



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

Case No. CCA/2012/0009

On appeal from:

Office of Fair Trading's

Decision reference: ADJ/2356-CCA-635425

Dated: 6 March 2012

Appellant: Premier Finance (GB) Limited

Respondent: The Office of Fair Trading

Heard at: The Tribunals Service, Rivershill House,
82 St George's Road, Cheltenham
Gloucestershire GL50 3EX

Date of hearing: 11 September 2012 (sitting in public)

Date of decision: 5 October 2012

Before

District Tribunal Judge Jacqueline Findlay (Chairman)

Nicholas Paul Baxter

Susan Ward

Attendances:

For the Appellant: Michael Greet

For the Respondent: James Purnell
Instructed by James Eldridge, Legal Division of
Office of Fair Trading

Observers: Kathy Hurst (Environment Agency)
Robert Willows (Environment Agency)
Alwyn Hart (Environment Agency)
Chloe Campbell (Office of Fair Trading)

Subject matter: Appeal against revocation of consumer credit standard licence Number 635425 and refusal of authorisation to carry on any activities in accordance with the provisions of Section 34A of The Consumer Credit Act 1974 – Consumer Credit Act 1974 Sections 25-41 (“the Act”)

Cases referred to: European Environmental Controls Limited v The Office of Fair Trading [2009] UK FTT316 (GRC)
North Wales Motor Auctions Limited v Secretary of State for Trade [1981] CCLR1
Miller v Office of Fair Trading [2009] EWCA Civ34

The Decision

1. The unanimous decision of the Tribunal is to dismiss the appeal. The decision of the Respondent to revoke the consumer credit licence is confirmed for the reasons set out below. The Tribunal confirms that Premier Finance (GB) Ltd (“the company”) should not be authorised to carry on any activities for a specified period of time in order to enable the company’s business to be transferred or wound up.

Abbreviations

2. List of abbreviations:

Premier Finance (GB) Limited	PFL
Premier Systems GB Ltd	PSL
Premier (Sales/Service) Ltd	PSSL
JD Services (Southwest) Limited	JDSL
KJD Services (SW) Limited	KJD
Somerset K Distribution Ltd	SKDL

The Appeal

3. The company appeals through its sole shareholder and director against the determination of an Adjudicator of the Respondent, Alison Spicer, dated 6 March 2012, revoking a standard licence issued to the Company on 6 July 2010 (CCL635425). In the event of the appeal being dismissed the company seeks authorisation to carry on any activities for a specified period of time in order to enable the company’s business to be transferred or wound up.

The Proceedings

4. The company was incorporated on 7 January 2009. The sole shareholder and director is Laura Amor. In 2010, the company applied for a licence to carry on consumer credit business. In the application form, Ms Amor denied having a controller within the meaning of the CCA 1974. The OFT granted the application and the company’s licence commenced on 6 July 2010.

5. The company supplies Kirby vacuum cleaners by way of Hire Purchase agreements to private customers, who are referred to it by 5 distributors of Kirby vacuum cleaners. The company has around 2,000 customers and operates from an office at Romilly House, 201 Central Park, Petherton Road, Hengrove, Bristol, BS14 9BZ (“the property”). The property was purchased by Ms Amor on 21 December 2010.
6. On 26 October 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 s.32 of the Act.
7. The notice invited representations and on 1 December 2011 Ms Amor made written representations on her own behalf and on behalf of the Company. On 19 December 2011 Ms Amor attended a Consumer Credit Group Hearing with Mr Greet, a retired solicitor and family friend, with Ms Spicer, the Adjudicator, Mr Paul Dowden, the notetaker and Adrian Dixon, an observer.
8. A transcript of that interview which is not disputed appears in the bundle at Tab 3.
9. On 6 March 2012 Ms Spicer, on behalf of the Respondent, issued the determination to the company. A Notice of Appeal dated 31 March 2012 was lodged signed by Ms Amor, on behalf of the company, initiating the proceedings before this Tribunal. The Respondent issued a response dated 2 May 2012 to the appeal.
10. On 4 May 2012, 29 May 2012 and 28 June 2012 the Principal Judge of the First Tier Tribunal (Consumer Credit) issued directions.
11. There was an oral hearing at which the Tribunal heard submissions from Mr Purnell, on behalf of the Respondent, and from Mr Greet, on behalf of Ms Amor and the company, and heard oral evidence from Ms Amor. The Tribunal considered an agreed bundle of documents. Ms Amor lodged the unaudited financial statements for the period 1 February 2011 to 31 March 2012. The Respondent had no objection to the documents being lodged late and the Tribunal was of the view that it was in the interests of justice to extend the time to lodge the documents. The Tribunal and Respondent had the opportunity during a recess to consider the accounts.
12. Mr Purnell invited the Tribunal to uphold the determination. However, he requested the Tribunal to consider that the Adjudicator erred in relying on criminal charges which were withdrawn and did not result in convictions during the period when Ms Amor was a director of PSL. The Tribunal has attached no weight to this matter and accepts that the offences were withdrawn and did not result in conviction.

The Case for The Company

13. In the course of oral and written submissions by Mr Greet, and in the witness statement and oral evidence of Ms Amor, the following assertions were made on behalf of the company.
14. No weight should be attached to the fact that the company included the word “Premier” in its name which was Ms Amor’s choice. In oral evidence Ms Amor stated that the company was initially called “Deco” after her son Declan and that the name was changed because it did not sound right. She stated she tried a few different names but could not say why she had specifically chosen “Premier”.
15. Ms Amor was never knowingly a director of PSL. She never exercised any control over PSL at any time and that there has never been any association between the company and PSL.
16. The evidence of Ms Sarah Saunders should not be taken into account without having the chance to cross examine her. It is impossible, from the schedule at Tab 35, to establish which complaints are attributable to the company. It is a breach of natural justice not to have the opportunity to cross examine Ms Saunders.
17. The company has around 50,000 customers not 2,000 as stated. The unaudited financial statements, lodged today, for the period 1 February 2011 to 31 March 2012 demonstrate that this is a successful operating business.
18. PSL was incorporated on 29 April 2009 and PSSL was incorporated on 18 May 2011. Ms Amor had no part in the formation of PSL and PSSL. Neither the company nor Ms Amor is associated with PSL or PSSL.
19. Barry Wilson no longer attends the company’s premises and he is not and has never been an associate of the company.
20. PSL was insolvent when served with a notice to revoke and as it was no longer trading there was no point in it maintaining a consumer credit licence. There was no motive between PSL giving up the consumer credit licence and a desire to bolster/maximise the chances of the company being allowed to retain its consumer credit licence.
21. No inference should be drawn from the fact that Mr Greet represented both the company and PSSL at the Consumer Credit Group Hearing. Mr Greet’s position as representative was due to the tight timescales imposed by the Respondent.
22. Ms Amor is not an associate of Mr Anthony John Hay and he has no influence over her or the company.

23. The company and Ms Amor have at no time had any association with KJD. Accordingly no weight should be attached to the conduct of KJD.
24. The company is not an associate of Mr Kenvyn Pobjoy.
25. SKDL was dissolved seven years ago and it would be absurd to attach weight to any involvement of Mr Hay or his former wife in SKDL.
26. No weight should be attached to Mr Lings' statement on the basis that there has been no chance to challenge the statement by cross examination. Any opinions of Mr Lings are nothing more than opinion. It is a breach of natural justice not to have the opportunity to cross examine Mr Ling.
27. The fact that PSSL rents part of the property is not evidence that there is any association. There is no association between the company and PSSL.
28. Ms Amor was never a controller of JDSL. She did not know that she was a 40% shareholder and JDSL was never an associate of Ms Amor.
29. Although Ms Amor is in a personal relationship with Mr Hay, that relationship does not influence the way she runs the company. No weight should be attached to this relationship. Mr Hay is not the controller of the company and Ms Amor does not act under his direction or instruction. Ms Amor concedes that Mr Hay has in the past used her name in previous enterprises without her knowledge or consent but this is not the case in relation to the company.
30. It is incorrect to assert that Ms Amor could not recall the names of the Kirby distributors at the Consumer Credit Group Hearing and the transcript of that hearing shows that it was agreed that the names should be submitted in writing.
31. The company is not a business associate of PSL and two errors made by salesmen cannot bind the company and no trade resulted from these errors.
32. The company and PSSL occupy different parts of the same building and do not share a principal place of business. As such this is not evidence of an association. The company has not been engaged in unlicensed trading at any time.
33. As Mr Hay never has been and is not a controller of the company, Ms Amor did not make any false statements on the application for a consumer credit licence.
34. Ms Amor is a person of good and unblemished character who has the skills, knowledge, experience and competence to be considered fit to run a company which holds a consumer credit licence.

35. The company had no first hand knowledge of the affairs of PSSL and there is no evidence before the Tribunal to support a finding that PSSL is controlled by Mr Hay.
36. The company and Ms Amor know nothing about the trading record of KJD and Ms Amor has had no involvement at any time in the running or controlling of KJD.
37. Neither the company nor Ms Amor are or have been at any time associates of Mr Wilson or KJD. It is a matter of public record that Mr Wilson signed an undertaking on his own behalf and on behalf of KJD. No weight should be attached by the Tribunal to this matter because there is no association.
38. Ms Amor assisted in certain clerical duties occasionally for PSL but did not act as controller or in any other way and she did not know she had been appointed a director. It cannot be correct that a “right to exercise control” which has been imposed on a person without their knowledge or consent fulfils the definition of associate. The company understands the definition of associate but maintains that it is absurd to suggest that someone who has been appointed as a shareholder or director without their knowledge or consent comes within the definition under statute.
39. Mr Wilson no longer works for the company. Neither PSL nor Mr Pobjoy is engaged in the selling of vacuum cleaners and the company does not finance any business from PSL that no longer exists.
40. Warwick Leaman, accountant to the company, can be expected to know who runs the company and is in a position to know that and confirm it. Mr Leaman is a professional man and weight should be attached to his evidence.
41. In relation to the contention of the Respondent that consumer credit agreements were entered prior to obtaining a consumer credit licence, the documents relied on by the Respondent were prepared in error. No actual trade resulted, in that one simply did not go ahead and the other was cancelled and any money returned. This is not evidence of unlicensed trading because there was no intention to do so.
42. Mr Hay is not involved in the company, is not the controlling mind, the assertion is untrue and it is offensive to Ms Amor to say so.
43. No weight should be attached to the fact that Mr Hay has in the past used his ex wife to “front” his businesses controlled by him. Just because Mr Hay did this with his ex wife does not mean that he has done it with Ms Amor.
44. Ms Amor had a successful independent career in the NHS and it was her decision to start the company and no one else is involved.

The Respondent's Case

45. The Respondent makes the following submissions.
46. The determination to revoke the standard consumer credit licence should be upheld. The Tribunal should confirm that the company should not be authorised to carry on any activities for a specified period of time in order to enable the company's business to be transferred or wound up.
47. There have been a succession of companies who all deal in the sale or supply of Kirby Vacuum cleaners: JDS, KJD, PSL, PSSL and PFL. All these companies trade or traded out of Romilly House, Central Park, Petherton Road, Bristol, BS14 9BZ. There is a common thread of the dramatis personae between the various companies, most notably Mr Hay, Ms Amor and/or Mr Wilson.
48. SKDL was incorporated on 1 April 1998 and dissolved 19 July 2005. Mr Hay was the controlling shareholder, company director and company secretary. Mr Hay's former wife Kathryn Hay was also listed as a director. On 9 January 1996 Mr Hay, who is now Ms Amor's cohabiting partner, entered into distribution agreement with Kirby (UK) Ltd. This agreement was assigned to SKDL on 3 October 2011. Kirby supplied products to JDS without a formal distribution agreement in place.
49. JDS was incorporated on 22 December 2004 and seven months later SKDL was dissolved. JDS benefited from the supply of Kirby products without a formal agreement and the Respondent suggests that there is a strong indication that JDS took over the business of SKDL. The shareholders of JDS were Mr Hay (60%) and Ms Amor (40%). The director of JDS was Kathryn Hayhurst. The Respondent submits that this is an indication of a company controlled by Mr Hay which has his wife/ex wife as director and partner as shareholder.
50. During the period between 23 May 2008 and 16 September 2009 claims were issued against JDS resulting in seven County Court Judgements totalling £13,740. JDS satisfied none of these Judgements. A petition to wind up JDS was presented to the Companies Court by HM Revenue and Customs on 18 February 2010, as a result of which a winding up order was made on 14 April 2010. JDS was finally dissolved on 15 January 2001. Mr Wilson was the company secretary of JDS.
51. Mr Wilson was director and sole shareholder of KJD which is incorporated on 16 July 2008 and dissolved on 26 October 2010.
52. On 20 February 2009 Mr Lings, a fair trading officer in the Trading Standards Department of Brighton and Hove City Council, investigated a complaint that KJD had sold a Kirby Vacuum cleaner on a hire purchase agreement to a blind customer. His observations while attending the property suggested an association between KJD, Mr Wilson and Mr Hay.

Mr Wilson signed an undertaking not to continue, repeat, engage, consent to or connive in conduct set out in a schedule which detailed 12 forms of unfair and unlawful trading. Mr Wilson signed the undertaking in his own personal capacity and on behalf of KJD.

53. On 5 August 2009 following further complaints Mr Lings attended the property and met Mr Pobjoy a director of PSL, a company which was incorporated on 29 April 2009. Ms Amor was a director of PSL until 15 September 2009. Mr Lings asserts that he was told by Mr Pobjoy and Mr Hay on the telephone that KJD had ceased trading and that PSL had taken over.
54. At the Consumer Credit Group Hearing Ms Amor stated that Mr Wilson helped out with the sales side, did come into the office but had nothing to do with finance. The Respondent submits that Mr Wilson is a business associate of the company.
55. Mr Ling attended the property on 27 August 2009 and met Mr Hay who introduced himself as the owner of PSL. PSL which was trading from the property is a Kirby dealer having taken over from KJD.
56. There is evidence to show that Mr Hay was controlling a company even when he was not listed as a director or shareholder in circumstances where Ms Amor was listed as a director.
57. There is evidence to show that Mr Hay is a controller of a phoenix company from the property in respect of Kirby vacuums without a formal distribution agreement. The reason that Mr Hay was not listed as a director is that he was declared bankrupt on 26 June 2009.
58. PSL committed a series of criminal offences during October and November 2009 under consumer protection legislation in the course of its business selling Kirby vacuums. PSL and Mr Pobjoy were prosecuted and on 10 December 2010 pleaded guilty to a combined total of eleven offences committed against elderly and vulnerable consumers.
59. The Respondent issued a Minded to Revoke Notice against PSL and PSL surrendered its consumer credit licence under the orders of Ms Amor who contacted Mr Pobjoy, director of PSL, and instructed him to surrender its consumer credit licence “in an endeavour to simplify the issues to be decided by the Adjudicator”. This is evidence that the directors of PSL were accustomed to act on the instructions of either the company and/or Ms Amor. This is also evidence that PSL and Mr Pobjoy were business associates of the company.
60. The company was issued with a consumer credit licence on 6 July 2010. The Respondent relies on 2 PSL documents headed “Contract of Sale” in which a finance company, stated to be providing hire purchase finance was stated to be the company. One was dated 8 September 2009 when Ms Amor was still listed as a director of PSL and the second was

23 October 2009. This is evidence that the company was engaged in unlicensed trading and there was a clear business association between the company and PSL.

61. Sarah Saunders, Trading Standards Officer at Bristol City Council, has provided the Respondent with statements pertaining to complaints made by consumers against businesses operating from the property, namely PSL, PSSL, KJD and the company. In particular, there are 31 complaints listed against the company between 9 November 2010 and 22 July 2011 (Tab 35 pages 458 to 464).
62. PSSL was incorporated on 18 May 2011. There are two directors Mr Anthony Butler and Mr Peter Slater. PSSL submitted an application for a consumer credit licence on 3 August 2011. It was the intention of PSSL and the company that in the event that PSSL were granted a consumer credit licence PSSL would take over the sales of Kirby vacuum cleaners which would be financed by the company. The company would then be purely a finance company. The Respondent submits that this is evidence of a clear business association between PSSL and the company.
63. PSSL rents a small area of the property from the company for a rent of £1,000 per month. This is evidence to show that the company and PSSL are business associates.
64. Ms Amor is both a controller of the company (she holds all of the company's issued share capital and is the company director) and an associate of the company.
65. Ms Amor was a controller of JDS. She owned 40% of the issued share and accordingly was a controller within the definition prescribed by s.189(1) because she was entitled to exercise one third or more of the voting power at any general meeting of JDS. JDS is therefore an associate of Ms Amor pursuant to s.184(4).
66. Ms Amor was a business associate of PSL as she was a company director of PSL. Ms Amor was an associate of PSL within the meaning of s.25(3). Ms Amor is a business associate of Mr Pobjoy and a business associate of Mr Wilson within the meaning of s.25(3).
67. Ms Amor is associated with Mr Hay. They are in a relationship, live at the same residential property and have two children together. The Respondent submits that although this relationship does not fall within the definition of associate as set out in s.184 their relationship is of a kind of associate and therefore a matter to which the Tribunal must have regard pursuant to s.25(2A)(e).
68. Mr Hay is an associate of the company because he is a person who appears to be its controller pursuant to s.184(4). The Respondent submits that Mr Hay is a controller of the company because he is a person in accordance

with whose directions or instructions the directors of the company are accustomed to act (s.189(1)).

69. Mr Hay is an associate of PSL because he is a person who appears to be its controller. Mr Hay is a controller of PSL because he is a person in accordance with whose directions or instructions the directors of PSL are accustomed to act.
70. Mr Hay appears to have been a controller of JDS. He owned 60% of the issued shares and was therefore a controller of JDS within the definition prescribed by s.189(1) because he was entitled to exercise one third or more of the voting power at any general meeting of JDS. JDS was therefore an associate of Mr Hay.
71. Mr Hay was an associate of KJD because he was a person who appeared to have been its controller. Mr Hay appeared to be a controller of KJD because he was a person in accordance with whose directions or instructions the directors of KJD were accustomed to act.
72. Mr Hay appears to have been a controller of SKDL. He owned all the issued shares and was therefore a controller within the definition prescribed by s.189(1) because he was entitled to exercise one third or more of the voting power at any general meeting. SKDL was an associate, therefore, of Mr Hay pursuant to s.184(4).
73. Mr Hay is a business associate of Mr Wilson and Mr Pobjoy within the meaning of s.25(3).
74. The company is an associate of Ms Amor, Mr Hay and JDS. The company was an associate of JDS because Ms Amor and Mr Hay were controllers of both companies.
75. The company was an associate of KJD pursuant to s.184(3)(a) because Mr Hay appears to have been the controller of both companies.
76. The company is an associate of PSL pursuant to s.184(4) because Mr Hay appears to have been a controller of both companies.
77. The company is a business associate of PSL because PSL salesmen have purported to use the company as a finance company for PSL sales.
78. The company is a business associate of PSSL within the meaning of s.25(3) because they share a principle place of business with each other.
79. The company is a business associate of Mr Pobjoy within the meaning of s.25(3) because it finances sales made by PSL and is able to influence Mr Pobjoy so as to instruct PSL to surrender its consumer credit licence.
80. The company is a business associate of Mr Wilson within the meaning of s.25(3) who comes into the office and helps out with sales.

81. By its conduct and by the conduct of its associates and business associates the company is not fit to practice a licence consumer credit business.
82. The company has committed unfair business practices, and licenced trading and contravened s.7 CCA 1974.
83. The company and its associates have engaged in business practices which appear to the Respondent to be deceitful and improper within the meaning of s.25(2A)(e). The company is a vehicle for Mr Hay to carry on the sale and distribution of Kirby vacuum cleaners which he previously carried on through JDS, KJB and PSL operating from the same property. Mr Hay is disguised from the operation because of his personal bankruptcy and this is evidence that shows that the company and its associates have engaged in business practices as stated.
84. The details of the complaints received from Bristol City Council indicate a pattern of unfair business practices being operated by each of the businesses including the company. The complaints are evidence which tend to show that the company, its employees and/or agents have engaged in business practices appearing to the Respondent to be deceitful, oppressive, unfair or improper, within the meaning of s.25(2A)(e).
85. The company has engaged in unlicensed trading as stated above.
86. When applying for the consumer credit licence the company in answer to the question “does your organisation have a controller?” answered “no”. This was false because Mr Hay, a personal bankrupt, was the controller of the company. This tends to show that the company has contravened s.7 CCA 1974 within the meaning of s.25(2A)(b)(i).
87. Ms Amor due to her association with JDS, PSL and Mr Hay lacks the necessary skills, knowledge and experience to participate in business carried on under a consumer credit licence within the meaning of s.25(2)(b).
88. The company is not fit to hold a consumer licence due to its association with Mr Hay because the company’s controller and/or associate has engaged in business practices which appear to the Respondent to be deceitful, oppressive, unfair or improper, within the meaning of s.25(2A)(e).
89. PSL’s association with the company is fatal to the company’s contention that it is a fit and proper company to hold a consumer credit licence for the reasons as set out above.
90. PSSL is a business associate of the company and PSSL did not disclose on its application form for a consumer credit licence that it was controlled by Mr Hay. This shows that the company’s business associate has contravened s.7 CCA 1974, within the meaning of s.25(2A)(b)(i).

91. The company's association with KJD is fatal to the company's contention that it is fit to hold a consumer credit licence for the reasons as stated above.
92. Mr Pobjoy was convicted of offences involving dishonesty and is engaged in business practices which appear to the Respondent to be deceitful, oppressive, unfair or improper. This is evidence which shows that the Company's business associate has committed offences within the meaning of s.25(2A)(a) and conduct within the meaning of s.25(2A)(e). This is evidence which shows that the company's business associate has contravened any other enactment regulating the provision of credit to individuals or other transactions with individuals within the meaning of s.25(2A)(b)(iii).
93. Mr Wilson engaged in business practices which appeared to the Respondent to be deceitful, oppressive, unfair or improper, as stated above. This is evidence which tends to show that the company's business associate has committed conduct within the meaning of s.25(2A)(e) and in addition that this is evidence which tends to show that the company's business associate has contravened any other enactment regulating the provision of credit to individuals or other transactions with individuals within the meaning of s.25(2A)(b)(iii).
94. Mr Purnell has submitted today that Ms Amor's oral evidence makes clear that she is not a fit person to hold a consumer credit licence. Her oral evidence demonstrated that she had little comprehension of how the company operates and no understanding of the business accounts.

The Legislative Background

95. The law relating to the revocation of a licence is contained in s.32 CCA 1974:
"(1) Where at a time during the currency of a licence the OFT is of the opinion that if the licence had expired at that time (assuming, in the case of a licence which has effect indefinitely, that it were a licence of limited duration) it would have been minded not to renew it, and that therefore it should be revoked or suspended, it shall proceed as follows."
96. The law relating to the renewal of a licence is contained in s.29 CCA 1974. Section 29(3) states that *"the preceding provisions of this Part apply to the renewal of a licence as they apply to the issue of a licence"*.
97. Section 25 requires a licensee to be a fit person. Section 25(2)-(3) provides:
"(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, consumer hire business 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;*
 - ia .Paragraph 13 of Schedule 1A to the Financial Services and Markets Act 2000;*
 - 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).*

(2B) For the purposes of subsection 2A(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the OFT to involve irresponsible lending.

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

98. S.25(2A)(e) requires the OFT to take account of evidence tending to show that the Appellant or its associates have engaged in business practices which appear to the OFT to be deceitful, oppressive, unfair or improper.#

99. The OFT is to take account of the activities of:

- i. the applicant,
- ii. its employees,
- iii. its agents,
- iv. its associates or business associates,
- v. any person appearing to the OFT to be its controller,
- vi. an associate or business associate of any person appearing to the OFT to be its controller.

100. Section 189 defines a controller as:

“in relation to a body corporate, 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 one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller.”*

101. Section 25 permits the OFT to take account of the activities of a person who is not conclusively shown to be a “controller” within the meaning of s.189, but someone who appears to the OFT to be such a person.

102. The definition of an associate is contained in section 184:

“(1) A person is an associate of an individual if that person is –

- (a) *the individual’s husband or wife or civil partner,*
- (b) *a relative of –*
 - i. *the individual, or*
 - ii. *the individual’s husband or wife or civil partner, or*

- (b) *the husband or wife or civil partner of a relative if –*
 - i. *the individual, or*
 - ii. *the individual’s husband or wife or civil partner.*

- (2) *A person is an associate of any person with whom he is in partnership, and of the husband or wife or civil partner or a relative of any individual with whom he is in partnership.*

- (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 the controllers of the other; or*

 - (b) *if a group of two or more persons is a controller of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.*

- (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”.*

103. Section 25(3) extends the definition of “associate” for the purpose of s.25 to include “a business associate”. Business associate has no special definition and therefore covers anyone with whom the applicant (or someone who appears to the OFT to be the applicant’s controller) has business dealings.

104. Subsection 2 requires that in determining whether an applicant is a fit person for the purposes of s.24 the OFT is to 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 credit hire businesses or ancillary credit businesses:*

...

- (b) *practices and procedures that the applicant proposes to implement in connection with any such business:*

- (c) *Evidence of the kind mentioned in subsection 2A”.*

105. Subsection 2A refers to evidence tending (inter alia) to show that the applicant or the controller of a corporate applicant has engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not).

Findings of Fact

106. The company was incorporated on 7 January 2009. Ms Amor is sole shareholder and director of the company. In 2010 the company applied for a licence to carry on consumer credit business. On the application form, the company denied having a controller within the meaning of the CCA 1974. The company's licence commenced on 6 July 2010 (CCL 635425).
107. The company operates from an office at the property which was purchased by Ms Amor on 21 December 2010. The company is in the business of hiring to private customers Kirby vacuum cleaners under Hire Purchase agreements, thus effectively providing finance for the acquisition by those customers of such vacuum cleaners. The trading accounts for the period 1 February 2011 to 31 March 2012 show a net book value of £339,600 being the value of the Kirby vacuum cleaners owned by the company. The vacuum cleaners appear as "plant and machinery". The cost of the vacuum cleaners as at 31 March 2012 is recorded as £579,965.
108. The company relies on the sales persons of the distributors of Kirby vacuum cleaners. The sales persons attend potential customers' homes and provide demonstrations of the product. The demonstrations take at least 2 hours. The cost of a Kirkby vacuum cleaner varies depending on the product but on average the cost to the company is about £500. The customer is charged on average over £2,000 for the same product.
109. The contract of sale is produced to the customer in their home and signed by them and the sales person. The sales person decides on the terms of the hire purchase agreement. The APR varies from 10% to 30% and the agreement may or may not include the payment of a deposit. The rate of interest is decided by the sales person taking into account various factors including whether the customer is an existing Kirby vacuum cleaner customer.
110. The contract of sale is then referred to the company who then makes enquiries about the customer's credit history. The hire purchase agreement signed on behalf of the company is then signed by the customer in their home in the presence of the sales person. The company then pays the distributor for the Kirby vacuum cleaner. The company pays commission to the distributor on occasions.
111. Any used Kirby vacuum cleaners which are taken by the company as part exchange or returned due to non payment under the hire purchase agreement are refurbished and resold in the same way as stated above on variable terms.

112. The Tribunal is satisfied that on a correct analysis of the situation those sales persons and the entities for which they work were acting as agents for the company in these transactions.
113. Mr Barry Wilson acted as an agent for the company. The company is an associate of Mr Wilson. Mr Wilson has committed unfair business practices against consumers.
114. The company is an associate of Mr Pobjoy who has committed offences of unfair business practices against consumers.
115. The company was an associate of companies PSL, JDS, KJD and PSSL.
116. The company was an associate of Ms Amor and Mr Hay.
117. The company engaged in unfair business practices, unlicensed trading, omitted there was a controller on the licence application form, and posed an appreciable risk of detriment to consumers.
118. Ms Amor lacks the skills, knowledge and experience in relation to consumer credit business, consumer credit hire business and lacks the competence and fitness to control a consumer credit organisation. This was particularly clear from her evidence that she did not understand even the basic nature of a hire purchase agreement.
119. Mr Hay lacks the competence and fitness to control a consumer credit organisation.
120. PSL omitted to list Mr Hay as a controller, committed offences of dishonesty, and posed an appreciable risk of detriment to consumers.
121. PSSL omitted to list Mr Hay as a controller.
122. KJD has engaged in deceitful business practices.
123. The company is not fit to carry on a licence consumer credit business.
124. There is an appreciable risk of detriment to consumers by the company continuing in business with a consumer credit licence and accordingly it is not appropriate to authorise the company to carry on any activities for a specified period of time in order to enable the business to be transferred or wound up.

Reasons for the Decision

125. Ms Amor in her oral evidence demonstrated she had no understanding of the company's business and the consumer credit operation. She stated that the distributor came to her and she paid them £2,000 or thereabouts depending on what the machine was sold for. She stated she was lending money to the distributor. She stated also that she was financing the

purchase of the vacuum cleaner to the customer and was lending the customer the money. She demonstrated by her oral evidence that she did not have even the most rudimentary grasp of the practical and financial system under which the company is providing finance for customers and how hire purchase agreements work.

126. Ms Amor demonstrated in her oral evidence her lack of understanding of the profit and loss accounts lodged today. She was unable to explain until prompted the nature of the “plant and machinery” itemised on the accounts.
127. Ms Amor holds all the company’s issued share capital and is the company director and accordingly she is both the controller of the company and an associate of the company.
128. Ms Amor was a 40% shareholder in JDS and accordingly she was a controller of JDS within the legislative definition and JDS was an associate of Ms Amor.
129. Ms Amor was the company director of PSL and is therefore an associate of PSL. She ceased to be a director on 15 September 2009 when Mr Pobjoy took over control of the company. The company in its response stated that Ms Amor “contacted Mr Pobjoy to get him to instruct that the CCL for this company should be surrendered, and this has now taken place.” The Tribunal accepts that this is evidence that the director of PSL acted on the instructions of the company and/or Ms Amor and is evidence that PSL and Mr Pobjoy were business associates of the company and Ms Amor.
130. Ms Amor stated at the Consumer Credit Group Hearing and in evidence to us today that although Mr Wilson had nothing to do with the financial side of the business he was involved in the sales side and helped her out with sales. It is the view of the Tribunal that this is evidence that Mr Wilson is a business associate of the company and Ms Amor.
131. The Tribunal’s view is that Mr Wilson has committed unfair business practices against consumers as evidenced by his undertaking to the City Council of Bristol not to continue, repeat, engage, consent to or connive in conduct as set out in the schedule detailing 12 forms of unfair and unlawful trading. It is the view of the Tribunal that Mr Wilson would not have been required to sign such an undertaking if he had not been engaged in these activities.
132. The Tribunal accepts the evidence of Mr Lings. Mr Lings is a fair trading officer in the Trading Standards Department. He made the statement on the understand and acknowledged that he would be liable to prosecution if he wilfully stated in his statement anything which he knew to be false or did not believe to be true. It is the view of the Tribunal that it is highly unlikely that Mr Lings would have made an untrue statement. Mr Greet has submitted that it is a breach of natural justice to deny him the opportunity of cross examining Mr Lings. The Tribunal is of the view that

there has been no breach of natural justice taking into account that no application was made on behalf of the company for Mr Lings to be called as a witness, the company has had ample opportunity to prepare and present its case and on the basis of all the evidence it is more likely than not that the contents of Mr Lings' statement are correct.

133. Ms Amor was unable to offer any reasonable explanation or the choice of the word "Premier". She stated only that her original choice of name of "Deco" was not appropriate. It is the view of the Tribunal that had there been a convincing reason for the choice of name Ms Amor would have been able to explain this. The Tribunal finds that the name was chosen to preserve in the minds of customers and potential customers a connection with PSL.
134. It is the view of the Tribunal that it is highly unlikely that Ms Amor neither knew nor consented to being allotted shares in JDS.
135. It is the view of the Tribunal that it is highly unlikely that Ms Amor knew nothing about being a director of PSL.
136. It is the view of the Tribunal that Ms Amor has misunderstood the definition of a controller pursuant to s.189. A person is a controller when they are entitled to exercise one third or more of the voting power at any general meeting.
137. It is the view of the Tribunal that Ms Amor was a controller of PSL in that she was able to instruct the directors to surrender the consumer credit licence.
138. It is clear from Ms Amor's oral evidence today that she has no understanding of the financial operations of the company's business, no understanding of the consumer credit business and no understanding of the basic mechanisms of the hire purchase agreements by which the business operates. It is the view of the Tribunal that it is more likely than not that Mr Hay is the controller of the business and that the company is operated under his instructions and direction. Accordingly as a controller he is an associate of the company.
139. Mr Hay owned 60% of the issued shares in JDS and as such was a controller of JDS pursuant to the prescribed definition. JDS was therefore an associate of Mr Hay.
140. The Tribunal is of the view that Mr Hay was an associate of KJD, being a controller of KJD because he was a person in accordance with whose directions or instructions the directors of KJD were accustomed to act.
141. It is the view of the Tribunal that Mr Hay is a controller of PSL because he is a person in accordance with whose directions or instructions the director of PSL are accustomed to act and an associate of PSL.

142. It is the view of the Tribunal that as Mr Hay owned all the issued shares in SKDL he was the controller and SKDL was an associate of Mr Hay accordingly.
143. It is the view of the Tribunal that Mr Hay is a business associate of Mr Wilson and Mr Pobjoy within the meaning of the legislation.
144. Ms Amor's evidence in relation to Mr Hay's employment has been inconsistent and for that reason unreliable. At the Consumer Credit Group Hearing Ms Amor stated in response to the question as to what Mr Hay did with his time that he looked after their children. In oral evidence Ms Amor stated that Mr Hay is a supervisor looking after distributors all over the world and had been doing so for the last 2 years and more so over the last 18 months. She stated that he was not employed but worked on a commission basis. Ms Amor was unable to explain the inconsistencies in her evidence.
145. The Tribunal is of the view that it is more likely than not that Miss Saunders' statements are correct. Miss Saunders is a Senior Enforcement Officer with the Bristol City Council Trading Standards Service. She declared that her statement was true to the best of her knowledge and belief and she made it knowing that if it were tended in evidence she would be liable to prosecution if she had wilfully stated in her statements anything she knew to be false or did not believe to be true. It is the view of the Tribunal that Miss Saunders had no reason not to tell the truth and it was more likely than not that she would. The Tribunal is of the view taking into account all the circumstances that it is more likely than not that Miss Saunders' statements were true. The Tribunal's view is that there has not been a breach of natural justice in Miss Saunders not appearing as a witness for cross examination by Mr Greet for the reasons as stated above at paragraph 133.
146. It is the view of the Tribunal that the company was trading in consumer credit activity prior to having received a consumer credit licence. The Tribunal is of the view that it is not significant that the contracts of sale did not proceed. It is the view of the Tribunal that what is significant is that the contracts of sale were dated before the consumer credit licence was issued on 6 July 2010 and that the contracts of sale are evidence that the business was engaged in unlicensed trading and indicative of a business association between the business and PSL.
147. The fact that the unlicensed consumer credit agreements did not proceed does not assist the company in contending that unlicensed activities did not take place. A licence is required even to canvas a regulated consumer hire agreement off trade premises and the contracts of sale are evidence that they were clearly canvassed.
148. The Tribunal is of the view that it is highly significant that JDS, KJD, PSL, PSSL and the business all trade or traded out of the same property.

149. The Tribunal is of the view that Mr Lings' and Miss Saunders' statements were available in advance and the business could at any time put forward an alternative version of events. At no time has the company sought to put forward any such alternatives notwithstanding that there has been ample opportunity to do so.
150. The Respondent has established that if the business were to retain its licence the likelihood is that it would pose a risk of detriment to consumers. The Respondent has discharged the burden of proof.
151. The Tribunal is of the view that it would be inappropriate to make an authorisation to enable the business to be wound down or sold on the grounds that the risk of detriment to consumers is overwhelming.

Costs

152. The Tribunal makes no order as to costs.

[Signed on the original]

Regional Tribunal Judge Jacqueline R Findlay (Chairman)
5 October 2012