

FINAL NOTICE

Tyne Point Car Sales Limited

14 December 2022

ACTION

1. By an application dated 29 October 2021 ("the Application"), Tyne Point Car Sales Limited ("TPCSL" or "the Applicant") applied under section 55A of the Act for Part 4A permission to carry on the regulated activities of:
 - a. agreeing to carry on a regulated activity;
 - b. credit broking, limited to secondary broking;
 - c. debt counselling, limited to the relevant credit activity and
 - d. debt adjusting, limited to the relevant credit activity.
2. The Application is incomplete.
3. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

4. TPCSL has failed to respond to requests for the provision of information considered by the Authority to be necessary to allow the Application to be determined. By its Warning Notice the Authority gave notice that it proposed to refuse the Application and that TPCSL was entitled to make representations to the Authority about that proposed action.
5. No representations were received from TPCSL following the issuing of the Decision Notice.
6. The Authority must therefore determine 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 TPCSL satisfies, and will continue to satisfy, the threshold conditions.
7. 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 TPCSL would fail to do so if the Application were to be granted.
8. The failure to provide the information raises concerns as to whether TPCSL:
 - a. can be effectively supervised by the Authority as required by threshold condition 2C;
 - b. has appropriate human resources, given TPCSL's 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

9. 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 body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

“the Executive Decision Maker” means the member of the Authority’s staff acting under executive procedures as described in Chapter 4 of the Decision Procedure and Penalties Manual in the Authority’s Handbook.

“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; and

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

FACTS AND MATTERS

10. The Application was received by the Authority on 29 October 2021.
11. Further information was requested from TPCSL under section 55U(5) of the Act.
12. The Authority requested the following information in support of the Application:
 - a. On 5 April 2022, the Authority asked TPCSL to provide further information to progress its case. The deadline for a response was 8 April 2022. Non substantive response received on 6 April 2022.
 - b. On 22 April 2022, the Authority asked TPCSL to provide a business case to explain the reasons why TPCSL requires authorisation. The deadline for a response was 27 April 2022. Non substantive response received on 22 April 2022.
 - c. On 8 July 2022, the Authority sent TPCSL a further information request. The deadline for a response was 13 July 2022. No response was received.
 - d. On 21 July 2022, the Authority sent TPCSL a chaser request in relation to the email dated 8 July 2022. The deadline for a response was 26 July 2022. Non substantive response received on 26 July 2022.
 - e. On 22 July 2022, TPCSL was called to be informed of the outstanding information as per emails dated 8 July 2022 and 21 July 2022.
 - f. On 26 August 2022, the Authority sent TPCSL a concerns letter requesting clear and adequate responses to all outstanding questions and noting that the Authority was minded to refuse the application. The deadline for a response was 1 September 2022. Non substantive response received on 31 August 2022.
 - g. On 2 September 2022, the Authority informed TPCSL that the non-responder process will start as the information requested was still outstanding. The deadline for a response was 7 September 2022. No response was received.
13. On 13 September 2022, the Authority sent a letter to TPCSL by way of email and recorded delivery, noting the lack of a substantive 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 the Authority issuing TPCSL with a Warning Notice proposing to refuse the Application. Although TPCSL responded to the email sent on 13 September 2013, it failed to provide the outstanding information by the stated deadline.
14. On 18 October 2022, the Authority issued a Warning Notice by way of email and recorded delivery, giving notice to TPCSL that it proposed to refuse the Application and that TPCSL was entitled to make representations to the Authority about that proposed action. No representations were received.

15. On 7 November 2022, the Authority issued a Decision Notice by way of email and recorded delivery, giving notice to TPCSL that it had decided to take the action described above. TPCSL 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 or to date.

IMPACT ON THRESHOLD CONDITIONS

16. TPCSL has failed to respond to 7 separate requests for the provision of information considered by the Authority to be necessary to allow the Application to be determined. The final request gave TPCSL 10 business days to respond and included a statement to the effect that TPCSL must contact the Authority, or the Authority would issue TPCSL with a Warning Notice.
17. The Authority must therefore determine 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 TPCSL satisfies, and will continue to satisfy, the threshold conditions, and accordingly the Authority has refused the application.
18. 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 TPCSL would fail to do so if the Application were to be granted.
19. The failure to provide the information raises concerns as to whether TPCSL:
- a. can be effectively supervised by the Authority as required by threshold condition 2C;
 - b. has appropriate human resources, given TPCSL's 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.

PROCEDURAL MATTERS

IMPORTANT NOTICES

20. This Final Notice is given under section 390 of the Act.

Publication

21. 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.

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

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 entitled 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)(c)G 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.