

12 Endeavour Square  
London  
E20 1JN

Tel: +44 (0)20 7066 1000  
Fax: +44 (0)20 7066 1099  
[www.fca.org.uk](http://www.fca.org.uk)

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## **FINAL NOTICE**

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**To: Tunstall Trade Car Sales Limited**

**FRN: 693753**

**Dated: 28 AUGUST 2019**

### **ACTION**

1. For the reasons set out in this Final Notice, the Authority hereby takes the following action against Tunstall.
2. The Authority issued Tunstall the Decision Notice, which notified it that, for the reasons given below and pursuant to section 55J of the Act, the Authority had decided to cancel Tunstall's Part 4A permission.
3. Tunstall 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, for the reasons set out below, the Authority has today cancelled Tunstall'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 Threshold Conditions part of the Handbook;
  - “the Decision Notice” means the Decision Notice issued to Tunstall dated 12 June 2019
  - “EG” means the Enforcement Guide;
  - “the Handbook” means the Authority’s Handbook of rules and guidance;
  - “the Principles” means the Authority’s Principles for Businesses;
  - “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);
  - “Tunstall” means Tunstall Trade Car Sales Limited;
  - “Tunstall’s Part 4A permission” means the permission granted by the Authority to Tunstall under the Act; and
  - “the Warning Notice” means the Warning Notice issued to Tunstall dated 23 May 2019.

## **RELEVANT STATUTORY PROVISIONS**

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

## **SUMMARY OF 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 Tunstall is failing to satisfy the suitability Threshold Condition because it is not a fit and proper person having regard to all the circumstances, including its connections with other persons, namely Mr Savatori Oliverio and Mr Giovanni Oliverio, who were expected to act with probity, and who the Authority has decided to prohibit due to their criminal convictions involving fraud and dishonesty.
8. Tunstall has failed to comply with Principle 11 (Relations with regulators), in that Tunstall has not been open and co-operative in all its dealing with the Authority.

9. Tunstall is failing to satisfy the Threshold Condition in relation to its permitted regulated activities and accordingly the Authority considers that Tunstall's Part 4A permission should be cancelled.

#### **FACTS AND MATTERS RELIED ON**

10. Tunstall was authorised by the Authority on 21 July 2015 to carry out limited regulated activities relating to credit broking, debt adjusting and debt-counselling.
11. Tunstall's sole director and controller was, upon his own confession, convicted of criminal activity on 25 October 2017. Tunstall's sole current approved person was also convicted in relation to the same criminal activity.
12. Tunstall failed to notify the Authority of the criminal convictions.
13. The Authority has prohibited the sole director and the current approved person from performing any functions in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.
14. Through the Warning Notice, the Authority gave notice that it proposed to take the action described above and Tunstall was given the opportunity to make representations to the Authority about that proposed action.
15. No representations having been received by the Authority from Tunstall within the time allowed by the Warning Notice, the default procedures in DEPP 2.3.2G permit the allegations/matters described in the Warning Notice, and repeated in the Decision, to be regarded as undisputed.
16. The Authority has therefore decided to cancel Tunstall's Part 4A permissions for the reasons described above.

#### **Decision Maker**

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

#### **Important**

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

#### **Publicity**

19. The Authority must publish such information about the matter to 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 publication would in the opinion of the Authority, be unfair to Tunstall or prejudicial to the interests of consumers.
20. The Authority intends to publish this Final Notice and such information about the matter to which this Final Notice relates as it considers appropriate.

#### **Authority Contacts**

21. For more information concerning this matter generally, Tunstall should contact Hema Rachhoya at the Authority (direct line: 020 7066 2770).

**Anna Couzens**  
**Enforcement and Market Oversight**

## **ANNEX**

### **RELEVANT STATUTORY PROVISIONS**

1. The Authority's operational objectives include securing an appropriate degree of protection for consumers (section 1C of the Act) and protecting and enhancing the integrity of the UK financial system (section 1D of the Act).
2. Section 56(1) of the Act provides:

"The [Authority] may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by:

  - (a) an authorised person,
  - (b) a person who is an exempt person in relation to that activity, or
  - (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity."

### **RELEVANT REGULATORY PROVISIONS**

3. In exercising its power to make a prohibition order, 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 action specified above are set out below.

#### **The Enforcement Guide**

4. The Authority's policy in relation to exercising its power to issue a prohibition order is set out in EG.
5. EG 9.1 explains the purpose of prohibition orders in relation to the Authority's regulatory objectives.
6. EG 9.2 sets out the Authority's general policy on making prohibition orders. In particular—
  - (a) EG 9.2.1 states that the Authority will consider all relevant circumstances, including whether enforcement action has been taken against the individual by other enforcement agencies, in deciding whether to make a prohibition order;
  - (b) EG 9.2.2 states that the Authority has the power to make a range of prohibition orders depending on the circumstances of each case; and
  - (c) EG 9.2.3 states that the scope of a prohibition order will depend on, among other things, the reasons why the individual is not fit and proper and the severity of risk he poses to consumers or the market generally.

7. EG 9.5.1 states that where the Authority is considering whether to make a prohibition order against someone who is not an approved person, the Authority will consider the severity of the risk posed by the individual and may prohibit him where it considers that it is appropriate to achieve one or more of the Authority's statutory objectives.
8. EG 9.5.2 provides that, when considering whether to exercise its power to make a prohibition order against someone who is not an approved person, the Authority will consider all the relevant circumstances of the case. These may include, but are not limited to, the factors set out in EG 9.3.2. Those factors include: whether the individual is fit and proper to perform functions in relation to regulated activities (noting the criteria set out in FIT 2.1, 2.2, and 2.3); the relevance and materiality of any matters indicating unfitness; the length of time since the occurrence of any matters indicating unfitness; and the severity of the risk which the individual poses to consumers and to confidence in the financial system.

### **Fit and Proper Test for Employees and Senior Personnel/or Approved Persons?**

9. The Authority has issued guidance on the fitness and propriety of individuals in FIT.
10. FIT 1.3.1BG(1) states that the most important considerations when assessing the fitness and propriety of a person to perform a controlled function include that person's honesty, integrity and reputation.
11. FIT 2.1.1G states that in determining a person's honesty, integrity and reputation, the Authority will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G. It notes, amongst other things and by way of example, that:

"... conviction for a criminal offence will not automatically mean an application will be rejected. The [Authority] treats each candidate's application on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding, the offence, the explanation offered by the convicted person, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation."
12. FIT 2.1.3G(1) states that the matters referred to in FIT 2.1.1G include, but are not limited to, whether a person has been convicted of any criminal offence, noting that particular consideration will be given to offences including dishonesty, fraud and financial crime (amongst other things).