
FINAL NOTICE

Michael Banks
79 St. Margarets Avenue
Bradford
West Yorkshire
BD4 9BE

10 February 2015

ACTION

1. By an application dated 1 April 2014 ("the Application") Michael Banks applied under section 60 of the Financial Services and Markets Act 2000 ("the Act") to carry on the regulated activities of Limited permission credit broking, Debt adjusting and Debt counselling.
2. The Application is incomplete.
3. For the reasons listed below, the Authority has decided to refuse the Application.

SUMMARY OF REASONS

4. By its Warning Notice dated 19 November 2014 ("the Warning Notice") the Authority gave notice that it proposed to refuse the Application and that Michael Banks was entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from Michael Banks 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 apply, 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 22 December 2014 (“the Decision Notice”), the Authority gave Michael Banks notice that it had decided to take the action described above.
7. Michael Banks had 28 days from the date the Decision notice was given to refer the matter to the Upper Tribunal (formerly known as the Financial Services and Markets 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 Michael Banks Final Notice of its refusal.
9. The Authority decided to refuse the Application and to give this Final Notice as Michael Banks has failed to provide the information required by the Authority, and in the absence of the information sought, the Authority cannot ensure that Michael Banks will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act.

DEFINITIONS

10. 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

FACTS AND MATTERS

11. The Application was received by the Authority on 1 April 2014.

12. On the basis of the information contained in the Application, the Authority has concerns over whether Michael Banks will carry out business in the United Kingdom and can be effectively supervised having regard to all the circumstances (Threshold Conditions 2B and 2C).

13. In light of these concerns, Michael Banks was requested to provide the following information in the case worker’s letter dated 22 July 2014:

- The reason why he was not contactable to discuss the details provided on his application.
- His up-to-date contact details.
- Documentation which verify his details, particularly his address.

14. Information was requested from Michael Banks under section 55U(5) of the Act. Details of all the communications between the Authority and Michael Banks are set out below:

- (1) On 19 May 2014, an email was sent to Michael Banks introducing the case worker. The email also stated that the Authority would be in contact in due course and provided a link to find out more about the FCA and its approach to consumer credit authorisation.

- (2) On 25 June 2014, the case worker further wrote to the business address and sent an e-mail to Michael Banks confirming his application was considered to be complete for the purposes of section 55A of the Act and as such, the six month period for consideration of a complete application had started and would expire on 25 December 2014. This was returned to the FCA marked as "addressee gone away".
- (3) On 27 June 2014, the case worker sent an email to Michael Banks requesting documentation to verify his details as they did not match details on the electoral register. The case worker gave a deadline of 11 July 2014 to provide the documentation.
- (4) On 30 June 2014, the case worker checked Michael Banks' website, namely www.tlcmotors.co.uk and this appeared to be in operation.
- (5) On 21 July 2014, the case worker gave Michael Banks a call on both his landline and mobile numbers to find out why he had not responded. Both numbers were not obtainable.
- (6) On 22 July 2014, the case worker wrote to Michael Banks at his home address and asked for clarification why he was not reachable with the details provided on his application. The case worker also asked for up to date contact details and documentation which verified his details. The case worker gave a deadline of 5 August 2014 to provide the information.
- (7) On 18 September 2014, a non-responder 1 letter was both sent by email and posted to Michael Banks at his home address. The case worker gave a deadline of 25 September 2014 to respond. The email and letter also stressed that failure to provide information might result in the case being recommended to the FCA's Regulatory Transaction Committee.
- (8) On 26 September 2014, a non-responder 2 letter was both sent by email and posted to Michael Banks at his home address by special delivery. The case worker gave a deadline of 3 October 2014 to respond. The email and letter again stressed that failure to provide information might result in the case being recommended to the FCA's Regulatory Transactions Committee. The letter was signed for on 27 September 2014 with the printed name of M. Banks.
- (9) On 1 October 2014, the case worker contacted Michael Banks on both his landline and mobile numbers to chase up earlier requests. Both numbers were not obtainable. The case worker sent an email to Michael Banks asking if he would respond by the deadline of 3 October 2014.
- (10) On 6 October 2014, the case worker called Michael Banks on both his landline and mobile numbers to find out why he had not responded. Both numbers were not obtainable. The case worker sent an email reminder to Michael Banks asking for a response to the earlier requests. The case worker gave a deadline of 13 October 2014 to respond.
- (11) On 9 October 2014, the case worker checked Michael Banks' website, namely www.tlcmotors.co.uk, which no longer appeared to be in operation.
- (12) On 14 October 2014, a non-responder 3 letter was both sent by email and posted to Michael Banks at his home address by special delivery. The case worker gave a deadline of 21 October 2014 to respond. The email and letter

again stressed that failure to provide information might result in the case being recommended to the FCA's Regulatory Transactions Committee and explained that Mr Banks may wish to consider withdrawal of the application. The letter was signed for on 15 October 2014 with the printed name of M. Banks.

- (13) In summary the Authority received no responses to any communications sent to Michael Banks and none of the requested information. In addition the Authority received no communication from Michael Banks at any stage since receipt of his application form.

IMPACT ON FITNESS AND PROPRIETY

15. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
16. Threshold Conditions 2B and 2C require that Michael Banks satisfy the Authority that he will carry on business in the United Kingdom and can be effectively supervised. The Guidance to Threshold Condition 2C states that the Authority may have regard to whether it is likely the FCA will receive adequate information from the firm to determine whether the firm is complying with the requirements and standards under the regulatory system. Similarly, Principle 11 of the Principles for Businesses requires a firm to deal with its regulators in an open and cooperative way.
17. By failing to provide the requested information despite repeated requests to do so, Michael Banks has not been open and co-operative with the Authority. The Authority is therefore not satisfied that Michael Banks will satisfy, and continue to satisfy, Threshold Condition 2C.
18. In addition, the information requested (as set out in paragraph 10 above) was relevant to the Authority's assessment of whether Michael Banks could otherwise satisfy, and continue to satisfy, Threshold Conditions 2B (Location of offices) and 2C (Effective supervision) by giving the Authority a better understanding of, among other things, the business of Michael Banks by providing the information requested.
19. In the absence of the requested information, it has not been possible to determine whether the firm has offices in the United Kingdom and whether Michael Banks can be effectively supervised or indeed whether he is even still trading.
20. On the basis of the facts and matters described above, the Authority has concluded that it cannot ensure that Michael Banks will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which Michael Banks would have permission if the Application was granted.

IMPORTANT NOTICES

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

Publication

22. Sections 391(4), 391(6) and 391(7) of the Act 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 Michael Banks or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

24. For more information concerning this matter generally, contact Katherine Webster, Manager, Credit Authorisations Department at the Authority (direct line: 020 7066 64126 / email: katherine.webster@fca.org.uk).

Nicholas Mears
on behalf of the Regulatory Transactions Committee

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 60(3) of the Act allows the Authority to require an applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
3. Section 62(5) of the Act defined 'interested parties' as including the applicant, and the person in respect of whom the application is made.
4. Section 390 (1) of the Act requires the Authority, if the matter was not referred to the Tribunal within the time required by the Tribunal Procedure Rules, to issue a Final Notice.
5. 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.
6. 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.
7. 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

8. 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 Handbook, including the part titled Threshold Conditions ("COND"). The main considerations in relation to the action specified are set out below.

Threshold condition 2B: Location of offices

9. COND 2.2.1A(2) states that if a firm is not a body corporate but has a head office in the United Kingdom then the firm must carry on business in the United Kingdom.

Threshold condition 2C: Effective supervision

10. COND 2.3.3G states in assessing the threshold conditions set out in paragraphs 2C and 3B of Schedule 6 to the Act, factors which the FCA will take into consideration include, among other things, whether:
- (a) it is likely that the FCA will receive adequate information from the firm, and those persons with whom the firm has close links, to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the FCA 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 FCA);
 - (b) the structure and geographical spread of the firm, the group to which it belongs and other persons with whom the firm has close links, might hinder the provision of adequate and reliable flows of information to the FCA; factors which may hinder these flows include the fact there may be branches or connected companies in territories which supervise companies to a different standard or territories with laws which restrict the free flow of information, although the FCA will consider the totality of information available from all sources; and
 - (c) in respect of a firm not carrying on, or seeking to carry on, a PRA-regulated activity, it is possible to assess with confidence the overall financial position of the group at any particular time; factors which may make this difficult include lack of audited consolidated accounts for a group, if companies in the same group as the firm have different financial years and accounting dates and if they do not share common auditors.