



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

Case number: CCA/2013/0001

Between:

Connected Claims Limited (“CCL”)

Appellant

and

The Office of Fair Trading (“OFT”)

Respondent

On appeal from: The OFT’s determination reference ADJ/2492

Dated: 8th January 2013

Heard at: The Immigration and Asylum Tribunal, Piccadilly Exchange, 2 Piccadilly
Plaza, Manchester M1 4AH

Date of hearing: 3rd September 2013 (sitting in public)

Date of decision: 14th October 2013

Before Mr. Peter Hinchliffe, Tribunal Judge,
Mr. D. Stuart McDonald
Mr Neil Pardoe

Attendances:

For the Appellant Mr J Cropper of DWF LLP.

For the OFT: Mr. M. Vinall instructed by the OFT.

DECISION

1. The unanimous decision of the Tribunal is to dismiss the appeal. The decision of the OFT to revoke CCL's consumer credit licence under Section 32 of the Consumer Credit Act 1974 (the "Act") is confirmed for the reasons set out below.

BACKGROUND TO THE APPEAL

2. CCL appeals against the determination of the OFT dated 8th January 2013 to revoke consumer credit licence 641507 granted to CCL on 23rd January 2012 (The "Licence"). The OFT in its Determination of Minded to Revoke Notice of 8th January 2013 (the "Determination") gave the following reasons for its decision:

"The adjudicator found that

- 1) *an associate of the licensee has:*

- a *contravened a provision made by or under Part 16 of the Financial Services and Markets Act 2000 within the meaning of section 25(2A)(b)(ii) of the Act:*

- b *engaged in unfair and improper business practices within the meaning of section 25(2A)(e) of the Act.*

- 2) *an associate of the licensee failed to demonstrate the necessary skills, knowledge and experience within the meaning of section 25(2)(b) of the Act.*

The adjudicator considered that the matters referred to above are circumstances that are relevant to the licensee's fitness under section 25(2) of the Act.

Notwithstanding the representations the adjudicator was not satisfied that the licensee was fit to hold the licence, accordingly the licence was revoked."

3. The OFT had concluded that the associate referred to in 1 a and 1 b of the extract from the Determination set out above is Debt Connect Limited ("DCL"), and the associate referred to in 2 in the extract from the Determination set out above is Mr Rahul Sharma ("Mr Sharma"). The decision of the OFT followed the issue of a minded to revoke notice issued under section 32 of the Act on 30th October 2012 (the "Notice") to CCL in which the OFT outlined the basis for their concern about whether CCL was fit and competent to engage in the consumer credit activities covered by the Licence and sought representations from CCL on these concerns.
4. CCL appealed against the Determination on the 4th February 2013. CCL denied that it had contravened any provisions under Part 16 of the Financial Services and Markets Act 2000; or engaged in unfair and improper business practices within the meaning of Section 25(2A)(e). It denied that it had failed to demonstrate the necessary skills, knowledge and experience within the meaning of Section 25(2)(b) of the Act. CCL

went on to deny that DCL is closely associated with CCL and stated that Mr Sharma is sufficiently experienced and knowledgeable in the consumer credit industry and stated that it had the requisite internal procedures in order to operate a licensable business.

5. This appeal has been considered in conjunction with appeal reference CCA/2013/0002 brought by DCL against the OFT (the "DCL Appeal"). The DCL Appeal is against the OFT's determination that DCL had acted in the manner set out in 1a and 1b of the extract from the Determination set out in 2 above and that Mr Sharma failed to demonstrate the necessary skills, knowledge and experience within the meaning of section 25(2)(b) of the Act. The DCL appeal followed an application by DCL to renew its consumer credit licence. The Tribunal heard this appeal and the DCL Appeal simultaneously and the parties submitted evidence and representations that were relevant to both appeals. The Tribunal decision on the DCL Appeal was issued on the same date as this decision and is referred to at paragraph 10 below.

UNDISPUTED FACTS

6. In the OFT's response to the notice of Appeal, the following facts were said to be undisputed. At the hearing, the parties accepted that such facts were not in dispute:
 - Mr Sharma is the current managing director and 75% shareholder of CCL.
 - Mr Pardeep Kumar Sharma is a 25% shareholder in CCL.
 - CCL is controlled and managed by Mr Sharma.
 - CCL has 12 employees.
 - CCL's licence commenced on 23 January 2012. The categories of work covered by the Licence are; credit brokerage, provision of debt counselling on a commercial basis, provision of debt adjusting on a commercial basis.
 - Mr Sharma is the Managing Director of DCL and has full day-to-day control.
 - DCL had eight employees at the time of the decision to reject the application for renewal of its licence.
 - Mr Pardeep Kumar Sharma owned 100% of the shares in DCL but exercises no authority or control.
 - Mr Pardeep Kumar Sharma is Mr Sharma's father.
 - DCL is engaged in ancillary credit or debt management business.
 - The OFT considers debt adjusting and debt counselling to be high-risk activities.
 - On 6th March 2012, the OFT served notice under Section 6(3) of the Act requiring further information from DCL in relation to its business.
 - The OFT requested a Trading Standards officer to visit DCL in order to further assess their fitness to continue to hold a consumer credit licence and to obtain further

information about the nature of its business. This visit took place on the 14th of June 2012.

- During this visit it was confirmed by Mr Sharma that DCL then offered debt management and debt settlement products and that it would not engage in consumer credit, consumer hire or debt collecting and that its business would not change were its renewal application to be granted.
- The debt management activities carried out by DCL involved the provision of advice regarding suitability of various debt solutions and the administration of debt management plans. It provides debt settlement by seeking to negotiate full and final settlement offers with consumers' creditors.

THE LEGISLATIVE BACKGROUND

7. The Determination is based upon DCL and Mr Sharma being associates of CCL. Section 184 of the Act sets out the position on associates:-

“ 184 Associate

(1) a person is an associate an individual if that person is:-

a).....

b) A relative of

(i) the individual, or

(ii) the individual's husband or wife or civil partner, or

c)

(2)...

(3) a body corporate is an associate of another body corporate-

a) if the same person is a controller of both, or a person is a controller of one and persons who are his associates, or he and persons who are his associates, are controllers of the other, or

b)

(4) a body corporate is an associate of another person if that person is a controller of it or if that person and persons who are his associates together are controllers of it.

(5) In this section “relative” means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendent ...”

8 Section 25 of the Act deals with the requirements that the holder of a consumer credit licence must be a fit person. Section 25 (1) establishes that an applicant for a consumer credit licence must satisfy the OFT that he is a fit person to carry on the type of consumer credit business for which he has applied for a licence. Section 25 (2) sets out the basis upon which that fitness must be assessed:

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

(2B)

(3) *In subsection (2A) , “associate ”, in addition to the persons specified in section 184, includes a business associate.”*

ROLE OF THE TRIBUNAL

9 Section 41ZB of the Act deals with disposal of appeals by the Tribunal. 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;*
 - (e) *give the OFT directions for the purpose of giving effect to its decision.*

The issues to be decided by the Tribunal in this case are whether on the evidence before the Tribunal, it should conclude that CCL was a fit person to hold a consumer credit licence at the time that the Appeal came before the Tribunal. The reasons given in the Determination remain the foundation for the Appeal, however the Tribunal is entitled to consider any further matter that has a bearing on CCL's fitness, so long as CCL has been given the opportunity to make representations on such matters. The standard of proof on any issue is the usual civil standard of a balance of probability and the Tribunal must be satisfied that the evidence establishes that CCL is not a fit person to hold the Licence, if the Licence is to be revoked.

THE TRIBUNAL'S FINDINGS

10 In a decision of the same date, the Tribunal determined the DCL appeal and reached the following conclusion:

“The Tribunal concludes that Mr Sharma has insufficient skill, knowledge and experience to enable him to guide DCL and its employees through the requirements that they must meet in order to discharge their responsibilities as a consumer credit licence holder operating in an area with a high risk of consumer detriment. As Mr Sharma is the sole or principal source of such skill, knowledge and experience the Tribunal finds that DCL also has insufficient skill, knowledge and experience to enable it to continue to meet the terms of its Licence.

In all the circumstances of this appeal and having considered all the evidence and arguments, the Tribunal finds that DCL is not a fit person to be issued with a consumer credit licence and that the application for renewal of consumer credit licence should be refused. “

11 It was argued on behalf of CCL that CCL is not part of a group or holding structure and is an entirely separate entity from DCL. Its accounts are filed separately. Its banking arrangements are dealt with separately; the company has different objectives and a different business plan and it has different employees to DCL. On this basis, it was argued that CCL is not an associated company with DCL according to the Act. CCL's primary business activity is that of claims management. Mr Sharma stated that the consumer credit activities within CCL were relatively recent and remained limited. The OFT did not disagree with this assertion. The Tribunal saw no reason to disagree with the assertions made on behalf of CCL that, in business terms, there is no substantial connection between DCL and CCL. However, Section 184 of the Act sets out the criteria to be applied in deciding whether or not two body corporates are connected. The criteria are not based upon a close business or practical association, they rely upon an assessment of the control exercised or capable of being exercised over the relevant companies.

12 Section 189 (1) of the Act defines "controller" as

"In relation to a body corporate, means a person-

a) In accordance with whose directions or instructions the directors of the body corporate or of another body corporate which is its controller (or any of them) are accustomed to act or

b) who, either alone or with any associate or associates is entitled to exercise, or control the exercise of, 1/3 or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller."

13 The Tribunal finds that:

- Mr Pardeep Kumar Sharma and Mr Sharma are father and son and therefore they are associates within the meaning of Section 184 (1)(b)(i) of the Act.
- Mr Sharma is the sole Director of CCL and the owner of 75% of the issued share capital of CCL. He is therefore the controller of CCL.
- By virtue of being its director Mr Sharma is also a business associate of CCL and an associate of it within the meaning of Section 25(3) of the Act.
- Mr Pardeep Kumar Sharma owns 100% of the share capital of DCL. He is therefore the controller of DCL within the meaning of Section 189(1) of the Act.

It follows from the above that DCL and CCL are associates of one another within the meaning of Section 184(3)(a) of the Act, by virtue of the fact that Mr Pardeep Kumar Sharma is the controller of DCL and an associate within the meaning of Section 25(3) of Mr Sharma who is the controller of CCL.

14. The Tribunal's finding that both DCL and Mr Sharma are associates of CCL means that, by virtue of section 25 (2A) of the Act, the Tribunal must have regard to evidence about the business practices of DCL and its compliance with Part 16 of the Financial Services and Markets Act 2000 in so far as it relates to DCL's consumer credit activities. The Tribunal considered these issues in the course of determining the DCL appeal. It concluded that DCL had carried on unfair and improper business practices. However, by the time of the appeal hearing, the Tribunal was not persuaded that the residual failings in its business practice were of such gravity and seriousness that they would, of themselves, constitute grounds for concluding that DCL was not a fit person to hold a Consumer Credit Licence.
15. With regard to DCL's compliance with Part 16 of the Financial Services and Markets Act 2000 in the course of its consumer credit activities, the OFT had identified a failure by DCL to operate a complaints procedure that met the required standards. The Tribunal concluded in the DCL appeal that there was real cause for concern at the effectiveness or willingness of DCL to meet these standards.
- 16 The Tribunal's major concerns about DCL and Mr Sharma, and the basis for its decision to refuse to renew DCL's consumer credit licence, related to their lack of skills, knowledge and experience in relation to consumer credit business. The Tribunal's decision in the DCL appeal was that Mr Sharma has insufficient skill, knowledge and experience to guide DCL through its consumer credit licence obligations.
- 17 In considering CCL's fitness to hold a consumer credit licence, the Tribunal has to have regard to CCL's skills, knowledge and experience and the skills, knowledge and experience of other persons who will participate in CCL's consumer credit business. In Mr Sharma's witness statement and in his evidence at the hearing, he explained that the primary business purpose of CCL was to assist its clients in the recovery of the proceeds of mis-sold PPI insurance and that "*consumer credit licence activity is an add-on to these services and the number of customers of CCL which require licensable advice reflects that*". Mr Sharma pointed to his own academic and employment history, which included a business studies degree, an initial position with the Release Money Group including time spent with Debt Release Direct during 2009 and his subsequent experience at DCL and CCL, where he has had general management responsibility and responsibility for regulatory compliance for the consumer credit activities at both firms. Mr Sharma stated that both companies, DCL and CCL, were in a process of continual improvement and

refinement of their business practices. Both had made adjustments at the request of the OFT, but Mr Sharma argued he had made other changes and improvements for business purposes and was aware of the need to make continuing changes, in particular, in the light of the changes to the regulatory regime for consumer credit activities. Mr Sharma argued that there was no material risk of harm to consumers dealing with CCL and none would arise if CCL were to continue with the Licence. CCL has a good reputation in the industry and does not have a significant complaint history. He went on to say that CCL is fully compliant with the contents of the OFT's own guidance on debt management and other consumer credit activities and the OFT had not raised any specific issues which impacted either on his own performance or with that of the companies employees. He had amended the companies training activities and said that amendments to its compliance activities were currently on going. It was argued on behalf of CCL that the OFT's approach to the two cases being addressed at the hearing and in the processes running up to the hearing were confused: The OFT had failed to distinguish adequately between CCL and DCL in explaining its reasons.

- 18 The Tribunal took full account of the evidence of both parties and the representation and arguments submitted on their behalf. The Tribunal found it significant that in the evidence given at the hearing Mr Sharma confirmed that he was the sole source of expertise on consumer credit matters and on consumer credit licenses within CCL and DCL. CCL did not argue that CCL had or could draw on other sources of relevant skills, knowledge and experience and the Tribunal found no evidence that other sources existed. Mr Sharma did not see the need for such resources and did not accept that he lacked the required capability.

In any decision to revoke an existing consumer credit licence the onus is on the OFT and hence on the Tribunal to establish that the licensee is not fit to hold a licence. In the DCL Appeal, the onus was on DCL to establish that it was fit to hold such a licence. The Tribunal therefore considered afresh the evidence and representation relating to Mr Sharma and CCL and their capability to comply with their responsibilities under the Licence at the time of the hearing and in the future. The Tribunal concluded the evidence set out in the decision on the DCL Appeal established on the balance of probabilities that Mr Sharma lacked adequate skills, knowledge and experience to manage a company holding a consumer credit licence and to deal proactively with regulatory requirements. This conclusion and the absence of any other relevant skills, knowledge and experience in CCL meant that CCL was not a fit person to carry on the activities set out in the Licence. The reasons for the decision in the DCL Appeal are set out in full in that decision and are not repeated here.

19 The Tribunal took account of and considered other relevant factors before coming to its overall conclusion. In particular, the Tribunal considered the extent to which the revocation of the Licence was a proportionate response to the problems and difficulties that arose in respect of CCL. The Tribunal noted that no evidence had been provided that CCL was failing to meet its obligations under the Licence at the time of the hearing. The OFT had not sought to argue that the obligations that it had placed on CCL in a letter dated 23rd January 2012 had not been met. The letter of 23rd January 2012 was sent after the OFT had confirmed that it had completed the assessment of CCL's application for a licence and had made a decision to issue CCL with a Licence. The letter stated that;

“although we are issuing the Licence, we expect you to address the following concerns in the near future”

and set out a list under nine headings over three pages of issues that needed to be addressed by CCL. These issues included the phrasing of promotions, the cooling-off period offered by CCL, the knowledge within CCL and its adequacy, compliance with the OFT's debt management guidance, and the extent to which CCL would operate in a transparent manner and be able to comply with the debt management guidance at that time and in the future. The Tribunal noted that the existence of these concerns had not, at the time, been sufficient to cause the OFT to conclude that CCL was not a fit person to hold a licence. The Tribunal also considered the evidence and its conclusion in the DCL Appeal that Mr Sharma did not lack good faith or integrity. He had sought to respond to the issues specifically raised by the OFT and was likely to do so in the future if failings or shortcomings were pointed out to him.

20 The Tribunal took account of these factors and weighed these against the clear need for CCL to have the capability to proactively identify and address issues of fair and proper business practice and compliance with legal requirements or regulatory guidance that might otherwise cause consumer detriment in an area of consumer credit activity that posed a high risk to consumers. The Tribunal concluded that, on the balance of probabilities, CCL lacked the capability to act in such a proactive manner and this was unlikely to improve in the foreseeable future. In all the circumstances of the case and taking account of all of the evidence and the representations of the parties and the need to act proportionately, the Tribunal came to the view that CCL was not a fit person to hold a consumer credit licence.

DECISION OF THE TRIBUNAL

21 Having considered all of the evidence and arguments, the Tribunal finds that CCL is not a fit person to hold a consumer credit licence and that the imposition of requirements under the Act would not address these fitness concerns. The appeal is refused, the Licence was properly revoked by the OFT.

22 The Tribunal invited the views of the OFT and CCL on the issue of whether CCL should be authorised under Section 34A of the Act to retain its authorisation for a limited period and a limited purpose. The parties agreed and the Tribunal concurs that CCL is authorised under Section 34A of the Act to carry into effect any agreements made before the expiry of the License subject to the conditions set out below. These authorisations are granted for a period of two months from the date of this decision. CCL must:

Contact its existing customers within five days of this decision to advise them of the need to make alternative arrangements with regard to their debts;

Direct such customers to appropriate sources of further help such as the Directgov website <https://www.gov.uk/options-for-paying-off-your-debts>;

Make arrangements so that any client monies that will not be disbursed to creditors are returned to the consumer; and

Neither offer services to any new clients nor engage in further negotiations with creditors of existing clients.

P M Hinchliffe
Tribunal Judge