



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

Case No. CCA/2011/0007

On appeal from:

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

ADJ/2255-CCA-621903

Dated:

26 May 2011

BETWEEN:

Appellant:

Emerald Motor Company Limited

Respondent:

The Office of Fair Trading

Heard at:

45 Bedford Square, London, WC1B 3DN

Date of Hearing:

15 November 2011 (sitting in public)

Date of Decision:

15 November 2011

Before

District Tribunal Judge Findlay (Chairman)

Neil Pardoe

Miriam Scott

Attendances:

For the Appellant:

**Mr Gammon of Gammon Bell and Co, Solicitors
Christopher Carey, Managing Director of
Emerald Motor Company Limited**

For the Respondent: **Mr. Sudip Sen of The Office of Fair Trading**
Subject matter: Appeal against the revocation of consumer credit standard licence number 0621903, licensee Emerald Motor Company Ltd. Consumer Credit Act 1974 Sections 6, 25 - 41. Rehabilitation of Offenders Act 1974.

Cases referred to: North Wales Motor Auctions v Secretary of State for Trade [1981]CCLR 1
Admanson v Waveney District Council [1997] 2 All ER 898

Decision

1. This is the unanimous decision of the Tribunal. We dismiss the appeal. The decision of the Office of Fair Trading (“the Respondent”) to revoke the licensee’s consumer credit standard licence is confirmed.

The Appeal

2. Mr Christopher Carey, the director of Emerald Motor Company Ltd (“the company”), appeals on behalf of the company against a determination by Alison Spicer, the Adjudicator acting on behalf of the Respondent, made on 26 May 2011, revoking a standard licence issued to the Emerald Motor Company Ltd on 18 November 2008 (licence number 0621903).

The Proceedings

3. On 19 September 2008 Mr Carey submitted an application for a consumer credit brokerage licence on behalf of the Appellant on a form that he signed, on behalf of the company. On 18 November 2008 a licence for credit brokerage was issued to the company.
4. On 3 March 2011 the Adjudicator, Ms Spicer, on behalf of the Respondent, issued to the company, a notice that she was minded to revoke the licence. That notice was given under Section 32 of the Consumer Credit Act 1974 (“the Act”), as amended by the Consumer Credit Act 2006.
5. The notice invited representations and Mr Carey made oral and written representations on his own behalf and on behalf of the company. On 18 April 2011 Mr Carey attended a consumer credit group hearing with Ms Spicer, the Adjudicator, Mr Paul Dowden, the notetaker, and Ms Thompson, an observer.
6. A transcript of that interview which is not disputed appears in our bundle [pages 102 to123].

On 26 May 2011 Ms Spicer on behalf of the Respondent issued the determination to revoke the licence to Mr Carey on behalf of the company. A Notice of appeal dated 15 June 2011 was lodged, signed by Mr Gammon on behalf of Mr Carey and the company, initiating the proceedings before this Tribunal. The Respondent issued a Response dated 1 August 2011 to the appeal.

7. On 2 August 2011 the Principal Judge of the First-tier Tribunal (Consumer Credit) issued directions.
8. At the oral hearing before the Tribunal we heard submissions from Mr Sen on behalf of the Respondent, and from Mr Gammon, on behalf of Mr Carey and the company and heard oral evidence, on oath, from Mr Carey.
9. We considered an agreed bundle of documents and certificate of conviction
10. Mr Sen, on behalf of the Respondent, made a late application on 9 November 2011 to admit evidence regarding a spent conviction in 2002 which he considered was relevant to Mr Carey's behaviour. Directions were issued on 10 November 2011 in response to this application with a view to deciding the application as a preliminary matter after hearing oral submissions from the parties. This was not necessary. Mr Gammon, on behalf of Mr Carey, conceded that the spent conviction was relevant to the proceedings and the details should be before the Tribunal. The time limit for filing documents was waived in the circumstances and the certificate of conviction was admitted and added to the bundle. We have a discretion to admit evidence of a spent conviction under the provisions of the Rehabilitation of Offenders Act 1974 if we consider that justice could not be done without admitting such evidence. The issue has been conceded before us, and we accept that for justice to be done it was necessary for us to be aware of the circumstances of the conviction. However, in the event, as appears below, in reaching our conclusions we have not attached any significant weight to the conviction or the events that led to it.

The Legislative Background

11. Section 25 of the Consumer Credit Act 1974 deals with the requirement that the licensee is to be a fit person. It provides that:

“(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 businesses, consumer hire businesses or ancillary credit businesses;
 - (b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;
 - (c) practices and procedures that the applicant proposes to implement in connection with any such business;
 - (d) evidence of the kind mentioned in sub-section (2A).

2A That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has

- (a) committed any offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under this Act;

Section 25A deals with guidance on the fitness test and provides that:

- (1) The OFT shall prepare and publish guidelines in relation to how it determines, or how it proposes to determine, whether persons are fit persons as mentioned in section 25.
- (2) If the OFT revises the guidance at any time after it has been published, the OFT shall publish it as revised.
- (3) The guidance shall be published in such manner as the OFT thinks fit for the purpose of bringing it to the attention of those likely to be affected by it.
- (4) In preparing or revising the guidance the OFT shall consult such persons as it thinks fit.
- (5) In carrying out its functions under this Part the OFT shall have regard to the guidance as most recently published.

Section 32 of the Act deals with suspension and revocation. It provides that:

- (2) In the case of a standard licence the OFT shall, by notice
 - (a) inform the licensee that, as the case may be, the OFT is minded to revoke the licence, or suspend it until a specified date or indefinitely, stating its reasons, and
 - (b) invite him to submit to the OFT in accordance with section 34 representations as to the proposed revocation or suspension.

In determining whether a person is a fit person, the respondent is to have regard to any matters appearing to it to be relevant, as set out in the initial wording in section 25(2), including evidence tending to show (amongst other things):

that the person, has committed any offence involving fraud or other dishonesty or violence, as set out in section 25(2A)(a), and
that the person has contravened any provision of the Act, as set out in section 25(2A)(b).

Section 36A of the Act states:

A person who is a licensee under a standard licence must provide the OFT with any information which the general notice requires to be provided.

General Notice 75, commenced on 27 March 2008, sets out an obligation upon licensees to notify changes in information by reference to the questions on the relevant licensing application form. It states;

Notification shall be given within the period of 28 days beginning on the day on which the information or document is superseded or the change in circumstances occurs. Failure to provide details of the matters required by this general notice within the prescribed period can result in a financial penalty of up to £50,000.

The General notice lists the categories of information under the various relevant application and renewal forms to which the ongoing duty to notify the respondent applies. It includes criminal convictions for offences involving fraud or other dishonesty.

Sections 6(7) and (8) of the Act state:

(7) An applicant shall notify the OFT, giving details, if before his application is determined –

- (a) any information... is superseded or otherwise affected by a change of circumstances; or
- (b) he becomes aware of an error in or omission from any such information or document.

(8) A notification for the purposes of subsection (7) shall be given within the period of 28 days beginning with the day on which (as the case may be) –

- (a) the information or document is superseded;
- (b) the change in circumstances occurs; or
- (c) the applicant becomes aware of the error or omission.

The Role of the Tribunal

12. The role of the Tribunal:

Section 41ZB of the Act deals with disposal of appeals. It provides that:

(1) “The First-tier Tribunal shall decide an appeal under section 41 by way of a rehearing of the determination appealed against.

(2) In disposing of an appeal under section 41, the First-tier Tribunal may do one or more of the following;

- (a) Confirm the determination appealed against;
- (b) Quash that determination;
- (c) Vary that determination;
- (d) Remit the matter to the OFT for reconsideration and determination in accordance with the directions (if any) given to it by the Tribunal;”

13. The legal burden of proof in a revocation case is on the OFT. The standard of proof on any issue is the usual civil standard of a balance of probability.

14. It is not disputed that at all material dates Mr Carey has been the controller of the company; for that reason his fitness is a relevant issue when it comes to considering the company's fitness to hold a licence. The question to be decided by the Tribunal is whether on the evidence adduced before it Mr Carey, on behalf of the company, is a fit person to hold a licence at the time the appeal comes before the Tribunal. While the reasons given in the Minded to Revoke notices remain the foundation for the appeal, the Tribunal is entitled to entertain any further matter which has a bearing on Mr Carey's fitness as long as he has been given the opportunity to make representation on such matters.

Findings of Fact

15. There are limited areas of dispute about the relevant primary facts, though for the most part they are agreed between the parties.

16. It is common ground between the parties, and we find, that the following events took place:-

- i. A consumer credit licence was issued to the company on 18 November 2008 to undertake credit brokerage which is used to arrange finance for customers in order to facilitate the purchase of used cars.
- ii. Mr Carey together with his business partner, Ivan Husk, ran a business known as Oaktree Car Sales, an unincorporated business. Oaktree Car Sales was granted a consumer credit licence to undertake consumer credit and credit brokerage on 10 February 2006. That licence lapsed on 10 February 2011. Mr Carey, on behalf of the company, when completing the application for a licence on behalf of the company on 19 September 2008 answered "No" when asked "Has your organisation or any individual or organisation we have asked you to tell us about on this form ever held or applied for any other consumer credit licence?"
- iii. On 30 October 2002 at Bournemouth Crown Court, Mr Carey was convicted of assault occasioning actual bodily harm. He was sentenced to a community punishment order for 200 hours and ordered to pay compensation of £750 to the victim. By 19 September 2008 this conviction was spent pursuant to the Rehabilitation of Offenders Act 1974.
- iv. Mr Carey, on behalf of the company, when completing the application for a licence on 19 September 2008 answered "No" when asked "Has your organisation or any individual or organisation we have asked you to tell us about on this form ever been convicted of an offence?"
- v. On 2 October 2008 at Southampton Magistrates' Court Mr Carey was convicted of assault by beating, which took place on 1 February 2008. He was sentenced to a community punishment order for 40 hours unpaid work and ordered to pay £50 compensation and £200 costs.

- vi. On 7 October 2010 at Southampton Crown Court, Mr Carey was convicted of “dishonestly attempt to make false representation to make gain for self.” He was sentenced to a community order for 12 months with 200 hours unpaid work and ordered to pay £500 costs.
- vii. Mr Carey, on behalf of the company, did not notify the respondent of his conviction on 2 October 2008.
- viii. Mr Carey, on behalf of the company, did not notify the respondent of his conviction on 7 October 2010.
- ix. On 19 July 2009 there was a “Ferrari Fun Day” at Newbury Show Ground organised by the Ferrari Owners Club, of which Mr Carey was a member. Mr Carey made his Ferrari car available to offer rides to members of the public to raise money for charity. He drove the car for the morning. He became tired and a friend of his Mr Eldridge took over the driving of the car. While Mr Eldridge was driving there was an accident in which the Ferrari collided with a tree and was very seriously damaged, the loss being estimated at the Crown Court trial at £50,000. Mr Carey made a claim (initially by telephone) on his insurance policy for the damage in which he falsely stated that he was driving. He made the same false assertion to the insurance company in a report dated 21 July 2009 and repeated it in a further statement with a declaration as to its truth on 10 August 2009. He later admitted to the insurers that he was the driver and this had the result that the insurance company avoided the policy and refused to pay out. A further consequence has been that there has been a large increase in his insurance premiums.

The case for Mr Carey

- 17. The conviction in 2002 was of a domestic nature involving an altercation between Mr Carey and his wife’s former partner. Although the offence was of a violent nature Mr Carey submits that his wife’s former partner was charged and convicted of an offence of criminal damage.
- 18. With regard to the conviction in 2008 Mr Carey told us that there were mitigating circumstances and that the offence was not a serious one. We accept both these propositions.
- 19. Mr Carey submits that he did not disclose the conviction in 2008 because he thought it was a matter of public record to which the OFT would have access. Mr Carey submits that his omission was not a deliberate attempt to mislead and we accept that.
- 20. Mr Carey asserts that apart from the convictions his conduct has been exemplary and relies on two references supporting this assertion.

21. He draws attention to the point that his family as well as the company depend on him. He states that he has learnt from his experiences and believes that he is able to demonstrate appropriate integrity and judgement.
22. He points out (and we accept) that the manner in which he has conducted consumer credit business has never been called into question throughout the time during which he or the company have held a licence.
23. The conviction of 2010 arose out of events following the incident on 19 July 2009. Mr Carey has throughout admitted that when he made a claim for the damage to his insurance company he stated falsely that he was the driver. His oral evidence today (which is consistent with the account recorded in his interview with Ms Spicer on 18 April 2011) is that he believed throughout, and was correct in this belief, that the damage to his car was covered by his insurance policy notwithstanding the fact that Mr Eldridge was driving. He told us that he falsely claimed that he was driving because Mr Eldridge spent long periods out of the UK and he believed that this might result in a long delay before the insurance claim was paid. This is not obviously consistent with the assertion in paragraph 5 of his statement dated 20 September 2011 (page 206) that his false claim was “made upon a misunderstanding regarding my insurance cover ...” On Mr Carey’s evidence today there was no misunderstanding, just an attempt to avoid delay and inconvenience to him.
24. The cases of the Appellant and the Respondent diverge significantly on two points:-
- It is part of the Respondent’s case that Mr Carey believed that (rightly or wrongly) he would not be covered by insurance with Mr Eldridge as driver and that he made the false claim because he believed that he would receive no insurance payment if he told the truth.
 - It is part of the Respondent’s case (relying on the sentencing remarks of Judge Burrell at Southampton Crown Court at page 98) that the insurance company established the falsity of the claim before Mr Carey admitted it and independently of his admission.
25. By contrast, it is Mr Carey’s case (as noted above):
- That he believed (correctly) throughout that he was covered under his insurance policy with Mr Eldridge as driver and he made the false claim to avoid inconvenience and delay which might have resulted from the fact that Mr Eldridge spent large periods of time outside the UK.
 - That the insurance company were made aware of the falsity of the claim for the first time by his voluntary decision to disclose it to them.
26. We resolve these conflicts in Mr Carey’s favour. We find that he had a genuine belief throughout that he was covered by insurance for the collision and that the report of the true facts to the insurers was made voluntarily by

him before they had become independently aware of them, though in the context of an investigation by them into the claim. We accept his evidence that the Judge was misled by an error on the part of his Counsel at the hearing. We make no finding as to whether in truth Mr Carey would have been entitled to make an insurance claim on the true facts. It is not possible on the evidence before us to reach a reliable conclusion on this point and it is not in our judgement necessary for us to do so in determining this appeal, given our findings as to Mr Carey's genuine belief.

The Reasons for the Decision

27. The appeal centres on the question of Mr Carey's fitness to hold a consumer credit licence, in his capacity as controller of the company. The fitness of Mr Carey is to be assessed as at the time of the hearing. The question before us is whether, on the evidence before us, Mr Carey is a fit person to hold a licence. If we find he is not a fit person to hold a licence the determination must be upheld.

28. We take into account in Mr Carey's favour the following points:-

- i. We accept that he has had a lengthy business career without complaints, investigations or convictions in relation to his business affairs. We accept and attach weight to the two written references he has lodged.
- ii. The two convictions for offences of violence, while not irrelevant, attract little or no weight, taking into account the mitigating circumstances, the context in which the offences were committed and the time which had elapsed after the first of them.
- iii. In our judgement, the inaccurate completion of the licence application form and his failure to inform the respondent of his 2008 conviction arose, more probably than not, through lack of care on his part and were not deliberate attempts to deceive.
- iv. On our findings, he believed when he made his false insurance claim that he would have been covered by insurance on the facts as they actually were. However, as we note below, this finding contains elements of aggravation as well as mitigation.
- v. We accept that his initial false claim was more probably than not made in haste and very likely while he was in a state of some shock following the accident. Having made it, it is likely that at least at first he felt committed to it.
- vi. We accept that he volunteered the truth to the insurance company.
- vii. Mr Carey was acting charitably in making his vehicle available in raising money for a good cause.

viii. Mr Carey has suffered significant detriments, quite independently of the threat to his consumer credit licence.

- He has been punished by the criminal law with the attendant ignominy associated with a conviction for dishonesty.
- He has been placed on the Fraud Register.
- He has been denied cover for the damage to his car.
- He is facing greatly increased insurance premiums.

ix. The loss of the consumer credit licence will have a severe impact on his business and may put him and the company out of business. This would have serious consequences for his family and the company's other employee.

29. Nevertheless, we are compelled to conclude that Mr Carey's conduct is so reprehensible that the above considerations are outweighed. The making of a false insurance claim is a matter of grave concern. It is an act of gross and deliberate dishonesty and even when made in a state of panic and in haste reflects very badly on the character of the person making it. As hinted above, Mr Carey's explanation that he was motivated by a wish to minimise delay and inconvenience to himself aggravates rather than excuses his conduct. He was prepared to behave dishonestly for a relatively trivial motive, and this too reflects badly on him.

30. A person capable of dishonesty on this scale cannot, in our judgment, be regarded as a person fit to hold a consumer credit licence under a system designed to protect consumers. Further, Mr Carey's failure to correct the information on the licence application contravenes section 6(7) of the Act. Mr Carey has demonstrated in failing to keep the OFT informed of his conviction in 2008 a lack of care and attention to detail as well as a lack of basic skill and knowledge. While this feature of the case alone would not have justified the revocation of the company's licence it confirms the impression of his character created by his conduct in regard to the insurance claim. In relation to the 2010 conviction Mr Carey should have notified the respondent of his conviction for the fraud attempt no later than 6 November 2010 which he failed to do. The respondent does not contend and we do not find that there was a breach of section 7, i.e. that Mr Carey knowingly or recklessly gave information to the respondent; however, the contraventions of sections 6 and 36A are relevant matters to which we have given weight.

31. It follows that we conclude that the Respondent has sufficiently demonstrated grounds for its decision which we confirm. It has been submitted on Mr Carey's behalf that the matter might have been adequately dealt with by imposing conditions or limitations on the licence rather than revoking it. In addition a request has been made to carry on licensable

activities until 31st December 2011 pursuant to section 34A. We have considered these requests and conclude that it would not be appropriate for Mr Carey to engage in any new brokerage activities or dispose of stock by arranging finance on behalf of customers taking into account the gravity with which we view the conduct outlined above. In our judgement the gravity of the dishonest conduct relied on is such that revocation is the only proper course consistent with the intentions of the legislation and the protection of the public. No limitations or conditions would be appropriate. In all of the circumstances of this appeal, the Tribunal unanimously finds that Mr Carey is unfit to hold a licence and confirms the determination of the Adjudicator to revoke the consumer credit standard licence and dismisses the appeal against that determination.

Costs

32. Any application for costs must be made not later than 14 days after the date of which the Tribunal sends to the parties this decision in accordance with Rule 10 of the Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009.

.....

District Tribunal Judge Jacqueline R Findlay (Chairman)
15 November 2011
Signed 29 November 2011