
FINAL NOTICE

To: **Managed Debt Services Ltd**

Firm
Reference
Number: 651315

Address: Burdett Court
18 Navigation Rise
Millsbridge
Huddersfield
HD3 4GZ

Date 26 June 2014

ACTION

1. For the reasons given in this notice, the Authority has refused the Application made by Managed Debt Services Limited ('MDSL') for authorisation to carry on the regulated activities of debt adjusting and debt counselling.

SUMMARY

2. On 7 June 2012 MDSL applied to the OFT for a consumer credit licence covering the activities of debt adjusting and debt-counselling, both on a commercial basis. By way of the OFT's determination dated 27 March 2014 the OFT decided to refuse that Application.
3. As at 1 April 2014 statutory responsibility for consumer credit regulation transferred from the OFT to the Authority. In accordance with the Transitional Order, the OFT's determination notice is to be treated as a decision notice given by the Authority under section 55X(4) the Act.

4. MDSL has not referred the matter to which the Decision Notice relates to the Tribunal.
5. The Authority cannot be satisfied that MDSL is fit to be authorised under Part 4A of the Act to carry on the regulated activities to which the Application relates for the following reasons:
 - (a) MDSL has failed to demonstrate that it, or its individuals, has sufficient skills, knowledge and experience in the areas in which it seeks to carry out regulated activities.
 - (b) MDSL failed to provide clear and accurate information, explanations and advice in respect of its products and services. MDSL's marketing, advertising and promotional materials failed to accurately reflect the services offered by MDSL and the cost of those services. MDSL also misused the OFT's name in its advertising materials.
 - (c) MDSL does not have adequate policies and procedures to ensure that its marketing practices are transparent and not misleading to consumers. MDSL failed to provide adequate pre-contract information in respect of its Debt Settlement Plan. It also failed to have any pre-contract information in respect of its Debt Management Plan, therefore creating a risk of consumer detriment.
6. MDSL intended to operate in an industry where consumers affected are often particularly vulnerable. The risk of long term detriment to vulnerable consumers is amplified where a business of this type fails to meet the required regulatory standards. MDSL's failure to demonstrate that it had individuals with the relevant skills and experience, as well as its failure to implement adequate procedures, made clear that authorising MDSL would present an unacceptable risk to consumers.

DEFINITIONS

7. The definitions below are used in this Final Notice.

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

"the Application" means MDSL's application to the OFT for a consumer credit licence dated 7 June 2012

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority

"the Decision Notice" means the OFT determination notice dated 27 March 2014

"MDSL" means the applicant, Managed Debt Services Limited

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

"the Transitional Order" means The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber)

“the Warning Notice” means the OFT minded to refuse notice dated 22 November 2013

REASONS AND IMPACT ON FITNESS

8. The regulatory and statutory provisions relevant to this final notice are referred to in Annex A.
9. MDSL’s personnel lack relevant experience. Despite MDSL’s stated future reliance upon external professional assistance and third party support, there are deficiencies in the collective experience of the firm. One of the individuals in MDSL has sought to undertake training during the period of the application process. However, he did not finish this training during that period. Of the two other individuals, one remains abroad and the other has limited relevant experience.
10. MDSL has not satisfied the Authority that it has adequate resources, having regard to the nature of the regulated activity it seeks to carry on and the available skills, experience and resources of the firm. This is evidenced by the failures in the pre-contract information and other documentation to meet with legislative and regulatory requirements.
11. MDSL has not satisfied the Authority that it has adequate practices and procedures in place that are suitable to enable it to carry on the regulated activities that it seeks permission to conduct. In particular the firm does not incorporate adequate practices and procedures to meet the needs of consumers or mitigate the risks posed to them. This is evidenced by the following:
 - (a) MDSL made a misleading statement with regard to offering free debt advice. Whilst MDSL did not propose to charge for initial advice, the debt management services and products it proposed to provide did attract fees;
 - (b) MDSL emphasised the potential savings of debt management without making it equally clear that creditors are not obliged to agree to a debt management plan or freeze interest and charges. This is because rescheduling debts will usually lead to an increase in the total sum being repaid, an extended repayment period and a possible impact on the consumer’s credit rating;
 - (c) MDSL claimed or implied that the consumer would definitely be debt free within a specified period of time;
 - (d) MDSL failed to provide warnings regarding debt management options by providing unbalanced information with regard to characteristics and keys risks associated with the debt management option;
 - (e) MDSL failed to provide clear and adequate information in its websites, advertising content and pre-contract information about fees and costs associated with the service that they were to provide; and
 - (f) MDSL failed to provide sufficiently adequate pre-contract information regarding debt management plans and debt settlement plans, such as the nature of the service to be offered, its duration, projected cost and the likely consequences for the consumer’s credit rating.

12. MDSL misused the OFT's name in its advertising material to imply that the whole range of its activities were licenced or approved in some way, including the entirety of its business processes.

IMPORTANT NOTICES

13. This final notice is given under section 390(1) of the Act.

Publication

14. 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.
15. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

For more information concerning this matter generally, contact Keith Cooper, Manager, Debt, Credit & Regulatory Permissions Department at the Authority (direct line: 020 7066 7466 / email: keith.cooper@fca.org.uk).

Nicholas Mears
Head of Department
Authorisations Division
The Financial Conduct Authority

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS WARNING NOTICE

Relevant Statutory Provisions

1. The OFT was required, by section 25 of the CCA, which section was also repealed by the Transitional Order with effect from 1 April 2014, to be satisfied, before issuing a consumer credit licence of the type applied for by MDSL, that the applicant was fit to hold it, having regard, among other factors, to whether any of the applicant's agents, associates and/or controllers had committed any offence involving fraud and/or had contravened the CCA itself.
2. The Authority is required, by section 55B(3) of the Act, before giving permission under Part 4A of the Act to any person, to ensure that that person will satisfy and continue to satisfy, in relation to all of the regulated activities for which the person will have permission, the relevant threshold conditions set out in Schedule 6 to the Act.
3. Paragraph 2E of Schedule 6 to the Act requires, specifically, as one of those conditions, that the Authority should ensure that each such applicant is fit and proper.
4. Paragraph 2E further provides that the Authority is to consider in this regard:
 - (1) the applicant's connections with other persons;
 - (2) the need to ensure that the applicant'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;
 - (3) whether the applicant has complied with requirements imposed by the Authority, or requests made by the Authority, relating to the provision of information to the Authority;
 - (4) whether those who manage the applicant's affairs have acted and may be expected to act with probity; and
 - (5) the need to minimise the extent to which it is possible for the business carried on or to be carried on by the applicant to be used for a purpose connected with financial crime.

Relevant provisions of the Transitional Order

5. Article 32 of the Transitional Order provides as follows:

“(1) Paragraphs (2) to (4) apply if, before 1st April 2014—

- (a) the OFT had given a notice to a person (“A”) of its determination to refuse to issue a standard licence to A in accordance with A's application, and
- (b) the appeal period in relation to that decision had not ended.

(2) The notice is to be treated as—

- (a) if A does not have a Part 4A permission, a decision notice given under section 55X(4) of the Act by the FCA to A of the decision to refuse A's application for Part 4A permission;
- (b) in any other case, a decision notice given under section 55X(4) of the Act of the decision of the appropriate regulator to refuse A's application to vary A's Part 4A permission."

Relevant provisions of the Authority's Handbook

- 6. In exercising its powers in relation to the granting of a Part 4A permission, the Authority must have regard to guidance published in the Authority Handbook, including the part titled Threshold Conditions ("COND"). The considerations in relation to the decision made in respect of MDSL'S application are set out below.

Threshold condition 2D: Appropriate Resources

- 7. 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.
- 8. COND 2.4.2G(2) states that the FCA 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.
- 9. COND 2.4.4G states that, when assessing whether a firm has appropriate resources, the Authority will have regard to matters including:
 - (a) the nature and scale of the business carried on, or to be carried on, by A;
 - (b) the risks to the continuity of the services provided by, or to be provided by, A

Threshold condition 2E: Suitability

- 10. COND 2.5.2G(2) states that the FCA will also take into consideration anything that could influence a firm's continuing ability to satisfy the threshold conditions set out in paragraphs 2E and 3D of Schedule 6 to the Act. Examples include 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.
- 11. COND 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the FCA threshold conditions, the FCA will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.