



IN THE FIRST-TIER TRIBUNAL

(CONSUMER CREDIT)

GENERAL REGULATORY CHAMBER

Case No. CCA/2012/0001

On appeal from:

Office of Fair Trading's

Decision reference: ADJ/2331 635376

Dated: 19 December 2011

Appellant: Kevin Duke t/a Mr Superloan

Respondent: The Office of Fair Trading

Heard at: Victoria House, Bloomsbury Place, London WC1A 2EB

Date of Hearing: 15 May 2012 (sitting in public)

Date of Decision: 15 May 2012

**Before: District Tribunal Judge Jacqueline Findlay (Chairman)
Mr D Stuart McDonald Tribunal Member
Ms Sue Ward Tribunal Member**

Attendances:

For the Appellant: Mr Robin Ford

**For the Respondent: Mr Mark Vinall instructed by the Office of Fair Trading
Mr Sudip Sen, Office of Fair Trading**

Subject matter: Appeal against the revocation of consumer credit standard licence
Consumer Credit Act 1974 sections 25 to 41ZB. Authorisation under s 34A.

Cases referred to: Unified Financial Planning Ltd v OFT (CCA/2008/0007)
European Environmental Controls V OFT[2009] UKFTT 316 (GRC)
Cooper v OFT (CCA/2008/0006)
OFT v Hall [2010] EWHC 857 (Ch)
Harris v Registrar of Approved Driving Instructors [2010] EWCA Civ 808

Decision

- 1 This is the unanimous decision of the Tribunal. The appeal is allowed in part. We confirm the revocation of the licence but for the purpose of enabling Mr Duke's business to be wound up we include as part of the Determination a provision authorising Mr Duke to carry out the specific activity of collecting money owing under existing agreements until 31 July 2012. This activity to be carried out on trade premises.
- 2 The parties are invited to agree and lodge within 7 days of receipt of the decision a draft order to give effect to the decision.

Background to the appeal

- 3 Mr Duke is a sole trader carrying on a home-collected money-lending business under the name "Mr Superloan". On 17 March 2010 the OFT's Consumer Credit Licensing section received Mr Duke's declaration form and sole trader consumer credit application by means of the online application process. He was granted a standard consumer credit licence (the "Licence") by the Respondent, the Office of Fair Trading (the "OFT") on 8 April 2010 (no. 635376). On 27 September 2011 the OFT issued to Mr Duke a Minded to Revoke Notice ("MTR") under s. 32 of the Consumer Credit Act 1974 ("the Act"). The MTR notified Mr Duke that the OFT had doubts about his fitness to hold a licence and invited him to make representations in response to the OFT's proposal to revoke the Licence. The MTR set out the reasons for the OFT's doubts. Mr Duke responded with written representations dated 7 November 2011, received by the OFT on 8 November 2011, prepared by Mr R F Spragg, of counsel. By a determination on 19 December 2011 (the Determination"), an OFT Adjudicator, Ms Radhia Karaa, decided to revoke Mr Duke's consumer credit licence on the grounds that he was not a fit person. The Determination addressed the representations made by Mr Duke and outlined the reasons.

- 4 Mr Duke attended a Consumer Credit Group hearing on 8 November 2011. A transcript of that hearing which is not disputed appears in our bundle [Tab 4]. The hearing was attended by Radhia Karaa, of the OFT, Mr Duke and Mr Spragg, of counsel. Ms A Jeffrey attended as a notetaker.
- 5 On 6 January 2012 Mr Duke lodged a notice of appeal. On 23 February 2012 the Principal Judge of the First-tier Tribunal (Consumer Credit) issued directions. The time limits were varied on 6 February 2012 and again on 8 May 2012. Further directions were issued on 19 April 2012.
- 6 In correspondence Mr Duke indicated that he requested the provision of a computer and screen at the Tribunal hearing to explain his case in relation to the online application form for a licence. The arrangements were made and the facilities provided. Mr Ford, on behalf of Mr Duke, indicated on the day of the hearing, however, that Mr Duke accepted that the documents at tab 6 were a true and adequate representation of the pages which appeared in the online application process as made by him in March 2012 and a live internet link and screen were not required.

The Procedure

- 7 At the oral hearing before the Tribunal we heard submissions from Mr Vinall on behalf of the OFT, submissions from Mr Ford, on behalf of Mr Duke, and oral evidence from Mr Duke on oath. We considered an agreed bundle of documents.

The OFT's Determination

- 8 The OFT's reasons for revoking the Licence were set out in the Determination and are summarised as follows:
 - Mr Duke had a history of committing serious criminal offences. He had numerous convictions spanning a 14-year period up to 12 March 2003 including offences of both dishonesty and violence (within the meaning of s.25(2A)(a) of the Consumer Credit Act 1974 ("the Act"));
 - When applying for his consumer credit licence, Mr Duke only informed the OFT of one of his convictions, and failed to mention any of his other unspent convictions. The Adjudicator did not accept Mr Duke's account of how this occurred, and concluded that he had dishonestly failed to declare his other convictions because he did not wish to endanger his licence application;

- 9 The Adjudicator concluded that Mr Duke had a propensity to commit criminal offences and a disregard for the law.
- 10 The Adjudicator declined to grant any transitional authorisation under s.34A of the Act for the purpose of enabling the business to be transferred or wound up.

The Role of the Tribunal

- 11 Section 41ZB of the Act deals with disposal of appeals. It provides as follows:

“(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;

(e)give the OFT directions for the purpose of giving effect to its decision.”

- 12 The standard of proof on any issue is the civil standard of the balance of probability. The question to be decided by the Tribunal is whether on the evidence adduced before it Mr Duke is a fit person to hold a licence at the time the appeal comes before the Tribunal. While the reasons given in the MTR notice remain the foundation for the appeal, the Tribunal is entitled to consider any further matters which have a bearing on Mr Duke’s fitness as long as Mr Duke has been given the opportunity to make representations on such matters.

The Legislative Background

- 13 Section 25 of the Act deals with the requirement that the licensee is to be a fit person. It provides as follows:

“(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 subsection (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—

(i) this Act;

(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;

(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;

(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);

(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or

(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not).”

14 Section 32 of the Act deals with suspension and revocation of consumer credit licences. It provides as follows:

“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—

(i) as to the proposed revocation or suspension.”

15 Section 34 of the Act deals with Representations to the OFT as follows:

“ (1)Where this section applies to an invitation by the OFT to any person to submit representations, the OFT shall invite that person, within 21 days after the notice containing the invitation is given to him or published, or such longer period as the OFT may allow,—

(a)to submit his representations in writing to the OFT , and

(b)to give notice to the OFT , if he thinks fit, that he wishes to make representations orally,

and where notice is given under paragraph (b) the OFT shall arrange for the oral representations to be heard.

(2)In reaching its determination the OFT shall take into account any representations submitted or made under this section.”

16 Section 34A of the Act deals with the winding-up of standard licensee’s business. It provides as follows:

(1)If it thinks fit, the OFT may, for the purpose of enabling the licensee's business, or any part of his business, to be transferred or wound up, include as part of a determination to which subsection (2) applies provision authorising the licensee to carry on for a specified period—

(a)specified activities, or

(b)activities of specified descriptions,

which, because of that determination, the licensee will no longer be licensed to carry on.

(2)This subsection applies to the following determinations—

.....

(c)a determination to suspend or revoke such a licence.

(3)Such provision—

(a)may specify different periods for different activities or activities of different descriptions;

(b)may provide for persons other than the licensee to carry on activities under the authorisation;

(c)may specify requirements which must be complied with by a person carrying on activities under the authorisation in relation to those activities;

and, if a requirement specified under paragraph (c) is not complied with, the OFT may by notice to a person carrying on activities under the authorisation terminate the authorisation (in whole or in part) from a specified date.

(4)Without prejudice to the generality of paragraph (c) of subsection (3), a requirement specified under that paragraph may have the effect of—

(a) preventing a named person from being an employee of a person carrying on activities under the authorisation, or restricting the activities he may engage in as an employee of such a person;

(b) preventing a named person from doing something, or restricting his doing something, in connection with activities being carried on by a person under the authorisation;

(c) securing that access to premises is given to officers of the OFT for the purpose of enabling them to inspect documents or to observe the carrying on of activities.

(5) Activities carried on under an authorisation shall be treated for the purposes of sections 39(1), 40, 148 and 149 as if carried on under a standard licence.]”

17 Section 7 of the Act provides as follows:

“A person commits an offence if, for the purposes of, or in connection with, any requirement imposed or other provision made by or under this Act, he knowingly or recklessly gives information to the OFT, or to an officer of the OFT, which, in a material particular, is false or misleading.”

Issues for the Tribunal to decide

18 In deciding whether Mr Duke is a fit person to hold a licence the Tribunal is required to have regard to any matters appearing to it to be relevant including evidence tending to show (among other things) that he has committed any offence involving fraud or other dishonesty or violence and whether Mr Duke failed to disclose all but one of his convictions to the OFT when applying for his licence, in circumstances amounting to a contravention of s7 of the Act (knowingly or recklessly giving materially false or misleading information to the OFT).

19 If the Tribunal upholds the OFT’s conclusion on fitness it is required to consider whether it should grant any further authorisation under s.34A taking into account the grounds for its conclusions in relation to fitness and taking into account the nature of Mr Duke’s business.

20 The following matters of fact are relevant and were not in dispute between the parties:

- Mr Duke’s convictions are as set out in paragraphs 7 to 31 of the OFT’s response and the details of the convictions at tabs C to HI inclusive.
- The screen prints at tab 6, marked shot1 to shot 4, are an accurate representation of the screen prints which would have appeared to Mr Duke when making his online application dated 15 March 2010, received on 17 March 2010.

- Mr Duke disclosed on the application form that he had a conviction for handling stolen goods in April 2003 for which he received a 15 month custodial sentence, but disclosed no other convictions.

The OFT's case

21 The OFT has invited the Tribunal to find that:

- Mr Duke is not a fit person to hold a licence in view of:
 - his convictions; and
 - his failure properly to disclose his convictions, which the OFT contends amounted to a contravention of s.7 of the Act;
- No transitional authorisation should be granted under s. 34A of the Act.

Mr Duke's case

22 Mr Duke has invited the Tribunal to consider the following points:

- a) He is a fit person to hold a licence and there would not be an appreciable risk of detriment to customers.
- b) Although he accepts he has a number of previous convictions involving dishonesty and violence these are historic, the last conviction being in 2003.
- c) He does not accept that he contravened Section 7 of the Act.
- d) He accepts that his offending history between 1998 and 2003 showed a propensity to offend and a disregard for the law but this is no longer the case. He has been trading since the Licence was granted and there have been no complaints and he is not aware of any difficulties. He has over 80 people on his books. He has joined the Consumer Credit Association (“CCA”) and has sought and received advice from them. He is running his business in accordance with the recommended guidelines of the CCA. His business is on the CCA’s approved website Lenders Compared.org. He is registered with the anti-money laundering body and reports to them on any money he receives. He maintains proper accounts and his business is open for inspection. He takes his responsibilities to run the business legitimately and seriously, providing the appropriate protection to consumers.

- e) He made a decision in July 2003, on his release from prison that he was not going to get into trouble again and was going to better himself. He is married with two children. He lives in his own house which is mortgaged. He has striven to put his offending behaviour behind him. He has worked hard and remained in employment or earned his own income since 2003. He has tried his best to become a valued member of society.
- f) It was stated on his behalf on 7 November 2011 [tab 5] that when he filled in the form on line for a licence on 15 March 2010 the application form was different from the one at tab 6. He was asked when completing the form if he had any previous convictions and when he ticked yes he was asked for his last conviction. He telephoned his solicitor for the details which he put on the form. He would have asked his solicitor a different question and would have provided the details if he had been asked to provide all his non-spent convictions. Completion of the form was not done to deliberately conceal anything.
- g) In his undated "Position Statement" he accepts that he did not disclose his previous convictions but says that this was not an attempt to deceive anyone. The online application process was ambiguous and unclear in its requests. He disclosed an unspent previous conviction and this should have been the trigger for further investigation by the OFT and it is not his fault that this did not take place.
- h) The adjudicator was wrong in her assessment of Mr Duke's evidence in relation to the online process.
- i) As stated in his unsigned and undated witness statement he submitted the application being as honest as the application form allowed him. When completing the section on previous convictions he completed it as he felt able to do. There was no indication on the form as to how to add any further convictions. He accepts that the form did not ask specifically for his last conviction and he simply included his last conviction as the form was very unclear as to how one added any further convictions and he thought that at least the last conviction would alert the OFT to the fact that he had an unspent conviction.
- j) It did not occur to him that giving an alias when arrested by Police many years ago was relevant and it was not a deliberate attempt to mislead.
- k) Mr Duke assumed that the OFT would do a full Police National Computer ("PNC") check once he told them he had a conviction for which he had been to prison and if he had been trying to deceive the OFT he would not have disclosed any convictions at all.
- l) When his house was raided by the Police no evidence of any wrongdoing was found and no criminal proceedings followed. No action was taken by Trading Standards in relation to his business.

- m) He has spent a considerable sum of money and his business is just starting to show a profit.
- n) He does not understand why there has been a delay of some eighteen months in deciding to take this actions which has led him incurring costs of about £20,000 in setting up his business as well as considerable time and effort.
- o) It would be unfair and inequitable to revoke his licence based on past behaviour many years ago.
- p) There is a discrepancy between the OFT's decision and the information given to Mr Duke at the Consumer Credit Group hearing on 8 November 2011 [tab 4 pages 13 and 14]. Mr Duke should be granted an authorisation to wind down his business and be allowed 45 weeks from 9 December 2011.
- q) Since the hearing on 8 November 2011 he has not arranged any further loans because he was concerned that he would not have adequate "run off" time because he might not be in business to collect any outstanding loans.

Findings of Fact

- 23 On 17 March 2010 the OFT's Consumer Credit Licensing ("CCL") section received Mr Duke's signed declaration form and sole trader consumer credit application requesting credit category A. The application was submitted through the online application process. On the application form Mr Duke declared a conviction for the offence of handling stolen goods for which he received a 15 months imprisonment. When asked about the details of the offence he wrote "Was followed by police as i (sic) escorted a stolen car down A1 motorway to Wakefield."
- 24 In March 2010 the normal practice of the OFT when a conviction was declared was to refer the case to the Credit General Fitness Team who would perform a check on PNC database. The declaration of a conviction automatically turned the risk red on the system. A red risk would then flag the need for referral to the Credit General Fitness Team for consideration. However, in this case the red risk was manually changed to green on the system. The OFT is unable to explain why this happened.
- 25 In accordance with standard licensing procedure the Consumer Credit Licensing team ("CCL") contacted Sunderland Trading Standards Service for information about Mr Duke. No response was received.

- 26 There was correspondence between Mr Duke and the CCL case officer between 22 March and 26 March 2010 about the categories of activity required on the licence.
- 27 The CCL case officer sent an information request to Mr Duke asking him to complete and submit a “CRP1 credit profile form” because he had stated that he would be providing loans to sub-prime customers. The CTP1 seeks detailed information about the nature of the proposed business, its practices and procedures and the applicant’s skills, knowledge and experience. It is normal procedure that when a CRP1 request is generated by the licensing computer system, an automated ‘task’ event is placed on the system which would then flag the expiry of the deadline for providing the information in the form. For reasons unknown in this case no ‘task’ was generated and the deadline was not flagged.
- 28 On 8 April the Licence was issued to Mr Duke on the same day that he was issued with a letter telling him that a decision would be made within 25 working days.
- 29 On 29 April the CRP1 form was returned in electronic form by Mr Duke. It was unreadable by the CCL case officer and no action was taken as the Licence had been issued.
- 30 Mr Duke, in his online application form, answered “no” to the question about his intention to enter into credit agreements away from trade premises or to enter into “home credit” agreements (where the repayments are collected at the consumer’s home). Accordingly no onsite visit was arranged by the OFT or the local Trading Standards Service which would normally be the case if an applicant indicated they would be involved in Home Collected Credit (“HCC”).
- 31 In December 2010 the Unsecured Credit team of the OFT were made aware that Mr Duke was carrying on HCC activities. The case was passed to the General Credit Fitness team in July 2011 and a PNC check was carried out.
- 32 On 27 September 2011 a MTR notice was issued under s. 32 of the Act.
- 33 On 19 December 2011 the Determination was issued.
- 34 Between 12 May 1988 and 12 March 2003 Mr Duke was convicted of the offences set out in paragraphs 7 to 31 of the MTR notice dated 27 September 2011.
- 35 Mr Duke was arrested (but not charged) on two occasions in 2007 and 2011 on suspicion of criminal damage.

- 36 Mr Duke was acquitted in 2006 on a charge of perverting the course of justice.
- 37 A police search of Mr Duke's home on 29 October 2010 discovered a machete, a baton and three knuckle-dusters. No charges were brought.
- 38 In November 2011 Mr Duke was issued with a fixed penalty notice for a public order offence.
- 39 Question 20 of the online application form asks "Have you, or any individual or organisation we have asked you to tell us about on the form ever been: convicted of any offence?" In answer to that question Mr Duke ticked "Yes". He completed the drop down screen with details of his name, the court, the sentence imposed, brief details and the date of the conviction as required. He then clicked on "save". He did not then click on the prompt headed "Add another individual or organisation" which would have enabled him to add details of his other convictions. He did not get in touch with OFT in any way to inform them of his other convictions.
- 40 Question 20 of the online application form states:
"You must tell us about all convictions. You must also tell us about any conditional or absolute discharges (or admonishments in Scotland) which are not spent. You may be committing (sic) a criminal offence if you fail to do so."
- 41 A box on the left hand side of the page states:
"The law about spent convictions is complex. You are responsible for checking whether or not convictions are spent and for declaring all current convictions. If you are unsure about any convictions, you should seek legal advice or tell us about them anyway."
- 42 Mr Duke has built his business up by word of mouth. In November 2011 he had between 70 and 80 clients. His usual procedure is that in response to a telephone enquiry he sends out an application form and letter. On receipt of the application form he arranges a home visit and if appropriate the loan is arranged at the client's home. He collects the repayments on a weekly basis at the clients' homes. Loans are arranged over 20 months, 30 months or 45 months. There are three rates of APR, depending on the circumstances, 800%, 340% and 102.71%.
- 43 Mr Duke has not arranged any loans since December 2011. He does not know the precise amounts outstanding under the remaining loans. He thinks he has "one or two" which are due to run until 16 November 2012 with an outstanding value of between £2000 and £3000.

- 44 Mr Duke was aware of all his convictions when he completed the online application form. He completed the form on a laptop at his home. He considers himself to be reasonably computer literate although describes himself as not “brilliant”.
- 45 Mr Duke estimates that he has incurred costs of between £20,000 and £30,000 since obtaining the Licence in making loan agreements, in legal costs, in the conversion of his loft to an office, and in the purchase of a laptop, paper and office equipment.

The Reasons for the Decision

- 46 The appeal centres on the question of Mr Duke’s fitness to hold a consumer credit licence. If he is not a fit person to hold a licence the Determination must be upheld.
- 47 In reaching our decision we take into account in Mr Duke’s favour the following points:-
- a) Question 20 of the online application form does not have a specific box to click marked “other convictions”. Unless an applicant clicks on “add another individual or organisation” there is no space provided or other screen displayed to include any more than one conviction.
 - b) The OFT’s normal practice and procedure were not followed for reasons unknown. The failure of those procedures resulted in no action being taken on the information provided by Mr Duke.
 - c) Mr Duke was led to believe that he had only 45 days to collect outstanding loans.
 - d) Mr Duke has incurred costs as a consequence of being granted a Licence.
 - e) Mr Duke’s last conviction for violence or dishonesty occurred eight years ago.
 - f) Mr Duke has become a member of the Consumer Credit Association and as a result of that membership has sought and been given assistance in relation to his loan application forms and his APR’s have been correctly calculated.
 - g) At no time during the operation of his business has Mr Duke received complaints about the service offered or his loans.

- 48 Nevertheless, we are compelled to conclude that Mr Duke is not a fit person to hold a licence in view of his convictions and his failure to disclose his convictions which amount to a contravention of s 7 of the Act.
- 49 In relation to the convictions although they are historic they are serious in nature. It is a lengthy history of offending and the convictions include offences of fraud and other dishonesty and offences of violence. There are two offences of theft in 1997, two offences of handling stolen goods in 1998 and three offences of handling stolen goods in 2003. There is an offence of assault occasioning actual bodily harm in 1995 and an offence of violent disorder and possession of an offensive weapon in public in 1997. Mr Duke's conviction in 2003 and all the above offences were unspent at the time of the licence application. Mr Duke has committed an offence under the Public Order Act as recently as November 2011 for which he received a fixed penalty notice.
- 50 The instructions which accompany question 20 of the online application form are clear and unambiguous. The onus was on Mr Duke to make disclosure of all his unspent convictions and he failed to make this disclosure. We accept that the application form did not provide a specific option which would have led Mr Duke to the screen to enable further convictions to be detailed but the accompanying instructions made it clear that he must disclose all his convictions. The instructions made clear that to fail to do so could be a criminal offence. Mr Duke failed to do so. He could easily have done so in some other way. It is our conclusion that he chose not to provide the details of all his convictions and by failing to do so he knowingly and recklessly gave information to the OFT which in a material particular was misleading.
- 51 Mr Duke's evidence about the completion of the online application form is inconsistent and not persuasive. His evidence is as follows:
- a) In his witness statement he stated that he made the application "...being as honest as the application form allowed me" and that he completed question 20 "...as I felt able to." He stated also "I thought that at least the last conviction would alert people to the fact that I had an unspent conviction."
 - b) In his position statement it is stated that the application form was "ambiguous and unclear."
 - c) In the Consumer Credit Group hearing stated that his recollection was that the form said "date of last conviction" and that is why he contacted his solicitor and asked for that information. He stated that the form produced at tab 6 is not what he recalled filling in.
 - d) In oral evidence he stated that his recollection was that the question asked for the details only of his last conviction and that he could see no prompts to provide details of other convictions. He stated that he

rang his solicitor for details of his last conviction because it was his impression that he only had to provide the details of the last conviction. However, he stated also that it was the absence of specific prompts which led him to believe no other convictions were required. The absence of any specific prompts would only arise after the details of the latest conviction had been entered and Mr Duke clicked on the save tab. Mr Duke is unable to explain why he got the impression that only the last conviction was required from the online process and his evidence is improbable in this regard. There is nothing on the face of question 20 which could lead an applicant to conclude that only the last conviction was required. If the failure to provide a specific box to click for other convictions was what led Mr Duke to believe he had done everything he could this would not have appeared until the information about the last conviction was saved. Mr Duke rang his solicitor for the details of his last conviction before he completed the screen at question 20 and therefore must have formed the impression that only the last conviction was required before he clicked the save tab. His inability to explain this inconsistency has encouraged our belief that he has recklessly provided information to the OFT.

- 52 In our view it is highly significant that Mr Duke stated in oral evidence (1) that he did not know if he did not read the instructions to question 20 or did not understand the instructions, (2) that he did not read the small print and (3) that he wasn't sure if his convictions would have made a difference to his application and (4) that "I took a chance on it."
- 53 Mr Vinall submitted that the information given on the application form in relation to the 2003 conviction was inaccurate and misleading brief. In our view there is no significance in Mr Duke providing only brief details of the conviction on the basis that this was all that was asked for and the details related to the offence for which he received the custodial sentence.
- 54 Taking into account all the circumstances we find that Mr Duke knowingly and recklessly failed to disclose his previous convictions. If Mr Duke had read the application form with a reasonable degree of care he would have been in no doubt about his duties. It is highly unlikely that he did not read the instructions. It is, however, highly likely, as he stated in his oral evidence, that he "took a chance on it" when submitting his application.
- 55 In our view, and following *Harris v Registrar of Approved Driving Instructors* [2010] EWCA Civ 808, the public in general and the OFT in particular are entitled to expect that those who complete forms will do so fully frankly and honestly. In our view Mr Duke failed to tell the whole truth and did so knowingly and recklessly.

56 It follows that the OFT has satisfied us that it would have been minded not to renew Mr Duke's licence had it expired at the relevant dates and therefore revocation was appropriate under section 32.

Transitional authorisation under s.34A

57 Notwithstanding our findings with regard to fitness we consider it appropriate that Mr Duke be given a short period of time within which to recover money owing under existing credit agreements. Mr Duke was unable to tell us how much was outstanding other than stating that there were one or two loans which were due to run until November 2012, that the initial loans were for £2000 or £3000 in total and that about half of the amounts outstanding had been repaid. In our view it is fair and reasonable to allow Mr Duke until 31 July, a period of 30 weeks from the Determination, to make arrangements for the repayment of these loans. However, taking into account his previous convictions, including the conviction in November 2011, and that no onsite visit was undertaken as part of the competence assessment process it is not appropriate for Mr Duke to be involved in Home Collected Credit.

Costs

58 We make no order as to costs.

District Tribunal Judge Jacqueline R Findlay (Chairman)
29 May 2012



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

Case No. CCA/2012/0001

BETWEEN:

KEVIN DUKE

Appellant

And

THE OFFICE OF FAIR TRADING

Respondent

ORDER

UPON the Appellant's appeal against the Respondent's determination dated 19 December 2011 ("the Determination") to revoke the Appellant's consumer credit licence and to refuse to grant authorisation under s.34A of the Consumer Credit Act 1974 ("the Act");

AND THE APPEAL having been heard on 15 May 2012 and determined by a Decision of the Tribunal dated 29 May 2012;

IT IS ORDERED THAT:

1. The appeal against the Respondent's decision to revoke the Appellant's consumer credit licence is dismissed and that part of the Determination is confirmed under s.41ZB(2)(a) of the Act.
2. The appeal against the Respondent's decision to refuse authorisation under s.34A of the Act is allowed to the extent that the Determination is varied under s.41ZB(2)(c) of the Act as follows:

The Appellant is authorised under s.34A(1) of the Act to carry on the activity of collecting money owed under consumer credit agreements that were entered into by him before 29 May 2012. Such authorisation is granted for the period until 31 July 2012 only, and is limited to activities carried out on trade premises (in particular it does not authorise the collection of repayments at consumers' homes).

3. There is no order as to costs.

**District Tribunal Judge Jacqueline R Findlay (Chairman)
11 June 2012**