Jersey Financial Services Commission

Public Statement

Hawksford Trust Company Jersey Limited (Hawksford)
Issued: 25 August 2021

Financial Services (Jersey) Law 1998 (**FS(J)L**)

Financial Services (Trust Company Business (Assets – Customer Money)) (Jersey) Order 2000 (the **TCB Asset Order**)

Code of Practice for Trust Company Business (the **TCB Code**)

1 Action

1.1 The Jersey Financial Services Commission (**JFSC**) issues this public statement under Articles 25(b) and 25(c) of the FS(J)L.

1.2 The JFSC considers it necessary and proportionate to issue this public statement having concluded that Hawksford breached certain principles of the TCB Code and requirements of the TCB Asset Order, as detailed below.

1.3 The JFSC determined the matters outlined in this public statement are ineligible to be considered for a civil financial penalty.

2 Summary

2.1 Hawksford is registered by the JFSC to carry on Trust Company Business[1]. It provides corporate and fiduciary services to both corporate and private wealth customers.

2.2 In 2017, Hawksford reported to the JFSC the results of a file review from a selection of its customer structures that identified significant and material issues with how Hawksford had provided trust company business services to its customers. The JFSC believes that these issues were attributable to deficient corporate governance, systems and controls, and policies and procedures.

2.3 In total, four cases of cross charging Hawksford's fees were identified, affecting three customers. Hawksford's file review also found that it had charged and taken fees from one customer structure that, for all intents and purposes, no longer had a useful life or purpose to justify the fees. Hawksford has reimbursed the affected customer.

2.4 The JFSC conducted an investigation which identified deficiencies in Hawksford's corporate governance over customer structures and systems and controls (including policies and procedures). Deficiencies in these areas also meant Hawksford repeatedly failed to prevent, adequately detect and resolve the issues for a significant period.

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[1] As defined in Article 2 of the FS(J)L.

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3 Findings

3.1 The JFSC's investigation focussed predominantly on the customer structure where cross charging had initially been identified. The investigation related to the period 2001 to 2017 (the **period under review**). The structure was a discretionary trust (the **Trust**), established by the settlor in 1994. Hawksford provided administration services and there was an external investment manager.

Failure to act in the best interests of the customer

3.2 Hawksford had lost contact with the settlor and investment manager by 2003 and it has since been confirmed that the Trust's investments were effectively valueless, but a moderate cash balance was held in the bank account. The Trust had no activities other than investment holding. Hawksford's policies, procedures and staff training for lost customer contact were deficient. Hawksford made inadequate attempts to contact the parties and assess whether there was still a need for the Trust.

3.3 Between 2003 and 2016, there were minimal services actually provided by Hawksford. Despite this, Hawksford continued to charge annual fees (equating to c. £2,200 p.a). This was not in the customer's best interests.

3.4 Hawksford had opportunities to address the structure's governance and conduct issues, for example through the periodic review process. However, these reviews were routinely inadequately dealt with and there was insufficient oversight, challenge or follow up to ensure that the required actions in the review process had been completed. Consequently, the review process was insufficiently robust.

3.5 In total, Hawksford billed and subsequently withdrew c. $42,000 (c.£28,000) of fees from the Trust's bank account from 2003 until it was fully depleted in March 2013. As noted, during this period, Hawksford provided minimal services and those that were provided were seemingly not required. It has since been confirmed that, for all intents and purposes, the Trust was no longer required, given its valueless investments. These fees were therefore unnecessary and not in the customer's best interests.

Cross charging

3.6 On two occasions, Hawksford's systems and controls did not detect that Trust fees were paid by unconnected Hawksford customer relationships, paid from a pooled bank account (which is utilised for a subset of customer relationships). This was to cover trust fees (c. £600 in total) that continued to be billed to the Trust after its funds were fully depleted from the Trust's bank account. Additionally, there were a further two instances of customer cross charging of Hawksford fees (c. £11,200) between unconnected customer structures, again within the pooled bank account, that its systems and controls failed to detect or prevent. All cases were a misapplication of customer monies.

3.7 Hawksford's governance arrangements over the affected customer structures were therefore deficient and its controls and processes for fee payments were insufficiently robust to detect and prevent the misapplication of customer monies.

3.8 Hawksford, during the period under review, gave significant discretion to directors who acted with limited oversight and accountability, which included having excessive discretion when collecting fees.

3.9 Fee controls and staff training were inadequate and the roles and responsibilities for the structure were insufficiently segregated by Hawksford. This included how fees were requested and authorised. There was therefore a concentration of roles over the structure, with insufficient checks and balances to determine if fees were appropriate.

Breaches of the TCB Code and TCB Asset Order

3.10 The JFSC concluded that Hawksford breached the following principles of the TCB Code and provisions of the TCB Asset Order:

TCB Code

3.10.1 **Principle 2:** A Registered Person must have the highest regard for the interest of its customers.

3.10.2 **Principle 3:** A Registered Person must organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems.

TCB Asset Order

3.10.3 **Article 6(1) of the TCB Asset Order**: A Registered Person must ensure that a customer's money is not used for another customer without proper authority.

3.10.4 **Article 6(2) of the TCB Asset Order**: A Registered Person must ensure that customer money is not disbursed unless it is properly payable to a customer, properly payable by or on behalf of, or in respect of a customer, or otherwise properly transferred.

4 Aggravating factors

4.1 The issues identified occurred over an extensive period. Hawksford repeatedly failed to prevent, adequately detect, or resolve the issues over the affected structures from 2003 to 2017. This was despite having opportunities to do so, for example during the periodic review process.

4.2 The JFSC found that the inadequate responses to the required actions arising from the periodic reviews, and lack of robust challenge to ensure the completion of these actions, prolonged the period over which the issues subsisted.

4.3 While the amounts involved in the cross charging were not of themselves significant, they were not identified until 2017, when an independent reporting professional was appointed by Hawksford to conduct a file review from a selection of Hawksford's customer structures. The cross charging in question had occurred in 2013.

4.4 Despite Hawksford undertaking a wide-ranging internal review following the third party file review, a further instance of cross charging was identified on the customer structure following the JFSC's prompting during its investigation. Subsequently, Hawksford conducted a wider pooled bank account review to establish if any further customers were affected, resulting in two further instances of customer cross charging which Hawksford identified and promptly reported to the JFSC. The JFSC concluded that had the JFSC not conducted its review, it is likely that those additional customers would still be at a financial loss.

5 Mitigating factors

5.1 After identifying concerns, Hawksford proactively engaged an independent reporting professional. Hawksford then promptly, appropriately and candidly notified the JFSC of the issues, once discovered, that led to the investigation.

5.2 Hawksford ensured that all affected customers were reimbursed in full.

5.3 The issues identified in Section 3 are historic. Hawksford remediated the issues identified through enhancements to its business, including its systems and controls/policies and procedures and training provided to its directors and staff.

5.4 Hawksford was open, transparent and cooperative with the JFSC.

For further enquiries, please contact Director of Enforcement, Kerry Petulla.