



In the First-tier Tribunal

Case No. CCA/2011/0006

General Regulatory Chamber

(Consumer Credit)

On appeal from:

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

ADJ/2227-CCA-631798

Dated: 12 May 2011

BETWEEN:

Appellant:

Timothy Michael White

Respondent:

The Office of Fair Trading

Heard at:

Care Standards Tribunal, 18 Pocock Street, London SE1 0BW

Date of Hearing:

21 November 2011 (sitting in public)

Date of Decision:

17 January 2012

Before:

Judge Keith Rowley Q.C. (sitting alone)

Attendances:

The Appellant:

In person

The Respondent:

Mr. Brendan Magennis of the Office of Fair Trading

Subject matter:

**Application by the Respondent under rule 8(3)(c) of the
Tribunal Procedure (First-tier Tribunal) (General Regulatory
Chamber) Rules 2009 to strike out the Appellant's appeal**

**against the revocation of his consumer credit licence number
631798**

Authorities referred to: *North Wales Motor Auctions v. Secretary of State for Trade*
[1981] C.C.L.R. 1

Jacobs' Tribunal Practice and Procedure

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is struck out under rule 8 of the above-mentioned Rules

REASONS FOR THE DECISION

A. Introduction

1. By a Determination dated 12 May 2011 (“the Determination”) Mr. Stuart Vernon (“the Adjudicator”), acting as an adjudicator for and on behalf of the above-mentioned Respondent (“the OFT”), decided that the above-mentioned appellant (“Mr. White”) was not a fit person to hold a licence under the Consumer Credit Act 1974 (“the 1974 Act”) and accordingly revoked Mr. White’s licence number 631798 (“the licence”).
2. That licence had been issued to Mr. White on 30 October 2009 and the categories of work covered by it were credit brokerage, debt adjusting, debt counselling, the provision of credit information services and the operation of a credit reference agency, these being the types of business referred to at section 24A(4) (c),(d), (e), (h) and (i) respectively of the 1974 Act.
3. Mr. White appealed against that revocation by a Notice of Appeal dated 18 May 2011.
4. The OFT thereafter served an undated Response (“the Response”) setting out the grounds

on which it opposed Mr. White's appeal.

5. In substance and in the circumstances I describe below, this is an application by the OFT under rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the Rules") to strike out the appeal brought by Mr. White on the grounds that his appeal has no reasonable prospect of succeeding or, in the alternative, for an unless order requiring Mr. White to clarify his grounds of appeal, in default of which his appeal be struck out.
6. The OFT appeared before me by Mr. Brendan Magennis, a lawyer in its Consumer Credit Group, who prepared a helpful skeleton argument in support of the OFT's application and for whose assistance I am grateful.
7. Mr. White has throughout acted in person and I should immediately pay tribute to the careful, courteous and thorough way in which he presented his submissions to me.
8. The application before me is not inherently unusual, but in my experience the factual background giving rise to it is somewhat out of the ordinary, hence I need first to explain that background in a little detail.

B. Factual background

9. In the course of his submissions Mr. White informed me that whilst he holds a Bachelor of Science degree from Warwick University, he said that he presently works as a book-keeper for an importer of balsamic vinegar. He said that he has no book-keeping qualifications but effectively "learnt on the job".
10. Although at the date of the hearing before me Mr. White had held the licence for just over two years, he was not at that date and has never carried on any business pursuant to that licence. Nor, as I understood it, does Mr. White have any immediate plans to commence trading in relation to all or any of the activities to which the licence relates.

11. That raises the obvious question why, in these circumstances, Mr. White wishes to continue to hold a licence and has appealed against the Determination which revoked it. The answer, given by Mr. White to both the Adjudicator and to me is two-fold: first, that holding a licence would be an advantage to him when seeking employment and, secondly, it would mean that if in future he did wish to carry on a business for which a licence was required, he would otherwise be required to spend further money and time in applying for a fresh licence.

12. The crux of the OFT's case is that because Mr. White's licence relates, in certain respects (namely debt counselling and debt adjusting), to what the OFT regards as "high risk" activities, as part of the process of satisfying it (the OFT) that he was a fit person to hold a licence Mr. White was required to submit what is known as a "Credit Competence Plan" ("CCP"). That document, which extended to some 39 pages, was signed by Mr. White and dated 8 October 2009. For present purposes the key information contained in the CCP was that Mr. White was reliant on services to be provided to him by a company called Forbury Financial Limited ("Forbury"), which used the internet trading name "LocalDebtAdvisors.co.uk", in a number of important respects, for example:
 - 12.1 A Mr. Dermot Hanley of Forbury was said to be the person responsible for ensuring the compliance of Mr. White's business with the 1974 Act, other relevant legislation and OFT Guidance (Part 2, Section 3).

 - 12.2 It was said that Forbury's "compliance officer" would take direct responsibility for ensuring full compliance with the 1974 Act and associated Regulations, other relevant consumer protection legislation and OFT Guidance (Part 2, Section 11).

 - 12.3 Mr. White said he was subject to Forbury's disciplinary procedures and, where considered appropriate, would be subject to retraining or termination (Part 2, Section 14).

- 12.4 To ensure that an appropriate system for handling complaints was in place, it was said that clients would be handed a copy of Forbury's client charter, and that Forbury's had a complaints handling procedure (Part 2, Section 15).
13. Forbury was itself the holder of a licence under the 1974 Act, which had been issued on 22 April 2009 and which extended to the activities of credit brokerage, debt adjusting, debt counselling.
 14. At this point in the narrative I should interpose that I am entirely satisfied, as Mr. Magennis submitted to me, that if, when he applied for the licence, Mr. White had not been able to draw on Forbury's resources in the respects identified in the CCP and of which I have given some examples above, the OFT would not have concluded that Mr. White was a fit person to hold a licence and he would therefore not, on this alternative hypothesis, have been granted a licence in the first place.
 15. Resuming the narrative, Mr. White was visited by a representative of Brent and Harrow Trading Standards on 8 February 2010. It is not necessary for me to say much about this visit, other than to note that by this time Mr. White had become profoundly dissatisfied with Forbury's performance. He told me Forbury was not answering his calls and, he said, he had severed his connection with Forbury in January 2010. He also told me that, on the occasion of this visit, he told Brent's representative that he was not trading and would inform Brent when he started to do so.
 16. Approximately three months later, on 7 May 2010, Forbury surrendered its licence under the 1974 Act.
 17. In September 2010 the OFT undertook a compliance review of 129 licence holders, including Mr. White ("the compliance review"). It is not necessary for me to deal with this in any detail, since the course of events relating to and following the compliance review are fully set out in paragraphs 22 to 31 of the Minded to Revoke Notice ("MTR") under section 32 of the 1974 Act dated 26 January 2011 addressed to Mr. White. The

MTR was prepared by Ms. Elaine Rassaby, another adjudicator at the OFT, and formed the basis on which the Determination was made. I do not understand Mr. White to dispute the factual accuracy of those paragraphs of the MTR although, and as I shall later explain, Mr. White has called into question the OFT's motives for including him in the compliance review.

C. Brief procedural history

18. I have already referred to both the MTR dated 26 January 2011 and the Determination dated 12 May 2011. Following service on him of the MTR Mr. White did not request an oral hearing hence the Adjudicator had before him only Mr. White's written representations dated 25 February 2011 when making the Determination.
19. The Determination was relatively brief, the Adjudicator concluding that Mr. White's fitness to hold a licence was inextricably linked to his relationship with Forbury. As that relationship had ended the Adjudicator held, by reference to section 25(2)(a) and (c) of the 1974 Act, Mr. White had thus failed to demonstrate the necessary skills, knowledge and experience, and that he had in place the required business processes and procedures, required of a licence holder. The Adjudicator also relied on the fact that Mr. White had failed to provide an independent audit report as requested by the OFT, but that finding has not significantly featured in the argument before me and I treat it as being of peripheral relevance only to the application I have to determine.
20. In his Notice of Appeal against the Determination, Mr. White relied on two grounds of appeal, namely that:
 - 20.1 the skills, knowledge and experience he possessed when the licence was granted to him had not diminished, and
 - 20.2 as he had never traded he had no business to audit but, were he in future to commence trading, he would notify the OFT and make himself available for an

audit.

21. The Notice of Appeal also included some general observations by Mr. White to the effect that (i) the fact he was not using the licence should not be a reason for revoking it, (ii) the licence and the period he had spent acquiring the requisite knowledge were part of his “cv skills and history” and (iii) revoking the licence could have an adverse effect on his ability to find future employment.
22. In his Notice of Appeal Mr. White did not make any criticism about the manner in which the OFT had behaved either in relation to the compliance review or procedurally in revoking his licence.
23. Following service of the Response, Mr. White himself served a Reply dated 26 August 2011 (“the Reply”). In the Reply Mr. White alleged (*inter alia*) that:
 - 23.1 as a non-trader, his inclusion in the compliance review “was little more than an attempt to improve the statistics of a headline-seeking action by the OFT” (paragraph 8);
 - 23.2 in this regard the OFT was engaged in a “purely public relations exercise” (paragraph 9); and
 - 23.3 the OFT’s actions in this case had the single objective of producing a report “showing the OFT in a favourable light championing the rights [of] the public, policing the financial services industry and prosecuting rogue traders”, Mr. White contending that he was being “persecuted” by the OFT
24. Thereafter and clearly with the above allegations in mind, by a letter to the OFT dated 30 August 2010 Mr. White identified nine individuals from the OFT that he said he wished to give oral evidence at the hearing of his appeal, including the Adjudicator and Ms. Rassaby.

25. By a letter to the Tribunal dated 6 September 2011 Mr. Magennis on behalf of the OFT expressed its opposition to Mr. White's desire to cross-examine those representatives of the OFT and also applied for an order from the Tribunal under Rule 6 of the Rules that Mr. White should clarify his grounds of appeal, that application being directed towards the allegations of, in effect, bad faith that Mr. White had made (for this first time) against the OFT in the Reply.
26. Mr. White responded to that application by a written Answer dated 20 September 2011 ("the Answer"), in which he said (*inter alia*) that:
- 26.1 his case for retaining his licence would be presented at the Tribunal hearing, that the Reply and the Answer were not to be considered as his complete case and that the Tribunal would hear evidence of the OFT's "arbitrary abuse of its remit to regulate the debt counselling industry in this case" (paragraph 2);
- 26.2 the OFT's actions were designed to achieve what he called "the right result" by not explaining why it had not acted in February 2010 and in failing to disclose that Forbury had surrendered its licence (paragraph 5); and
- 26.3 striking out his appeal would deny him due process of law and endorse any malpractice by the OFT (paragraph 9).
27. It is against the above background that I turn to consider the OFT's application.

D. The application: discussion

28. The principles I am required to apply in determining the application are not in doubt and are conveniently summarised in paragraph 12.40 of Jacobs' *Tribunal Practice and Procedure* to which my attention was drawn by Mr. Magennis:

“Under [the Tribunals, Courts and Enforcement Act 2007] the threshold is whether the case has no reasonable prospect of succeeding. This is similar or equivalent to ‘no real prospect of succeeding’. In *Swain v. Hillman* [2001] 1 All ER 91 at 92 Lord Woolf M.R. said of this phrase:

“The words ‘no real prospect of succeeding’ do not need any amplification, they speak for themselves. The word ‘real’ distinguishes fanciful prospects of success or...they direct the court to see whether there is a ‘realistic’ as opposed to ‘fanciful’ prospect.”

This will include a case that is manifestly misconceived.”

29. There are two limbs to the OFT’s application:
 - 29.1 The fact that, since January 2010, Mr. White has ceased to have any connection with Forbury means that he is no longer able to show that he is a fit person to hold a licence, because no other company, firm or person has replaced Forbury as provider to him of the various services identified in his CCP.
 - 29.2 There is no evidence to support Mr. White’s allegations of bad faith on the part of the OFT which, in any event, would not be a reason for the Tribunal to set aside the Determination.
30. In my judgment both of those contentions are well founded.
31. The correctness of the first of those submissions is self-evident, nor is it factually (as opposed to legally) disputed by Mr. White. Rather, his argument is that, if and when he decided to commence trading pursuant to his licence, he would at that stage make the necessary arrangements to ensure that his business was compliant and would invite the OFT to satisfy itself that this was the case.
32. I do not doubt that Mr. White advances that argument in good faith and with all sincerity. I also accept, as in effect contended in his Notice of Appeal, that as an individual he

possesses the same attributes of honesty and integrity and is of the same intellectual ability as he was when he applied for the licence. That, however, is not sufficient for Mr. White to satisfy the fitness test under section 25 of the 1974 Act.

33. In particular, section 25(2) of the 1974 Act requires regard to be had to (*inter alia*):

“(a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;

...

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

...”

34. It was clearly the case that Mr. White, when he was granted the licence, did not personally possess either all the requisite skills, knowledge and experience or the necessary business structure, and that he proposed therefore to rely heavily on Forbury as disclosed in his CCP. Mr. White no longer having any connection Forbury, which has itself ceased to be a licence holder under the 1974 Act, means that he no longer satisfies the statutory test of fitness. The 1974 Act does not provide for a person in the position of Mr. White, i.e., who is not trading and who does not presently satisfy the test of fitness, to continue to hold a licence on the basis that, if and when he does commence to trade, he will take the requisite steps to render himself fit. A licensee cannot subsist in this form of suspended animation.

35. As to the OFT's second contention¹ and as I have already observed, contrary to Rule 22(2)(g) of the Rules Mr. White's Notice of Appeal did not contain any allegations of bad faith on the part of the OFT. However Mr. Magennis did not suggest that for this reason I should not hear what Mr. White had to say on the point, and indeed addressed me on it when opening the application.

¹ See paragraph 29.2 above.

36. Having therefore had the benefit of Mr. White's explanation of his case on the point, and whilst I do not doubt that he feels a genuine sense of grievance about the way he has been treated by the OFT, I am entirely satisfied that Mr. White has no reasonable prospect of succeeding in his appeal based on the allegations he makes against the OFT in this context.

37. I reach that conclusion for no fewer than three separate reasons:

37.1 The evidence before me does not disclose any reasonably arguable case of bad faith on the part of the OFT. Mr. White's primary ground for this contention is that he was not at the time of the MTR and has never traded and, in effect, the OFT has picked on him as a soft target to boost its reputation. That, however, is merely supposition or assertion on his part.

37.2 Even if Mr. White was able to impugn the integrity of the OFT's investigatory process, he has not (and, in my judgment could not) made any such allegations against the Adjudicator, who was independent from and played no part in that investigation, and against whose Determination Mr. White has brought his appeal.

37.3 Whatever shortcomings there may have been in the OFT's investigatory process (and I make, and do not consider myself required to make, any findings in this regard), the issue raised by Mr. White's appeal is whether he is a fit person to hold a licence under the 1974 Act. The preamble to the Act makes clear that it was passed for the protection of consumers and there is well known and long-established authority that the grant of a licence is, therefore, a privilege and not a right: see *North Wales Motor Auctions v. Secretary of State for Trade* [1981] C.C.L.R. 1 *per* Sheen J. It follows that the only question with which I am concerned is whether, were there to be a full hearing of his appeal, Mr. White has a reasonable prospect of succeeding in showing that he is a fit person to hold a licence. For the reasons I have set out at paragraphs 31 to 34 above in my judgment he has not.

38. In those circumstances it would be a waste of time, money and judicial resources to allow this appeal to proceed any further.
39. The effect of my decision is not, as Mr. White has asserted, to deny him due process. He has had ample opportunity before the Adjudicator and, now, before me to present his case. The fact of the matter is that I have been persuaded by Mr. Magennis that Mr. White does not have an appeal against the Determination that merits a full hearing.
40. I therefore accede to the OFT's application and will make an order striking out Mr. White's appeal.

E. Costs

41. No submissions were addressed to me on the question of costs.
42. Under Rule 10 of the Rules, any application for costs must be made to the Tribunal not later than 14 days after the date on which the Tribunal sends this decision to the parties.

Keith Rowley Q.C.

Judge, First-tier Tribunal (Consumer Credit)

17 January 2012