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## FINAL NOTICE

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Active Claims (UK) Ltd  
1440 Leeds Road  
Bradford  
West Yorkshire  
BD3 7AA

9 July 2021

### **ACTION**

1. By an application dated 31 July 2019, Active Claims (UK) Ltd applied to the Authority under section 55A of the Act for Part 4A permission to carry on the regulated activity of: seeking out, referrals and identification of claims or potential claims (personal injury claims; financial services or financial product claims; housing disrepair claim; claim for a specified benefit; criminal injury claim; employment related claim).
2. In the same Application, the Firm also applied for permission to advise on, investigate or provide representation in relation to a criminal injury claim. By an email to the Authority dated 27 October 2020, the Firm clarified that it was not seeking permission for that aspect of the Application.
3. The Authority has refused the remaining aspects of the Application (cited in Paragraph 1) for the reasons summarised below.
4. It does not appear to the Authority that the Firm will meet and continue to meet threshold conditions 2D (appropriate resources), 2E (suitability) and 2F (business model) because:

- a. The Firm has repeatedly failed to engage appropriately with the Authority, leaving it unable to clarify important issues relevant to a proper assessment of the Firm's ability to comply with fundamental standards of the regulatory regime. The Authority has been unable to verify that the Firm is a fit and proper person and as a result it appears that the Firm is not ready, willing and able to comply with the standards of the regulatory regime.
- b. From the financial information the Authority has seen, it appears the Firm has had negative capital and reserves for the last three years. The Firm's approach has meant that the Authority has been unable to satisfy itself that the Firm is able to meet its liabilities as they fall due and that the Firm has an appropriate business model.

## **DEFINITIONS**

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

"the Act" means the Financial Services and Markets Act 2000;

"the Application" means the application under Part 4A of the Act dated 31 July 2019 (as later amended by the Firm by email on 27 October 2020);

"the Authority" means the Financial Conduct Authority;

"the Warning Notice" means the Warning Notice dated 01 February 2021 given to Active Claims (UK) Ltd by the Authority;

"the Decision Notice" means the Decision Notice dated 4 May 2021 given to Active Claims (UK) Ltd by the Authority;

"CMCOB" means the Claims Management: Conduct of Business section of the Authority's handbook;

"COND" means the Threshold Conditions section of the Authority's handbook;

"the Firm" means Active Claims UK Ltd;

"the RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);

"SUP" means the Authority's Supervision Manual, part of the Handbook;

"the threshold conditions" mean the conditions appearing at Part 1B of Schedule 6 of the Act; and

"the Tribunal" means the Upper Tribunal (Tax & Chancery Chamber)

## **FACTS AND MATTERS**

### **Background**

6. The Firm was incorporated in 2006 and provided claims management services to customers in respect of personal injury. The Firm was first authorised by the Claims Management Regulator on 3 May 2007. Responsibility for claim management regulation transferred to the Authority on 1 April 2019. From that date onwards firms needed to apply for temporary registration with the authority. The firm was granted temporary registration on 1 April 2019.

In order to continue carrying on claims management activities, Firms had to apply to the Authority for full authorisation in a window between 1 April 2019 and 31 July 2019. The Firm applied on 31 July 2019.

### *Application Assessment*

7. In order to assess a Firm's ability to meet regulatory standards and to discharge its responsibilities under the Act, the Authority required the applicant to provide the following information:
  - a. The applicant's business plan.
  - b. If applying for permissions in relation to advice, investigation or representation of a claim, a copy of the pre-contract information and the customer contract.
  - c. An opening balance sheet to demonstrate how the applicant will meet its financial resources requirement at the date of authorisation.
  - d. A forecast closing balance sheet for the first 12 months as an authorised firm.
  - e. A monthly cash flow forecast for the first 12 months of trading as an authorised firm.
  - f. Monthly profit and loss forecast for the first 12 months of trading.
  - g. Most recent annual and management accounts, if annual accounts are not recent.
  - h. Compliance procedures and compliance monitoring programme.
  - i. An individual form for each member of the firm's management body.

### *Chronology of correspondence with the Firm*

8. The Firm submitted its business plan with the Application together with the individual form for its director. The Authority requested the remaining outstanding information from the Firm on 16 September 2019.
9. On 30 September 2019, the Firm responded by email submitting its Compliance Monitoring Plan, Compliance Processes and Procedures, Staff Organisational Chart,

Projected Cash Flow Statement, Accounts 2018-19 and Projected Profit & Loss Statement and Accounts for the period 2019-20.

8. On 3 December 2019, the Firm provided by email copies of the Senior Manager and Certification Regime information as requested by the Authority.
9. On 7 February 2020, the Authority sent an email to the Firm seeking further information about its business activities, financial promotions, compliance plans, financial and prudential resources and also the director's individual form. The email invited a response by no later than 21 February 2020. The Firm did not reply.
10. In its email, the Authority had also requested the pre-contractual information document and client contract and vulnerable person procedure both of which remained outstanding given the Firm had applied for permission to carry on the regulated activity of advice, investigation or representation in relation to a criminal injury claim. The Authority requires that firms seeking permission to advise on, investigate or provide representation in relation to a criminal injury claim provide this information.
11. On 24 February 2020, the Authority sent an email to the Firm noting that its response was overdue and set a new deadline for response of 26 February 2020. The Firm did not reply.
12. On 20 April 2020, the Authority attempted to contact the Firm by telephone. The Authority left a voice message requesting that the Firm provide the outstanding information as a matter of urgency or contact the Authority to discuss the application. The Firm did not reply.
13. On 16 June 2020, the Authority contacted the Firm twice by telephone with both calls unanswered. The Authority left voice messages requesting that the Firm return its calls. The Firm did not reply.
14. On 22 June 2020, the Authority contacted the Firm by telephone. The Authority spoke to the Firm's director who stated that the Firm would call the Authority back within one hour. The Firm did not return the call.
15. On both 23 and 24 June 2020, the Authority attempted to contact the Firm again by telephone. The calls were unanswered and there was now no facility to leave a voice message.
16. On 24 July 2020, the Authority sent a letter to the Firm by email and recorded delivery, 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 a recommendation to the RTC that the Authority should issue the Firm with a Warning Notice proposing to refuse the Application.
17. The letter set out that the Authority expected a response within 10 working days. The Firm did not provide the outstanding information by the deadline set out in the letter, the receipt of which was signed for on 3 August 2020.

18. On 11 August 2020, a manager at the Firm sent an email and two attachments to the Authority. The email included an explanation that the delayed response was owing to a travel delay caused by the Covid-19 outbreak. It also attached a Compliance monitoring plan which the Firm stated needed updating and some financial details of the Firm, an extract of which appears below:

	<i>Notes</i>	<i>2019</i>	<i>2018</i>
		£	£
Fixed Assets		11,238	14,635
Current Assets		13,517	23,062
Creditors: amounts falling due within one year		(32,743)	(45,012)
Net current assets (liabilities)		<u>(19,226)</u>	<u>(21,950)</u>
Total assets less current liabilities		<u>(7,988)</u>	<u>(7,315)</u>
Total net assets (liabilities)		<u>(7,988)</u>	<u>(7,315)</u>
Capital and reserves		<u>(7,988)</u>	<u>(7,315)</u>

**Micro-entity Balance Sheet as at 30 April 2018**

	<i>Notes</i>	<i>2018</i>	<i>2017</i>
		£	£
<b>Fixed Assets</b>		14,635	17,561
<b>Current Assets</b>		23,062	18,753
<b>Creditors: amounts falling due within one year</b>		(45,012)	(44,671)
<b>Net current assets (liabilities)</b>		<u>(21,950)</u>	<u>(25,918)</u>
<b>Total assets less current liabilities</b>		<u>(7,315)</u>	<u>(8,357)</u>
<b>Total net assets (liabilities)</b>		<u>(7,315)</u>	<u>(8,357)</u>
<b>Capital and reserves</b>		<u>(7,315)</u>	<u>(8,357)</u>

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19. Authority replied by email a few minutes later on 11 August 2020. It asked for the Firm to contact the Authority to discuss the Application on the telephone. The Firm did not reply.

The purpose of that call was to set out that the Firm had yet to provide the following information:

- a. Updated compliance procedures as requested by email on 7 February 2020.
- b. Clarification of the inconsistency between the Application and the Firm's stated business model.
- c. Confirmation of whether the Firm is trading or dormant and a copy of its management accounts.
- d. A description of the customer journey and the list of solicitors the Firm works with.
- e. An updated and more detailed staff organisational structure chart.

20. On 18 August 2020, the Authority sent an email to the Firm recording that the Authority continued to have outstanding questions and that, should no response be received by 24 August 2020, the Authority's Claims Management Companies Department would recommend refusal of the Application. The Firm did not reply.
21. The Authority contacted the Firm again on 7 October 2020 to provide an update on the Application. The Authority spoke to the Firm on a telephone call during which it informed the Firm that it had concerns with its financial position and that the Authority could not be satisfied that the Firm was solvent. The Firm stated that it would provide updated financial information.
22. On 8 October 2020, the Authority contacted the Firm by telephone to discuss the Application and specifically the Firm's financial position. The call was unanswered and there was no facility to leave a message.
23. On 12 October 2020, the Authority again contacted the Firm by telephone. The Authority spoke to a representative of the Firm. The Authority stressed the urgency of the matter with the representative and requested that one of the Firm's officers contact the Authority as soon as possible.
24. The Firm did not return the call. Instead, on 27 October 2020, it provided its response to the Authority's email regarding the Firm's permission, whether the Firm is trading or dormant and details regarding its customer journey. The Firm clarified in its email response that it was only applying for permission for seeking out, referrals and identification of claims or potential claims for personal injury, housing disrepair, criminal injury and employment related claims. The Firm did not provide its updated financial information as had been requested.
25. On 29 October 2020, the Authority sent an email to the Firm requesting an updated copy of the Firm's accounts to be provided by 3 November 2020.
26. On 3 November 2020, the Authority contacted the Firm by telephone to follow up on the deadline which the Firm had missed. The call was unanswered and there was no facility to leave a message. The Firm did not reply by the deadline nor request an extension.
27. On 4 November 2020, the Authority again attempted to contact the Firm by telephone. The call was unanswered and there was no facility to leave a message. The Authority also sent an email to the Firm stating that if it did not receive a response, the Authority's Claims Management Companies Department would be minded to recommend to the Authority's decision makers to issue a Warning Notice to the Firm proposing to refuse the Application.
28. On 6 November 2020, the Firm requested an extension to the deadline owing to staff sickness. The Authority granted an extension to 13 November 2020 and indicated in its response to the Firm that failure to provide the information may result in the application for authorisation being refused.
29. On 13 November 2020, the Authority sent an email to the Firm in anticipation of the agreed deadline. The Firm did not respond to the Authority's email. On 16 November 2020, the Authority contacted the Firm by telephone to follow up on its request for the Firm's financial information. The call was unanswered. The Authority left a voice message requesting that the Firm return the call.

30. To date, the Firm has not responded to the Claims Management Companies Department's email of 13 November 2020 nor its voice message of 16 November 2020.

### **IMPACT ON THRESHOLD CONDITIONS**

31. The Authority considers that, having regard to all of the circumstances, it cannot ensure (as the Authority is required by section 55B(3) of the Act to do) that the Firm will satisfy, at the point of authorisation, and continue to satisfy, the threshold conditions for which the Authority is responsible. In particular and for the reasons set out below, it appears to the Authority that the Firm will not satisfy and continue to satisfy threshold conditions 2D (appropriate resources), 2E (suitability) and 2F (business model).

#### *Threshold condition 2D: Appropriate resources*

32. A firm's resources must be appropriate in relation to the regulated activities proposed to be carried on. COND 2.4.2G(2) provides that "appropriate resources" includes both financial and non-financial resources (such as human resources, effective means by which to manage risks, and any systems, controls, plans or policies that the firm maintains). It states that the Authority will interpret the term "appropriate" as meaning sufficient in terms of quantity, quality and availability.

33. The Authority considers that it cannot ensure that the Firm will satisfy at the point of authorisation and, subsequently, continue to satisfy the appropriate resources threshold condition. The Firm is required to meet the general solvency requirement for lead generation. However, the information provided by the Firm means that the Authority cannot be sure that the Firm has appropriate financial resources. It cannot be sure that the Firm is meeting the general solvency requirement in CMCOB 7.2.1R. This rule requires the Firm to be able to meet its liabilities as they fall due. The information received demonstrates that the Firm's capital and reserves are currently negative.

34. Based on the circumstances set out above, it does not appear to the Authority that the Firm will satisfy and continue to satisfy threshold condition 2D.

#### *Threshold condition 2E: Suitability*

35. A firm must be fit and proper having regard to all of the circumstances, including the need to ensure that its affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system. COND 2.5.1A(1)(d) states that a firm must be a fit and proper person having regard to all the circumstances including whether the firm has complied with and is complying with requirements imposed by the Authority in the exercise of its functions, or requests made by the Authority, relating to the provision of information to the Authority and, where the Firm has so complied, the manner of that compliance.

36. The Authority is concerned that it has on several occasions taken multiple attempts to contact the Firm to provide outstanding information relevant to its assessment of

the Application. The Firm has failed to provide updated financial information, which should be readily available within a reasonable timeframe.

37. The Authority considers that this demonstrates that it is unlikely that the Authority will receive adequate and timely information from the Firm (when requested) to enable the Authority to determine whether the Firm is complying with the requirements and standards under the regulatory system.
38. Based on the circumstances set out above, it does not appear to the Authority that the Firm will satisfy, and continue to satisfy, threshold condition 2E.

*Threshold condition 2F: Business model*

39. Threshold condition 2F requires that a firm's business model must be suitable in relation to the regulated activities conducted or proposed. COND 2.7.8G provides that a firm's viability and the longer-term profitability of the business are relevant to the consideration of this threshold condition. The Authority is concerned that the Firm's current capital and reserves position is negative, and it has not provided any credible plans for a return to profit.
40. Based on the circumstances set out above, it does not appear to the Authority that the Firm will satisfy, and continue to satisfy, threshold condition 2F.
41. On the basis of the facts and matters described above and having taken into account written representations submitted by the Firm, it does not appear to the Authority that the Firm would satisfy, and continue to satisfy, the threshold conditions if the Application was granted.
42. Accordingly, the Authority has refused the Application.

**REPRESENTATIONS**

43. Following the issue of the Warning Notice, the Firm submitted written representations which were considered by the RDC. A summary of these representations appears at Annex B.
44. An oral representations meeting with the RDC was scheduled for 12 April 2021 at the Firm's request, but neither the Firm nor its representatives attended. The Firm did not respond to the Authority's offer of a rescheduled representations meeting, nor did the Firm submit any further written representations.
45. This Final Notice was preceded by the Warning Notice and, following the Authority's consideration of the Firm's representations, the Decision Notice.
46. The Firm has not referred the Decision Notice to the Upper Tribunal within the time period set out in the Decision Notice. This Final Notice is therefore given under section 390(1) of the Act.



## **Publicity**

47. 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 the Firm or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
48. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

## **49. Authority contacts**

For more information concerning this matter generally, contact Greg Williams, Manager, Claims Management Companies Department at the Authority (direct line: 020 7066 1475/email: [Greg.Williams@fca.org.uk](mailto:Greg.Williams@fca.org.uk)).

**Sarah Hayes**  
**on behalf of the Regulatory Transactions Committee**

## **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 Handbook, including the part titled 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 Prestige First 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 Prestige First has, or will have, permission in the context of its ability to supervise Prestige First 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 Prestige First 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 Prestige First 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 Prestige First 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 Prestige First 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 Prestige First 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 Prestige First's position within a UK or international group, information provided by overseas regulators about Prestige First, and Prestige First'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)(a) 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 Prestige First 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 Prestige First 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 Prestige First has permission, or is seeking permission, to carry on.

## **ANNEX B – THE FIRM’S REPRESENTATIONS**

1. In its representations dated 18 February 2021, the Firm stated that, *"Much of the issues which you have raised regarding the financials of the company take root in the actions of the previous accountant. We have suffered losses to both businesses, finance and client care due to the accountant's lack of transparency and integrity whilst working for Active Claims. A new accountant has been employed recently who shall help to bring our case together as to why our Application should be granted. As you will be aware, due to Covid-19, Active Claims was instructed to close as it was not regarded as an essential business, the impact of that, both on a business and personal level, has been very damaging to say the least. However, with the possibility at the horizon of the lockdown ending, we are optimistic about getting things running again. The accounts are being prepared by the new accountant to fight our application, (and for the reversal of your decision) which in the current climate, is felt to be deemed an extra burden in the smooth running of our business."*
2. The Authority has not been provided with any evidence that the new accountant has rectified the Firm's financial position, that the Firm is now complying with the general solvency requirement in CMCOB 7.2.1R, or that the position is likely to improve in the future. Responsibility for satisfying the threshold conditions ultimately lies with the Firm itself.
3. The Authority has not seen any evidence from the Firm of the instructions it claims to have received, stating that it was not an essential business and that it ought to close. The Authority's understanding is that, at certain times, restrictions related to the Covid-19 pandemic have prevented in-person public access to certain venues such as shops, but have not required the closure of offices, and in any event should not have prevented the Firm responding to the Authority's communications appropriately. The Authority recognises the effect that the pandemic and restrictions have had on regulated firms. Since submission of the Application on 31 July 2019, the Authority has given the Firm significant latitude to engage with it appropriately and to provide the evidence required to demonstrate that the Firm will satisfy the threshold conditions. The Firm has not done so.