
FIRST SUPERVISORY NOTICE

To: Craig Mitchell
Reference Number: 624013
Address:
Date: 19 April 2022

1 ACTION

1.1 For the reasons given in this First Supervisory Notice, and pursuant to sections 55J(1)(a) and (c) of the Act, the Authority has decided to vary with immediate effect the Part 4A permission granted to Craig Mitchell by removing all his regulated activities which are as follows:

Insurance

- 1) advising on investments (except on Pension Transfers and Pension Opt Outs);
- 2) arranging (bringing about) deals in investments;
- 3) making arrangements with a view to transactions in investments;

Investments

- 4) advising on peer-to-peer agreements.
- 1.2 The effect of the Variation is that Craig Mitchell no longer has permission to conduct any regulated activities.

2 REASONS FOR ACTION

Summary

- 2.1 The Authority has concluded, on the basis of the facts and matters described below that, that it is appropriate to exercise its power under sections 55J(1)(a) and (c) of the Act to vary Craig Mitchell's permission because he is failing, or is likely to fail, to satisfy the Effective Supervision, Suitability and Appropriate Resources Threshold Conditions and to advance the Authority's consumer protection objectives (section 1C of the Act).
- 2.2 The Authority has identified serious concerns relating to Craig Mitchell in that his conduct appears to demonstrate that it is not a fit and proper person and poses a significant risk of harm to consumers. Specifically:
- 1) there are a total of 13 complaints against Craig Mitchell which have been upheld by the Financial Ombudsman Service ("FOS") and where the FOS found that Craig Mitchell had provided unsuitable investment advice to his customers. To date, Craig Mitchell has not paid redress to at least 6 of those customers in whose favour the FOS had upheld complaints;
 - 2) Craig Mitchell has also failed to respond to information requirements issued under section 165 of the Act and correspondence requiring him to provide an explanation for his failure to pay the FOS awards made against him; and
 - 3) further, there are a total of 10 complaints against Craig Mitchell currently being investigated by the FOS and Craig Mitchell has not satisfied the Authority that he has made adequate provision to meet his potential liabilities to his customers.
- 2.3 The Authority considers that Craig Mitchell is failing, or is likely to fail, to satisfy the Effective Supervision, Suitability and Appropriate Resources Threshold Conditions (paragraphs 2C, 2D and 2E of Schedule 6 to the Act) as well as its failure to comply with the Authority's requirements in potential breach of Principle 11 (Relations with regulators) of the Authority's Principles for Businesses. The Authority considers that the Variation of Craig Mitchell's permission with immediate effect is desirable to protect consumers.

3 DEFINITIONS

- 3.1 The definitions below are used in this First Supervisory Notice:

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

"the Authority" means the Financial Conduct Authority;

"the Cancellation Application" means the submission by Craig Mitchell of an application to the Authority to cancel his Part 4A permission on 19 March 2021;

"Complainant A" means a customer who issued a complaint with the FOS against Craig Mitchell;

"Complainants B and C" means a couple of customers who also issued a complaint with the FOS against Craig Mitchell;

“Executive Procedures” means the process as described in Chapter 4 of the Decision Procedure and Penalties Manual of the Handbook;

“FOS” means the Financial Ombudsman Service;

“Handbook” means the Authority’s online handbook of rules and guidance (as in force from time to time);

“Information requirement” means an information requirement pursuant to section 165 of the Act;

“Part 4A permission” means permission to conduct regulated activities, granted by the Authority under Part 4A of the Act;

“Threshold Conditions” are the minimum requirements that firms need to meet in order to be authorised and to continue carrying on regulated activities as set out in Schedule 6 to the Act;

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

“Variation” means the variation of Craig Mitchell’s Part 4A permission set out in paragraph 1.1. above.

4 FACTS AND MATTERS

Background

- 4.1 Craig Mitchell is a sole trader and was authorised on 5 January 2015. Craig Mitchell has permission to advise on and arrange deals in insurance contracts for both commercial and retail customers. He also has permission to advise on peer-to-peer investment agreements. Craig Mitchell is not permitted to hold client money.

Failings and risks identified

- 4.2 On 6 January 2021, the FOS referred to the Authority a complaint by Complainant A against Craig Mitchell which had reached the end of the FOS complaint process. Craig Mitchell had not complied with the award made against him even after he was advised that the case would be referred to the Authority should he fail to comply with the FOS decision.
- 4.3 The FOS had upheld Complainant A’s complaint that the latter was provided with unsuitable investment advice by Craig Mitchell in relation to a £10,000 investment in a bond offering a guaranteed return. Craig Mitchell was instructed to pay him £8,102 plus simple interest at the rate of 8%. Additionally, Craig Mitchell had to pay £150 for the trouble and upset caused to Complainant A. Complainant A had accepted the FOS decision which meant that it was now legally binding on Craig Mitchell.
- 4.4 On 26 January 2021, the Authority sent Craig Mitchell a letter via email notifying him of the unpaid FOS award of 8 September 2020 in favour of Complainant A. The letter requested Craig Mitchell to contact the Authority as a matter of urgency and to indicate his intentions with regard to payment of the FOS award. The Authority was notified that the email was successfully delivered to Craig Mitchell but he failed to respond to the Authority’s letter. A copy of the letter was also sent via recorded delivery and although it was signed for when delivered, Craig Mitchell again failed to respond.

- 4.5 On 19 March 2021, Craig Mitchell submitted an application to the Authority to cancel his Part 4A permission ("the Cancellation Application") on the basis that it had ceased to carry on regulated activities and to trade. He requested that the cancellation take effect immediately and stated that *"there are no assets or liabilities of the firm"*.
- 4.6 Craig Mitchell's responses to the questions asked as part of the application process revealed that he had not notified his clients of his intention to cancel his Part 4A permission, his firm's fees were not paid up to date and that he was not aware of any current or potential liabilities in respect of his business. Further, Craig Mitchell confirmed that he had no complaints currently under consideration with the FOS. He also admitted that he was not sure who would be looking after his customers on the assumption that his Part 4A permission was cancelled.
- 4.7 As at 5 April 2021, Craig Mitchell's balance sheet showed a net asset position of £7,550, comprising cash at bank and in hand. The profit and loss account of Craig Mitchell for the reporting period from 6 October 2020 to 5 April 2021 showed that he had not been carrying on any regulated activity. The Authority received no further submissions of regulatory returns from him after 5 April 2021.
- 4.8 On 24 May 2021, the Authority followed up with Craig Mitchell by informing him that the FOS was currently investigating 13 complaints against him, the earliest being September 2019 and the most recent, March 2021. The Authority requested Craig Mitchell to explain what arrangements he had put in place to deal with any liabilities that may fall due should the FOS uphold the complaints against him. The Authority informed him that in circumstances where firms have potential liabilities, the Authority had to *"ensure that consumers are not subjected to any detriment by the firms that serviced them"* and the Authority's expectations are that firms have arrangements in place either in the form of adequate *"run off"* insurance cover or sufficient capital to provide for its liabilities.
- 4.9 On 26 August 2021, Craig Mitchell replied to confirm that he had contacted the FOS about the 13 complaints and provided the following comments:
- 1) two cases were now closed;
 - 2) one case was still being dealt with him and he advised that Craig Mitchell was seeking further information from the investment company; and
 - 3) on six cases, Craig Mitchell denied providing any investment advice to his customers.
- 4.10 Craig Mitchell did not provide any information on the remaining four cases out of the total of 13 complaints.
- 4.11 On 1 December 2021, the Authority sent Craig Mitchell an email noting that there were four complaints which were currently still being investigated by the FOS. The Authority stated that it was not in a position to grant Craig Mitchell's application to cancel his permission without receiving evidence that he had professional indemnity insurance in place or sufficient funds to cover the potential costs of FOS complaints against him.
- 4.12 On 8 December 2021, the FOS referred to the Authority a complaint by a couple of other customers, Complainants B and C, against Craig Mitchell which had

reached the end of the FOS complaint process. The FOS had upheld Complainants B and C's complaint that they were provided with unsuitable investment advice by Craig Mitchell in relation to a £30,000 investment. Craig Mitchell was instructed to pay compensation calculated pursuant to a formula set out by the FOS, including interest.

- 4.13 On 19 December 2021, the Authority suggested that Craig Mitchell consider withdrawing the Cancellation Application due to his failure to respond to its repeated requests for information and that in the absence of a withdrawal, the Authority will proceed to take the matter to a senior decision-maker.
- 4.14 On 24 January 2022, the Authority sent Craig Mitchell an information requirement pursuant to section 165 of the Act requesting details of all complaints that he had received including the names of complainants, the dates, nature and status of complaints, and copies of all correspondence involving the complainants. The Authority also requested details of all complaints against Craig Mitchell in which the FOS made findings in favour of the complainants. The letter was sent via email to Craig Mitchell's email address and the Authority believes the email was successfully delivered as it did not receive any delivery failure notification.
- 4.15 On 25 January 2022, the Authority sent its letter of 24 January 2022 via post but it was subsequently returned undelivered. On 9 February 2022, the Authority also tried unsuccessfully to contact Craig Mitchell by phone and emailed to invite him to consider withdrawing the Cancellation Application on the basis the information he had provided to the Authority was incomplete. The Authority did not receive any reply to this email by Craig Mitchell.
- 4.16 On 10 February 2022, the Authority sent two identical letters with substantially the same wording as the 9 February 2022 email to two addresses the Authority had on file for Craig Mitchell, one of which appeared to have been successfully delivered, the other being returned undelivered, but again, the Authority received no reply from him.
- 4.17 On 11 April 2022, the FOS confirmed that a total of 13 complaints have been upheld by the FOS against Craig Mitchell and he has still not paid redress to at least 6 of those customers in whose favour the FOS had upheld complaints. A further 10 complaints were still being investigated by the FOS

5 CONCLUSION

5.1 The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.

Analysis of failings and risks

Failure to comply with the Threshold Conditions

5.2 The Authority has serious concerns about Craig Mitchell's compliance with the Threshold Conditions. The Threshold Conditions are minimum requirements that firms need to meet in order to be authorised and to continue carrying on regulated activities. The Authority considers that Craig Mitchell is failing, or is likely to fail, to satisfy:

- 1) the Suitability Threshold Condition as he may not be fit and proper because:
 - a) there are 13 complaints against Craig Mitchell which have been upheld by the FOS and where the FOS found that Craig Mitchell had provided unsuitable investment advice to his customers. To date, Craig Mitchell has not paid redress to at least 6 of those customers in whose favour the FOS had upheld complaints;
 - b) there are a total of 10 complaints against Craig Mitchell currently being investigated by the FOS;
- 2) the Effective Supervision Threshold Condition because Craig Mitchell has also failed to respond to an information requirement issued under section 165 of the Act and correspondence requiring him to provide an explanation for his failure to pay the FOS awards made against him; and
- 3) the Appropriate Resources Threshold Condition because Craig Mitchell has not satisfied the Authority that he has made adequate provision to meet his potential liabilities to his customers.

5.3 Craig Mitchell is also not engaging with the Authority in an open and cooperative manner or complying with the Authority's requirements in potential breach of Principle 11 (Relations with regulators) by failing to:

- 1) provide information on the arrangements he has in place to ensure that he has either PII cover or sufficient funds to meet his potential liabilities arising from FOS complaints against him;
- 2) be transparent and compliant with requirements to provide the Authority with prompt and accurate information regarding the complaints against him; and
- 3) respond to an information requirement issued under section 165 of the Act.

5.4 As a result of these matters, it appears to the Authority that Craig Mitchell:

- 1) has not complied and is not complying with the need to ensure that his affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers (sub-paragraph (c) of paragraph 2E of Schedule 6 to the Act);

- 2) is not capable of being effectively supervised as a result of the way his business is being organised (sub-paragraph (1)(c) of paragraph 2C of Schedule 6 to the Act);
- 3) does not have the appropriate resources in relation to the regulated activities that he carries on or seeks to carry on (sub-paragraph (1) of paragraph 2D of Schedule 6 to the Act); and
- 4) has not complied and is not complying with requirements imposed by the Authority in the exercise of its functions relating to the provision of information (sub-paragraph (d) of paragraph 2E of Schedule 6 to the Act).

The Authority's operational objective of consumer protection

- 5.5 The Authority's operational objective of consumer protection requires the Authority to ensure an appropriate degree of protection for consumers (section 1C(1) of the Act). Craig Mitchell has failed to make payment of FOS awards made against him by complainants.
- 5.6 In addition, he has failed to satisfy the Authority that adequate provision has been put in place to meet his potential liabilities to complainants arising from undischarged, unsatisfied and/or unresolved complaints against him. Craig Mitchell's actions to date casts serious doubts on its ability and willingness to observe regulatory requirements and demonstrate that he poses a significant risk of harm to consumers.
- 5.7 On the basis of the facts and matters set out, it appears to Supervision that it is desirable to exercise the power under section 55J(1)(c)(i) of the Act in order to advance the consumer protection objective.

Timing and duration of the Variation

- 5.8 The Authority considers it is necessary to impose the Variation to take immediate effect given the seriousness of the risks and the need to protect consumers. The Authority has identified the following concerns:
 - 1) evidence that the firm has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the firm's ability to meet its regulatory obligations (EG 8.3.3(3));
 - 2) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the Threshold Conditions (EG 8.3.3(4)).
- 5.9 The Authority will consider the full circumstances of each case when it decides whether an urgent variation is appropriate. The Authority has identified the following relevant factors:
 - 1) the extent of any loss, or risk of loss, or other adverse effect on consumers (EG 8.3.4(1));
 - 2) the seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct that breach (EG 8.3.4(4));
 - 3) the financial resources of the firm. Serious concerns may arise where it appears the firm may be required to pay significant amounts of

compensation to consumers (EG 8.3.4(5));

- 4) the firm's conduct (EG 8.3.4(8)); and
- 5) the impact that use of the Authority's own-initiative powers will have on the firm's business and on its customers (EG 8.3.4(9)).

5.10 The Authority considers that it is necessary for the Variation to remain in place indefinitely.

6 PROCEDURAL MATTERS

Decision-maker

6.1 The decision which gave rise to the obligation to give this First Supervisory Notice was made by an Authority staff member under Executive Procedures.

6.2 This First Supervisory Notice is given under section 55Y(4) and in accordance with section 55Y(5) of the Act.

6.3 The following statutory rights are important.

Representations

6.4 Craig Mitchell has the right to make written and oral representations to the Authority (whether or not it refers this matter to the Tribunal). The deadline for notifying the Authority that Craig Mitchell wishes to make oral representations and for providing written representations is 4 May 2022 or such later date as may be permitted by the Authority. Any notification or representations should be sent to David Watkins, (david.watkins@fca.org.uk).

6.5 The Authority must be informed in writing of any intention to make oral representations by 4 May 2022. If the Authority is not notified by this date, Craig Mitchell will not, other than in exceptional circumstances, be able to make oral representations.

The Tribunal

6.6 Craig Mitchell has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Craig Mitchell has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.

6.7 A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of Craig Mitchell and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttchmcts.gsi.gov.uk).

6.8 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

- 6.9 Craig Mitchell should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to David Watkins, (david.watkins@fca.org.uk).

Confidentiality and publicity

- 6.10 Craig Mitchell should note that this First Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).
- 6.11 Craig Mitchell should note that section 391(5) of the Act requires the Authority, when the First Supervisory Notice takes effect, to publish such information about the matter to which the notice relates as it considers appropriate.

Authority contacts

- 6.12 For more information concerning this matter generally, contact David Watkins, (david.watkins@fca.org.uk).

Annex

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers (section 1C).
2. Section 55J of the Act allows the Authority to vary the Part 4A permission of an authorised person if it appears to the Authority that the authorised person is failing, or likely to fail to satisfy the Threshold Conditions (section 55J(1)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55J(1)(c)(i)). This power is referred to as the Authority's own-initiative power.
3. Section 55Y(3) of the Act allows a variation of permission imposed under the own-initiative power to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the variation to take effect immediately (or on that date).
4. Section 391 of the Act provides that:

"[...]

 - (5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
 - (6) The [Authority] may not publish information under this section if in its opinion, publication of the information would be...unfair to the person with respect to whom the action was taken (or was proposed to be taken), prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
 - (7) Information is to be published under this section in such manner as the [Authority] considers appropriate."
5. The Threshold conditions represent the minimum standards which a firm is required to satisfy, and continue to satisfy, in order to be given and to retain a Part 4A permission. They are set out in Part 1B of Schedule 6 to the Act.
6. The Suitability Threshold Condition in paragraph 2E of Schedule 6 to the Act stated that:

"A must be a fit and proper person having regard to all the circumstances, including-

 - (a) A's connection with any person.
...
 - (d) Whether A has complied 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 A has so complied or is complying, the manner of that compliance."

RELEVANT REGULATORY PROVISIONS

The Principles for Businesses

7. The Principles for Business (PRIN) are a general statement of the fundamental obligations of firms under the regulatory system. PRIN 1.1.2R provides that they derive their authority from the Authority's rule-making powers as set out in the Act and reflect the statutory objectives. The Principles are set out at PRIN 2.1.1.
8. Principle 11 (Relations with regulators) is of particular relevance. This provides that a firm must deal with its regulators in an open and cooperative way and must disclose to the Authority appropriately anything relating to the firm of which that regulator would reasonably expect notice.

The Threshold Conditions

9. The section of the Handbook entitled Threshold Conditions (COND) gives guidance on the Threshold Conditions. COND 1.2.3G provides that the Authority may exercise its own-initiative powers under either section 55J or section 55L of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions or is likely to do so.
10. COND 2.3.1AUK reflects the provisions of the Act (Paragraph 2C of Schedule 6) to the effect that a firm must be capable of being effectively supervised by the Authority having regard to all the circumstances including the way in which a firm's business is organised (COND 2.3.1AUK(1)(c)).
11. COND 2.4.1AUK reflects the provisions of the Act (Paragraph 2D of Schedule 6) to the effect that the resources of a firm must be appropriate in relation to the regulated activities that the firm carries on or seeks to carry on (COND 2.4.1AUK(1)).
12. COND 2.5.1AUK reflects the provisions of the Act (Paragraph 2E of Schedule 6) to the effect that a firm must be a fit and proper person having regard to all the circumstances. These include the need to ensure that the firm's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers (COND 2.5.1AUK(1)(c) and whether the firm has complied and is complying with the Authority's requirements (COND 2.5.1AUK(1)(d)).
13. COND 2.5.4G(2) provides examples of the kind of general considerations the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the Suitability Threshold Condition. These include, but are not limited to, whether the firm conducts its business with integrity and in compliance with proper standards, has a competent and prudent management, and can demonstrate that it conducts its affairs with the exercise of due skill, care and diligence.

The Enforcement Guide

14. The Authority's approach in relation to its own-initiative powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
15. EG 8.1.1 reflects the provisions of section 55J of the Act by stating that the Authority may use its own-initiative power to vary an authorised person's Part 4A permission where, amongst other factors, the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible (EG 8.1.1(1)), or it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).

16. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, it will have regard to its statutory objectives and the range of regulatory tools that are available to it. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve (EG 8.2.1(2)).
17. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55J of the Act to vary a firm's permission to ensure such requirements are met. This may include where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)), or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).
18. EG 8.3.1 states that the Authority may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
19. EG 8.3.2 states that the Authority will consider exercising its own-initiative power as a matter of urgency where: 1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and 2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.
20. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; 2) information indicating that a firm's conduct has put it at risk of being used for the purposes of financial crime, or of being otherwise involved in crime; 3) evidence that the firm has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the firm's ability to meet its regulatory obligations; 4) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.
21. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include: the nature and extent of any false or inaccurate information provided by the firm (EG 8.3.4(3)); and the seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct the breach (EG 8.3.4(4)).
22. EG 8.3.4(9) includes the impact that use of the Authority's own-initiative powers will have on the firm's business and on its customers. The Authority will need to be satisfied that the impact of any use of the own-initiative power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives.