

This Decision Notice has been referred to the Upper Tribunal to determine the appropriate action for the FCA to take.

DECISION NOTICE

To: Lewis Alexander Limited

**Address: 30 Century Buildings
14 St Mary's Parsonage
Manchester
M3 2DD**

**Interim permissions
reference number: 534049**

Dated: 17 April 2018

ACTION

1. By an application dated 6 March 2015 ("the Application"), Lewis Alexander Limited ("LAL" or "the Firm") applied under section 55A of the Act for permission under Part 4A of the Financial Services and Markets Act 2000 ("the Act") to carry on regulated activities.
2. For the reasons given in this Notice and in accordance with section 55X of the Act the Authority has decided to refuse the Application.
3. With effect from 1 April 2014 LAL was granted interim permission pursuant to article 56 of the Financial Services and Markets Act 2000 (Regulated Activities) (No 2) Order 2013 to carry on the following regulated activities:
 - a. credit broking under article 36A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("RAO");
 - b. debt adjusting under article 39D RAO;
 - c. debt-counselling under article 39E RAO;

- d. debt-collecting under article 39F RAO;
- e. entering into a regulated credit agreement as lender under article 60B(1) RAO;
- f. exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement under article 60B(2) RAO;
- g. entering into a regulated consumer hire agreement as owner under article 60N(1) RAO;
- h. exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement under article 60N(2) RAO; and
- i. providing credit references under article 89B RAO.

EFFECT OF THIS NOTICE

4. As soon as this Notice is given to LAL, LAL's interim permission ceases immediately to have effect. This occurs automatically by operation of law (pursuant to article 58(1)(a) of the Financial Services and Markets Act 2000 (Regulated Activities) (No 2) Order 2013). From this time, LAL is no longer permitted to carry on the regulated activities set out in paragraph 3 (unless otherwise authorised or exempt to do so for the purposes of Section 19 of the Act).
5. LAL may apply to the Tribunal to suspend this ceasing of effect: see paragraph 64 below.

SUMMARY OF REASONS

6. Over the course of the Application, there have been a number of instances where the Firm has not demonstrated the level of cooperation that is expected of a regulated firm. When asked for information by the Authority, the Firm has failed to provide complete and prompt responses. The firm also failed to remedy, in a timely fashion, issues raised by the Authority during the course of the Application. Further, the Firm has been unable to demonstrate that it can proactively ensure compliance with applicable requirements. For example, the Firm was unaware, until it was pointed out by the Authority, that a number of its communications with customers contained inaccurate information and did not comply with regulatory requirements.
7. The Authority cannot, therefore, ensure that LAL will satisfy, and continue to satisfy, in relation to the regulated activities for which permission is sought, the threshold conditions set out in Schedule 6 to the Act for which the Authority is responsible.
8. In relation to the effective supervision threshold condition (in paragraph 2C of Schedule 6 to the Act), the Authority is not satisfied that LAL is capable of being effectively supervised by the Authority having regard to all the circumstances.
9. In relation to the appropriate resources threshold condition (in paragraph 2D of Schedule 6 to the Act), the Authority is not satisfied that LAL has appropriate non-financial resources in relation to the regulated activities that it seeks to carry on.
10. In relation to the suitability threshold condition (in paragraph 2E of Schedule 6 to the Act), the Authority is not satisfied that LAL is a fit and proper person having regard to all the circumstances.

DEFINITIONS

11. The definitions below are used in this Notice.

"the Act" means the Financial Services and Markets Act 2000

"the Application" means the application referred to in paragraph 1

"the Authority" means the Financial Conduct Authority

"CASS" means the 'Client Assets Sourcebook' in the Handbook

"CONC" means the 'Consumer Credit Sourcebook' in the Handbook

"CONC Rule" means CONC 8.2.4R(2)

"DMP" means debt management plan

"the Handbook" means the Authority's Handbook of rules and guidance

"IP" means interim permission under Article 56 of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013

"LAL" or "the Firm" means Lewis Alexander Limited

"MAS" means the Money Advice Service

"the OFT" means the body that before 1 April 2014 was known as The Office of Fair Trading

"the Phone Call" means the telephone conversation between the Firm and the Authority on 27 October 2017

"the RAO" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

"the Relevant Threshold Conditions" means the threshold conditions in paragraphs 2C to 2E of Schedule 6 to the Act

"SYSC" means the Senior Management Arrangements, Systems and Controls sourcebook in the Handbook

"the Tribunal" means the Upper Tribunal (Tax & Chancery Chamber)

"the Visit" means the Authority's visit to the Firm's offices on 9 May 2017

"the Website" means the Firm's website ('<https://www.lewisalexander.com/>')

FACTS AND MATTERS

Background to the Firm

12. The Firm is a debt management firm that is run and operated by Richard Johnson (who represents the Firm's sole human resource). Between 23 March 2003 and 31 March

2014, the Firm held a licence from the OFT to carry on the activities of debt adjusting and debt counselling (among other activities).

13. On 1 April 2014, the Firm became regulated by the Authority (with IP reference 534049). It applied for full permission on 6 March 2015.

Overview of the Firm's business

14. The Firm acts as a debt management firm. The Firm advises its customers in relation to their debts and, where appropriate, offers to enter into a DMP with them. If a customer agrees to enter into a DMP, the Firm proceeds to negotiate with the customer's creditors to set up repayment plans in respect of each debt, before advising the customer as to the payment schedule required going forward. The Firm distributes monies to lenders and accordingly has applied for permission to hold client monies.
15. In order to advise customers on the available suitable debt solutions, the Firm has to engage in the regulated activities of debt counselling (the giving of advice to a consumer about the liquidation of a debt) and debt adjusting (most notably the activity of negotiating the terms of the discharge of debt with a customer's lenders). The Firm's debt advice and debt management services therefore fall under the Authority's consumer credit regime and the Firm must be authorised by the Authority to carry out those activities.
16. The Firm had 41 customers as of 7 October 2017 and its principal source of income is from the monthly fees it charges customers on active DMPs. The Firm charges the following monthly fees in accordance with the level of debt management payments: £35 for customer payments of £100 to £249; £50 for customer payments of £250 to £349; and £65 for customer payments of £350 and upwards.

Debt advice provided by the Firm

17. Over the course of the assessment of the Application, the Authority provided the Firm with feedback on a number of matters. The Authority identified a number of issues that needed to be addressed. These included the standard of the 'durable medium' letter sent by the Firm to its customers in accordance with CONC 8.3.4R, inaccuracies in the information provided to customers on bankruptcy, and inaccuracies in the information provided to customers on debt relief orders.
18. However, towards the end of the assessment of the Application, the Authority reached the view that the Firm was able to provide debt advice to its customers broadly in compliance with CONC, and that its systems and controls satisfied the minimum standard required. In light of these conclusions, and taking other relevant matters into account, the Authority initially considered that there was a reasonable prospect that the Firm could meet the minimum standard for authorisation under section 55B(3) FSMA. However, in concluding its assessment and considering LAL's conduct as a whole across the duration of the assessment (as described in paragraphs 19 to 46 below), as well as the fact that a number of deficiencies in the Firm's communications to customers only came to light as a result of the Authority's enquiries, the Authority has come to the view that the Firm does not satisfy the test under section 55B(3).

The Firm's conduct over the course of the assessment of the Application

19. The Authority considers that, over the course of the assessment of the Application, there have been a number of instances where the Firm has not demonstrated the level of co-operation that is expected of a regulated firm (the facts relied upon below

demonstrate a number of examples). During this time, the Firm has had four different case officers (the Firm having requested a change of case officer on two occasions).

20. The Application was registered with the Authority on 6 March 2015. Following receipt of the Application the Authority assigned a case officer to LAL. Requests for information were made by the first case officer, and LAL responded to them. The first case officer left the Authority in February 2016. Shortly after, on 21 March 2016, the case was transferred to a second case officer in a specialist team in the Authority dealing with small debt management firms.

Feedback provided by the second case officer

21. On 23 August 2016, the second case officer rang the Firm to discuss the customer files that had been provided and initially reviewed by the Authority. Mr Johnson was made aware that: (i) within the customer files, there were a number of documents and pieces of important information missing; and (ii) the Authority had identified a number of breaches of CONC.
22. During this telephone call, the case officer discussed the Firm's options with Mr Johnson. One of the suggested options involved the Firm withdrawing the Application until it was in a position to comply with regulatory requirements. In response, Mr Johnson raised his voice to the case officer, accused her of "*bullying*", told her that he would no longer deal with her, and requested that she escalate the matter to a more senior member of staff.

Requests for information made by the third case officer

23. CASS 7.18.3 requires a firm operating a client transaction account to complete and sign an acknowledgement letter, which also must be signed by the firm's bank. This requirement is important because, in the case of LAL, it means that in a 'liquidation event', client money can be distinguished from LAL's assets so that its customers can expect to recover money that had been paid to LAL, but not yet distributed to creditors.
24. The Authority considers that this is an important and straightforward rule. However, in conducting its assessment of the Application, the Authority was required to make at least six separate requests, between 16 August 2016 and 19 May 2017, before the client account acknowledgement letter was provided by the Firm. The Authority considers that this demonstrates a level of cooperation below that expected from a regulated firm, and raises a concern as to whether the Authority will receive adequate information from the Firm in the future if it were to be authorised (that is to say, when it will not experience the level of attention that a firm being assessed for authorisation receives).
25. On 2 February 2017, the case officer requested information concerning the Firm's client bank account, specifically concerning the bank account acknowledgement letter and account reconciliation (this was the second request for the account acknowledgment letter). In response, Mr Johnson sent an email in which he stated his opinion that the Authority "*and the general establishment around it is corrupt in favour of creditors who have lobbied to get more funds out of people they think are withholding monies for repayment...*", and that "*...the credit industry lobbied parliament to get the [Authority] to enforce rules which are unfair to consumers and only fair to creditors and free to client services...and utilised the fee charging sector to do so!*".
26. On 6 February 2017, the third case officer made the third request for the account acknowledgement letter, as well as requesting further information from the Firm to

enable the assessment of the Application. This further information included a 3-year financial forecast. Mr Johnson responded to this request on 19 February 2017 by way of a long email covering a number of points, including the statement that “[the Firm] cannot forecast due to your lack of policing and control of the industry along with the [OFT]... I cannot wait until you revoke my license”, and “[the Firm] cannot forecast when we are not sure of being licensed, with such an ambiguous uncontrolled messed up process that your departments have tried to employ, it is impossible to state the future of the business until the industry regulators have taken control of what is an out of control industry”. Within this email, and in reference to the Authority, Mr Johnson also stated “[h]ow bent are you lot? It is quite ridiculous now and I have to go to the press as it cannot be accepted that I keep quiet about such massive collusion and breaches of governance / regulation”.

Requests for information concerning annual DMP reviews

27. On 25 November 2016, the third case officer requested up-to-date information from the Firm in order to select a sample of case files showing recent debt advice provided by the Firm. The request asked for the date of each of the Firm’s DMP customers’ last annual review (undertaken in accordance with CONC 8.8.1R(7)(b)). The Firm provided its response on 5 December 2016 stating that the ‘date of the last review’ for all of its customers occurred “[b]etween July 2016 Dec 2016”. The Authority considered that this response was not sufficient to enable it to assess whether the Firm was complying with the requirement to perform annual DMP reviews under CONC.
28. Over the course of a number of months, the Authority requested further information from the Firm to ascertain the date of the customers’ annual DMP reviews and obtain ‘up-to-date’ information. On 8 March 2017 the Firm provided a response in which it: stated that the Authority’s information request was “quite ridiculous”; stated that the Authority was “purposefully stopping me from being able to carry out my normal working day”; requested that the case officer “CONFIRM WHY YOU ARE USING BULLYING LEGAL TACTICS BY PLACING A TIME FOR A RESPONSE ON A CERTAIN DATE”; and suggested that the case officer “or someone from your office with DMP experience gets their posteriors up to Manchester to look at our software that cannot disclose certain information by extraction due to the way it was built for security purposes”.
29. On 13 March 2017, the Firm purported to provide the dates requested. Once received, the Authority cross-checked the dates with the customer files in its possession. It appeared from the Authority’s checks that the dates provided by the Firm related to ‘previous action’ undertaken on each file (rather than the date of the annual DMP review). During the Visit, the dates provided were checked with the Firm (in conjunction with the information contained within the Firm’s electronic records). This confirmed that the dates provided to the Authority on 13 March 2017 did not represent the dates of the customers’ annual DMP reviews.

The MAS link

30. In October 2017, as the Authority’s assessment of the Application drew to a close, various matters were raised with the Firm to ensure that they had been adequately addressed. One of these matters concerned the fact that the Website did not comply with the CONC Rule, which required the Firm prominently to include a link on its website to a particular page on MAS’s website. The Authority considered that the MAS link was not sufficiently prominent and found that it directed the user to the wrong landing page. The Authority considers that the CONC Rule is straightforward and clear, and sets out the exact website address required in the link.

31. The Firm responded with a number of emails over the course of 26 and 27 October 2017. The Authority considers that the Firm's responses failed to demonstrate the level of cooperation expected from a regulated firm, as evidenced by their length, content and tenor. The emails were forceful, and demonstrated hostility towards regulatory bodies.
32. After carefully considering the content of the first of the emails referred to in paragraph 31, the Authority contacted the Firm to arrange a telephone conference to answer the points raised and to assist the Firm in providing further information. Following this, the Firm sent three emails on 26 October 2017 that (in common with the first email) demonstrated an argumentative, hostile and confrontational attitude towards the Authority.
33. On the morning of 27 October 2017 (the day of the Phone Call), the Firm emailed the Authority and confirmed that it had moved the MAS link and placed it on the Website homepage. In this email, Mr Johnson stated that he wished *"to find out through the [Authority] if they still believe the requests they are making are correct legally based on my substantiation/s"*, and that he reserved the *"legal right to change [the MAS link] back to its original format"* if the Authority did not *"answer this very reasonable query within a 3 month period of this emails date"*. The Authority reviewed the change made to the Website and considered that it did not satisfy the CONC Rule because it was not sufficiently prominent (the link was located at the base of the web page in small font and did not stand out from other warnings and information).
34. During the Phone Call, the Authority expressed its concern regarding the length, content and tenor of the Firm's responses on the MAS link issue (which it considered raised concerns as to whether the Firm would co-operate with, and so be capable of being effectively supervised by, the Authority). The Authority also explained the CONC Rule and confirmed that it applied to every debt management firm.
35. In response to the Authority's explanation, Mr Johnson spent a considerable period of time during the Phone Call: explaining why he did not think that the CONC Rule should apply to the Firm; giving his opinion that the MAS link should not be included on the Website free of charge as it represented *"merchandisable space"*; stating his opinion of the OFT, which he considered had historically *"failed to police"* the debt management industry, before criticising the Authority for similar failings (which the Authority made him aware it did not accept); and confirming that the Firm would not comply with the CONC Rule until such point as the *"rest of the debt management industry"* complied.
36. After the Phone Call, Mr Johnson sent a further eight emails on 27 and 28 October 2017, in which he raised a complaint about the Phone Call and confirmed that he was *"contacting the metropolitan police regarding possible fraudulent activity of [the Authority's] staff"*.
37. On 31 October 2017, the Authority became aware that the Firm had again amended the Website such that it now operated in compliance with the CONC Rule. Although the Firm had made the changes necessary to comply with the minimum standard required by this rule, the Authority considered that this had only been achieved through the provision of a detailed explanation/justification over the course of a number of emails and phone calls (including a number of difficult, hostile and confrontational conversations/emails).

The Authority's recommendation to refuse the Application

38. After carefully considering the Firm's conduct within the context of the Application as a whole, the Authority concluded that it was unable to ensure that the Firm satisfied the test under s55B(3) FSMA. Accordingly, on 17 November 2017 the Firm was informed that the Authority would recommend to its decision makers that the Application be refused.
39. Following this, the Firm:
- a. contacted the case officer by telephone on 19 November 2017 and left a voicemail in which it stated (amongst other matters) that: a "*fraud report*" would be lodged with "*Action Fraud*"; a full report would be made to the Metropolitan Police "*against*" the Authority for "*untoward activities*", "*industrial espionage*", "*fraud*" and "*intent to conspire*"; and requested that the case officer be changed; and
 - b. proceeded to send three long emails in which it: criticised the Authority and accused it of using "*bullying tactics*"; stated its opinion that the requests for information made by the Authority were "*tantamount to a form of racketeering*"; and confirmed that "*the National Crime Agency and No10 Downing Street have been made aware by me personally about the goings on throughout this entire process of authorisation*".
40. In light of the serious nature of the allegations made within the voicemail and the subsequent emails (in paragraph 39 above), the Authority sent a detailed email to the Firm on 22 November 2017 responding to the allegations, and addressing a number of matters concerning the progression of the Application. In response, the Firm sent a further four emails on 22 November and 23 November 2017 written in the same tenor and containing similar content to those considered above, in which it accused the Authority of lying and stated that the Authority "*seems to be deluded with power and authority*".
41. Following on from these emails, the Authority informed the Firm (by way of email on 23 November 2017) that it did not consider that the points raised by the Firm advanced the assessment of the Application any further and that, as a consequence, it did not intend to engage in further correspondence in relation to them. In response, the Firm sent a further seven emails over the course of 23 and 24 November 2017 showing the same argumentative and confrontational attitude demonstrated previously.
42. On 14 December 2017, a warning notice was issued to the Firm setting out the Authority's proposal to refuse the Application. Following the issue of the warning notice, the Firm was given the opportunity to make representations on the Authority's proposed course of action. During the course of those representations, Mr Johnson, on behalf of the Firm, reiterated his long standing concerns about the regulation of the debt management industry, in particular, in relation to the regulation of advertising. Mr Johnson explained that this was one of the reasons for the Firm's attitude when dealing with the Authority.
43. However, Mr Johnson, and therefore LAL, failed to demonstrate that he could separate his concerns about the ongoing regulation of the debt management industry from the Application and the Firm's ongoing supervisory relationship with the Authority. As such, the Firm was unable to give adequate assurances that its approach to dealing with the Authority would change once authorised. For example, during the course of the Firm's representations:

- a. Mr Johnson said that he had previously been asked by the Authority whether he wanted to be authorised, and at the time he answered "*yes... but under the right basis, not in an arena that is an unlevel playing field*". When asked whether he thought a relationship with the Regulator could be sustained, he replied "*I do, I think 100%, but I think I would expect – I would be a liar if I said otherwise – I would expect to see a level playing field, which hasn't been apparent for some 12 years*".
 - b. Mr Johnson conceded that "*it would be questionable based on my correspondence and certain dealings whether I am fit and proper to be regulated and supervised*"; and
 - c. in relation to correspondence received from the Authority Mr Johnson admitted that he "*can't open an email without getting angered*".
44. During the course of its representations, the Firm was also asked how it would keep up to date with changes in regulation and applicable law, in particular, in relation to debt solutions. In response, the Firm questioned how it was possible to keep up to date with changes to relevant law and regulations.

Summary

45. The Authority considers that the facts relied upon above demonstrate that, over the course of the assessment of the Application, the Firm has on a number of occasions:
- a. questioned why it is required to provide information to the Authority in a forceful and argumentative manner;
 - b. demonstrated a reluctance to provide information to the Authority and comply with Handbook rules; and
 - c. adopted an uncooperative attitude when reacting to the provision of information or feedback given, and complying with requests made by the Authority.
46. In light of the above, taking the Firm's responses and conduct as a whole over the course of the assessment of the Application, the Authority is not satisfied that:
- a. it will receive adequate information from the Firm to enable it to determine whether it is complying with the requirements and standards under the regulatory system for which the Authority is responsible;
 - b. the Firm is fit and proper as it has not demonstrated that it has been, and will be, open and cooperative in its dealings with the Authority, and that it is ready, willing and organised to comply with the standards and requirements of the regulatory system; and
 - c. the Firm has in place appropriate human resources that are both able and willing to understand, and ensure that the Firm complies with, regulatory standards and requirements.

IMPACT ON THE THRESHOLD CONDITIONS

47. The regulatory provisions relevant to this Decision Notice are referred to in Annex A.
48. In light of the facts and matters set out above and for the reasons set out below, the Authority cannot ensure the Firm will satisfy, and continue to satisfy, the threshold conditions.

The effective supervision threshold condition (paragraph 2C of Schedule 6 to the Act)

49. The effective supervision threshold condition requires that a firm must be capable of being effectively supervised by the Authority having regard to all the circumstances.
50. Under the Authority's supervision model, ongoing supervision of certain firms (such as LAL) is carried out in a number of ways, including through market-based work, for example, thematic reviews. Firms may be asked to provide information to assist the Authority in this work, and firms are expected to consider and act as necessary on the Authority's findings. The Authority also supervises firms by responding to risks that it has discovered, for example, from a consumer complaint, or as a result of a firm self-reporting an issue. Where issues arise, the Authority requires firms to provide it with information in a timely fashion so that it can address any risks and advance its statutory objectives. Instead of using its resources to carry out extensive follow-up work, the Authority expects firms to have comprehensive and credible plans to mitigate risks.
51. Accordingly, when assessing whether a firm can be effectively supervised, the Authority considers the likelihood that it will receive adequate information from the firm (in a timely manner) to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the Authority is responsible. This includes consideration of whether the firm is ready, willing and organised to comply with Principle 11 (Relations with regulators) and the rules in SUP on the provision of information to the Authority.
52. In light of the concerns identified in paragraphs 19 to 46 above, the Authority does not consider that the Firm is capable of being effectively supervised by the Authority and, therefore, cannot ensure that the Firm satisfies and continues to satisfy the effective supervision threshold condition. In particular, the Authority is not satisfied that the Firm will:
- a. respond fully and promptly to requests for information from the Authority; and
 - b. engage constructively with the Authority to resolve issues and mitigate risks without significant oversight and resource from the Authority, such oversight and resource being disproportionate to the size, nature and number of customers of the Firm.

The appropriate resources threshold condition (paragraph 2D of Schedule 6 to the Act)

53. The appropriate resources threshold condition requires that a firm's resources must be appropriate in relation to the regulated activities conducted or proposed. COND 2.4.2G(2) provides that 'resources' includes financial and non-financial resources (such as human resources), and means of managing its resources (such as effective means by which to manage risks). In this context, the Authority will interpret 'appropriate' as meaning sufficient in terms of quantity, quality and availability. Consideration will be

given to whether a firm's resources are sufficient to enable it to comply with the requirements imposed or likely to be imposed on it in the course of the exercise of the Authority's functions.

54. LAL's sole human resource is Mr Johnson. Accordingly, the Authority is concerned that the Firm has not demonstrated that it has sufficient non-financial resources to understand and willingly comply with regulatory requirements (as shown in paragraphs 19 to 46 above). The Authority is also concerned that the Firm has been reactive to feedback given to the Firm throughout the application process (including the examples in paragraph 17), rather than having appropriate (human) resources to ensure compliance (proactively as opposed to reactively) with the applicable regulatory rules at all times. Further, in making representations on the warning notice, the Firm questioned how it could keep up to date with relevant developments in law and regulation, for example, changes in the criteria for different debt solutions.

55. As such, the Authority does not consider that it can ensure that the Firm satisfies, and will continue to satisfy, the appropriate resources threshold condition.

The suitability threshold condition (paragraph 2E of Schedule 6 to the Act)

56. The suitability threshold condition requires that, among other things, a firm must be fit and proper having regard to all the circumstances, including whether it has complied and is complying with requirements imposed by the Authority in the exercise of its functions, or requests made by the Authority relating to the provision of information to the Authority and, where it has so complied or is so complying, the manner of that compliance.

57. The matters described in paragraphs 19 to 46 above raise concerns as to the suitability of the Firm. In particular, the Authority considers that the Firm has not been open and co-operative in all its dealings with the Authority and has not demonstrated that it is ready, willing and organised to comply with the requirements and standards under the regulatory system.

58. As a result, the Authority is not satisfied that the Firm is fit and proper having regard to all the circumstances, including the need to ensure that its affairs are conducted in an appropriate manner. Accordingly, the Authority does not consider that it can ensure that the Firm satisfies, and will continue to satisfy, the suitability threshold condition.

REPRESENTATIONS

59. Annex B contains a brief summary of the key representations made by LAL and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by LAL, whether or not set out in Annex B.

PROCEDURAL MATTERS

60. This Notice is given under section 55X(4)(f) and in accordance with section 388 of the Act. The following paragraphs are important.

Decision maker

61. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

The Tribunal

62. LAL has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, it has 28 days from the date on which this Notice is given to it to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: fs@hmcts.gsi.gov.uk). Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

63. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Marina Lancaster at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

64. As part of a reference, LAL may ask the Tribunal to grant an order under rule 5(5) of the Tribunal Procedure (Upper Tribunal) Rules 2008 suspending the ceasing of its interim permission pending the Tribunal's substantive decision on the matter.

Access to evidence

65. Section 394 of the Act does not apply to this Notice.

Confidentiality and publicity

66. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391 of the Act provides that a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.

67. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. LAL should be aware, therefore, that the facts and matters contained in this Notice may be made public.

Authority contact

68. For more information concerning this matter generally, contact Marina Lancaster, Manager, Lending and Intermediaries - Authorisations Division, at the Authority (direct line: 020 7066 5250 / email: marina.lancaster@fca.org.uk).

Elizabeth France
Deputy Chair, Regulatory Decisions Committee

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS NOTICE

Relevant Statutory Provisions

1. Section 55A(1) of the Act provides for an application for permission to carry on one or more regulated activities to be made to the appropriate regulator. Section 55A(2) defines the “appropriate regulator” for different applications.
2. Section 55B(3) of the Act provides that, in giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of Part 4A of the Act, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the threshold conditions for which that regulator is responsible.
3. The threshold conditions that relate to the current application are set out in Part 1B of schedule 6 of the Act. In brief, the threshold conditions relate to:
 - (1) paragraph 2B: Location of offices
 - (2) paragraph 2C: Effective supervision
 - (3) paragraph 2D: Appropriate resources
 - (4) paragraph 2E: Suitability
 - (5) paragraph 2F: Business model

Relevant provisions of the Handbook

Threshold Conditions - COND

4. In exercising its powers in relation to the granting of a Part 4A permission, the Authority has regard to guidance published in the Handbook, including the part entitled ‘Threshold Conditions’ (“COND”). Provisions relevant to the consideration of the Application include those set out below.

General guidance

5. COND 1.3.2G(2) provides that, in relation to the threshold conditions in paragraphs 2C to 2E of schedule 6 of the Act (“the Relevant Threshold Conditions”), the Authority will consider whether a firm is ready, willing and organised to comply on a continuing basis with the requirements and standards under the regulatory system which will apply to the firm if it is granted Part 4A permission.
6. Under COND 1.3.3AG, in determining the weight to be given to any relevant matter, the Authority will consider its significance in relation to the regulated activities for which the firm has, or will have, permission, in the context of its ability to supervise the firm adequately, having regard to the Authority’s statutory objectives. In this context, a series of matters may be significant when taken together, even though each of them in isolation might not give serious cause for concern.
7. COND 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the Relevant Threshold Conditions, the Authority will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.

8. COND 1.3.3CG provides that, when assessing the Relevant Threshold Conditions, the Authority may have regard to any person appearing to be, or likely to be, in a relevant relationship with the firm, in accordance with section 55R of the Act (Persons connected with an applicant). For example, a firm's controllers, its directors or partners, other persons with close links to the firm (see COND 2.3), and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the Relevant Threshold Conditions, would be in a relevant relationship with the firm.

Paragraph 2C of Schedule 6 to the Act: Effective supervision

9. COND 2.3.1A(1) states that a firm must be capable of being effectively supervised by the Authority having regard to all the circumstances including the way in which the firm's business is organised.
10. COND 2.3.3G provides that, in assessing the threshold condition in paragraph 2C of Schedule 6 to the Act, factors which the Authority will take into consideration include, among other things, whether it is likely that the Authority will receive adequate information from the firm, and those persons with whom the firm has close links, to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the Authority is responsible and to identify and assess the impact on its statutory objectives; this will include consideration of whether the firm is ready, willing and organised to comply with Principle 11 (Relations with regulators) and the rules in the Supervision manual in the Handbook on the provision of information to the Authority.

Paragraph 2D of Schedule 6 to the Act: Appropriate resources

11. COND 2.4.1A states that the resources of a firm must be appropriate in relation to the regulated activities that the firm seeks to carry on.
12. COND 2.4.2G(2) states that the Authority will interpret the term 'appropriate' in paragraph 2D of Schedule 6 to the Act as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources, non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.
13. COND 2.4.2G(3) states that high level systems and control requirements are in SYSC. The Authority will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of the threshold condition in paragraph 2D of Schedule 6 to the Act.
14. COND 2.4.4G states that, when assessing whether a firm has appropriate resources, the Authority will have regard to matters including:
 - (d) Whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times.
 - (f) Whether the resources of the firm are commensurate with the likely risks it will face.

Paragraph 2E of Schedule 6 to the Act: Suitability

15. COND 2.5.1A(1)G states that a firm must be a fit and proper person having regard to all the circumstances, including its connection to any person, the nature of the regulated activity carried out, the need to ensure that the firm's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system and whether the firm has complied with requests made by the Authority, relating to the provision of information to the Authority and, where the firm has complied or is so complying, the manner of that compliance.
16. COND 2.5.2G(2)G states that the Authority will also take into consideration anything that could influence a firm's continuing ability to satisfy the threshold condition in paragraph 2E of Schedule 6 to the Act.
17. COND 2.5.4G(2) states that examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the threshold condition in paragraph 2E of Schedule 6 to the Act include, but are not limited to whether the firm:
 - (a) conducts or will conduct its business in compliance with proper standards;
 - (b) has, or will have, a competent and prudent management; and
 - (c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.
18. COND 2.5.6G provides that examples of the kind of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the threshold condition in paragraph 2E of Schedule 6 to the Act include, but are not limited to, whether:
 - (1) the firm has been open and co-operative in all its dealings with the Authority and any other regulatory body (see Principle 11 (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the regulatory system (such as the detailed requirements of SYSC and, in relation to a firm not carrying on, or seeking to carry on, a PRA-regulated activity only, the Prudential Standards part of the Handbook) in addition to other legal, regulatory and professional obligations; the relevant requirements and standards will depend on the circumstances of each case, including the regulated activities which the firm has permission, or is seeking permission, to carry on.
 - (1A) the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards for which the Authority is responsible under the regulatory system.

Consumer Credit Sourcebook ("CONC")

19. This section of the Handbook is the specialist sourcebook for credit-related regulated activities. As provided in CONC 1.1.2G, the purpose of CONC is to set out the detailed obligations that are specific to credit-related regulated activities and activities connected to those activities carried on by firms. These build on and add to the high-level obligations, for example, in PRIN, GEN and SYSC, and the requirements in or under the Consumer Credit Act 1974.
20. CONC 8.2.4R(2) states that a debt management firm must prominently include: on its web-site the following link to the Money Advice Service web-site (<https://www.moneyadviceservice.org.uk/en/tools/debt-advice-locator>).
21. CONC 8.3.4R states that, a firm must ensure that advice provided to a customer, whether before the firm has entered into a contract with the customer or after, is provided in a durable medium.
22. CONC 8.8.1R(7)(b) states that a firm in relation to a customer with whom it has entered into a debt management plan must, where the firm makes repayments on behalf of the customer, review, and amend or terminate, where appropriate, the customer's debt management plan at the earlier of each anniversary of entering into the plan, or as soon as the firm becomes aware of a material change in the customer's circumstances.

Principles for Businesses ("PRIN")

23. PRIN 1.1.2G states that the Principles are a general statement of the fundamental obligations of firms under the regulatory system. PRIN includes Principle 11 *"A firm must deal with its regulators in an open and cooperative way, and must disclose to the [Authority] appropriately anything relating to the firm of which that regulator would reasonably expect notice"*.

Senior Management Arrangements, System and Controls ("SYSC")

24. This part of the Handbook sets out the responsibilities of directors and senior management.
25. SYSC 9.1.1R states a firm must arrange orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the appropriate regulator to monitor the firm's compliance with the requirements under the regulatory system, and in particular to ascertain that the firm has complied with all obligations with respect to clients.

ANNEX B - REPRESENTATIONS

1. LAL's representations (in italics), and the Authority's conclusions in respect of them, are set out below.

Perceived failings in the regulation of debt management firms

2. *LAL's conduct was justified in light of the historic and ongoing regulation of the debt management industry. The Authority, and the OFT before it, failed adequately to ensure a level playing field in the debt management market. In particular, the Authority and the OFT turned a blind eye to non-compliance by other debt management firms. This gave them a competitive advantage and was detrimental to LAL, which strove to be compliant and was responsive to regulatory requirements.*
3. *Certain individuals at the OFT were determined to stop LAL advertising its business in the way it chose. The same individuals were now working at the Authority in order to prevent LAL from being authorised. At times, this had caused Mr Johnson to "spit out [his] dummy", but this was entirely justified in the circumstances.*
4. The Authority has given careful consideration to LAL's justification for its approach to communicating with the Authority. While the Authority accepts that LAL's behaviour was based on Mr Johnson's perception of the regulation of the debt management industry, the Authority does not consider that LAL's approach to corresponding with the Authority was appropriate, particularly as the exchanges were in relation to the Application which Mr Johnson used inappropriately as a vehicle to express his strongly held opinions.
5. The Authority considers that LAL is unable to separate its general concerns about the regulation of debt management firms from the Application for permission, and is not satisfied that LAL will be able to put its concerns to one side when dealing with the Authority's supervision staff in the future. The Authority also notes that, in making its representations, LAL admitted that it had been warned by the Authority about the possible consequences of the tone of its responses. However, this did not appear to alter the tone of LAL's correspondence with the Authority, which continued throughout the authorisation process, including correspondence with the Decision-Making Committees Secretariat (in relation to these proceedings) after the warning notice had been issued.

The conduct of the Authority during the assessment of the Application

6. *There were a number of issues throughout the assessment of the Application that contributed to the manner of LAL's responses to the Authority. In particular,*
 - a. *the second case officer was minded to refuse the Application before reviewing the case;*
 - b. *LAL was asked to remove a reference to the OFT from its business plan. The business plan stated that LAL had "suffered setbacks" as a result of the OFT's regulation of the debt management industry. This was an example of OFT history "being washed" – LAL was asked to remove the reference to OFT in order to protect somebody "behind the scenes";*

- c. *LAL had been given the impression by the Authority that permission would be granted. The Authority later changed its mind; and*
- d. *the Authority did not record the phone conversation with Mr Johnson where it initially informed him that it might refuse the Application. This amounted to double standards as LAL was required to record conversations with its customers. Further, it was unacceptable given the content of the call, which is best described as a "wind-up".*

7. These submissions are dealt with in turn:

- a. In reaching the decision to issue this Notice, the Authority has not reviewed the conduct of the second case officer (although the Authority notes that LAL presented no evidence in support of its claims that the second case officer acted inappropriately). In any event, the second case officer was replaced at the request of LAL and had no further contact with the Firm after August 2016.
- b. The Authority is satisfied that suggestions made in relation to the business plan were intended to assist the Firm, for example, by removing the sections that, in the case officer's view, erroneously called into question the Firm's financial viability. In particular, certain sentences in the business plan suggested that the Firm might not be able to compete in light of the failings it perceived in respect of the regulation of debt management firms.
- c. The Authority accepts that one of the case officers indicated to LAL that he was considering recommending that the Firm be authorised. However, the Authority is satisfied that the case officer made clear that this was a provisional view and would have to go through the decision making process at the Authority, and that more senior Authority staff might take a different view from his own.
- d. LAL was not required to make audio recordings of calls with customers, although it was subject to certain record keeping requirements in the Handbook (for example in SYSC 9.1.1R). The Authority is not required to record calls with firms. In any event, the Authority made a note of the call and shared it with LAL.

8. Irrespective of the responses above, the Authority does not consider that the points raised by LAL, even if made out, justify the tone and content of LAL's correspondence with the Authority.

Effective supervision

- 9. *LAL can be effectively supervised as it has always complied with the Authority's rules and requests. LAL's attitude in correspondence should be compared to what actually happened. In particular, even where LAL did not agree with the approach taken by the Authority, it ultimately complied with its requests. For example, LAL ensured that the link to the MAS website (as required by the CONC Rule) was positioned on LAL's website to the satisfaction of the Authority.*
- 10. *The reason for the delay in providing the client account acknowledgment letter was due to the delay in obtaining a counter signature from LAL's bank (as required by CASS 7.18.3). LAL provided evidence of the attempts it made to obtain the counter-signature from its bank.*

11. *LAL reviewed a customer's file whenever they contacted the Firm. As a result, each customer file was reviewed at least every 12 months. The Firm's only issue with the annual DMP reviews was that it had not provided customers with a statement in a durable medium. However, the Firm now did so.*
12. *LAL cooperated "above and beyond reason" and would continue to do so, but had the right to ask questions to the Authority to ensure the Authority was doing the right thing. Mr Johnson (and therefore, LAL) wanted "as little involvement with the [Authority] as possible. I want to know when my licencing is, if I'm doing the right thing, what's changing in the industry and how do we apply that. If there's something wrong I've got to deal with it, if there isn't then fine."*
13. *When asked questions about LAL's ongoing ability to be regulated, Mr Johnson said that when previously asked by the Authority whether he wanted to be authorised he answered "yes... but under the right basis, not in an arena that is an unlevel playing field". When asked whether he thought a relationship with the Authority could be sustained, he replied "I do, I think 100%, but I think I would expect – I would be a liar if I said otherwise – I would expect to see a level playing field, which hasn't been apparent for some 12 years".*
14. The Authority remains concerned with the effort and resource required by it to ensure LAL's compliance with applicable rules, or to obtain information from LAL. Given the Authority's approach to supervision, the size of the Firm, and the number of clients, the Authority would not be able to commit the same level of resource to the Firm on an ongoing basis as it has done in considering the Application. The Authority notes LAL's assertion that it is committed to being regulated but, as explained at paragraph 5 of this annex, LAL appears to be unable to separate its concerns about the regulation of the debt management industry from the Application for permission. The Authority is not satisfied that LAL will be able to put its concerns to one side when dealing with the Authority's supervision staff in the future.
15. The Authority accepts that LAL ultimately complied with most if not all of the requests it made during the course of considering the Application. However, the Authority does not consider that LAL did so in a timely manner, and its compliance was at times obtained under protest. For example, while the Firm ultimately complied with the CONC Rule, it stated that it reserved the "*legal right to change [the MAS link] back to its original format*" if the Authority did not meet certain conditions.
16. In relation to the letter to be countersigned by LAL's bank, while the Authority accepts that a number of attempts were made by LAL to seek the countersigned letter from its bank, there were also lengthy periods of inactivity by LAL.
17. In relation to the annual DMP reviews, while the Firm may have been regularly reviewing customers' circumstances (the Authority was unable to ascertain whether it had), the Authority's concerns relate to LAL's responses to the Authority's requests for information, the nature of those responses, and the fact that the Authority ultimately had to visit the Firm to (among other things) properly review the information in the client files.
18. The Authority also notes that, in the course of making representations, LAL acknowledged that it had been warned by the Authority that the unprofessional and emotive nature of its correspondence fell short of the Authority's expectations, but continued to correspond in an inappropriate manner.

Fit and proper

19. *LAL is fit and proper as it gives suitable advice to customers, Mr Johnson (and therefore, LAL) has good morals, and has never sought to avoid complying with regulatory requirements. LAL offers an important service to consumers as it provides debt advice at all hours of the day and night – a service that is not provided by the non-charging sector.*
20. The Authority accepts that LAL's advice, and systems and controls, are broadly compliant with applicable Handbook rules, and notes Mr Johnson's commitment to LAL's customers. However, the Authority also notes that, during the course of making representations on behalf of the Firm, Mr Johnson conceded that *"it would be questionable based on my correspondence and certain dealings whether I am fit and proper to be regulated and supervised"*.
21. As set out above (in relation to paragraph 2C of Schedule 6 to the Act: effective supervision) the Authority considers that LAL is unable to separate its concerns about the regulation of the debt management industry from the Application for permission and, therefore, the Authority is not satisfied that LAL will be able to put its concerns to one side when dealing with the Authority's supervision staff in the future. Accordingly, the Authority cannot be satisfied that LAL is fit and proper and, in particular, cannot be satisfied that LAL will comply with requirements imposed on it, for example, Principle 11 of the Authority's Principles for Businesses.
22. When making representations to the Authority, LAL was unable to satisfy the Authority that it would change its attitude in the future. Instead, LAL indicated that it would not do so while it continued to believe that there was not a *"level playing field"* in the debt management industry, and stated that it was *"angered"* every time it opened an email.
23. In relation to LAL's claim that it offers a 24 hour service (in contrast to non-charging organisations in the debt management sector), the Authority notes that, in considering the Application, the Authority's focus is on whether it can ensure that LAL meets the threshold conditions, rather than whether LAL offers services that other firms do not, or otherwise comparing LAL with other firms in the debt management industry.

Adequate resources

24. *It is not entirely clear whether LAL will have sufficient resources on an ongoing basis, as it might not have a viable business given the Authority's approach to regulating debt management firms. However, on balance, LAL does have adequate resources, and Mr Johnson is committed to keeping the business going. During the assessment of the Application, at the request of the Authority, LAL increased its capital.*
25. The Authority has made no finding in relation to the financial resources of LAL. The Authority's concerns relate to LAL's non-financial resources and, in particular, its human resources. As such, this representation failed to address the Authority's concerns in relation to adequate resources. Given that Mr Johnson is LAL's sole human resource, and that he was responsible for dealing with the Authority during its assessment of the Application, and would be responsible for dealing with the Authority if permission were granted, the Authority cannot be satisfied that LAL's human resources are adequate to ensure that the Firm will comply with applicable regulatory requirements.
26. Further, the Authority notes that, during the course of its representations, LAL accepted that annual statements were only sent to clients after the Authority had explained that this was required under CONC. LAL was asked how it would ensure it kept up to date with

changes in regulation and applicable law, in particular, in relation to debt solutions. In response, LAL questioned how it was possible to keep up to date with changes to relevant law and regulations, and said that there should be a central resource for debt management firms or, alternatively, the Authority should update all relevant firms with any changes to applicable rules.