



Appeal number: CMS/2017/0005

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

JOSEPH COPESWINNERTON

Appellant

- and -

THE CLAIMS MANAGEMENT REGULATOR

Respondent

**TRIBUNAL: JUDGE ALISON MCKENNA
Mr. IAN ABRAMS**

**Sitting in public at the Employment Tribunal, Hill Street Birmingham
on 20 February 2018.**

The Appellant represented himself.

The Respondent was represented by Michael Armitage, counsel.

DECISION

1. The appeal is dismissed.

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REASONS

1. Background

2. This appeal concerned the decision of the Claims Management Regulator (“CMR”) dated 14 July 2017, to cancel the Appellant’s authorisation to provide regulated claims management services because of his non-payment of the annual fee by the required date.

3. The Appellant was authorised to provide regulated claims management services from 22 July 2010. It is a condition of authorisation that an authorised person pays an annual fee to the CMR. The CMR sent the Appellant an invoice for £750 on 28 March 2017. Following expiry of the date for payment, the CMR wrote to the Appellant on 22 June 2017, informing him that it was “minded to” cancel his authorisation on grounds of his non-payment. In the absence of any reply, a Cancellation Notice was issued on 14 July 2017. That Notice is the subject matter of this appeal.

4. In the “Outcome” section of the Notice of Appeal form, the Appellant asked for a temporary suspension of the CMR’s decision in order to allow him to make payment. The application for a stay was refused by Judge Peter Lane (as he then was) on 23 August 2017, so the Appellant has not been able to provide regulated services since 21 July 2017, when the CMR’s decision took effect.

5. The Appellant’s Grounds of Appeal dated 11 August 2017 referred only to his personal circumstances, saying that he was awaiting payment from third parties and that illness in the family had prevented him from conducting his business as usual. He asked for an extension of time in which to pay and said that he could not afford to pay the new application fee if required to apply for a fresh authorisation.

6. The CMR’s Response dated 28 November 2017 resisted the appeal on the basis that Regulation 20 of the CCMSR (see paragraph 19 below) provided the CMR with a discretion to cancel a person’s authorisation on grounds of non-payment of the relevant fee and that discretion had been exercised lawfully. Further, that it cannot have been unreasonable for the CMR to proceed to cancel the authorisation after repeatedly trying to engage the Appellant without success and in circumstances where he chose to reveal his personal circumstances only after the cancellation decision had been made. It was also submitted that it was reasonable for the CMR to take into account the history of late payments by the Appellant.

7. In correspondence after the filing of his Grounds of Appeal, the Appellant stated that he had always intended to pay the fee; that he had already paid for “membership” up until March 2018; that he had previously been given latitude in making late

payments, so that it was now unreasonable to cancel his authorisation. He suggested there was a “hidden agenda” in the CMR’s actions. The CMR’s response was that these factors were incapable of founding a basis for the Tribunal to uphold the appeal.

2. Appeal to the Tribunal

5 8. We are grateful to the Appellant and to Mr Armitage for their clear oral submissions at the hearing. The Appellant explained that he has dyslexia but told the Tribunal that he did not require any assistance to present his case.

9. Neither party relied on any witness evidence but made submissions in relation to the documentary evidence.

10 10. The Appellant’s submissions at the hearing were that he thought he would be allowed to pay late again, as he had in previous years. He said that his dyslexia had been taken into account by the CMR in previous years but not this time. He regarded the decision to cancel his authorisation as unreasonable.

11. The CMR’s submissions at the hearing were that the Tribunal can take any
15 decision that the CMR could have taken. Here, there was a clear breach of the condition at regulation 12 (5) (g) and a consequent power to cancel authorisation under regulation 20. That power had been exercised in a lawful and reasonable way because an invoice had been issued but not been paid. Considerable latitude had been afforded to the Appellant to encourage payment but he had failed to engage with the
20 CMR appropriately or at all. In particular, he had not conveyed his mitigating circumstances to the CMR in advance of his Notice of Appeal and he had a history of paying at the last minute to avoid cancellation. In all the circumstances, the CMR asked the Tribunal to uphold its decision and dismiss the appeal.

3. The Law

25 (i) *The Tribunal’s Jurisdiction*

12. The nature of the Tribunal’s jurisdiction in relation to an appeal 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 rehearing is described in *El Dupont v Nemours & Co v ST Dupont* [2003] EWCA Civ
30 1368 by May LJ at [96]¹. This 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. 13(3) of the 2006 Act as amended at paragraph 22 below. See also, *Tribunal Practice and Procedure*, Edward Jacobs, LAG third edition, chapter 4.

13. It follows that, in taking a fresh decision, the Tribunal is not required to
35 undertake a reasonableness review of the CMR’s investigation or its decision to

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

cancel authorisation. Any public law problems with the CMR's decision 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.

14. Pursuant to rule 15 (2) (a) (ii) of the Tribunal's Rules³, the Tribunal may when
5 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.

10 *(ii) The Regulatory Framework*

15. The regulatory framework within which the Appellant operated prior to the cancellation of his authorisation is as follows.

16. The primary legislative provision is the Compensation Act 2006 (as amended),
15 which provides at s. 4 (1) 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. These are the Compensation (Claims Management Services) Regulations 2006.

20 17. The Financial Services (Banking Reform) Act 2013 introduced the ability to appeal to the Tribunal against the cancellation of authorisation (see paragraph 22 below).

18. Paragraph 7 of the Schedule to the 2006 Act provides that Regulations may
25 enable the CMR to charge fees for the grant of authorisation and periodically thereafter, and also specify the consequences of failure to pay the fees.

19. The Compensation (Claims Management Services) Regulations 2006 enable the CMR to grant authorisation subject to conditions. Regulation 12 (5) provides that:

(5) In addition to any condition imposed by the Regulator, the following are conditions of an authorised person's authorisation –

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http://taxandchancery_ut.decisions.tribunals.gov.uk/Documents/decisions/HMRC_v_Abdul_Noor.pdf

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

(g) that in each year, within 1 month after the Regulator issues an invoice to the person for the annual fee, the person pays the regulator the amount of that fee in accordance with the invoice...

20. Regulation 20 provides that:

5 “(20) *Cancellation for Non-Payment of Fee*

The Regulator may cancel an authorised person’s authorisation if the Regulator sends an invoice for the fee to a person and the person does not pay the fee within one month after the date of the invoice”.

10 21. There is also a power to cancel authorisation in regulation 46, which is to be exercised following a statutory investigation and as a sanction for breaching the conditions of authorisation. That is not the power relied on here.

(iii) Appeal to the Tribunal

15 22. 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 the Tribunal as follows:

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

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

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

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

(d) suspends the person's authorisation,

(e) cancels the person's authorisation, or

(f) imposes a penalty.

25 *(1A) A person who is appealing to the Tribunal against a decision to impose a penalty may appeal against –*

(a) The imposition of the penalty,

(b) the amount of the penalty, or

(c) any date by which the penalty, or any part of it, is required to be paid.

30 (2) ...

(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;

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

(c) may suspend a person's authorisation;

5 *(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);

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

10 *(e) may remit a matter to the Regulator;*

(f) may not award costs.

(3A)...

4. The Evidence

15 23. The Tribunal had before it an agreed hearing bundle of just over 80 pages. 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.

20 24. The CMR explained that the Appellant had a history of difficulties with making payments, as follows. In 2011, 2012, 2013, and 2014 his payments were made late and in each case only after CMR sent letters warning him that it was “minded to” cancel his authorisation. In 2015, the Appellant’s authorisation was suspended for non-payment of the Legal Ombudsman Complaints Fee but reinstated on payment of the relevant amount. In 2016, the Appellant was sent a Cancellation Notice but it did not take effect because he made the payment on the final day of the notice period.

25 25. The documents before us showed that in 2017, the CMR sent the Appellant a letter about the annual fee in January, asked him to return a form in February, extended the deadline into March, telephoned him in March, and tried to phone him without success on several further occasions. In the absence of the requested information about turnover, the CMR estimated his turnover and sent him an invoice
30 at the end of March. In the absence of payment, the CMR tried to contact the Appellant in April, re-sent the invoice in June, and invited a response to a “minded to” letter by 5 July. In the absence of a response, the CMR issued the Cancellation Notice on 14 July, which it was stated would take effect on 21 July 2017.

35 26. This factual history was not disputed by the Appellant. The Appellant told the Tribunal that he had made additional phone calls to the CMR, which had not been noted. He produced no evidence of these, but submitted that he had told the CMR

about his personal difficulties *before* the cancellation decision and it had failed to take them into account. He said he did not know why this argument had not been mentioned in his Grounds of Appeal.

27. The documents before us showed a record of a telephone call made by the Appellant to the CMR on 20 July 2017 (i.e. one day before the cancellation was due to take effect) in which he was advised to make an immediate payment to avoid cancellation. The CMR's records also showed a telephone call made by the Appellant on 1 August 2017, asking to make a payment on that date. He was advised that it was then too late to make a payment, as his cancellation had already taken effect.

10 **5. Conclusion**

28. The Regulations clearly require payment of an annual fee by authorised persons. This obligation was not disputed by the Appellant. It was also not disputed that he had failed to pay it by the deadline given or that this gave the CMR power to cancel his authorisation. We have considered whether we would, ourselves, have exercised that power on the facts before us.

29. We note that the CMR made repeated attempts to contact the Appellant to discuss payment over a period of some seven months before it cancelled the authorisation. We are satisfied that he did not reply to the CMR's letters or e-mails during this period.

30. We note that the Appellant's pattern in previous years had been to make a last-minute payment to prevent cancellation taking effect, but he did not manage do it this time. We find there to be no change of approach by the CMR in its pattern of regulatory behaviour, but rather a change of approach by the Appellant in this respect. We do not accept that the CMR's acceptance of last-minute payments in earlier years raised any kind of legitimate expectation on the Appellant's part that this would be repeated. On the contrary, the Appellant's long experience of late payments could be said to have led him reasonably to expect that cancellation would follow if a last-minute payment was not made.

31. The only disputed fact in the appeal was whether the Appellant had telephoned the CMR to inform it of his difficult circumstances before the cancellation took effect. Applying the standard of the balance of probabilities, we are not satisfied that the Appellant did make phone calls to the CMR, in advance of the Notice of Cancellation, which were not recorded. We have considered the carefully recorded notes of conversations with the CMR placed into evidence before us. We have balanced against that the Appellant's lack of documentary evidence, and his failure to raise this point in his Grounds of Appeal. In all the circumstances, we do not accept that he raised his mitigating circumstances with the CMR before the Notice of Cancellation was served on him. The CMR cannot be criticised for failing to take into account what it did not know. In any event, we are making a fresh decision in this appeal and not reviewing the past conduct of the CMR.

32. Taking all these factors into account, we find that it was reasonable for the CMR to have issued the Notice of Cancellation in this case and that we would have taken that step ourselves in all the circumstances.

6. Outcome

5 33. For the above reasons, we now dismiss this appeal.

34. The Appellant remains without authorisation to provide regulated claims management services. However, he is able to make a fresh application for authorisation on payment of the appropriate fee.

10 **(Signed)**

ALISON MCKENNA

DATE: 15 March 2018

PRINCIPAL JUDGE

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