



**IN THE FIRST-TIER TRIBUNAL
(CONSUMER CREDIT)
GENERAL REGULATORY CHAMBER**

Case No. CCA/2012/0012

On appeal from:

**Office of Fair Trading's
Decision reference:**

641116

Dated:

28 May 2012

Appellant:

Rowena Koning

Respondent:

Office of Fair Trading

Heard at:

HMCTS, St Catherine's House, 5 Notte Street,
Plymouth, Devon, PL1 2TS

Date of hearing:

15 November 2012 (sitting in public)

Date of decision:

14 December 2012

Before

**Regional Tribunal Judge Jacqueline Findlay (Chairman)
Christopher Perrett**

Attendances:

For the Appellant:

Mr Koning

For the Respondent:

Mark Vinall
Instructed by James Eldridge, Legal Division of
Office of Fair Trading
Mr K Cooper (Case Worker)

Observers:

Mr J Pobjoy (The Office of Fair Trading)

Subject matter: Appeal against refusal to grant a consumer credit licence. Proposal to establish a consumer credit advisory business. The refusal was on the basis of the Appellant had failed to demonstrate that she was a fit person to be licensed taking into account her skills, knowledge and experience for the purposes of section 25(2) of the Consumer Credit Act 1974 (“the Act”).

Cases referred to: European Environmental Controls Limited v OFT [2009] UK FTT316 (GRC)
QSolvency Ltd v OFT [2009] CCA/2009/0004

The Decision

1. The unanimous decision of the Tribunal is to dismiss the appeal. The decision of the Respondent to refuse to grant a consumer credit licence is confirmed for the reasons set out below.

The Appeal

2. Mrs Koning appeals against the determination of the Adjudicator of the Respondent, Elaine Rassaby, dated 28 May 2012. She asserts that she is a fit person to hold a consumer credit licence and that any concerns raised by the Respondent could be addressed by the imposition of Requirements.

The Proceedings

3. The Tribunal comprised two members; the parties agreed to the composition of the Tribunal in writing under the Tribunal Courts and Enforcement Act 2007.
4. Mrs Koning is a sole trader and intends to establish a consumer credit advisory business trading as Footstep Solutions. Mrs Koning’s application for a consumer credit licence was received, together with her Credit Competence Plan (“CCP”), on 14 December 2010 [Tab 22 and 23]. On 14 February 2012 the Respondent issued a Minded To Refuse Notice (“the MTR Notice”) informing Mrs Koning that the Respondent was minded to refuse her consumer credit application. The MTR notice was issued in accordance with section 27 of the Act.
5. On 20 March 2012 Mrs Koning made oral representations to Ms Rassaby, an OFT Adjudicator, at a Consumer Credit Group Hearing at The Great Western Hotel, Exeter, St Davids.
6. On 20 May 2012 Ms Rassaby, on behalf of the Respondent, issued a Determination refusing Mrs Koning’s application.

7. Mrs Koning lodged a Notice of Appeal, dated 22 June 2012, on 25 June 2012.
8. Mrs Koning had hoped to be accompanied by Ms Bernadette McEvilly of Credit Competence. She had been unable to contact Ms McEvilly and had no idea why she was not available. Mrs Koning made no application for an adjournment to enable Ms McEvilly to attend. We have considered whether it would be in the interests of justice to adjourn. We have decided that it was fair and just to proceed today to determine the appeal taking into account that Mrs Koning had not applied for an adjournment, that there was no reasonable prospect that Ms McEvilly will be able to attend in the future, Mrs Koning is intelligent and very able to present her case and was assisted by her husband, Mr Koning, Mrs Koning has had ample opportunity to prepare and present her case and there is ample evidence to determine the appeal.

The Case for Mrs Koning

9. Mrs Koning in her Notice of Appeal, written submissions and oral evidence asserts the following:
 - a. She has previously been involved in financial advice matters while working with Ocean Housing and Cornwall Neighbourhoods for Change.
 - b. She received positive feedback from Paul Dowden, notetaker on behalf of the Respondent, after the Consumer Credit Group Hearing on 20 March 2012 that was inconsistent with the determination.
 - c. She has sought advice and assistance throughout the process to obtain a consumer credit licence and has on occasions received inaccurate advice though not from the Respondent. The process has been made more difficult because the Respondent was unwilling and unable to help and guide her through the process.
 - d. She believed the service she will provide is greatly needed. The ethos of her business model is to provide access to debt advice free to clients. She anticipates she will be funded by “sponsored organisations”. She sees her business model as being a complimentary service to that offered by the not for profit sectors. Her existing knowledge and skills as a counsellor will assist clients through the difficult period of indebtedness. She intends to offer a counselling service on a private basis for which she does not require a consumer credit licence.
 - e. In the event of a sponsoring organisation withdrawing funding she will continue to offer free advice about debt for a limited period.
 - f. She does not anticipate that there will be a conflict of interest between a sponsoring organisation which may be a creditor and the person for whom she is providing advice who may owe money to the sponsoring

organisation. She states “in relation to managing conflicts of interest, the service provided to the client will at all times be in their best interests. This includes avoiding creditor preference; if for example, the sponsoring organisation is also a creditor. This approach will form a key element of the agreement with any sponsoring organisation”.

- g. She has undertaken training with Credit Competence and successfully attended and passed the Debt Advice and Practice Course in June 2012.
- h. She intends to have ongoing involvement with Credit Competence. Bernadette McEvelly is the Director of Credit Competence. Mrs Koning intends to take advantage of the Silver Package which includes payment for an annual audit and 30 minutes per month “dedicated resource and telephone/e-mail enquiries” [Tab 11 Page 73].
- i. She has substantially altered her Debt Management Terms of Business, debt management process, monitoring procedures, compliance manual, complaints handling procedures and advertising.
- j. Her Curriculum Vitae [Tab 20] establishes that she has had extensive experience of providing debt advice.
- k. If required she will be able to abide by any requirements imposed by the Respondent similar to those provided for Mr Michael Penwill [Tab 7].

The Respondent’s Case

- 10. The Respondent makes the following submissions:
 - a. Mrs Koning has failed to demonstrate that she is a fit person to be licensed taking into account her skills, knowledge and experience, her lack of relevant training, her limited experience and her lack of knowledge of relevant legislative and regulatory requirements.
 - b. Mrs Koning has failed to demonstrate that she is a fit person to be licensed taking into account the practices and procedures that she proposes to implement in connection with her proposed business. In particular, the Respondent highlights the lack of clarity regarding the relationships between Mrs Koning, the consumers and the third parties who will be paying for her services: the lack of transparency and clarity of the advertising materials concerning the services offered: and Mrs Koning’s failure to demonstrate that she understands and is in a position to implement procedures that would comply with applicable legislative and regulatory requirements. The Respondent submits that the deficiencies cannot be adequately remedied by the provision of support by a third party compliance provider such as Credit Competence.

The Legislative Background

11. The test to be applied in determining applications for consumer credit licences is set out at section 25 of The Act:

“25 *Licensee to be a fit person*

(1) *If an applicant for a standard licence –*

(a) makes an application within section 24(1)(a) in relation to a type of business, and

(b) satisfies the OFT that he is a fit person to carry on that type of business with no limitation

he shall be entitled to be issued with a standard licence covering the carrying on of that type of business with no limitation.

[...]

(2) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things) -

(a) the applicant’s skills, knowledge and experience in relation to consumer credit business or ancillary credit business;

(b) ...;

(c) practices and procedures that the applicant proposes to implement in connection with any such business;

[...]”

12. In approaching the task of determining the appeal the Tribunal has borne in mind that the appeal is a re-hearing (s.41ZB(1) of the Act) and the legal burden of proof is on Mrs Koning to satisfy the Tribunal that she is a fit person.

13. The Tribunal has borne in mind the approach of the Tribunal in *QSolvency Ltd v OFT* who considered the proper approach to a case where there had been “continuous evolution” of the Appellant’s proposed business model during the application and appeal process. In particular, the function of the Tribunal is to decide whether Mrs Koning is a fit person on the material before it at the time of the hearing. Where a concern has been raised by the Respondent and addressed by Mrs Koning it does not become entirely irrelevant as the Tribunal must bear in mind all the matters that have been raised during the course of the process. The Tribunal has borne in mind the OFT’s submission in *QSolvency Ltd v OFT* that the assessment of fitness “cannot be an iterative process; constantly noting issues and

reverting to the applicant for amendments and/or improvements ... [the applicant] should evidence self sufficient competence, without a need for regular monitoring or regulatory guidance”

Findings of Fact

14. Mrs Koning is a sole trader and she intends to establish a consumer credit advisory business trading as Footstep Solutions. She explained in her appeal that the intention of the business is to provide free debt advice and help to clients. She will be paid by a “sponsoring organisation” such as a University or employer who would pay for her services on behalf of the student or employee.
15. From August 2008 until April 2009 she worked as a general advisor for Cornwall Neighbourhoods for Change. In this employment she provided free and confidential advice on welfare benefits, debt, housing and homelessness. The work involved case load management, advocacy, case note writing, answering telephone enquiries, assisting with benefit applications and representation.
16. She was employed as a Financial Inclusion Officer for Ocean Housing from August 2009 to April 2010. This job involved her in providing welfare and debt advice to Ocean Housing tenants and the implementation of that company’s Financial Inclusion Strategy. Her role included carrying out common financial statements, fuel poverty budgets, home visits, income maximisation for tenants, case load management, completing a referral flow chart, customer satisfaction forms, managing multiple debts for lease holders, attending staff meetings and organising focus groups.
17. Mrs Koning’s experience is as set out in her CV (Tab 20 pages 251 to 255). Mrs Koning has only limited experience in the consumer credit sector.
18. Mrs Koning has limited knowledge of the relevant legislation, guidance and procedures. She undertook formal training in financial matters when she did a course on council tax on water debt training with Wiser Adviser.
19. Mrs Koning undertook a Debt Advice and Practice course in June 2012. This was not a two day course as originally asserted but a one day course run by Credit Competence. The certificate appearing at Tab 6 is accordingly incorrect and misleading. The course involved the Managing Director of Credit Competence, Bernadette McEvelly delivering a presentation, asking Mrs Koning and the one other delegate questions and going through to case studies. Mrs Koning scored a combined mark of 79% on the knowledge test which appears at Tab 4. The knowledge test was undertaken halfway through the one training day. Mrs Koning received a handout from the course for future reference but she has not submitted this.

20. Mrs Koning did not know the details of and was unable to explain the elements of a Debt Relief Order and a Debt Administration Order.
21. Mrs Koning did not know to whom she would recommend people to obtain an IVA and did not know whether she would or would not take a referral fee in connection with this.
22. Throughout the papers and in oral evidence today Mrs Koning confused “creditors” and “debtors”.
23. The Debt Management Process Document at Tab 13 was prepared for Mrs Koning by Credit Competence. This document has not been adapted to reflect Mrs Koning’s circumstances and is in parts inaccurate and not fit for purpose. As example only dealings with customers will not be by telephone (Page 97), Mrs Koning will not be dealing with Scottish clients (Page 103), there would be no issuing of contractual information (Page 105), there will be no need for a signed standing order mandate (Page 105) and the review referred to on Page 106 does not apply to Mrs Koning’s circumstances.
24. Mrs Koning was not aware of the deficiencies in the Debt Management Process Document and had not read it in any detail.
25. The document which appears at Tab 54 is lodged by Mrs Koning as the draft document she will provide for people whom she is offering her services. This document was prepared by Credit Competence. The paragraph headed “can I change my mind about a debt management plan?” is misleading and inaccurate.
26. Mrs Koning’s business plan which appears at Tab 51 is inadequate and not fit for purpose. For example Page 6 refers to “customers” not “sponsoring organisations”, and the information under the paragraph headed “customer care” at Page 8 is inaccurate and the information relating to Barbara Bole at Page 3 is inaccurate as Mrs Koning is no longer involved with her.
27. There would be a conflict of interest in Mrs Koning being paid by a solicitor to offer debt advice and assistance to a client who owed money to the solicitor for advice already received. Mrs Koning does not understand the nature or implications of this conflict of interest and is unable to offer any practical or workable solutions for dealing with this issue.
28. Mrs Koning has not answered the question posed by the Respondent at Paragraph 3 on Page 343.
29. Mrs Koning has incorporated no provisions for the contracts she anticipates having with people to be brought to an end in the event of the sponsoring organisation withdrawing funding. On the one hand Mrs Koning believed that she would be bound by a contract with a person and the terms of the contract would be as set out in clause 2 of the debt management plan terms of business (Tab 10) and on the other believed she

could cease to be bound by this contract if payments were not forthcoming from the sponsoring organisation without any resulting consequences. None of the documentation submitted by Mrs Koning deals with this point.

30. Mrs Koning has never met the person referred to with whom she will have an “unique arrangement” to monitor her files (Tab 3 Pages 10 and 11).

Reasons for the Decision

31. Mrs Koning has received very little relevant training of the relevant legislation and regulatory requirements. The one day training course in June as described to us by Mrs Koning was of a very basic nature.
32. Mrs Koning’s previous work experience and training as described to us is limited and inadequate.
33. At the hearing Mrs Koning demonstrated a limited knowledge and understanding of the relevant legislative and regulatory requirements (see paragraphs 19, 20 and 21 above)
34. Mrs Koning has been unable to explain today with any clarity the relationship between her sponsoring organisations and her clients. She demonstrated in her oral evidence her lack of understanding the concept of a conflict of interest.
35. The inadequacy of the documents submitted confirm that Mrs Koning is not a person to implement procedures that would comply with applicable legislative and regulatory requirements including in particular the OFT’s Debt Management Guidance.
36. These deficiencies could not be remedied by support either by Credit Competence or the unidentified person referred to on pages 10 and 11 of Tab 3. Mrs Koning has relied on Credit Competence and paid for the services to draft the documents submitted in support of her application. These documents are inadequate and not fit for purpose which casts doubt on the abilities of Credit Competence to provide any useful and adequate service in the future to Mrs Koning.
37. Mrs Koning’s business model has evolved throughout the application and appeal process but is still inadequate and deficient even with the amendments and improvements.
38. Mrs Koning told us that she had not read the documentation with any care to ensure that it is fit for purpose and could support her case.
39. Mrs Koning throughout the documentation and in oral evidence confused “creditors” with “debtors”. This basic misunderstanding of the terminology, in our view, is indicative of her lack of knowledge and understanding of the work in which she proposes to be engaged.

40. Mrs Koning's lack of understanding of the concept of conflict of interest and the absence of any documentation showing how she would deal with a conflict of interest if it should arise is indicative of inability to implement the procedures she proposes.
41. Mrs Koning has been unable to persuade us that there is any organisation that would be willing to fund the services she intends to provide.
42. The documentation provided would be likely to mislead, either explicitly or by omission, clients about the nature of the service being offered. The documentation provided gives inadequate information about the services being offered. In our view the documentation provided does not comply with DM Guidance.
43. The Debt Management Plan terms of business which Mrs Koning referred to as a binding contract makes no provision for the ending of this contract in the circumstances that Mrs Koning herself has anticipated that a sponsoring organisation may withdraw funding. The absence of these provisions suggests that clients would be explicitly misled by entering into such a contract with Mrs Koning.
44. At the oral hearing Mrs Koning "had not digested the material provided by Credit Competence and accordingly was not able to demonstrate that understanding herself". Mrs Koning has demonstrated today that she has failed to improve on that position when asked to explain the documents submitted namely the Updated Business Plan Tab 18, the Monitoring Procedures Tab 14, the Advertising Guidelines Tab 15, the Compliance Manual Tab 16 and the Complaints Handling Procedures Tab 17.
45. For the reasons as stated above we have concerns about the competence and level of advice and assistance to be offered to Mrs Koning by Credit Competence. In any event any advice offered or auditing of compliance procedures would not be a substitute for the understanding and knowledge expected of Mrs Koning. In our view the level of service, namely "Silver" service offered by Credit Competence being "access to telephone or e-mail advice and guidance" is inadequate to address Mrs Koning's lack of knowledge and understanding.
46. In our view the imposition of Requirements would not address the fitness concerns. In our view no Requirements could remedy Mrs Koning's lack of knowledge of relevant legislative and regulatory requirements.
47. Mrs Koning has made various complaints about the process followed at the hearing before the adjudicator. We are not required to make findings with regard to these matters. We are satisfied that the transcript of the Consumer Credit Group Hearing at Tab 9 is an accurate account of that meeting. Mrs Koning has raised no issues in this regard at the hearing.

Costs

48. The Tribunal makes no order as to costs.

[Signed on original]

Regional Tribunal Judge Jacqueline R Findlay (Chairman)
14 December 2012