



Appeal number: CMS/2017/0009

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
CLAIMS MANAGEMENT REGULATION**

UK 4 LEGAL LIMITED

Appellant

- and -

THE CLAIMS MANAGEMENT REGULATOR

Respondent

**TRIBUNAL: JUDGE ALISON MCKENNA
Ms CATHY FARQUHARSON**

Determined on the papers, the Tribunal sitting in Chambers on 22 March 2018

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DECISION

1. The appeal is dismissed.

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REASONS

2. UK 4 Legal Limited (“the Appellant”), appealed against the decision of the Claims Management Regulator (“CMR”) dated 16 August 2017, that it had failed to comply with the terms of its authorisation and that its authorisation should be cancelled with effect from 13 September 2017.

10 1. Background

3. The Appellant company was authorised to provide regulated claims management services from 19 January 2015. Its most recent renewal of authorisation was granted in April 2017.

4. In October 2016, the CMR carried out an audit and wrote to the Appellant in
15 December that year, expressing certain concerns about its business model, which involved marketing conducted via an agent known as Lumen Corporation Limited (“Lumen”). After further correspondence, in January 2017, the CMR opened a Regulation 35 investigation into the Appellant.

5. After an investigation, in May 2017 the CMR sent the Appellant a “minded to”
20 letter, setting out the nature of its concerns about the Appellant’s relationship with Lumen, and indicating that it was “minded to” cancel the Appellant’s authorisation subject to any representations the Appellant would like to make.

6. The CMR met with the Appellant’s director Mohammad Shahid and considered
25 his written representations, but finally concluded that the authorisation should be cancelled to protect the public. It communicated this decision to the Appellant by letter dated 16 August 2017, indicating that the authorisation would cease on 13 September 2017. That is the decision which is now appealed to the Tribunal.

7. It follows that the issues for the Tribunal to decide in this appeal are: (i) whether
30 the Appellant breached the terms of its authorisation; and (ii) if so, whether cancellation of its authorisation is warranted.

8. The Appellant applied for the CMR’s decision to be stayed pending the determination of his appeal, but the Tribunal refused the application for a stay in October 2017.

2. Appeal to the Tribunal

35 9. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The

Tribunal considered an agreed bundle of evidence comprising two lever arch files of documents, including submissions made by both parties. We are grateful to Mohammad Shahid of the Appellant company and to Brendan McGurk, counsel for the CMR for their helpful written submissions.

5 10. The Appellant's position at the hearing, as set out collectively in its Grounds of Appeal and written skeleton argument was, in summary, that: (i) the CMR had not considered its representations adequately or at all; (ii) the CMR had failed to give weight to Mr Shahid's unblemished reputation during seventeen years in the industry; 10 (iii) that the Appellant was not responsible for Lumen's failure to comply with its legal obligations; (iv) the Appellant had ended the agreement with Lumen as soon as it knew of the CMR's concerns; (v) difficult personal circumstances, including illness in the family, had caused Mr Shahid not to conduct sufficient due diligence into Lumen; (vi) he has apologised for this lapse; (vii) the Appellant has been treated too harshly by the CMR in all the circumstances.

15 11. The Appellant's appeal was thus one made pursuant to s. 13 (1) (e) of the Compensation Act 2006 (see paragraph 21 below).

12. The CMR's Grounds of Opposition and skeleton argument were, in summary, as follows: (i) the grounds of appeal are misconceived and are incapable of founding a successful appeal; (ii) the evidence shows that the Appellant operated in breach of the 20 Conduct of Authorised Persons Rules 2014, in particular General Rules 2 (d), 2 (e), 3 and 4 and Client Specific Rule 9; (iii) the Appellant has not challenged the CMR's evidence in this regard and has not produced any evidence of its own to suggest that the CMR's conclusions were wrong; (iv) cancellation of authorisation was appropriate in all the circumstances to protect the public.

25 13. In its Reply to the CMR's Grounds of Opposition, the Appellant added that the CMR was believed to have the ulterior motive of trying to reduce the number of authorised claims management companies in operation; further, that the company would be willing to pay a financial penalty as an alternative to cancellation of authorisation.

30 3. The Law

(i) The Nature of the Tribunal's Jurisdiction

14. The nature of the Tribunal's jurisdiction in relation to these issues is *de novo* i.e. we stand in the shoes of the CMR and take a fresh decision on the evidence before us, giving appropriate weight to the CMR's decision. The nature of an appeal by 35 rehearing is described in *El Dupont v Nemours & Co v ST Dupont* [2003] EWCA Civ 1368 by May LJ at [96]¹. The nature of the jurisdiction is made clear by the full range of powers exercisable by the Tribunal in the exercise of its own discretion – see s.

¹ <http://www.bailii.org/ew/cases/EWCA/Civ/2003/1368.html>

13(3) of the 2006 Act (as amended), set out at paragraph 21 below. See also, *Tribunal Practice and Procedure* Edward Jacobs, LAG third edition, chapter 4.

15. It follows that, in taking a fresh decision, the Tribunal is not required to undertake a “reasonableness review” of the CMR’s investigation or its decision to cancel the Appellant’s authorisation. Any public law problems with CMR’s investigation or conclusions may be cured by the Tribunal taking a fresh decision. The Tribunal has no supervisory jurisdiction – see *HMRC v Abdul Noor* [2013] UKUT 071 (TCC)². This means that complaints such as a failure to give sufficient weight to representations are outside the Tribunal’s jurisdiction.

16. Pursuant to rule 15 (2) (a) (ii) of the Tribunal’s Rules³, the Tribunal may when hearing an appeal admit evidence whether or not it was available to the previous decision maker. The burden of proof in a *de novo* appeal rests with the Appellant as the party seeking to disturb the status quo and the standard of proof to be applied by the Tribunal in making findings of fact is the balance of probabilities - see Edward Jacobs’ book at paragraphs 14.88 and 14.107.

(ii) *The Regulatory Framework*

17. The regulatory framework within which the Appellant was required to operate is as follows. The primary legislative provision is the Compensation Act 2006 (as amended), which provides at s. 4 that a person may not provide regulated claims management services unless they are an authorised person, or an exempt person. An authorised person is one authorised by the CMR under s. 5 of the Act. The Schedule to the Act makes provision for Regulations to be issued, including Regulations for the conduct of authorised persons. The Financial Services (Banking Reform) Act 2013 introduced the ability to appeal to the Tribunal against a penalty (see paragraph 21 below).

18. The Compensation (Claims Management Services) Regulations 2006 (amended in 2014) provide for the grant and refusal of authorisation and the imposition of conditions of authorisation for claims management businesses. Regulations 12(5)(a) and (b) impose a requirement to comply with the Rules and any applicable code of practice on all regulated entities. The applicable code of practice is the Conduct of Authorised Persons Rules 2014. Regulation 35 provides for the Claims Management Regulator to investigate complaints or suspicions of unprofessional conduct.

19. Following an investigation, the CMR may decide on the appropriate sanction. Regulation 46 provides as follows:

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http://taxandchancery.ut.decisions.tribunals.gov.uk/Documents/decisions/HMRC_v_Abdul_Noor.pdf

3

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367600/tribunal-procedure-rules-general-regulatory-chamber.pdf

Cancellation etc of authorisations

46.—(1) Paragraph (2) applies if, after investigation of an alleged or suspected failure by an authorised person to comply with a condition of authorisation, the Regulator is satisfied that—

5 (a) the person has failed to comply with the condition; and

(b) cancellation, suspension or variation of the person's authorisation is appropriate.

(2) The Regulator may—

(a) cancel the authorisation, or suspend it for a period; or

10 (b) vary the authorisation by limiting the classes of claims management services that the person may undertake or provide, or otherwise varying the conditions of the authorisation (including by imposing an additional condition).

(3) The cancellation of, or the proposed suspension or variation of, the person's authorisation is appropriate for the purposes of paragraph (1)(b) only if the nature and seriousness of the person's failure to comply with the condition is such that, to protect the public, it is necessary to
15 cancel the authorisation, suspend it for the proposed period or vary it in the proposed way, as the case may be.

(4) Before cancelling, suspending or varying an authorised person's authorisation, the Regulator must give written notice to the authorised person—

20 (a) stating that the Regulator proposes to cancel, suspend or vary the authorisation, as the case may be;

(b) in the case of suspension or variation, setting out the terms of the proposed suspension or variation;

(c) setting out the reasons for the Regulator's decision, and a summary of the evidence on which the Regulator relies;

25 (d) inviting the person to make a written submission in relation to the proposed cancellation, suspension or variation; and

(e) specifying a reasonable period within which the person must do so.

(5) Before cancelling, suspending or varying the authorisation, the Regulator must take into account any submission made by the authorised person within the period allowed (or any further
30 period allowed by the Regulator).

20. The CMR has advised claims management businesses to conduct robust checks to ensure that they are complying with The Privacy and Electronic Communications (EC Directive) Regulations 2003 (“PECR”) and Data Protection Act 1998, referring to guidance issued by the Information Commissioner. Regulation 21 of the PECR provides that unsolicited telemarketing calls should not be made to numbers on the Telephone Preference Service (“TPS”) register. Such calls may only be made without the need to screen against the TPS where the caller has obtained prior consent. This requires claims management companies (or those acting on their behalf) to obtain a specific “opt in” from the consumer.

10 *(iii) Right of Appeal to the Tribunal*

21. The Compensation Act 2006 (as amended by the Tribunals Courts and Enforcement Act 2007 and the Financial Services (Banking Reform) Act 2013) provides at s. 13 for appeals to be made to the Tribunal as follows:

(1) A person may appeal to the First-tier Tribunal (“the Tribunal”) if the Regulator—

15 *(a) refuses the person's application for authorisation,*

(b) grants the person authorisation on terms or subject to conditions,

(c) imposes conditions on the person's authorisation,

(d) suspends the person's authorisation,

*(e) **Cancels the person's authorisation, or***

20 *(f) imposes a penalty.*

....

(3) On a reference or appeal under this section the Tribunal—

(a) may take any decision on an application for authorisation that the Regulator could have taken;

25 *(b) may impose or remove conditions on a person's authorisation;*

(c) may suspend a person's authorisation;

(d) may cancel a person's authorisation;

(da) may require a person to pay a penalty (which may be of a different amount from that of any penalty imposed by the Regulator);

30 *(db) may vary any date by which a penalty, or any part of a penalty, is required to be paid;*

(e) may remit a matter to the Regulator;

(f) may not award costs.

...

4. Evidence

(i) Witness Evidence relied on by the Appellant

5 22. The Appellant did not rely on any witness evidence as to fact. He did rely on a
character reference provided by Rob Crompton solicitor, of Michael Lewin Solicitors
in Leeds, dated 8 December 2017. This stated that the firm had worked with Mr
Shahid from 2008 until January 2016 and that “*Mr Shahid was pleasant, enthusiastic*
10 *and helpful throughout our working relationship and I have no reason to believe that*
he would deliberately flout the regulations”. We note that this character reference
expressly does not cover the period of time during which Mr Shahid’s company
worked with Lumen.

(ii) Witness Evidence relied on by the CMR

15 23. The witness evidence relied on by the CMR (the statements of Ms Jessie Wilton
and Ms. Bethan Taylor) was not challenged by the Appellant.

24. Ms Jessie Wilton is a Senior Officer in the CMR’s Direct Marketing Team. In
her witness statement dated 8 February 2018, she describes the history of the
Appellant’s interaction with the CMR. She states that Mohammad Shahid had been
involved in providing regulated claims management services prior to the
20 incorporation of the appellant company, but his previous company had surrendered its
authorisation in 2013.

25. Ms Wilton describes how, from June 2016, the CMR began receiving
complaints from members of the public who said they had been “cold-called” by “RK
Legal”, which was a trading name of the Appellant company. Some of the
25 complainants had registered with the TPS, as a result of which the CMR also received
complaints from Ofcom. The CMR decided to conduct an audit of the Appellant. The
audit visit took place in November 2016 and was followed by a Record of Audit.

26. In correspondence about the audit visit, the CMR was informed by the
Appellant that “...we are not currently doing any business except a marketing
30 arrangement we have with another firm who will be sending a representative to the
meeting”. This correspondence revealed the Appellant’s relationship with Lumen, of
which the CMR had previously been unaware. The CMR requested further
information about the activities being undertaken on the Appellant’s behalf by
Lumen. The Appellant advised that it had entered into an agreement with Lumen in
35 March 2016 and that Lumen operated a call centre generating personal injury leads on
its behalf.

27. Ms Wilton explained that much of the information requested at audit was
supplied by a Mr Mulla from Lumen rather than by the Appellant itself. This included
details of “opt-ins” by customers, which the CMR regarded as insufficient to justify

Lumen contacting a customer registered with the TPS because the opt-ins were too historic and not sufficiently specific.

28. Ms Wilton's evidence was that in December 2016, Mr Mulla from Lumen had contacted the CMR to ask for authorisation to "rent" the Appellant's authorisation. The CMR advised that such an arrangement would constitute a criminal offence, as whilst agency arrangements were permissible, this could only take place where the agent operated in the name of the principal authorised business.

29. Ms Wilton explained that the CMR decided to open a formal investigation in January 2017 due to its concerns about the Appellant's apparently limited knowledge and control over the activities carried out by Lumen, the apparent lack of competence of its director Mr Shahid, the complaints from TPS-registered customers and the apparent lack of due diligence in relation to the data. The opening of the inquiry was initially responded to by Mr Mulla, expressing concerns about the effect on his business.

30. Ms Wilton's evidence was that the documents supplied (mainly by Mr Mulla) during the investigation did nothing to allay the CMR's concerns and consequently a "minded to" letter was sent in May 2017. The letter referred to the Appellant's failure to monitor its agent, with the result that TPS complaints had been made. Further, that the Appellant was operating from a location undisclosed to the CMR and through its agent Lumen, to whom it had passed responsibility to ensure compliance, in breach of its own regulatory obligations.

31. Ms Wilton explained that the CMR had considered the range of enforcement action available to it but had decided that cancellation of authorisation was the only effective and viable course of action to protect the public in these circumstances. As the Appellant's director had demonstrated a limited understanding of the Appellant's obligations, it did not seem likely that the imposition of conditions would be effective.

32. Her evidence was that, following receipt of the "minded to" letter, the Appellant held a meeting with representatives of the CMR. The Appellant supplied written representations as follows: (i) it had not been thought necessary to inform the CMR of Lumen's address; (ii) it was unaware that Lumen had contacted the CMR directly and this approach had not been agreed by the Appellant; (iii) the Appellant had relied on assurances from Lumen that its data was TPS compliant; (iv) it did not have the resources to carry out due diligence on Lumen's operations beyond its initial checks; (v) it could not be expected to be aware of complaints which had not been passed on by the Legal Ombudsman; (vi) cancellation of authorisation was too harsh in the circumstances.

33. Ms Wilton's evidence was that after consideration of these representations, the CMR concluded that cancellation of authorisation was appropriate. The cancellation letter of 16 August 2017 explained that the Appellant had breached the Rules by: (i) failing to inform the CMR of its principal place of business; (ii) failing to keep itself informed of the activities that Lumen was carrying out in its name; (iii) failing to carry out due diligence in relation to Lumen's operating methods; (iv) failing to take

steps to ensure that it was aware of complaints about calls to TPS-registered customers. The letter explained that it was considered necessary to cancel the Appellant's authorisation to protect the public.

34. Ms Taylor's evidence described the requirements of the Conduct of Authorised Persons Rules, with particular reference to those breached in this case. General Rule 2 (e) requires authorised businesses to act with professional diligence and take all reasonable steps in relation to any arrangements with third parties to confirm that data has been obtained in accordance with the legislation and the Rules. General Rule 2 (d) requires authorised businesses to maintain appropriate records and audit trails, including in relation to customer complaints. General Rule 4 requires that authorised businesses ensure that employees have the necessary training to perform their duties and General Rule 3 requires that authorised businesses are directed by persons with the necessary competence with a working knowledge of the legislation and rules relating to claims management services.

35. Ms Taylor also explained that the CMR's approach to enforcement was to cancel an authorised person's authorisation only in cases of serious breach of the Rules and where it is necessary in order to protect the public.

(iii) Documentary Evidence

36. The Tribunal had before it an agreed hearing bundle comprising two lever-arch files. This had been prepared in accordance with standard directions in the General Regulatory Chamber, whereby the Regulator serves a draft index of documents on the Appellant and the Appellant is able to suggest the inclusion of additional documents.

37. We read all the documents provided, but considered particularly the agreement between the Appellant and Lumen dated 1 March 2016 (volume 1, tab 21). It is described as "An Agreement for the Supply of Marketing Services" in which the Appellant "CMC" is the principal, and Lumen is the agent. The services are described in schedule 1 as follows:

"The Agent shall through the media of general advertising and general marketing activities as agreed between the parties from time to time and within the parameters set out in this Agreement and in compliance at all times with all applicable Regulatory requirements, market the services of firms of solicitors to the Target Market Group using its best endeavours to do so effectively".

38. The fees arrangement in schedule 2 to the agreement (volume 2, tab 112) reads as follows:

"In consideration of the CMC agreeing to allow the Agent to undertake the Marketing Services as Agent to the CMC, the Agent shall pay to the CMC the following sums - £1200 plus VAT per calendar month".

39. We noted that the date of the Appellant's formal termination of the agreement with Lumen was 22 May 2017 (volume 2, tab 100).

40. Finally, we noted the e-mail from Mr Mulla to CMR (volume 1, tab 61) dated 5 December 2017, to which he attached the agreement between Lumen and the Appellant and wrote “...I just need you to approve the structure we currently use of renting from Mr Shahid (uk4legal) is compliant as we are regulated to carry out marketing services”.

5. Conclusions

41. We turn now to our conclusions on the issues identified at paragraph 7 above.

(i) *Was there a breach of the terms of authorisation?*

42. The Appellant has not challenged the evidence of breach relied upon by the CMR in any meaningful way. Indeed, at the final meeting with the CMR Mr Shahid made some significant admissions (see paragraph 32 above). Having considered all the evidence before us, we find that the Appellant breached its terms of authorisation as follows:

(i) General Rules 2 (d) and (e), by admittedly failing to act with due diligence in relation to its arrangements with Lumen, failing to ensure that Lumen acted in accordance with the Rules in relation to its data and failing to maintain appropriate records, including in relation to complaints;

(ii) General Rule 3, by Mr Shahid’s evident lack of competence and his failure to demonstrate appropriate awareness of the Rules and legislation relevant to the claims management business, for example in relation to the handling of complaints from TPS-registered customers;

(iii) General Rule 4, by failing to ensure that Lumen’s staff had appropriate training and competence for their duties on the Appellant’s behalf, as demonstrated by them cold-calling TPS-registered customers;

(iv) Client Specific Rule 9, by failing to ensure that Lumen’s publicity on the Appellant’s behalf and intended to solicit business complied with the Rules.

(ii) *Is cancellation of authorisation warranted?*

43. The Appellant’s submissions have been directed principally towards his contention that the cancellation of authorisation is a disproportionate response to the breaches described above. Mr Shahid likens his situation to driving at 33 miles per hour in a 30 mile per hour speed limit and losing his licence for a first offence. We disagree with his analogy because we conclude that, regardless of previous good conduct by Mr Shahid and with all due respect for his difficult family circumstances, the Appellant company’s relationship with Lumen represented a very serious breach of the Conduct of Approved Persons Rules.

44. Contrary to Mr Shahid’s assertion, we do not find that he took immediate steps to remedy an unacceptable arrangement but find instead that he waited until after the CMR’s “minded to” letter was received before he ended the company’s contractual

relationship with Lumen. It appears to have been only at this point that he realised the seriousness of the situation.

45. It is evident from the correspondence that Mr Shahid knew so little about his own business at the time of the CMR's investigation that he had to rely on Mr Mulla to answer many of the CMR's enquiries and provide the documentation. By its own admission, the Appellant was conducting no business of its own when the CMR intervened, and all its work was being conducted by Lumen. The documentary evidence of the financial arrangements between the Appellant and Lumen shows that, counter-intuitively, this was an agreement in which the agent was obliged to pay the principal for carrying out the contracted services. That commercial reality speaks louder than the black-letter terms of the contract between them.

46. The terms of schedule 2 to the agreement taken together with the e-mail from Mr Mulla to the CMR referred to above suggests that Mr Shahid had effectively "rented" his authorisation to Lumen in exchange for a monthly payment, whether he recognised it or not. By his own admission, he did not monitor Lumen's activities in any meaningful way. Such an arrangement seems to us to strike at the very heart of the CMR's relationship with an authorised business and to undermine a regulatory framework in which the public expects, and is entitled to have, confidence. It is difficult to see how any sanction other than cancellation of authorisation would be appropriate in these circumstances.

47. Parliament saw fit to give the CMR power to cancel an authorised person's authorisation in Regulation 46 (2)(a) – see paragraph 19 above. Parliament did not see fit to include a "reasonable excuse" criteria on which an authorised person who admitted breaching the Rules could rely. It follows that the Grounds of Appeal seeking to raise a reasonable excuse may not provide a successful basis for appeal. In any event, the extenuating circumstances relied upon are those of the director whereas the cancellation of authorisation is directed to the company.

48. Jessie Wilton's evidence was that the CMR had considered whether to impose conditions on the Appellant's authorisation but concluded that Mr Shahid had demonstrated so little awareness of the basic requirements that it could not be satisfied that he would be able to ensure compliance with additional conditions. We have noted Mr Shahid's suggestion that a financial penalty could be imposed on the Appellant company, however the accounts show the business to be operating at a loss and so the imposition of what would inevitably be a significant financial penalty would be likely to cause the business to close down in any event.

49. In all the circumstances we conclude that the cancellation of authorisation was warranted in this case.

50. Accordingly, we now dismiss this appeal.

(Signed)
ALISON MCKENNA

DATE: 28 March 2018

PRINCIPAL JUDGE

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