

## FCA – FINANCIAL CONDUCT AUTHORITY



The Financial Conduct Authority (FCA) is the conduct regulator for 58,000 financial services firms in the UK.

The aim of the FCA is to control financial markets in the UK. FCA regulates the financial sector in order for it to work in a fair, effective and honest manner, to benefit the shareholders, staff but most importantly the customers.

Work of the Financial Conduct Authority is regulated by the Financial Services and Markets Act 2000.

The FCA Handbook sets out the general guidance about criminal convictions under the headings of COND (Conditional Threshold) and FIT (Fitness and Propriety), and it can be accessed following [this link](#).

HM Treasury exercised their power under the s.55C of the Financial Services Act 2012 (Power to amend Schedule 6) and made Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013, which created 4 sets of threshold conditions and in general apply to any firm or person carrying out a regulated activity except as stated in COND 1.1A.4 G.

### FCA and controlled function:

Any role classified as a controlled function, will be eligible for a standard DBS check. FCA confirms which positions are regarded as 'controlled function'.

Any person who applies to be approved by the Financial Conduct Authority, will be assessed on their fitness and propriety (FIT). The FCA Handbook, FIT 1.3 lists how the FIT will be assessed, and their main consideration will be about person's honesty, integrity, reputation, capability and financial soundness.

### Statements of Principle and Code of Practice:

Any person applying to the FCA to be an 'approved person', as well as meeting the above 'fit and proper test', will also have to comply with the Statements of Principle and the Code of Practice. Furthermore, such person will have to report anything that could affect his/her ongoing suitability to carry out duties of an approved person.

Such person must:

- ✓ Act with due skill, care, diligence and integrity in carrying out his/her controlled function;
- ✓ Observe proper standards of market conduct in carrying his/her controlled function;
- ✓ Disclose any information of which Financial Conduct Authority would expect, and must deal with all regulators in an open and co-operative way;
- ✓ Ensure that the business of the firm is organised so it can be controlled in an effective way (if they are performing Significant Influence Function);
- ✓ Exercise due skill, diligence and care in managing the business of the firm, if they are performing a significant influence function
- ✓ Take reasonable steps to ensure that the requirements and standards of the regulatory system are complied with by the business of the firm for which he/ she is responsible in his controlled function;

FCA takes any kind of misconduct very serious and will take disciplinary actions against an approved person who acts in a way that is inconsistent with the rules for the controlled functions and/or knowingly work together with another person to breach the firm's rules.

### Consequences of having a conviction:

FCA must assess anyone who wishes to perform a controlled function relating to another person's finances. Therefore, the FCA will take any and every criminal conviction very seriously, especially convictions relating to the dishonesty offences.

FIT 2.1 Explores factors taken into account when determining a person's honesty, integrity and reputation. The FCA will look and assess each application on their own individual basis, before making any judgements.

FIT 2.1.3 G (1) says that an application will not automatically be rejected if the applicant has got a criminal conviction/s. The factors taken into account will include, but are not limited to:

- I. The nature of the crime
- II. Whether the nature of the crime raises the question of honesty, integrity or competence
- III. Whether the person has carried out his/her sentence and personal conduct and
- IV. The employment history, especially disciplinary actions taken against the person applying to be authorised by FCA.

## THE MOTORING LAW EXPERTS

**Managing Director: Jeanette S. Miller B.A. (Hons)\* Director: Tara Boyle LLB (Hons)**

**Head Office:** Unit 3 Digital Park, 3 Pacific Way, Salford (Media City) M50 1DR.

**London Office:** The Clubhouse, Holborn Circus, 20 St Andrews Street, London EC4A 3AG.

**Registered Office:** Riverside House Kings Reach Business Park, Yew Street, Stockport, United Kingdom, SK4 2HD.

**Tel:** 0161 274 5580 | **Email:** [enquiries@motoroffence.co.uk](mailto:enquiries@motoroffence.co.uk) | **Web:** [motoroffence.co.uk](http://motoroffence.co.uk)

Geoffrey Miller Solicitors is a trading name of Jeanette Miller Law Limited, a Limited Company Registered in England and Wales. Company No: 8214795.

Authorised and Regulated by the SRA No: 573314. VAT No: 162 5765 93. \*Author of the Lawpack Kit "Fighting a Motoring Ticket" and Founding Chief Executive and President of AMOL.

If you are convicted of a driving offence, you are under an obligation to disclose it to the FCA when making an application. They will assess each application on their individual merit, taking into account the above criteria before making any decisions. However, non-disclosure may lead to the adverse inferences being drawn by the FCA, and have a negative impact on your application.

Further, if your conviction will result in disciplinary actions and you are at risk of losing your job, FCA will review your previous employment history. Disciplinary dismissal would undermine your application especially if combined with the criminal conviction.

It is important to disclose everything to the FCA, even if it may seem not to be relevant. As the FCA expects an applicant to be open and honest with them, so if they need to look more closely at an application because of any adverse information they may discover, this will work in an applicant's favour.

### What to disclose?

A person who is working in the financial organisation regulated by the FCA, must disclose any criminal convictions and cautions, whether they are spent or not. The exception only applies to protected convictions, and protected cautions. These can be found in Rehabilitation of Offenders Act 1974, and the Rehabilitation of the Offenders Act 1974 (Exceptions) Order 1975.

The Regulation states that any conviction should be disclosed if it is:

- ✓ A listed offence
- ✓ Custodial sentence or sentence of service detention
- ✓ Any other offence that does not fit within the above criteria
- ✓ If a person was under 18 at the time of the conviction and less than 5 years and 6 months have passed
- ✓ If a person was over 18 at the time of the conviction and less than 11 years have passed.

Further, a person should disclose a caution if it was given in relation to the listed offence; or a person was under 18 and less than 2 years have passed; or a person was over 18 and less than 6 years have passed.

### What do I do next?

We are always happy to discuss your case with you, we are specialists in defending drivers nationwide for all types of motoring offences. Call our team on **0800 1389 123** for some free initial advice.

'Listed Offences' can be found in The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013, paragraph 5 (a)-(n). Specifically paragraph 5(d) refers to Schedule 15 to the Criminal Justice Act 2003 and lists numerous offences, including driving offences such as:

- ✓ Causing death by careless driving when under influence of drink or drugs;
- ✓ Causing injuries by furious driving;
- ✓ Causing death by driving; disqualified drivers;
- ✓ Causing death by careless driving when under influence of drink or drugs

Paragraph (k) of the Act, says that any offences of attempting or conspiring to commit, aiding or counselling any of the offences falling within the paragraphs (a)-(j), or an offence of encouraging or assisting crime under Part 2 of the Serious Crime Act 2007, would "listed offences". They include but are not limited to:

- ✓ Administering prescribed drugs not in contravention to the conditions imposed by the Medicines Act 1968
- ✓ Obstructing a person in the exercise of his duty without reasonable excuse- s.129 Mental Health Act 1983

### Has your application been refused?

If the authorisations team believes that a person's application should be refused, they will refer it to the Regulatory Transactions Committee (RTC), made up of senior FCA staff. They may either accept your application, or may agree with the recommendation to refuse the application. If the latter happens, an applicant will receive a warning notice.

An applicant, however has got a right to write to or make oral submissions the Regulatory Discipline Committee (RDC) with their reasons as to why FCA should not reject their application.

RDC following considerations of all of the representations, will decide whether they will continue with the refusal and give a decision notice, or allow the FCA to continue with the application.

If the outcome is negative and you wish to reject the decision notice, you can refer the matter to the Upper Tribunal.

**CALL US NOW ON FREEPHONE 0800 1389 123**

**Call Geoffrey Miller Solicitors 24 Hours 7 Days a Week**

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