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FINAL NOTICE

Bouchers with Allansons Limited
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4 April 2018

ACTION

1. With effect from 1 April 2014, Bouchers with Allansons ("BWA") 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 regulated activities of:
 - i. Debt-counselling under article 39E of the RAO; and
 - ii. Debt adjusting under article 39D of the RAO.
2. By an application dated 26 March 2015, BWA applied under section 55A of the Act for permission under Part 4A of the Act to carry on those regulated activities.
3. For the reasons listed below, the Authority has refused has decided to refused the Application

SUMMARY OF REASONS

4. For the reasons set out herein, the Authority cannot ensure that BWA will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act. The Authority is not satisfied that BWA: is capable of being effectively supervised, so as to meet the Threshold Condition set out in

paragraph 2C of Schedule 6 to the Act (Effective supervision); has appropriate non-financial resources to be able to meet the Threshold Condition set out in paragraph 2D of Schedule 6 to the Act (Appropriate resources); or is fit and proper so as to be able to meet the Threshold Condition set out in paragraph 2E of Schedule 6 to the Act (Suitability).

5. The Authority does not consider that BWA is ready, willing and organised to comply with the requirements and standards of the regulatory regime: BWA has not demonstrated that it both understands the applicable regulatory requirements and is able to comply with them of its own accord.
6. The Authority has identified a number of failures by BWA to meet regulatory requirements, namely that BWA:
 - i. does not keep orderly records that are sufficient to enable the Authority to ascertain whether the firm is complying with its obligations under CONC when giving debt advice, contrary to SYSC 9.1.1R. This means that the Authority has not been able to satisfy itself as to the quality of the firm's debt advice.
 - ii. has been unable to resolve the Authority's concerns about the quality of the advice given by BWA on the basis of the records that BWA maintains. These concerns include that BWA may not have adequately considered the individual circumstances of customers prior to advising them to enter into a debt management plan ("DMP") (including a review of the enforceability of any consumer credit agreements to which the customer is a party); nor explained adequately why the recommended solution was appropriate (including the nature of the DMP and the review of agreements, and the likely cost to the customer);
 - iii. does not have appropriate systems and controls in place to ensure effective quality assurance in respect of its advice processes;
 - iv. does not have appropriate systems and controls in place to reconcile client money in accordance with CASS 11;
 - v. has failed to provide customers with statements as required by CONC 8.8.1R(8)(a) to (e);
 - vi. does not have in place adequate processes for reviewing and terminating (where necessary) DMPs;
 - vii. has failed to ensure that its financial promotions and communications with customers are clear, fair and not misleading (including as to the professional status of BWA, the services offered by it and its charges for those services); and
 - viii. does not have appropriate human resources at a senior management level to identify the regulatory requirements that BWA must meet and ensure that BWA complies with such requirements.
7. In the light of these failures, and in circumstances where the firm failed to identify itself the deficiencies set out in paragraph 8, the Authority does not have confidence that BWA is ready, willing and organised to comply with the applicable regulatory requirements. In particular, the firm's failure to comply with SYSC 9.1.1R has prevented the Authority from assessing the quality of BWA's debt advice as it sought to do as part of its assessment of the

Application. This raises concerns as to the adequacy of BWA's internal systems of control and whether it can be supervised effectively by the Authority.

8. The concerns set out above are heightened because BWA holds an interim permission and has therefore been required to comply with the Authority's regulatory requirements and standards since 1 April 2014. It has also had a substantial period in which to address the concerns raised by the Authority during its consideration of the Application, but has in large part failed to do so.
9. Accordingly, the Authority cannot ensure that, if the Application were granted, BWA would satisfy, and continue to satisfy, the threshold conditions in paragraphs 2C (Effective supervision), 2D (Appropriate resources) and 2E (Suitability) of Schedule 6 to the Act.
10. In light of the above, the Authority has issued this Final Notice.

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 2 above;

"the Authority" means the Financial Conduct Authority;

"BWA" means Bouchers with Allansons Limited;

"CONC" means the Consumer Credit sourcebook in the Authority's Handbook;

"DMP" means debt management plan;

"I&E" means income and expenditure;

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

"QA" means quality assurance;

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

"SRA" means Solicitors Regulation Authority;

"SYSC" means the Senior Management Arrangements, Systems and Controls sourcebook in the Authority's Handbook; and

FACTS AND MATTERS

Background to the firm

12. BWA is a debt management firm that was incorporated with the name Choice Collections Limited on 15 March 2010 and has applied for Part 4A permission to carry on the regulated activities of debt adjusting and debt counselling. BWA is wholly owned by Allansons LLP, a firm of solicitors, which acquired it in 2014. Mr Roger Allanson, a partner in Allansons LLP, is the proposed holder of controlled functions in BWA.

13. Between 15 March 2010 and 31 March 2014, BWA held a licence with the OFT to act as a debt management firm.
14. On 1 April 2014, BWA became regulated by the Authority under interim permission reference 635635 and applied for full authorisation under Part 4A of the Act on 26 March 2015.

Overview of BWA's business

15. BWA's business model entails sourcing indebted customers who are seeking debt advice. BWA offers advice on a range of debt solutions, although the only debt solution offered in-house by BWA is a DMP.
16. In order to set up and administer a DMP, BWA 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). BWA's debt management services therefore fall under the Authority's consumer credit regime and the firm must be authorised by the Authority to carry out the activities set out in its business plan.
17. BWA described its business model in the following terms. If the customer agrees to enter into a DMP, the customer immediately begins making payments into the DMP. For the initial period of the DMP BWA only makes token payments to creditors, while holding the remaining money (after it has taken its fee) for the customer in its client account. During this initial period BWA requests copies of the customer's credit agreements, assesses them for compliance with the Consumer Credit Act, and, in cases of perceived non-compliance, challenges the enforceability of the agreement with a view to achieving a total or partial write-off of the debt. Where the debt is enforceable, BWA proceeds to negotiate with the customer's creditors to set up pro-rata repayment plans in respect of each debt, following which it will receive and administer the customer's payments to creditors.
18. BWA's principal source of income is from the monthly fees it charges customers who have entered into DMPs.
19. BWA's terms and conditions provided on 8 March 2017 to the Authority set out the firm's charges as follows:
 - i. The total fee payable for the DMP would be a maximum of 33% of the total debt level at the start of the plan;
 - ii. 49% of the customer's monthly payment would be retained in fees for the first 20 months; and
 - iii. 33% of the customer's monthly payment would be retained in fees from month 21 onwards until the total fee had been paid.
20. There was also a term headed "*What other charges there may be and why*" in the contract that provided a range of hourly rates that might apply:
 - i. £230/hour for the services of solicitors with over 8 years' experience;
 - ii. £213/hour for the services of solicitors & legal executives with over 4 years' experience;

- iii. £189/hour for the services of other solicitors or equivalent fee earners; and
 - iv. £158/hour for the services of trainee solicitors or equivalent; and
 - v. £105/hour - Paralegals or clerks.
21. The firm did not state in what specific circumstances BWA would deviate from its regular fee structure and charge an hourly rate although the contract did give as one example: *"your creditors decided to litigate and we need to defend you or otherwise deal with the creditor in a different way"*.
22. Since being made aware of the Authority's concerns about its contract, BWA has amended its terms to remove reference to the rates referred to in paragraph 22. It has added a term that *"A fee of 15% will be added to your overall balance for any debts or balances removed in full, reduced or partially settled."* The firm does not explain what sum the 15% relates to or how it relates to the overall maximum fee of 33% referred to at paragraph 19(a) above.
23. According to information provided by BWA on 8 June 2017 BWA had 137 debt management customers as at that date.

BWA's Record-Keeping

24. In accordance with SYSC 9.1.1R, a firm must arrange for 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).
25. Such orderly records are essential to enable a firm to assess the quality of its advice (see below). They are also essential for a firm to be able to demonstrate to the Authority that it is complying with requirements under the regulatory regime, and for the Authority to ensure that good consumer outcomes have been, and are being, achieved, including that appropriate advice has been given to customers.
26. In order to comply with SYSC 9.1.1R, the Authority therefore considers that BWA should keep orderly records that are sufficient to enable the Authority to ascertain that the firm has complied with its obligations under CONC 8 (i.e. in relation to the giving of debt advice). SYSC 9.1.1R is not prescriptive as to the precise form in which these records must be kept, provided that the overarching requirements of that rule are met.
27. The Authority has reviewed all customer files where BWA provided new/initial advice (to five customers) and review advice (to 14 customers) (as required by CONC 8.8.1(2) and (3)) during the period 24 February 2017 to 11 April 2017. In each case, BWA's record of the assessment of the customer's circumstances and the advice given during the meeting is limited to one or two sentences at most. Given this brevity, the Authority was unable to assess from reviewing the files whether in each case BWA complied with a number of relevant regulatory requirements in CONC 8 in relation to each (or indeed any) of the 19 customers.
28. The Authority is concerned by this inability to assess BWA's compliance with CONC 8. In the absence of adequate records, the Authority could not be

satisfied that the advice provided to BWA's customers was in compliance with, for example, CONC 8.3.2R(1) to (3), CONC 8.3.4R, CONC 8.3.7R(2) and (5), and CONC 8.5.4R(1) and (2).

29. By way of example, the relevant notes entries for Customer A (customer number DT000297) states:

- i. 28 February 2017: "*Client has emailed in his income and expenditure details*". The Authority notes that there is not a copy of this email on Customer A's file.
- ii. 22 May 2017: "*Client called in and said he was made redundant on Friday and wants to reduce his monthly payment to £50, spoke to [staff member A] she said its fine and that [staff member B] will call him when your back to go over his I&E again? Emailed [staff member B]*".
- iii. 15 June 2017: "*outbound call - spoke with client and reviewed I&E and reset payment. client was made redundant but has interviews. Reduced payment until he is back in full time work but will get help from family if needed to pay bills etc.,. Discussed other debt options but client is happy with the service we are providing. We spoke regarding ARC debt and unenforceability, potential next steps and client instructed us to request debt write off. then review case after response from creditor.*"

30. The Authority considers that the records of how the customer's I&E was taken are not adequate to allow a proper assessment of whether BWA is complying with CONC 8.3.7R(2)(a) which requires a reasonable and reliable assessment of the customer's financial position, his circumstances and other relevant factors before giving any advice or recommendation on a particular course of action in relation to the customer's debts.

31. According to management information provided by BWA, a 'review' was carried out with Customer A on 2 March 2017. The Authority understands this 'review' to be the initial advice provided to Customer A, as the date of first contact with Customer A was 9 February 2017 and the first payment into the DMP was on 2 March 2017. However, there are no records/notes in the client file of the initial advice and the file contains only one I&E document (which the Authority notes is dated 15 June 2017 and shows a disposable income of £50).

32. Given the brevity of the notes, the Authority cannot identify: what specific information the firm gathered as part of the fact-find; whether the firm carried out a reasonable and reliable assessment of the customer's circumstances; the range of debt solutions discussed with the customer (and indeed what was discussed about each solution); whether the customer has been provided with appropriate advice; and whether or not the customer is on a suitable debt solution.

33. The Authority raised with BWA the deficiencies in its record-keeping by correspondence dated 22 September 2017. In response, BWA acknowledged that in the case of Customer A's file "*More detailed notes should have been added in order to provide a better overview of the client's situation from the outset. The notes on the file review carried out on the 15th June provided more detail but again could have gone further into the discussion and the client response to the debt options discussed, this would also have explained why employment status was not amending (sic) and remained as employed*". The Authority is of the view that the other 18 files reviewed by it evidence poor

record-keeping similar to that in Customer A's file, which is acknowledged by BWA.

34. In light of the above, the Authority considers that BWA does not keep records in a manner compliant with SYSC 9.1.1R. As a result, the Authority cannot identify whether BWA's debt advice complies with CONC 8. This is of particular concern as the CONC provisions are designed to ensure that customers:
- i. are provided with advice that is specific to their financial and personal circumstances (and highlights the risks they face), and is not generic advice;
 - ii. are given information about the available options that is sufficient for them to make an informed choice as to how they wish to proceed; and
 - iii. understand, and are kept apprised of, the steps being taken by the firm on their behalf.
35. The Authority therefore considers that the provisions of CONC 8 referred to in paragraph 30 above are significant ones; this is especially so when one considers the difficult circumstances faced by consumers who approach debt management firms and the reliance they place on the expertise and professionalism of such firms.

Concerns about adequacy of advice

36. Certain general features of BWA's DMP book give rise to concerns regarding the quality of BWA's advice. Having analysed the management information provided by BWA on 8 June 2017, the Authority is concerned about the appropriateness of some of BWA's plans.
37. A breakdown of the different financial solutions that BWA referred customers to between June 2016 and June 2017 shows that of the 143 customers BWA advised:
- i. 116 were recommended "Litigation", which the Authority understands to be the DMP that BWA provides, which includes a check, where appropriate, on whether consumer credit agreements are enforceable.
 - ii. Ten were recommended full and final settlement.
 - iii. Three were recommended individual voluntary arrangements.
 - iv. Two were recommended to seek help from the free sector.
 - v. No customers were recommended a debt relief order or bankruptcy.
38. Having further analysed the management information provided by BWA, the Authority has concerns about the quality of BWA's advice, which it is unable to resolve in light of the record-keeping concerns set out above. Of the 137 current DMP customers BWA had as at June 2017:
- i. There were 23 single creditor plans (17% of BWA's client book) and 24 plans with only two creditors (18% of BWA's client book). The low number of creditors meant the customers may have been able to self-manage their debts. If the customer self-managed the one or two debts they had, they would have been debt-free more quickly and at a lower overall cost as they

would not have had to pay BWA's fees. The Authority notes, for example, that Customer B (DT000272) owed £11,589.95 to one creditor and BWA was holding £5,004 (i.e. 43% of the debt owed) of the customer's money. It is possible that the money held by BWA could have been used in a full and final settlement of this customer's debt. In light of BWA's inadequate record-keeping, it is not clear to the Authority whether the firm discussed with its single and/or dual creditor customers the availability of other debt solutions, other services or self-managing the debt, as opposed to a long-term DMP.

- ii. 59 plans (43% of BWA's book) still have more than 10 years until the customers would become debt-free. At the time the management information was provided, 17 of these 59 plans were less than three months old. These protracted plans concern the Authority as there may be a more suitable solution for these customers, such as an individual voluntary arrangement (which typically lasts a maximum of 6 years) or a debt relief order (which typically lasts 12 months). By way of example, the Authority notes that Customer C (DT000366) owed over £31,000, had a monthly disposable income of £50 and, according to the management information provided by BWA, was not a homeowner. The outstanding length of Customer C's plan was approximately 60 years. Another example is Customer D (DT000032), who owed over £44,000, had a monthly disposable income of £30 and was not a homeowner. The outstanding length of Customer D's plan was over 135 years, and so on the basis of this plan this customer would never be debt-free. It is unclear to the Authority how plans of over 60 and 135 years respectively would be in the best interests of these customers. BWA's records are insufficient for the Authority to ascertain what advice was given by BWA to these customers on this issue or what, if any, consideration was given to alternative options in the management of the customers' debt problems.

39. The Authority is concerned that the breakdown provided by BWA indicates that its advice heavily favours the products it provides and, accordingly, that it may not be generating outcomes that are in its customers' interests.

40. The management information also shows that, of the 28 plans that had ended where the customer had paid fees to the firm, 25 of these plans ended with the customer still in debt and on average having 93% of their original debt still outstanding. This raises concerns as to the suitability and effectiveness of those plans. The Authority is further concerned that as a result of the firm's fee structure, 16 of these customers were in a worse position financially than when they entered into the plans (as they had paid more in fees to the firm than the amount of debt cleared during the plan). By way of example, the debt of Customer E (DT000167) was reduced by only £8 while the customer's plan was ongoing despite paying £588 in fees to the firm. BWA's records are insufficient for the Authority to ascertain how these factors were taken into account in advising these customers and what advice was given by BWA to them on this issue.

BWA's QA process

41. The Authority has concerns as to the adequacy of BWA's systems and controls in relation to its QA process.

42. On 26 November 2016, 8 December 2016 and 14 February 2017, the Authority asked BWA to provide its QA policy and procedures. On 8 March 2017 BWA provided a document "*Bouchers QA process and framework*". Having reviewed this document, the Authority's view is that this is an employee appraisal

document and not a QA policy; for example, the document has sections for "Performance goals and objectives" and "Skills and knowledge development" of an individual employee. The document does not explain what BWA's policy is for QA of its customer files.

43. On 8 March 2017, BWA also provided a document entitled "Client File Review Form v1". This document consists of a number of binary 'yes'/'no' questions including a comments section at the end, and lacks any detail to guide the user as to how to evaluate the advice given. The Authority considers that this document is not adequate for BWA to determine whether the advice provided to the customer has complied with all the relevant regulatory provisions, and record the outcome of this assessment.
44. To date, the Authority considers that it has not received BWA's QA policy and/or procedure. The Authority further considers that the QA review form and the amount of QA being conducted is inadequate. During a telephone call on 14 March 2017, Mr Allanson of BWA informed the Authority that BWA did not have a documented QA process. The Authority accordingly considers that BWA does not have an appropriate QA system in place, as there is no documentation which sets out the detail of what is involved in the QA process.
45. On 9 May 2017, BWA provided five completed QA file review forms and a log of QA that had been completed. The log showed that the last QA was conducted on 19 September 2016, despite the fact that according to management information provided by the firm on 8 June 2017 BWA had taken on 76 new DMPs and reviewed 36 existing DMPs since then.
46. The Authority considers that the QA that is being conducted by BWA is not sufficient in terms of quality or quantity because:
 - i. no QA checks were conducted between 19 September 2016 and at least 9 May 2017, a period of almost eight months;
 - ii. the "Client File Review Form v1" & QA examples provided make no reference to key areas the Authority would expect to be checked as part of the QA process, such as the quality of the assessment of the customer's circumstances and the quality of the advice given; and
 - iii. where the QA check has identified an issue, BWA has not recorded what (if any) remedial action was taken to rectify the issue.
47. Further, the Authority considers that any QA process implemented by BWA would be ineffective, given the lack of information recorded in its files, as the firm's record-keeping is not adequate to enable any QA process to ascertain whether the advice given complied with the relevant provisions in CONC. In addition, in the light of its concerns as to senior management (as set out below), the Authority is not satisfied BWA has any staff with the appropriate skills to review the advice given by its debt advisers, and BWA has declined to engage compliance consultants to assist it prior to knowing the outcome of the Application.

Reconciliation of client money

48. As a CASS debt management firm, BWA is required to comply with the obligations in CASS 11.11. The purpose of the client money rules in CASS is to ensure that client money is adequately protected.

49. On 23 November 2016, the Authority requested BWA to provide its most recent reconciliation of its client account. On 6 January 2017 BWA provided a spreadsheet entitled "New Reconciliation". This document was a ledger of the customer payment history and not evidence of BWA reconciling its client account.
50. On 24 April 2017, the Authority again asked BWA to provide its most recent reconciliation of its client account. BWA responded on 9 May 2017 referring back to the previously provided document. BWA also stated "*Please also note that a fuller reconciliation is in progress. Unhappily as we are, as you are aware, using a system supplied by [Supplier X] we are dependent upon them for the extract of some information which will enable this task to be completed. As soon as it is I will forward it to be added to the submission in support of the application.*" To date the Authority has not received the reconciliation. The Authority therefore infers that BWA is not reconciling its client account in accordance with CASS 11.11.

Non-compliance with the rules in CONC 8.8.1R(8)

51. The rules in CONC 8.8.1R(8)(a) to (e) require BWA to provide a statement to customers at the start of the DMP, and at least annually or at the customer's reasonable request, setting out:
- i. a balance showing the amount owed by the customer, including any interest charges at the beginning of the statement period;
 - ii. fees, charges and other costs applied over the period of the statement, including any upfront fee or deposit, such as an initial arrangement fee, an arrangement fee, any periodic or management or administrative fee, any cancellation fee and any other costs incurred under the contract;
 - iii. a narrative explaining the type of fee applied, how the fee is calculated and to what it applies;
 - iv. the duration or estimated duration of the contract; and
 - v. the total cost of the firm's service over the duration or estimated duration of the contract.
52. These rules are designed to ensure that customers are presented with key information about their plan in one document, to help them determine whether they wish to take out the product and to help them determine whether the product continues to remain suitable on an ongoing basis.
53. The Authority's review of the 19 client files where advice was given in the period 24 February to 11 April 2017 (i.e. 14 new client files and 5 review client files), indicates that BWA failed to provide any of the customers with documentation that meets the requirements of CONC 8.8.1R(8)(a) to (e).

Review and termination policy

54. BWA was sent the "Dear CEO" letter that was sent out to all debt management firms and published on the Authority's website on 8 December 2016. The "Dear CEO" letter highlighted BWA's obligations when reviewing customers' DMPs.
55. The "Dear CEO" letter is clear that the more time that has elapsed since a customer last engaged in a review the less reliable the information BWA holds

about the customer is likely to be. This will impact on BWA's ability to satisfy various rules within CONC 8 (for example CONC 8.3.2R(1)(c) and CONC 8.5.1R(1)) and to ensure that the debt solution remains sustainable and appropriate for the customer over time. The impact of this is that there may come a point when BWA's lack of confidence about the accuracy of the information it holds means it becomes sensible for it to consider bringing to an end its involvement in the DMP.

56. BWA provided its customer journey document and its termination policy on 8 March 2017. Despite the "Dear CEO" letter being sent three months prior to BWA's providing these documents to the Authority, they are not adequate as they fail to explain what steps BWA will take if a customer fails to engage in a review of their DMP. According to BWA's processes the only circumstances in which a DMP would be terminated is as a result of three missed payments. As a result the Authority infers that BWA will continue a DMP indefinitely without the customer engaging in reviews, as long as they continue to make payments into the plan.
57. This process is not adequate to ensure that BWA continues to satisfy various rules within CONC 8, in the event that a customer fails to engage in having their DMP reviewed. This further means that BWA risks customer detriment by retaining its customers on unsuitable plans for extended periods of time.

Financial promotions and communications with customers

58. CONC 3.3.1R requires BWA to ensure that its communications with customers and its financial promotions are clear, fair and not misleading.

The status of the firm

59. In an information request sent on 23 November 2016, and re-sent on 8 December 2016, the Authority queried the SRA registration number 485689 that BWA had included in previous correspondence as this number returned no results on a search of the SRA register. BWA's response on 5 January 2017 was that its SRA registration was in fact 69771. The SRA registration number 69771 also returned no results on the SRA register. When this was questioned BWA stated on 8 March 2017 that the SRA was at fault in closing down the registration number in error and that they had requested it be reinstated.
60. On 18 April 2017 BWA provided a series of emails between Mr Allanson of BWA and the SRA, in which the SRA stated that:
- i. the only SRA-registered firm Mr Allanson was currently employed by was Allansons LLP, SRA ID 77580;
 - ii. SRA ID 69971 related to the sole practice of Paul Boucher, and this number had been obsolete since 2008;
 - iii. it had previously told Mr Patel of BWA that if BWA was a separate entity, it would need to apply for authorisation; and
 - iv. there was no record of BWA ever applying for SRA authorisation, and it had not been given authorisation.
61. It is of significant concern to the Authority that, despite the Authority first bringing the issue of BWA not holding a valid SRA registration to the attention of BWA on 23 November 2016, BWA has continued to mislead customers by

using an invalid SRA registration number and promoting itself as an SRA-registered law firm.

- i. Letters in the client files dated as late as 16 June 2017 are headed as "Bouchers Solicitors" and state in the footer "'Bouchers' is a trading style of Bouchers with Allansons Limited (Regd No. 07189690) regulated by the Solicitors Regulation Authority (no. 485689)...".
 - ii. The footer of the webpage <https://allansons.com/debt-management-services/> stated until shortly before the issue of this Notice "'Allansons,' 'Bouchers' and 'Claims4all' are trading styles of Allansons LLP ... and the wholly owned subsidiary Bouchers with Allansons Limited (regd. No 07189690) regulated by SRA no 69771". (It now refers to the correct interim permission reference number of BWA.) The webpage also states "Our status as Solicitors gives us a unique understanding of the legal issues surrounding debt management, enabling us to utilise effective strategies that simply aren't available to traditional companies".
 - iii. The letter that is sent to customers with the contract states "We are an experienced firm of solicitors...".
62. The Authority considers that BWA's financial promotions and communications with customers do not comply with CONC 3.3.1R as they are likely to mislead customers into thinking BWA is an SRA-registered law firm when it is not. Furthermore, it has been using its claim to be a firm of solicitors to promote the debt management services it provides as being superior to that of other debt management firms. For example, in the contract cover letter it states "More and more people are now facing financial difficulties so you are not alone and whilst there are other sources of debt advice and services, some of which are free of charge, many people like yourself are turning to ourselves to support them because of the significant added value we can bring. What we are offering is unprecedented for a firm of lawyers". This is misleading to consumers as BWA is not, and never has been, a SRA-registered firm.

63. The webpage <https://allansons.com/debt-management-services/> advertises debt management services and has BWA's and Allansons' names and Companies House registrations in its footer. BWA told the Authority that this webpage belonged to Allansons LLP and not to BWA. However, the Authority is of the view that this webpage belongs to BWA as Allansons does not have permission to engage in debt management activities.

Description of services and explanation of contract terms

64. By email on 8 March 2017, BWA provided the Authority with a copy of its contract (including terms and conditions) as at that date.

65. Under the heading "Debt Management/Resolutions of Service (credit Resolve) (sic)", the contract stated the services provided by BWA were:

- *negotiating with your creditors to deal with the debts*
- *initial advice on legal matters (at least to decide whether our other services, listed below, are inclusive or outside of this Service Agreement)*
- *PPI reclaim – we will audit your accounts and where applicable will commence claims for refunds for any mis-sold Payment Protection Insurance*

- *Agreement Audit – we will request and check your agreements for compliance with the Consumer Credit Act & advise on any issues arising & their consequences*
- *Bank Charge reclaim – we will request a refund of any unfair charges on any of your accounts*

66. BWA stated in the contract that its fee was a maximum of 33% of a customer's total indebtedness. This was stated to be a departure from BWA's normal charging structure.

67. Under the heading "*What other charges there may be and why*", BWA stated:

There may be occasions when we need to depart from the monthly payments where, for example, your creditors decided to litigate and we need to defend you or otherwise deal with the creditor in a different way. In these circumstances, our fees would be based on an hourly rate to provide our legal expertise.

These are as follows:

- *£230 - Solicitors with over 8 years' experience*
- *£213 - Solicitors & legal executives with over 4 years' experience*
- *£189 - Other Solicitors or equivalent*
- *£158 - Trainee Solicitors or equivalent*
- *£105 - Paralegals or clerks*

Please note:

- *Any outbound letters, calls, emails or texts will be charged at 1/10th the hourly rates above*
- *Any inbound letters, calls, emails or texts will be charged at 1/20th the hourly rates above*
- *Our prices are revised each November and we will tell you of the revised prices at that time*
- *We will advise how much we think a case departing from the monthly fee structure will cost at the appropriate time*

68. BWA appeared to have two charging structures: one that related to the debt management services and another that related to issues that fall outside of the debt management services. It was not clear from the wording of the contract what services would fall within the 'normal' debt management contract and what would be excluded. For example, the list of 'debt management services' covers 'initial legal advice' and the additional charges also covered litigation and 'dealing with a creditor in a different way'.

69. Under the heading "*Your right to cancel*", the contract provides:

"... If You provide Us with written notice to cancel outside of the "cooling-off" period, this agreement will then be at an end, however, We will be entitled to retain in full any fees which You have paid to Us and which have been received in Cleared funds. Additionally, please note that as this agreement is a departure from our normal payment structure, should you decide to cancel prior to the end of the agreement, we reserve the right to charge our normal hourly rates on a time spent basis as detailed above in "What other charges there may be and why"

70. A spreadsheet entitled "FCA Client Fees and Payments" provided by BWA on 8 March 2017 demonstrates that BWA had been charging customers for the service of checking credit agreements separately to the fees for the plan, despite this being part of the service as described in the contract. BWA informed the Authority that the checking of credit agreements was done by a third party and this is why there was an extra cost. This was not set out in the contract, and the Authority has not been provided with any evidence that it was explained to the customer, orally or in any other materials.

Other issues mentioned in the contract

71. The contract lists PPI reclaim as a service provided. However, BWA cannot engage in claims management activities as it is not a SRA-registered law firm and/or does not hold a valid Ministry of Justice authorisation.
72. The contract provided on 8 March 2017 stated that complaints could be referred to the SRA or the Legal Ombudsman. However, BWA is not a SRA-registered law firm and so the SRA and Legal Ombudsman have no jurisdiction over BWA's debt management activities.

The revised contract

73. On 15 November 2017, BWA provided the Authority with a revised version of its customer contract. This has rectified the issue set out at paragraph 70 above, and has removed the "other charges" referred to at paragraph 67 above. BWA subsequently explained that it had never intended to enforce these charges against customers, unless litigation had been undertaken for the customer. The Authority has seen no evidence that this was ever explained to customers.
74. In the new version of the contract, BWA has added a term that "A fee of 15% will be added to your overall balance for any debts or balances removed in full, reduced or partially settled." The contract does not explain what sum the 15% relates to or how it relates to the overall maximum fee of 33% referred to at paragraph 19(a) above. BWA has not provided any other materials to the Authority in which it explains to the customer how this term is intended to operate, or evidence that it does so orally.
75. In the new version of the contract, BWA has rectified the issue mentioned at paragraph 72 in relation to complaints.
76. The requirement for firms to ensure that clients are provided with communications that are clear, fair and not misleading is important. Accordingly, the absence of any customer documents clearly explaining the matters identified above, or any record of any oral discussion which did so, is of concern to the Authority. The lack of any clear explanation of how the charges to be made under the contract and the services to which they would relate is of particular concern to the Authority.

77. Further, to the extent that the issues identified have been rectified, the Authority remains concerned that BWA did not take steps to ensure that its customers were given a clear explanation of these matters prior to the intervention by the Authority.

Non-compliance with the rules in CONC 3.9.3R

78. CONC 3.9.3R sets out the requirements for financial promotions and communications with consumers in regards to debt management. As a financial promotion the webpage is required to comply with the rules in CONC 3.9.3R. BWA's website is public-facing, and the firm can reasonably expect that it is the first opportunity it has to promote its services to potential fee-paying customers and some customers who view the webpage will not have had previous communication with BWA. The Glossary in the Authority's Handbook defines a customer for debt adjusting and debt counselling as "*an individual who uses, may use or has used the services of a firm in carrying on that regulated activity*".

79. The webpage fails to comply with specific rules in CONC 3.9.3R as follows:

- i. CONC 3.9.3R(3) because the website fails to include the level of fees charged for BWA's services, how they are calculated and what service they cover;
- ii. CONC 3.9.3R(5) because the website fails to include a statement that a customer may be eligible under the Financial Ombudsman Service and referring by a link or otherwise to the information the firm is required to publish under DISP 1.2.1R(1);
- iii. CONC 3.9.3R(6) because the website fails to include a statement that the firm's service is profit-seeking;
- iv. CONC 3.9.3R(7) because the website fails to include a statement that the firm's service is offered in return for payment from the customer;
- v. CONC 3.9.3R(8) because the website fails to include a reference to impartial information and to sources of assistance from not-for-profit debt advice bodies;
- vi. CONC 3.9.3R(9) because the website fails to include the most important actual or potential advantages, disadvantages and risk of each debt solution option;
- vii. CONC 3.9.3R(10) because the website fails to include a statement setting out the likely adverse effect of entering into the debt solution in question on the customer's credit rating;
- viii. CONC 3.9.3R(11) because the website fails to include a statement setting out that evidence of entering into an individual voluntary arrangement, a debt relief order or a protected trust deed will be entered on a public register;
- ix. CONC 3.9.3R(13) because as entering into a DMP with BWA will lead to a period when payments to a customer's lenders or owners (in whole or in part) are not made or are retained by the firm the website fails to include a warning of the likelihood of falling into arrears or increasing arrears and an explanation of when distributions would be made to lenders or owners;

- x. CONC 3.9.3R(14)(a) to (e) inclusive because the website fails to include a statement of the risks of entering into an individual voluntary arrangement or a protected trust deed, as the case may be, including of the following risks:
 - i. if the arrangement or deed fails, the risk of bankruptcy;
 - ii. homeowners may need to release equity from the value of their homes to pay off debts, and that a remortgage may attract higher interest rates or, if no remortgage is available, an individual voluntary arrangement may be extended for 12 months;
 - iii. there are restrictions on the expenditure of a person who enters into an individual voluntary arrangement or a protected trust deed;
 - iv. the customer's lenders or owners may not approve the individual voluntary arrangement or the protected trust deed;
 - v. only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period and unsecured debts not included remain outstanding; and
- xi. CONC 3.9.3R(15) because the website fails to include a statement that where another option for dealing with a customer's debts is available, that another option is available and may be suitable for the customer.

80. This information is important to ensure the communication or financial promotion contains sufficient information to help consumers to make an informed choice when deciding which debt solution they require.

81. Further, the fact that there was no mention in the contract or other materials provided to the customer that the consumer credit agreement checking service would be provided by a third party was a breach of CONC 3.9.3R(4).

Other issues with the website

82. Furthermore the website fails to comply with the fair, clear and misleading rule at CONC 3.3.1R. The website states "*A debt settlement plan is one of the most efficient ways to get your finances in order and tackle unsustainable debts head-on. Our unique debt settlement plan involves challenging your creditors to prove what they say you owe them, in addition to reclaiming money from mis-sold financial products and resolving debts using a full and final settlement plan.*" The website does not warn the customer that a lender is not obliged to accept less in settlement than it is entitled to. In reaching the conclusion that the website fails to comply with CONC 3.3.1R by omitting this warning, the Authority has had regard to the guidance at CONC 3.3.10G(8).

83. The website also fails to include a link to the Money Advice Service's website, as required by CONC 8.2.4R.

Adequacy of senior management

84. In determining whether BWA has appropriate non-financial resources and is a fit and proper person, the Authority has considered whether those who manage BWA's affairs have the adequate skills and experience.
85. The concerns identified in this Notice had not been identified and/or addressed by BWA prior to the involvement of the Authority. The response of BWA's senior management to the Authority's concerns has not been sufficient to demonstrate that BWA is able to comply with its regulatory obligations. The Authority is not satisfied that the firm's senior management would, if BWA were granted Part 4 permission, be able to identify relevant requirements applicable to BWA and ensure that BWA's affairs were conducted in compliance with the regulatory regime.
86. The Authority's concerns about this failure on the part of BWA are heightened by the fact that:
- i. BWA holds an interim permission and has therefore been required to comply with the Authority's regulatory requirements and standards since 1 April 2014;
 - ii. BWA has had a substantial period in which to address the concerns raised by the Authority during its consideration of the Application, but has in large part failed to do so; and
 - iii. BWA's senior management has expressed an unwillingness to engage compliance assistance during the Application process, and stated an intention only to do so if the Application is successful.

IMPACT ON THE THRESHOLD CONDITIONS

87. The regulatory provisions relevant to this Notice are referred to in Annex A.
88. During the assessment of the Application, the Authority identified a number of failures by BWA to meet regulatory requirements. As set out more fully above, BWA:
- i. does not keep orderly records that are sufficient to enable the Authority to ascertain whether the firm is complying with its obligations under CONC when giving debt advice, contrary to SYSC 9.1.1R. This means that the Authority has not been able to satisfy itself as to the quality of the firm's debt advice, despite having concerns about the quality of the advice given on the basis of the records that do exist;
 - ii. has been unable to resolve the Authority's concerns about the quality of the advice given by BWA on the basis of the records that BWA maintains. These concerns include that BWA may not have adequately considered the individual circumstances of customers prior to advising them to enter into a DMP (including a review of the enforceability of any consumer credit agreements to which the customer is a party); nor explained adequately why the recommended solution was appropriate (including the nature of the DMP and the review of agreements, and the likely cost to the customer);
 - iii. does not have appropriate systems and controls in place to ensure effective quality assurance in respect of its advice processes;

- iv. does not have appropriate systems and controls in place to reconcile client money in accordance with CASS 11;
- v. has failed to provide customers with statements as required by CONC 8.8.1R(8)(a) to (e);
- vi. does not have in place adequate processes for reviewing and terminating (where necessary) DMPs;
- vii. has failed to ensure that its financial promotions and communications with customers are clear, fair and not misleading (including as to the professional status of BWS, the services offered by it and its charges for those services); and
- viii. does not have appropriate human resources at a senior management level to identify the regulatory requirements that BWA must meet and ensure that BWA complies with such requirements.

89. In light of these failures and for the reasons set out below, the Authority cannot ensure that, if the Application were granted BWA will satisfy, and will continue to satisfy the threshold conditions in paragraph 2C (Effective supervision), paragraph 2D (Appropriate resources) and paragraph 2E (Suitability) of Schedule 6 to the Act.

The threshold condition in paragraph 2C (Effective supervision)

90. The Authority considers that it cannot ensure that BWA satisfies, and will continue to satisfy, the effective supervision threshold condition in light of the concerns identified above in relation to its failure to keep adequate records in compliance with SYSC 9.1.1R.

The threshold condition in paragraphs 2D (Appropriate resources) and 2E (Suitability)

91. The Authority does not consider that BWA is ready, willing and organised to comply with the requirements and standards of the regulatory regime: BWA has not demonstrated that it understands the applicable regulatory requirements and is willing and able to comply with them of its own accord.

92. The Authority considers that it cannot ensure that BWA satisfies, and will continue to satisfy, the appropriate resources and suitability threshold conditions in light of the concerns identified above in relation to:

- i. its failure to keep adequate records in compliance with SYSC 9.1.1R;
- ii. its lack of systems and controls to carry out QA in relation to the advice given by it, and compliance with CASS 11 in relation to client money;
- iii. its failure to provide customers with statements as required by CONC 8.8.1R(8)(a) to (e);
- iv. its lack of adequate processes for reviewing and terminating (where necessary) DMPs;
- v. its use of misleading financial promotions and communications with customers; and

vi. its lack of appropriate human resources at a senior management level.

93. The Authority is particularly concerned by BWA's failure to demonstrate that it complies with SYSC 9.1.1R. As part of its assessment of the Application, the Authority sought to assess the quality of the firm's debt advice by way of a review of 19 files against the requirements in CONC 8. However, the firm's deficiencies in its record-keeping have prevented the Authority from satisfying itself that BWA's advice is of a satisfactory standard.
94. The Authority has raised these concerns with BWA, but BWA's responses further evidence that it is not ready, willing and organised to comply with the applicable regulatory requirements: it has failed to demonstrate that it has in practice resolved these failings. BWA has not demonstrated that the firm understands the regulatory rules applicable to it (for example as regards record-keeping) and is both willing and able to comply with them.
95. BWA has had ample opportunity to ensure that it complies with the regulatory regime, as it holds an interim permission and has therefore been required to comply with the Authority's regulatory requirements and standards since 1 April 2014. It has also had ample opportunity during the Application process to take steps to improve its level of compliance with the applicable regulations. Aside from the changes to its contract as set out above, which alleviate to some extent the Authority's concerns about the failure to give an adequate explanation of important contract terms to customers, it has not taken the opportunity to do so.
96. For these reasons, the Authority cannot ensure that, were the Application to be granted, BWA satisfies, and would continue to satisfy, the threshold conditions in paragraphs 2C, 2D and 2E of Schedule 6 to the Act in relation to the regulated activities for which it seeks permission.

REPRESENTATIONS

97. Annex B contains a brief summary of the key representations made by BWA 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 BWA, whether or not set out in Annex B.

IMPORTANT NOTICES

98. This Final Notice is given under section 390 (1) of the Act.

Publication

99. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
100. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

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

Chair of the Regulatory Decisions Committee

ANNEX A

RELEVANT REGULATORY PROVISIONS

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 2 of schedule 6 of the Act. In brief, the threshold conditions relate to:
 - (1) Threshold condition 2B: Location of offices
 - (2) Threshold condition 2C: Effective supervision
 - (3) Threshold condition 2D: Appropriate resources
 - (4) Threshold condition 2E: Suitability
 - (5) Threshold condition 2F: Business model

Relevant provisions of the Authority's 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 Authority's Handbook, including the part entitled 'Threshold Conditions' (COND). Provisions relevant to the consideration of the current application are set out below.

General guidance

5. COND 1.3.2G(2) states that, in relation to threshold conditions 2D to 2F, 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. COND 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the Authority threshold conditions, the Authority will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.
7. COND 1.3.3CG provides that, when assessing the Authority 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 FSMA (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 Authority threshold conditions, would be in a relevant relationship with the firm.

Threshold condition 2C: Effective supervision

8. 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.
9. COND 2.3.3G states that, when the Authority is assessing threshold condition 2C, 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 SUP on the provision of information to the Authority.

Threshold condition 2D: Appropriate resources

10. COND 2.4.1A (1) states that the resources of a firm must be appropriate in relation to the regulated activities that the firm carries on or seeks to carry on.
11. COND 2.4.1A(4) states the matters which are relevant in determining whether a firm has appropriate non-financial resources include the skills and experience of those who manage the firm's affairs and whether the firm's non-financial resources are sufficient to enable the firm to comply with requirements imposed or likely to be imposed on the firm by the Authority in the course of the exercise of its functions
12. COND 2.4.2G(2) states that the Authority will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources (though only in the case of firms not carrying on, or seeking to carry on, a PRA-regulated activity), 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 conditions set out in threshold condition 2D.
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.

Threshold condition 2E: Suitability

15. COND 2.5.1A(1) states that the applicant must be a fit and proper person having regard to all the circumstances, including:

- (c) the need to ensure that A'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.
- (e) whether those who manage A's affairs have adequate skills and experience and act with probity
- (f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner

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 threshold condition 2E. Examples include the firm's position within a UK or international group, information provided by overseas regulators about the firm, and the firm's plans to seek to vary its Part 4A permission to carry on additional regulated activities once it has been granted that permission.

17. COND 2.5.4G(2)(c)G 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, threshold condition 2E include whether the firm:

- (a) conducts, or will conduct, its business with integrity and in compliance with proper standards;
- (b) has, or will have, a competent and prudent management; and
- (c) whether the firm 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, this threshold condition 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 Authority 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;
- (7)(a) the firm has put in place procedures which are reasonably designed to ensure that it has made its employees aware of, and compliant with, those requirements and standards under the regulatory system that apply to the firm for which the Authority is responsible and the regulated activities for which it has, or will have permission;
- (7)(c) the firm has put in place procedures which are reasonably designed to determine that its employees are acting in a way compatible with the firm adhering to those requirements and standards; and
- (10) the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities.

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 CCA.
- 20. CONC 3.3.1R(1) states that a firm must ensure that a communication or financial promotion must be clear, fair and not misleading.
- 21. CONC 3.3.10G(8) gives as an example of a practice that is likely to contravene the clear, fair and not misleading rule in CONC 3.3.1R "emphasising any savings available to a customer by proposing to reschedule a customer's debts, without explaining that a lender is not obliged to accept less in settlement of the customer's debts than it is entitled to, nor to freeze interest and charges and that the result may be to increase the total amount payable or the period over which it is to be paid and to impair the customer's credit rating".
- 22. CONC 3.9.3R states that a firm must ensure that a financial promotion or a communication with a customer (to the extent a previous communication to the same customer has not included the following information) includes:
 - (3) a statement setting out the level of fees charged for the firm's services, how they are calculated, what service they cover and where it is not possible to state an exact amount, a reasonable estimate of the anticipated fees, or the average level of its fees, for the service in question;
 - (4) a statement of whether any aspect of the services is provided by a third party or at extra cost;
 - (5) a statement that a customer may be eligible under the Financial Ombudsman Service and referring by a link or otherwise to the information the firm is required to publish under DISP 1.2.1R (1);

- (6) where this is the case, a statement that the firm's service is profit-seeking;
- (7) where this is the case, a statement that the firm's service is offered in return for payment from the customer;
- (8) other than for a not-for-profit debt advice body, a reference to impartial information and to sources of assistance from not-for-profit debt advice bodies;
- (9) where the financial promotion or communication sets out detail of how a customer might resolve debt problems by explaining options, the most important actual or potential advantages, disadvantages and risk of each option, including those of the debt solution offered by the firm;
- (10) a statement setting out the likely adverse effect of entering into the debt solution in question on the customer's credit rating;
- (11) a statement setting out that evidence of entering into an individual voluntary arrangement, a debt relief order or a protected trust deed will be entered on a public register;
- (12) where applicable, a statement setting out that a debt solution is only available in a particular country of the UK;
- (13) where entry into a debt solution with the firm will lead to a period when payments to a customer's lenders or owners (in whole or in part) are not made or are retained by the firm, a warning of the likelihood of falling into arrears or increasing arrears and an explanation of when distributions would be made to lenders or owners;
- (14) a statement of the risks of entering into an individual voluntary arrangement or a protected trust deed, as the case may be, including of the following risks:
 - (a) if the arrangement or deed fails, the risk of bankruptcy;
 - (b) homeowners may need to release equity from the value of their homes to pay off debts, and that a remortgage may attract higher interest rates or, if no remortgage is available, an individual voluntary arrangement may be extended for 12 months;
 - (c) there are restrictions on the expenditure of a person who enters into an individual voluntary arrangement or a protected trust deed;
 - (d) the customer's lenders or owners may not approve the individual voluntary arrangement or the protected trust deed;
 - (e) only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the

end of the period and unsecured debts not included remain outstanding; and

- (15) a statement that where another option for dealing with a customer's debts is available, that another option is available and may be suitable for the customer.

23. CONC 8.2.4R states that a debt management firm must prominently include:

- (2) on its web-site the following link to the Money Advice Service web-site (<https://www.moneyadviceservice.org.uk/en/tools/debt-advice-locator>).

24. CONC 8.3.2R states that a firm must ensure that:

- (1) all advice given and action taken by the firm:
 - (a) has regard to the best interests of the customer;
 - (b) is appropriate to the individual circumstances of the customer; and
 - (c) is based on a sufficiently full assessment of the financial circumstances of the customer;
- (2) customers receive sufficient information about the available options identified as suitable for the customers' needs; and
- (3) it explains the reasons why the firm considers the available options suitable and other options unsuitable.

25. CONC 8.3.4R states that a firm must ensure that advice provided to a customer, whether before the firm has entered into contract with the customer or after, is provided in a durable medium and:

- (1) makes clear which debts will be included in any debt solution and which debts will be excluded from any debt solution;
- (2) makes clear the actual or potential advantages, disadvantages, costs and risks of each option available to the customer, with any conditions that apply for entry into each option and which debts may be covered by each option;
- (3) warns the customer:
 - (a) of the actual or potential consequences of failing to continue to pay taxes, fines, child support payments and debts which could result in loss of access to essential goods or services or repossession of, or eviction from, the customer's home;
 - (b) of the actual or potential consequences of not continuing to make repayments under credit agreements or consumer hire agreements;
 - (c) of the actual or potential consequences of ignoring correspondence or other contact from lenders and those acting on behalf of lenders;

- (d) that action to recover debts may be commenced, which may involve further cost to the customer; and
- (e) that by entering into a DMP or another non-statutory repayment plan there is no guarantee that any current recovery or legal action will be suspended or withdrawn.

26. CONC 8.3.7R states that a firm must:

- (2) before giving any advice or any recommendation on a particular course of action in relation to the customer's debts, carry out a reasonable and reliable assessment of:
 - (a) the customer's financial position (including the customer's income, capital and expenditure);
 - (b) the customer's personal circumstances (including the reasons for the financial difficulty, whether it is temporary or longer term and whether the customer has entered into a debt solution previously and, if it failed, the reason for its failure); and
 - (c) any other relevant factors (including any known or reasonably foreseeable changes in the customer's circumstances such as a change in employment status);
- (5) seek to ensure that a customer understands the options available and the implications and consequences for the customer of the firm's recommended course of action.

27. CONC 8.5.1R states that a firm must ensure that a financial statement sent to a lender on behalf of a customer:

- (1) is accurate and realistic and must present a sufficiently clear and complete account of the customer's income and expenditure, debts and the availability of surplus income.

28. CONC 8.5.4R states that a firm must:

- (1) take reasonable steps to verify the customer's identity, income and outgoings;
- (2) seek explanations if a customer indicates expenditure which is particularly high or low.

29. CONC 8.8.1R states that a firm in relation to a customer with whom it has entered into a DMP must:

- (2) regularly monitor and review the financial position and circumstances of the customer;
- (3) adapt the DMP to take into account relevant changes in the financial position and circumstances of the customer;
- (8) provide a statement to the customer at the start of the DMP, and at least annually or at the customer's reasonable request, setting out:

- (a) a balance showing the amount owed by the customer, including any interest charges at the beginning of the statement period;
- (b) fees, charges and other costs applied over the period of the statement, including any upfront fee or deposit, such as an initial arrangement fee, an arrangement fee, any periodic or management or administrative fee, any cancellation fee and any other costs incurred under the contract
- (c) a narrative explaining the type of fee applied, how the fee is calculated and to what it applies;
- (d) the duration or estimated duration of the contract; and
- (e) the total cost of the firm's service over the duration or estimated duration of the contract.

Senior Management Arrangements, System and Controls - SYSC

- 30. This section of the Handbook sets out the responsibilities of directors and senior management.
- 31. SYSC 6.1.1R states a firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives (or where applicable, tied agents) with its obligations under the regulatory system
- 32. 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 it 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 respects to clients.

CASS Client Assets

- 33. CASS 11.11.3R states a CASS debt management firm must maintain its records and accounts in a way that ensures their accuracy and, in particular, their correspondence to the client money held for individual clients.
- 34. CASS 11.11.6G states so that a CASS debt management firm may check that it has sufficient money segregated in its client bank accounts to meet its obligations to clients for whom it is undertaking debt management activity, it is required periodically to carry out reconciliations of its internal records and accounts to check that the total amount of client money that it should have segregated in client bank accounts is equal to the total amount of client money it actually has segregated in client bank accounts. CASS 11.11.8R to CASS 11.11.23R provide rules that the different types of CASS debt management firm are obliged to follow to meet this obligation.
- 35. CASS 11.11.17G states for a CASS small debt management firm to demonstrate it has maintained its records and accounts in a way envisaged by CASS 11.11.3R, it should carry out checks of its internal records and accounts that are reasonable and proportionate to its business. CASS 11.11.8R provides a rule that a CASS small debt management firm is obliged to follow to meet this obligation.

36. CASS 11.11.8R states a CASS small debt management firm must undertake periodic checks of its internal accounts and records to ensure that the amount of money it holds in its client bank accounts is equal to the amount of client money that should be segregated under CASS 11.9.
37. CASS 11.11.10G states the checks that a CASS small debt management firm is required to undertake under CASS 11.11.8R include checking that its internal records and accounts accurately record the balances of client money held in respect of individual clients, and that the aggregate of those individual client money balances are equal to the total client money segregated in its client bank accounts. In undertaking the comparison between the internal records of balances of client money and the client money segregated in client bank accounts, a firm should use the previous day's closing client money balances and should compare those with other records relating to the same day. In determining an appropriate frequency for its record checks, a firm should consider the volume and frequency of transactions in its client bank accounts.

ANNEX B

REPRESENTATIONS

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

BWA is a firm of solicitors

2. *BWA is a firm of solicitors, which also carries on debt counselling and debt adjusting. An application had been made to the SRA for registration and BWA had understood it to have been granted. After an issue was raised by the Authority, BWA had been shocked to discover that the registration had been closed down (which was an error on the part of the SRA). A renewed application has been submitted in respect of BWA; when this is granted BWA will revert to being a firm of solicitors.*
3. *In any event, Allansons LLP, which owns BWA, is a firm of solicitors regulated by the SRA. As such, it is entitled to conduct activities which are regulated activities under the Act under the terms of a general licence granted to the Law Society.*
4. Based on the information summarised at paragraph [60] of this Notice, the Authority is satisfied that BWA is not a firm of solicitors registered with the SRA; nor has the Authority been provided with any evidence of BWA ever having been so registered, or of any error on the part of the SRA in this regard. The Authority notes that BWA's representations on this matter assert on the one hand that it is a firm of solicitors, but on the other hand implicitly acknowledge that it does not have that status. While BWA is owned by a firm of solicitors, Allansons LLP, it is misleading of BWA to represent itself as having that status.
5. There is no general licence granted to the Law Society (or to the SRA). The OFT did provide a general licence but that has not been continued by the Authority on taking over responsibility for the regulation of consumer credit firms. BWA may have in mind an exemption in respect of debt management activities pursuant to article 39K of the RAO; this applies only in the course of providing advocacy or litigation services, not where solicitors are engaged to conduct debt management services only. It would also not apply to BWA, as the firm is not a firm of solicitors.

BWA is willing to be regulated by the Authority, but the Authority has been unhelpful

6. *BWA is quite willing to be regulated by the Authority, and to meet the Authority's criteria and conditions. It would have hoped that the Authority would have offered assistance but BWA has been told by the Authority that being compliant is BWA's own obligation and the Authority will not provide any advice. Where BWA has managed to glean some advice, it has implemented it; if the steps taken are still not acceptable then it needs to know what is. BWA remains flexible and open to suggestions of any change that should be made.*
7. The expressed willingness of BWA to make changes appears to place reliance on the Authority to identify what changes should be made; this is inappropriate. It is not the role of the Authority to provide detailed feedback and guidance akin to that to be expected of a compliance consultant. It is the responsibility of the firm

to identify the requirements of the Authority applicable to its business; however, there is significant general information published by the Authority, to which BWA could access to assist it in doing so (including the "Dear CEO" letter of December 2016). It is of concern to the Authority that BWA has not used the time during which it has had interim permission to identify any changes to its practices and procedures necessary to comply fully with its regulatory obligations.

Record-keeping

8. *BWA may have been hampered by not having call-recording facilities and having to rely on note-keeping. Call-recording is not affordable at present; it intended to implement this if the Authority were to grant the Application. While the note-keeping may have been shorthand in earlier cases it is now more detailed. BWA maintains that it gives appropriate advice. It has implemented a form (a copy of which has been provided to the Authority) which goes through all the appropriate steps to be taken and this is in use in respect of all new cases, detailing the advice given and the conclusion arrived at.*
9. *In the case of Customer A, the note of February 2017 was inadequate but this does not indicate that the client had not cooperated, nor that the I&E details were unknown. It is clear on the file that when the file was reviewed due to the change in circumstances reported by Customer A an up to date I&E was on the system and payment was reset to take into account the change of circumstances and the discussion with Customer A.*
10. *Customer A's file is only one of 40 requested by the Authority and this reflects the percentage of error.*
11. The Authority does not require firms to have call-recording facilities, although this is one way of meeting record-keeping requirements. BWA has provided no evidence to support its assertion that the notes taken by its staff have improved in terms of detail recorded. The form provided to the Authority, referred to in BWA's representation, appears in fact to be the "Client File Review Form" (see paragraphs 25 to 26 below) which appears to be intended to document a review of the file rather than record advice given; even if used as a record at the stage of the initial advice it would be inadequate for that purpose. As set out at paragraphs 36 to 40 of this Notice, the Authority has concerns about the advice given, but the records provided by BWA are inadequate to enable the Authority to form a concluded view as to the adequacy of the advice given.
12. In relation to Customer A, the Authority's concern is with the record-keeping, which BWA has admitted was inadequate. The Authority does not agree that it is clear from the records in this case what advice was given by BWA when it reviewed Customer A's position with that customer (if indeed such a review took place).
13. As set out at paragraph 33 of this Notice, the Authority considers the record-keeping in all other files which it has reviewed to be of a similar poor standard to that in the case of Customer A. It does not agree with the comment by BWA that the percentage of error is represented by that file alone. It notes that BWA has not made any positive case that the records on any of the other files reviewed were, in fact, of a better standard than in the case of Customer A.

The Authority's concerns with the advice given are unfounded

14. *A simple view of how long it will take to pay off a DMP at the current disposable income rate is only one measure of what is in the client's best interests. There*

were overriding reasons why other options were not suitable for Customers C and D even though those might have got them out of debt sooner; for example, Customer C did not wish their spouse to know of their debt problems.

15. *In the case of Customer B, while it might have been possible to use the accumulated fund as a negotiating lever, it would not have been appropriate to do so before ascertaining whether the agreement was enforceable, which had not yet been done.*
16. *Customer E paid £8 to avoid a default notice in respect of the customer's credit agreement, which was in fact unenforceable. The customer decided to take their custom elsewhere and the accumulated fund (£602, not £588) was refunded.*
17. *It takes time to assess the enforceability of consumer credit agreements and so BWS cannot work out a client's true level of indebtedness at the outset of a DMP; rather it accumulates the customer's funds pending that assessment being complete.*
18. *No customers have complained about the advice they have received from BWA and many have said they are very pleased with the service provided.*
19. In relation to Customers C and D, the matters raised by BWA in its representations are not evidenced on the relevant files. It is therefore not possible for the Authority to assess whether BWA's account of these matters is accurate and what was considered and discussed with the clients at the relevant times. The failure to record these factors increases the Authority's concerns with the record-keeping on these files, and does not allay its concerns with the quality of the advice given.
20. In relation to Customer B, the Authority remains of the view that the file failed to record any advice given to the customer in relation to how the customer's accumulated fund might be used. The Authority notes that BWA has not positively asserted that such advice was given. This is also of concern to the Authority in other cases where the number of debts is low and where the Authority cannot assess what other options were explored in advising customers on how best to deal with their debts in a manner that takes account appropriately of their individual circumstances.
21. BWA appears to have misunderstood the Authority's concern in relation to Customer E. The Authority has not suggested that BWA did not refund the customer's accumulated fund. Its concern relates to whether the customer was given advice that was in the customer's best interests, given that the customer was financially worse off following the DMP with BWA. The records in this file are inadequate to indicate whether or not this was the case.
22. A lack of complaints, and the existence of positive expressions of customer satisfaction, do not necessarily indicate that customers have received suitable advice or an adequate outcome.

Annual statements

23. *BWA does not accept that it is failing to provide the statements required by CONC 8.8.1R(8)(a) to (e). This matter has been rectified and implemented and the rationale has been fully understood.*
24. By referring to the matter having been rectified, BWA's representation implicitly accepts that it has previously failed to provide annual statements as required by

the rule set out above. It has not provided copies of statements provided since the rectification it has stated to have taken place, nor any other evidence of its subsequent implementation of these requirements.

BWA now has a documented QA process

25. *BWA implemented a documented QA process following a telephone conversation with the Authority in March 2017. It is unfortunate that this was omitted, but it has been rectified. The solution is the Client File Review Form provided by BWA to the Authority. If the Application is granted, BWA intends to implement call recordings which would further assist with QA.*
26. The Authority notes the admission that BWA did not previously have a documented QA process. The Client File Review Form provided is the document referred to at paragraph 43 of this Notice, and the Authority considers it inadequate for the reasons set out in that paragraph. The Authority's further concerns with BWA's QA processes are set out at paragraphs 42 to 47 of this Notice and the Authority notes that BWA has not provided any evidence to address these concerns.

Handling of client money

27. *BWA's accounts system was sold as SRA Accounts Rules compliant but it is not. Independent accountants are working on a reconciliation. There is still a little further work to be done on this but monthly reconciliations will be in place going forward. The reconciliation will be forwarded as soon as it is completed.*
28. *At the meeting held with the Authority on 8 January 2018, at which BWA made oral representations in respect of this matter, BWA indicated that it had received a letter indicating that the accounts had been reconciled as at June 2017, and that it would forward a copy of this to the Authority.*
29. The Authority notes that compliance with SRA rules is not directly relevant to whether BWA complies with the Authority's rules on reconciliation of client money, as set out in CASS 11. In any event, it notes that BWA's representation admitted that such (or, it appears, any) reconciliations had not, to date, been performed. A copy of the letter referred to in the previous paragraph has not been provided to the Authority, and a reconciliation as at June 2017 would, in any event, not demonstrate ongoing compliance with the Authority's rules in CASS 11.

Review and termination policy

30. *BWA has a termination policy, which is that if a client stops making payments for three months and does not engage, then it will close the client's plan down. BWA takes the view that continued payment is contact and a sure indication that the client is content with things the way they are. The fact that BWA might consider that the advice originally given may need updating is no reason to eject the client from the service because it might turn out that the advice is correct.*
31. BWA's termination policy is inadequate to comply with its obligations under CONC 8, for the reasons set out in paragraphs 54 to 57 of this Notice.

BWA does not have a website

32. *BWA does not have a website. The web page referred to by the Authority in fact belongs to Allansons LLP, the owner of BWA. The contents, insofar as they*

related to debt management, were not inaccurate (or were not intended to be) but the references to debt management have now been removed. If and when BWA has a website it will be fully compliant.

33. The Authority considers the webpage referred to in paragraphs 61(b) and 63 of this Notice to belong to BWA, for the reasons set out in paragraph 63. The web page remains unaltered (save in the minor respect set out in paragraph 61(b)), contrary to BWA's representation. It is of concern to the Authority that BWA's senior management allowed a website to operate describing the services offered by BWA, which did not comply with the Authority's requirements, and has consistently failed to address the issues identified, despite representing that it had done so. In the absence of any details, the Authority places little weight on BWA's assurance as to future compliance.

Adequacy of senior management

34. *BWA's senior management has been on a steep learning curve. The management intends to move BWA into the same offices as Allansons LLP to make it easier for senior management to supervise its operations directly.*
35. *BWA plans to engage the services of a compliance consultancy to provide compliance monitoring and assist senior management. However, it may not be in a position, financially, to do so unless assured that it has a future as a regulated firm.*
36. Given the nature of its concerns with the adequacy of senior management, the Authority does not consider that increased direct supervision of BWA's operations by senior management personally will alleviate these concerns. In particular, the Authority is not satisfied that senior management has acquired sufficient grasp of the applicable regulatory requirements during the period of BWA's interim authorisation by the Authority and during the course of the Application process to provide it with comfort in this regard.
37. BWA has not provided a draft engagement letter nor any other details of the scope of its intended retainer of the compliance consultancy. It has not provided any indication of the timescale in which it intends to engage the consultancy, and therefore there is no indication of how much longer BWA intends to continue to operate while not compliant with the Authority's requirements. Further, given the Authority's concerns about BWA's senior management, it is not clear that BWA will be able adequately to identify the areas on which it requires assistance from the consultancy, so as to inform the scope of its retainer. Accordingly, this does not allay the Authority's concerns about BWA's compliance in the future.
38. BWA's decision to defer seeking professional compliance advice unless and until it has been authorised by the Authority gives rise to concern about the extent to which BWA's senior management prioritises the avoidance of consumer detriment.

BWA's fee cap is of great benefit to customers

39. *The 33% cap on BWA's charges provides customers with certainty and an incentive to BWA to deal with their debts expeditiously, since beyond a certain point its services for long-term DMPs will be provided, effectively, free of extra charge. This is something which sets it apart from its competitors.*
40. The Authority makes no comment on the fee offerings of BWA's competitors. Any benefit to customers in long-term DMPs of a cap on fees does not obviate the

need to ensure that a DMP is only recommended to a customer when BWA has established on the basis of all relevant information that this is an appropriate solution for the customer concerned, and for BWA to adopt record-keeping procedures which enable it to assess by means of QA that it has done so, and to evidence this to the Authority when required.