
FINAL NOTICE

To: Westwind UK Limited

Address: 5 Winsor Drive
Reading
Berkshire
RG30 3EG

FRN: 506732

Dated: 20 June 2013

ACTION

1. For the reasons listed below and pursuant to Regulation 10(1)(h) (as applied by Regulation 14) of the Payment Services Regulations 2009 ("the PSR"), the Authority has decided to cancel the registration granted to Westwind UK Limited ("Westwind"), as a small payment institution under the PSR ("Westwind's registration").
2. The Authority gave Westwind a Decision Notice on 8 May 2013 ("the Decision Notice") which notified Westwind that for the reasons given below and pursuant to Regulation 10(1)(h) of the Payment Services Regulations 2009 ("the PSR"), the Authority had decided to cancel the registration granted to Westwind as a small payment institution under the RSR.
3. Westwind has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was given to Westwind.
4. Accordingly, the Authority has today cancelled Westwind's registration as a small payment institution.

DEFINITIONS

5. The definitions below are used in this Final Notice:

“the Act” means the Financial Services and Markets Act 2000

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

REASONS FOR THE ACTION

6. On the basis of the facts and matters and conclusions described in the Warning Notice dated 28 March 2013 (“the Warning Notice”), and in the Decision Notice, the Authority has concluded that Westwind has failed to pay fees and levies totalling £460.00 owed to the Authority, (which were due to be paid by 29 July 2012), and to respond adequately to the repeated requests from the Authority that it does so. These failings lead the Authority to conclude that Westwind has failed to demonstrate a readiness and willingness to comply with its ongoing regulatory obligations and to deal with the Authority in an open and co-operative way. Therefore it is desirable to cancel Westwind’s registration as a small payment institution in order to protect the interests of consumers, in accordance with Regulation 10(1)(h) of the PSR (as applied by Regulation 14).

RELEVANT STATUTORY PROVISIONS

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

DECISION MAKER

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

IMPORTANT

9. This Final Notice is given to Westwind in accordance with section 390(1) of the Act (as applied by paragraph 7(b) of Part 1 of Schedule 5 to the PSR).

Publicity

10. Section 391(4), 391(6) and 391(7) of the Act (as applied by paragraph 7(c) of Part 1 of Schedule 5 of the PSR) apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, 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 Westwind or prejudicial to the interests of consumers.
11. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contact

12. For more information concerning this matter generally, Westwind should contact Roger Hylton at the Authority (direct line: 0207 066 8168).

John Kirby
Enforcement and Financial Crime Division

ANNEX

RELEVANT STATUTORY PROVISIONS

1. Section 1A(1) of the Act states that the body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority.
2. Regulation 14 of the Payment Services Regulations 2009 ("the PSR") states:

"Regulations 7 to 11 apply to registration as a small payment institution as they apply to authorisation as a payment institution..."
3. Under Regulation 10(1)(h) (as applied by Regulation 14) of the PSR, the Authority may cancel the registration of a small payment institution if the cancellation is desirable in order to protect the interests of consumers.

Fees and levies owed to the Authority

4. Regulation 92(1) of the PSR states:

"The functions of [the Authority] under these Regulations are to be treated for the purposes of paragraph 23 Schedule 1ZA (fees) to the 2000 Act as functions conferred on [the Authority] under that Act..."
5. Paragraph 23(1) of Schedule 1ZA to the Act states:

"[The Authority] may make rules providing for the payment to it of such fees, in connection with the discharge of any of its qualifying functions, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it-

 - (a) to meet expenses incurred in carrying out its functions or for any incidental purpose; [...]"

RELEVANT HANDBOOK PROVISIONS

6. In exercising its power to cancel the registration of a small payment institution, the Authority must have regard to guidance published in the Authority's Handbook of rules and guidance ("the Handbook"). The relevant main considerations in relation to the action specified above are set out below.

Relevant Rules and Guidance

7. The rules and guidance relating to the payment of fees and levies are located in the FEES Manual which forms part of the Handbook. From 1 April 2013, some of the rules and guidance relevant to this matter were amended. The rules and guidance relevant in this case are set out below.
8. FEES 4.2.1R requires that:

"A person shown in column (1) of the table in FEES 4.2.11 R as the relevant fee payer must pay each periodic fee applicable to it, calculated in accordance with the provisions referred to in column (2) of that table, as adjusted by any relevant provision in this chapter:

 - (1) in full and without deduction (unless permitted or required by a provision in *FEES*); and

- (2) on or before the date given in column (3) of that table, unless FEES 4.2.10 R applies."

9. FEES 4.3.1R states that:

"The periodic fee payable by a firm (except an ICVC or a UCITS qualifier) is:

- (1) each periodic fee applicable to it calculated in accordance with FEES 4.3.3 R, using information obtained in accordance with FEES 4.4; plus
- (1A) any periodic fee applicable to it calculated in accordance with FEES 4.3.3A R using information relating to its *UK* business obtained in accordance with FEES 4.4 (or by other means in the case of the Bank of England); less
- (2) any deductions from the periodic fee specified in Part 2 of FEES 4 Annex 2 R or Parts 6 and/or 7 of FEES 4 Annex 11 R. For the purposes of this deduction, any deduction available in Part 2 of FEES 4 Annex 2 R shall not be applied to any fee calculated in accordance with FEES 4.3.3A R and any deduction available in Part 6 and/or 7 of FEES 4 Annex 11 R shall not be applied to any fees calculated in accordance with FEES 4.3.3 R."

10. FEES 4.3.3 AR states that:

"The periodic fee referred to in FEES 4.3.1 R in relation to fee-paying payment service providers and fee-paying electronic money issuers is calculated in accordance with 1R."

11. FEES 5.7.1R (effective until 31 March 2013) requires that:

"A firm must pay annually to [the Authority] the general levy on or before the later of 1 April and 30 calendar days after the date when the invoice is issued by [the Authority]."

13. FEES 7.2.1R requires that:

"A firm must pay each CFEB levy applicable to it:

- (1) in full and without deduction (unless permitted or required by a provision in *FEES*); and
- (2) in accordance with the provisions of FEES 4.3.6 R as modified by FEES 7.2.1A R."

OTHER RELEVANT REGULATORY PROVISIONS

14. The Authority's policy in relation to exercising its enforcement powers is set out in the Enforcement Guide ("EG"), the relevant provisions of which are summarised below.
16. EG 19.91 provides that the Authority's approach to enforcing the PSR will mirror its general approach to enforcing the Act.

18. EG 19.93 provides that, in relation to the PSR, the Authority has decided to adopt procedures and policies, in relation to the use of its sanctioning and regulatory powers, akin to those it has under the Act. The types of circumstances in which the Authority will consider cancelling a firm's Part 4A permission under the Act include failure to pay fees and levies owed to the Authority.
