

REVOCATION OF CONSUMER CREDIT STANDARD LICENCE – conviction for dishonesty – failure to disclose disciplinary action by the Financial Services Authority – lying to the adjudicator and the tribunal – undertakings – Appellant ordered to pay costs of appeal

IN THE CONSUMER CREDIT APPEALS TRIBUNAL

BETWEEN:

MARK COOPER

Appellant

- and -

THE OFFICE OF FAIR TRADING

Respondent

Date of hearing: 12 March 2009

Venue of hearing: The Asylum & Immigration Tribunal, Bennett House, Town Road, Hanley, Stoke-on-Trent ST1 2QB

**Tribunal: Dr James Behrens (chairman)
Mr John Bridge
Mr Anthony Wilding**

Appearances:

The Appellant appeared in person

For the Respondent: Miss Deborah Lawunmi, legal adviser employed by the OFT

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DECISION

1. This is the unanimous decision of the above-mentioned Tribunal.
- 5 2. By a notice of appeal dated 6 October 2008 Mr Cooper appealed against the Determination dated 2 October 2008 (“the Determination”) of Ms. Alison Spicer (“the Adjudicator”), acting as an adjudicator on behalf of the Office of Fair Trading (“the OFT”), revoking Mr Cooper’s standard licence no 599184 under the Consumer Credit Act 1974 (“the CCA”).
- 10 3. The appeal proceeded in accordance with the provisions of the Consumer Credit Appeals Tribunal Rules 2008, S.I. No. 668 of 1998, and directions were given by His Honour Judge Wulwik, the President, on 13 November and 30 December 2008 and by Dr Behrens, the Chairman, on 13 February 2009.

15 **The Determination**

4. The main reason for the Determination was that Mr Cooper had committed an offence involving fraud or dishonesty within the meaning of section 25(2A)(a) of the CCA. On 28 February 2007, Mr Cooper was convicted, upon his own confession, of obtaining property by deception, contrary to section 15(1) of the
20 Theft Act 1968. The Adjudicator placed great weight on this conviction. She also found that Mr Cooper had failed to disclose to the OFT the revocation of his authorisation under the Financial Services and Markets Act 2000, and that this showed a lack of attention to regulatory matters which is a matter of concern in relation to his fitness to carry out licensed activity. She concluded that consumers
25 are at risk from dishonest actions by Mr Cooper, and determined to revoke his licence.
5. In a supplemental Minded to Revoke notice the OFT claimed that Mr Cooper had carried on trading activities under names which were not set out on the licence
30 granted by the OFT. This complaint centred on the use of various web sites and domain names. The Adjudicator found these matters not proved, and the OFT did not seek to challenge this finding on the Appeal.

6. The OFT also relied on the fact that in his oral representations before the Adjudicator Mr Cooper said that apart from the Theft Act offence which led to the present Minded To Revoke Notice he had not been subject to any adverse determinations with regard to his past licences on account of criminal activity. The OFT said that this was untrue, and that by claiming this was the case Mr Cooper was in clear contravention of section 7 of the Act. They also claimed that the earlier offences of Mr Cooper show his propensity to dishonesty. For both these additional reasons he should not have a licence.

10 **The grounds of Appeal**

7. Mr Cooper's written grounds of appeal contended that the Adjudicator did not fairly take into consideration all the material facts provided to her, that she did not understand his defence to the complaint relating to the action by the Financial Services Authority ('the FSA'), and that she did not understand his defence in relation to the issue of domain names. As the Adjudicator found in favour of Mr Cooper on the domain name issue, and the OFT did not seek to challenge this finding, no more needs be said about it here.

Mr Cooper's attitude to this Appeal

8. The first set of directions in relation to this Appeal dealt with standard case management matters, in particular directing mutual exchange of witness statements by 16 December 2008. The second set of directions commenced with the words

Upon the Tribunal being informed by the Appellant that he did not receive the directions issued on 13 November 2008 and sent out under cover of a letter from the Tribunal dated 18 November 2008.

In this second set of directions, the time for service of Mr Cooper's witness statements was extended to 27 January 2009. When nothing further was heard from Mr Cooper, the Chairman issued directions on 13 February saying that unless he served his witness statements by 27 February he would not be permitted to give evidence or call witnesses. Still nothing was heard from Mr Cooper.

9. On the morning of the hearing, Mr Cooper confirmed that he had received both the directions of 16 December and 13 February. He presented the tribunal with a three-page written statement, and with copies of certain documents which were not in the appeal bundle. He did not have with him a copy of the OFT's statement of case or a copy of the appeal bundle. He claimed he had never received them.
10. We adjourned for half-an-hour for Mr Cooper to read the OFT's statement of case, and for Miss Deborah Lawunmi (the legal representative for the OFT) to liaise with him about documents, so that the matter could continue that day if possible. After the adjournment, and because Miss Lawunmi did not object to Mr Cooper giving evidence in accordance with his statement, the Chairman allowed him to do so.
11. Subsequent to the hearing Miss Lawunmi forwarded to the Tribunal Office a copy of the recorded delivery slip bearing what appears to be Mr Cooper's signature proving that an item sent to him from the OFT was delivered to him on 11 November 2008. Miss Lawunmi says that this relates to the appeal bundle and the OFT statement of case which the OFT sent to Mr Cooper at this time. We invited Mr Cooper to comment on this point, but he declined to do so.
12. We find as a fact that Mr Cooper did receive the OFT statement and the appeal bundle from the OFT. When taken with the fact that he turned up at the hearing expecting to refer to a written statement notwithstanding the warning in the Chairman's directions of 27 February, we consider either that he lied to us about not receiving the documents from the OFT, or that he has a lackadaisical approach to regulatory matters such as this tribunal. Neither bodes well as to his suitability for a licence.

The substance of Mr Cooper's case regarding the Theft Act offence.

13. The Theft Act offence arose as a result of a 'car-clocking' offence, i.e. altering the odometer of a car to make it appear that the car has done less miles than it really

has. A customer had requested a used vehicle for sale with less than 50,000 miles on the clock. Mr Cooper had a suitable vehicle in stock but with a mileage of more than 50,000. In order to secure the sale he arranged for the odometer to be altered from approximately 85,400 miles to 45,649 miles. When asked by the Adjudicator how this was arranged Mr Cooper responded ‘...somebody comes in and does it’. When asked by the tribunal the same question Mr Cooper responded that he looked up in AutoTrader for a person to carry out ‘mileage rectification’. The purchase of the vehicle in question occurred in August 2003. The mileage discrepancy came to light some years later. Mr Cooper was convicted of the offence on 28 February 2007. He was sentenced to pay a fine £5,000, to reimburse the customer the purchase price of £6,990, and to pay the prosecution costs of £5,796.95.

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14. Mr Cooper disclosed to us a letter he had written to the victim after he had pleaded guilty but before he was sentenced, showing that he apologised to her and offered her a refund of £6,000 in full and final settlement. Her response to this letter was to thank him and to say that she would accept the offer if she thought she was legally entitled to, but as the matter was now before the court she did not know whether she could. In the event, as stated above, the court ordered Mr Cooper to reimburse the victim the sum of £6,900 as part of the total sentence it passed for the offence.

15. Mr Cooper said that he has been severely punished for the offence, and that by taking away his CCA licence he would be penalised a second time for the same matter. Although the tribunal understands this sentiment, there are three answers to it. First, a grant of a licence is a privilege not a right, and to take away a privilege is not a penalty. Mr Cooper is therefore not being penalised twice for this offence. Second, a conviction for a criminal offence has never prevented subsequent disciplinary proceedings against, for example, solicitors; nor should it prevent the matter being considered in subsequent licensing proceedings. Third, section 25(2) and (2A) of the CCA specifically provides that previous convictions for fraud or other dishonesty or violence are matters relevant for the purpose of

determining whether a person is a fit person for a licence. Mr Cooper's submission runs contrary to this express provision in the CCA.

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16. Mr Cooper informed us that when local trading standards officers carried out an investigation into his business, they checked in excess of 160 cars which he had sold, and they found no other improper business practices had been carried out by Mr Cooper's company or by himself. No other evidence of car clocking was found. This evidence was, we were told, adduced to the court by the prosecution in the criminal trial.
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17. Mr Cooper says that he has sold in excess of 7000 cars in the last 15 years in the Stoke-on-Trent area, and has never, never been in any sort of trouble with local trading standards officers, other than the odd dispute over merchantable quality issues, which he has always managed to resolve amicably.
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18. Mr Cooper emphasised that he was most unlikely to commit this offence again, as he considered he would almost certainly be sent to prison if he did.
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19. We agree with the submission of the OFT that this offence of obtaining money by deception is serious given that he is a used car salesman and made arrangements to deliberately alter the mileage on a car for the sole purpose of securing a sale. The fact that he arranged specifically for the alteration to be carried out adds to the gravity of the offence, as does the fact that he breached the trust between himself and a customer who was relying on his expertise and experience as a used car salesman. By virtue of the very nature of the offence of which he was convicted he cannot be trusted to be honest in his field of business. The holder of a consumer credit licence must uphold high standards of moral probity given the financial risks which consumers are subject to as a consequence of making consumer credit agreements. We note that the rehabilitation period under the Rehabilitation of Offenders Act 1974 for a person sentenced to a fine is five years
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- 30 so we can properly take account of this conviction which is only two years old.

20. We agree entirely with the view of the adjudicator at paragraph 31 where she says as follows:

5 I have placed great weight on Mr Cooper's conviction. Although the offence was committed by Mr Cooper in August 2003, and Mr Cooper claims to have changed his ways since then, the offence
10 comprised a calculated decision by Mr Cooper to deceive his customer for his own financial gain, which does not appear to have troubled his conscience in the years following the offence. ... The fact that he knew how to locate a person to alter the odometer, does not tally with his assertion that this was a spontaneous act of
15 stupidity of a normally scrupulous businessman. I also note that in the years since the commission of the offence Mr Cooper demonstrated a continuing lack of regard for his customer until the offence came to light in 2007, and only then did he seek to make any amends to her.

21. In our judgment, this in itself is sufficient to dispose of the appeal. We do not find Mr Cooper a fit person to hold a licence. However, matters do not end there. There are three matters further which we are asked to consider: the FSA disciplinary matters which were not declared to the OFT, the deception by Mr
20 Cooper of the Adjudicator, and lastly the offer of undertakings by Mr Cooper.

The FSA disciplinary matter

22. The OFT submits that Mr Cooper has shown himself to be dishonest by failing to advise the OFT in his licence application that the FSA had taken disciplinary
25 action against him. In his oral representations to the Adjudicator Mr Cooper contended that the reason why he failed to disclose the FSA action against him in his application for a CCA licence was because the only reason his FSA authorisation had been revoked was because he had failed to pay the authorisation renewal fee of £1,500 – and the decision not to pay this sum was a business
30 decision which he had deliberately taken not to continue his licence. Similarly in his representations to the tribunal he said that the paperwork and procedures required to keep within the FSA rules and regulations was not worth the expense and time for the small rewards it might bring. So after the first year had expired he decided not to renew his application, and ended up being struck off. Mr Cooper

therefore considered it did not need to be mentioned in the licence application under the CCA.

23. We find as a fact that this is only partly true, if it is true at all. The reason the FSA revoked Mr Cooper's licence was not primarily because he failed to pay a fee, but because he failed to submit a Retail Mediation Activities Return (known as a RAMA return). Notwithstanding the name, this is nothing to do with mediation in the sense of dispute resolution. It comprises a whole range of financial and other data about the business, under various headings. In summary these are:

- Financial information, covering: balance sheet; profit and loss account (including commissions and fees); regulatory capital; information on the operation of any client money accounts; and information on professional indemnity insurance cover.
- Threshold conditions: confirmation of compliance with certain of the FSA threshold conditions.
- Training & Competence: Information on the number of advisers and their qualifications.
- Conduct of business information: Including data on the monitoring of any appointed representatives, details of clawed-back commission and an indication of sources of business.
- Fees data: Information required for the calculation of fees for the FSA
- Complaints data: Information about complaints received by firms from their customers.

24. Mr Cooper said that he had a go at filling in the form on line, but it was far too complicated, and he failed to complete it. He admitted that he had been fined the sum of £250 by the FSA on two occasions for failing to submit this form. He refused to accept that this amounted to disciplinary action.

25. In front of the adjudicator Mr Cooper maintained that he was not aware that the FSA had taken action against him. We do not find this credible. Although we do not consider it would be sufficient in itself for us to revoke his licence, we consider it shows a pattern of disrespect for regulatory authority, and indeed that Mr Cooper is prepared to lie when it suits him to do so.

The deception by Mr Cooper of the Adjudicator

26. Mr Cooper claimed at the hearing before the adjudicator that he had never been in trouble before.

5 I've been involved in a number of businesses over the last 15 years that have all held CCA licences. None of them other than the offence that we're about to talk about have been in any trouble before with the OFT. I've never – there's been no sort of Trading Standards offences; they've not been prosecuted by the police of anything, any of those businesses, save mentioning what we're coming on to now, the car-clocking offence.
10 [Pg 236-7 of the appeal bundle]

15 What I did do was a one-off
[Page 238]

I've never had any offences like this before. You know, I've never had any real trouble with the Trading Standards, other than the occasional phone call where you get an odd dispute where somebody bought a second-hand car, they go wrong, but in the main we've always managed to resolve everything amicably, so there's never been any real problems.
20 [Page 239]

27. This was not true. Mr Cooper has been subject to adverse Minded To Revoke determinations on account of previous convictions for dishonesty and breaches of section 7 of the CCA on 25 July 1985, 14 September 1990 and 5 August 1997. The convictions are all (now) spent convictions under the Rehabilitation of Offenders Act 1974, so he could not have been asked about them at the hearing. However as he volunteered, unprompted, this untrue information, it is a case where we consider justice cannot be done unless the true position is known. Accordingly evidence of Mr Cooper's spent convictions is admissible under section 7(3) of the Rehabilitation of Offenders Act 1974. These convictions include 6 convictions under the Theft Act in 1984 (including one offence of obtaining property by deception – the same offence as in 2007) for which he was sentenced to a short term of immediate imprisonment, a conviction in 1985 for one offence of theft and one of obtaining property by deception for which he was sentenced to a nine months' suspended sentence. Despite his protestations at a previous application for a licence back in 1997 that 'he was now an older and
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wiser man with family responsibilities, and was unlikely to make the mistakes of the past' [Page 288] it appears that when temptation comes his way he gives in to it.

- 5 28. These previous convictions which led to the adverse Minded to Revoke determinations against Mr Cooper are we consider relevant to the present matter, because they establish that he gave false information to the Adjudicator, and they show his clear propensity to be dishonest.

The offer of undertakings by Mr Cooper

- 10 29. Mr Cooper offers to furnish his local trading standards office with a monthly breakdown showing all sales invoices for vehicles sold from his garage, along with all the relevant purchase invoices for these sold vehicles, to show there are no mileage discrepancies on any of his vehicles. He says that with an undertaking in these terms we may properly give him a licence.

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30. The OFT objects in principal to such an undertaking. It says that this is not the kind of case where requirements should be considered. Requirements are there to deal with situations where there is a clear cut issue, where the OFT or tribunal is dissatisfied with the trader's business model, and where this can be checked on by imposing conditions. It is not intended to cover a fundamental issue such as the trader's dishonesty. An example would be where the trader is employing an individual who has convictions for fraud. So an undertaking may be appropriate governing such matters as supervision, rules regarding access to cash and accounts, or perhaps a condition that this person is not employed. Undertakings are there to eradicate a problem where the trader is on the borderline of being unfit. The present case, says the OFT, is not a borderline case. It is a case of clear unfitness. The requirements regime is not there to replace the fitness criteria. Otherwise the OFT argues that in almost every case one would impose conditions, and very few licences would be refused.
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31. We are not sure that the issue is quite as clear cut as the OFT submits; but we are sure that the requirement regime cannot as a matter of public policy be used so as to impose a massive expense on the OFT to police someone's organisation. It may be appropriate to make a condition governing the manner in which they run their business; but it is not appropriate to require the business to send paperwork to the OFT so that the OFT can spend possibly several hours checking this paperwork at significant public cost.

32. Accordingly we reject the offer of an undertaking by Mr Cooper. We do not consider it appropriate for an undertaking of this sort to be offered where there is a fundamental concern as to the trader's honesty. As a matter of public policy, the OFT should not be required to police a trader's business so that they can hold a consumer credit licence. We are entirely satisfied that Mr Cooper is unfit to hold a licence by reason of his dishonesty. Even if it was appropriate for public funds to be spent in the manner suggested by Mr Cooper, we do not consider this removes the risk to consumers of Mr Cooper again succumbing to temptation.

Economic consequences

33. Mr Cooper stressed to us the economic consequences of our dismissing this appeal. He said he would be forced to give up his business, and this would put five full-time employees and one part-time employee out of work. We did not investigate this in any detail, but the fact remains that our function is to determine whether Mr Cooper is a fit person to hold a licence. If we conclude he is not, then he is not entitled to one, whatever the economic consequences to him or to any other persons.

Conclusion

34. We are not satisfied Mr Cooper is a fit person to hold a licence. We base this primarily on the recent conviction for obtaining property by deception. However the attitude of Mr Cooper to this tribunal and to the adjudicator indicates that his dishonesty is on-going. He is not a reformed character. He remains a risk to

consumers. He should not have a licence. We therefore confirm the determination of the adjudicator and dismiss this appeal.

Costs

5 35. Where a tribunal considers that a party has acted vexatiously, frivolously or unreasonably in bringing an appeal or otherwise in relation to the appeal it may order that party to pay to the other party the whole or part of the costs incurred by the other party.

10 36. We consider this is such a case. The appeal has been wholly without merit. There should be no question of an appeal where there has been a recent conviction for such a serious offence as Mr Cooper's. When this is coupled with his disregard of the procedural directions throughout this appeal, and his lies to the adjudicator and the tribunal the matter is put beyond even argument. Not only was Mr Cooper unreasonable in bringing the appeal, but he has conducted the appeal
15 unreasonably. Accordingly we direct that he should pay the costs of the OFT of the appeal, to be assessed by the tribunal if not agreed.

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**DR JAMES BEHRENS
CHAIRMAN**

CCA/2008/0006