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## **FINAL NOTICE**

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**Michael John Dwane**

**08 February 2021**

### **ACTION**

1. By an application dated 5 March 2020 Michael John Dwane applied under section 55A of the Act for Part 4A permission to carry on the regulated activities of credit broking (limited to secondary broking), debt adjusting (limited to relevant credit activities) and debt counselling (limited to relevant credit activities) (the "Application").
2. For the reasons listed below, the Authority has refused the Application.

### **SUMMARY OF REASONS**

3. By its Warning Notice dated 14 October 2020 ("the Warning Notice") the Authority gave notice that it proposed to refuse the Application and that Michael John Dwane was entitled to make representations to the Authority about that proposed action.
4. As no representations have been received by the Authority from Michael John Dwane within the time allowed by the Warning Notice, the default procedures in paragraph 2.3.2 of the Authority's Decision Procedure and Penalties Manual apply,

permitting the Authority to treat the matters referred to in its Warning Notice as undisputed and, accordingly, to give a Decision Notice.

5. By its Decision Notice dated 16 November 2020 ("the Decision Notice"), the Authority gave Michael John Dwane notice that it had decided to take the action described above.
6. Michael John Dwane had 28 days from the date the Decision Notice was given to refer the matter to the Upper Tribunal (formerly known as the Financial Services and Markets Tribunal). No referral was made to the Upper Tribunal within this period of time or to date.
7. Under section 390(1) of the Act, the Authority, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give Michael John Dwane Final Notice of its refusal.
8. On the basis of the facts and matters described below, the Authority has decided to refuse the Application and to give this Final Notice as is not satisfied that Michael John Dwane is a fit and proper person to perform the regulated activities to which the Application relates.
9. For the reasons set out herein the Authority cannot ensure that Michael John Dwane will satisfy, and continue to satisfy, the Threshold Conditions set out in Schedule 6 of the Act.
10. In particular:
  - a) The Authority cannot be satisfied that Mr Dwane will comply with requirements imposed by the FCA or conduct his affairs in an appropriate manner. Mr Dwane's previous firm of which he remains a controller, Mick Dwane Car Sales Limited ("MDCSL"), had its permissions revoked by way of a Final Notice dated 10 January 2018 for failing to submit regulatory returns;
  - b) Mr Dwane has demonstrated limited understanding of his regulatory obligations and responsibilities; and
  - c) There is a serious risk of confusion between Mr Dwane (sole trader) and his previous firm, MDCSL (which operates under the same trading name). Mr Dwane's failure to address adequately the Authority's concerns in this regard mean that the Authority cannot be satisfied that Mr Dwane will conduct his affairs in an appropriate manner, having regard in particular to the interests

of consumers or that he will be sufficiently open and cooperative with the Authority.

11. As a result, the Authority is not satisfied that Mr Dwane meets or will continue to meet the Effective Supervision and Suitability Threshold Conditions and has therefore refused the Application.

## **DEFINITIONS**

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

“the Act” means the Financial Services and Markets Act 2000;

“the Application” means the application under Part 4A of the Act by Mr Dwane dated 5 March 2020;

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

“Mr Dwane” means Michael John Dwane;

“the Effective Supervision Threshold Condition” means the Threshold Condition set out at paragraph 2C of Schedule 6 of the Act;

“MDCSL” means Mick Dwane Car Sales Limited;

“the MDCSL Final Notice” means the Final Notice issued by the Authority to MDCSL dated 10 January 2018;

“RAO” means The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, as amended;

“the Return” means MDCSL’s CCR007 return for the period ended 31 December 2016;

“the Suitability Threshold Condition” means the Threshold Condition set out at paragraph 2E of Schedule 6 to the Act;

“the Threshold Conditions” means any of the conditions set out in or under Schedule 6 to the Act; and

“the Tribunal” means the Upper Tribunal (Tax & Chancery Chamber).

## **FACTS AND MATTERS**

### **Background**

13. Michael John Dwane (sole trader) runs a second-hand car dealership.
14. In order to carry on consumer credit regulated activities, a firm requires authorisation under Part 4A of FSMA.
15. Mr Dwane applied to the FCA on 5 March 2020 for permission to perform certain consumer credit regulated activities, namely credit broking (Article 36A of the RAO), debt adjusting (Article 39D of the RAO) and debt counselling (Article 39E of the RAO). This is for the purpose of referring customers who purchase cars to third party lenders to help finance their purchase and to deal with customers who wish to have part exchange with outstanding finance on their vehicles.

### **Relevant Facts and Matters**

#### Mick Dwane Car Sales Ltd

16. Mr Dwane was a director of MDCSL (FRN 718105). MDCSL was authorised by the Authority. By way of a Final Notice dated 10 January 2018 (the "MDCSL Final Notice"), MDCSL had its permissions under Part 4A of the Act revoked.
17. The MDCSL Final Notice states that MDCSL failed to submit its CCR007 return for the period ended 31 December 2016 (the "Return"). MDCSL was required to submit its Return to the Authority by 13 February 2017.
18. The Final Notice found that MDCSL:

*has not been open and co-operative in all its dealings with the Authority, in that MDCSL has failed to respond adequately to the Authority's repeated requests for it to submit the Return, and has thereby failed to comply with Principle 11 of the Authority's Principles for Businesses and to satisfy the Authority that it is ready, willing and organised to comply with the requirements and standards under the regulatory system.*

*These failures, which are significant in the context of MDCSL's suitability, lead the Authority to conclude that MDCSL has failed to manage its business in such a way as to ensure that its affairs are conducted in a sound and prudent manner, that it is not a fit and proper person, and that it is therefore failing to satisfy the*

*Threshold Conditions in relation to the regulated activities for which MDCSL has had a permission.*

19. In addition, MDCSL is currently listed by Companies House as having its accounts more than a year overdue (accounts to 31 December 2018 were due by 30 September 2019) and its confirmation statement overdue (statement due by 30 December 2019).

Mr Dwane's involvement with MDCSL

20. Companies House records indicate that Mr Dwane was a Director of MDCSL from 16 December 2011 to 12 July 2014 and from 23 July 2015 to 31 August 2015. Since 7 April 2016 to present he has been recorded as an individual with significant influence or control over MDCSL.
21. The Authority asked Mr Dwane about his involvement with MDCSL after he ceased to be a Director in 2015. Mr Dwane advised he was employed as a car salesman by the new owner, who took over MDCSL. Until 2015, Mr Dwane held 75% of the shares in MDCSL. Since 2015, 100% of the shares in MDCSL have been held by Mr Dwane's accountant.
22. During the Application process, Mr Dwane confirmed that MDCSL still exists and is registered at the same address as his sole trader business (Michael John Dwane). Mr Dwane is submitting a new authorisation application as a sole trader and wishes to use the trading name Mick Dwane Car Sales, (the same trading name as MDCSL).
23. The Authority raised concerns about MDCSL and Mr Dwane's sole trader business operating from the same address with the same business model and trading name. Mr Dwane responded that he would rather not dissolve MDCSL as he wants to keep MDCSL's company bank account open. Mr Dwane stated that he struggles to get a bank account due to his personal bankruptcy. In a previous discussion with Mr Dwane on 25 June 2020, Mr Dwane advised the Authority he was happy to wind down MDCSL. On 20 July 2020, having spoken to his accountant, Mr Dwane advised the Authority that he had instead changed MDCSL's name and registered address to avoid potential confusion.
24. On 9 July 2020, MDCSL changed its name to Yellow Strike Limited. However, the Authority has since identified that, on 2 August 2020, Yellow Strike Limited

changed its name back to MDCSL. As a result, MDCSL continues to operate and will have the same trading name as Mr Dwane's proposed regulated business.

Mr Dwane's ability to submit returns going forward

25. In light of MDCSL having its regulatory permissions revoked for a failure to submit its Return, the Authority asked Mr Dwane how he would ensure going forward he could comply with his regulatory obligations including submission of GABRIEL returns. Mr Dwane advised the Authority that he was confident that all Firm records and obligations could be kept up to date and on time as he has engaged a 'specialist in the field'. However, when the Authority questioned him further on this, Mr Dwane confirmed that he will still be using the same accountant as when MDCSL's permissions were revoked.
26. Mr Dwane also noted in this conversation, when asked by the Authority how he intended to take responsibility for the submission of regulatory returns, that he pays someone else to do this as he is a car dealer.
27. Mr Dwane declared in the Application that in 2015 HMRC issued a bankruptcy order against him personally for £89,000. Mr Dwane provided documentation that showed he was discharged from bankruptcy in September 2016.
28. When asked by the Authority about the circumstances of his bankruptcy, Mr Dwane failed to provide a clear explanation as to why HRMC had insisted on the personal bankruptcy route instead of bringing proceedings against MDCSL.

Conducting regulated activity without permission

29. During the assessment of the Application, on 25 June 2020, the Authority reviewed Mr Dwane's business website. Mr Dwane's website stated "finance packages available for everyone. Bad Credit? No Credit history, No problem".
30. Mr Dwane was advised by the Authority that this was a financial promotion and therefore should not be conducted without FCA authorisation or approval by an Authorised Person. Mr Dwane responded that he was unaware of these requirements on financial promotions and that he was under the impression that he could pass on customer details for finance.
31. Mr Dwane stated that he was not responsible for his website but that it was a third-party web designer's responsibility. On 26 June 2020 and 29 July 2020, the Authority requested Mr Dwane to remove this wording from his business website.

Mr Dwane stated and the Authority confirmed that he had done so following the latter communication.

### **IMPACT ON THE THRESHOLD CONDITIONS**

32. The regulatory and statutory provisions relevant to this Final Notice are set out at Annex A.

#### **Effective Supervision - Threshold Condition 2C**

33. The Authority must be confident that it will receive adequate information from an authorised firm 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.
34. The Authority considers that the failure of MDCSL to submit its regulatory returns to the Authority, despite repeated requests to do so, when Mr Dwane was a controller and individual exercising significant influence over MDCSL meant that the Authority was unable to effectively supervise MDCSL.
35. Whilst Mr Dwane has informed the Authority that the reason for the failure to submit the Return was that his accountant was ill, the Authority considers that, in such circumstances, it was Mr Dwane's ultimate responsibility to ensure that the Authority was provided with appropriate information. Mr Dwane failed to do so for nearly a year until the Authority ultimately revoked MDCSL's Part 4A permission.
36. The Authority's concerns regarding the Authority's ability to supervise Mr Dwane effectively are heightened by the fact that Mr Dwane appears to be seeking authorisation under similar organisational arrangements as were in place for MDCSL and where MDCSL's Companies House returns are significantly overdue. In addition, the Authority considers, based on its conversations with Mr Dwane, that he continues to fail to understand that the submission of regulatory returns is the responsibility of an authorised firm and that he cannot discharge this responsibility to third parties.
37. As a result, the Authority cannot be confident that Mr Dwane will provide the Authority with the information it requires to ensure that it can effectively supervise him and therefore that he can meet the Effective Supervision Threshold Condition.

## **Suitability – Threshold Condition 2E**

38. The Authority considers that the facts and matters outlined above mean that Mr Dwane is not a fit and proper person and therefore does not satisfy the Suitability Threshold Condition.
39. Firstly, the Authority considers that Mr Dwane lacks the skills and experience necessary to carry out the regulated activities applied for.
40. As noted in the Authority's grounds for refusal under the Effective Supervision Threshold Condition, the Authority considers that Mr Dwane's understanding of his responsibilities and obligations as an authorised firm are not sufficient. Further, while it is open to Mr Dwane to consult more knowledgeable individuals (such as his accountant) for advice on specific regulatory matters, these arrangements do not allow Mr Dwane to contract out of his regulatory responsibilities. Moreover, Mr Dwane's arrangement with his accountant has previously proved inadequate to ensure that MDCSL had sufficient knowledge and skill to comply with its regulatory obligations. The Authority's concerns in this regard are reinforced by the fact that Mr Dwane was unaware that he was prohibited from advertising certain financial services on his business website until informed by the Authority.
41. Secondly, the Authority cannot be satisfied that Mr Dwane will comply with requirements imposed by the FCA or conduct his affairs in an appropriate manner. The Authority notes a number of issues in this regard:
42. FIT 2.1(3) (13) provides that, in considering an individual's honesty, integrity and reputation, the Authority may have regard to "whether, in the past, the person has been candid and truthful in all their dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards."
43. Mr Dwane was a controller of MDCSL when it had its regulatory permissions revoked as a result of a failure to submit its Return to the Authority. This failure represented a failure to comply with the standards of the regulatory system and persisted for a significant period of time and occurred despite repeated communications by the Authority to MDCSL.
44. In addition, MDCSL continues to fail to comply with financial and company reporting requirements - its annual accounts and confirmation statement are



significantly overdue. These failings raise further concerns as to Mr Dwane's readiness and willingness to ensure that his business complies with applicable legal requirements and standards. They also raise concerns as to whether Mr Dwane's current and proposed arrangements for compliance with reporting requirements are and will be effective.

45. Mr Dwane had previously stated to the Authority he would change the name and registered address of MDCSL to avoid confusion between MDCSL and his sole trader business. However, the Authority notes that Companies House records indicate that Mr Dwane has since renamed his company for a second time back to MDCSL. As a result, the Application remains marked as incomplete. This raises concerns as to whether Mr Dwane understands the regulatory requirements which apply to him. In addition, given that Mr Dwane did not inform the Authority he had re-registered the company as MDCSL, whether he will be open and cooperative in his dealings with the Authority.
46. As a result, the Authority considers that there is a material risk of confusion to consumers because of the similarities between MDCSL and Mr Dwane's proposed business. Consumers searching the FCA Register for Mr Dwane may identify MDCSL (Mick Dwane Care Sales Limited) or vice versa. This risk is significantly increased by the fact that both entities use the same trading name. It may be unclear to consumers that they may be dealing with an unauthorised firm and therefore unable to make a complaint to the Financial Ombudsman Service.
47. Mr Dwane's statement that he wishes to keep MDCSL operational to make use of its company bank account also raises concerns that MDCSL may continue to play a role in Mr Dwane's ongoing business. The Authority considers that this may result in lack of clarity for consumers (or other regulated entities) as to whether they are dealing with an appropriately authorised firm or one which has had its permissions revoked. This is significant given that if consumers deal with a firm that has had its permission revoked (and is therefore not regulated) then they are unable to make a complaint to Financial Ombudsman Service.
48. Having regard to all the circumstances, the Authority therefore considers that Mr Dwane is not a fit and proper person to carry out the regulated activities applied for. As a result, the Authority cannot be satisfied that Mr Dwane satisfies or will continue to satisfy the Suitability Threshold Condition.

49. On the basis of the above reasons and having regard to all the circumstances, the Authority has therefore decided to refuse the Application on the basis that Mr Dwane does not satisfy the Threshold Conditions in relation to all of the regulated activities for which he would have permission if the Application was granted.

### **IMPORTANT NOTICES**

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

### **Publication**

51. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final 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 Michael John Dwane or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
52. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **Authority contacts**

53. For more information concerning this matter generally, contact Emily Pinkerton, Manager, *Lending & Intermediaries* at the Authority (direct line: 020 7066 1450 / email: [Emily.Pinkerton@fca.org.uk](mailto:Emily.Pinkerton@fca.org.uk)).

**Val Smith**  
**On behalf of the Regulatory Transactions Committee**

## **ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE**

### **Relevant Statutory Provisions**

1. Section 55A(1) of the Act provides for an application for permission to carry on one or more regulated activities to be made to the appropriate regulator. Section 55A(2) defines the “appropriate regulator” for different applications.
2. Section 55B(3) of the Act provides that, in giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of Part 4A of the Act, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the threshold conditions for which that regulator is responsible.
3. The threshold conditions that relate to the current application are set out in Part 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
4. Paragraph 2C of Schedule 6 to the Act (the Effective Supervision Threshold Condition) states:
  - (1) A must be capable of being effectively supervised by the FCA having regard to all the circumstances including -
    - (a) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;
    - (b) the complexity of any products that A provides or will provide in carrying on those activities;
    - (c) the way in which A’s business is organised;

(d) if A is a member of a group, whether membership of the group is likely to prevent the FCA's effective supervision of A;

(e) whether A is subject to consolidated supervision required under any of the relevant directives;

(f) if A has close links with another person ("CL") -

(i) the nature of the relationship between A and CL;

(ii) whether those links are or that relationship is likely to prevent the FCA's effective supervision of A; and

(iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA's effective supervision of A.

5. Paragraph 2E to Schedule 6 of the Act (the Suitability Threshold Condition) states:

(1) A must be a fit and proper person having regard to all the circumstances, including-

(a) A's connection with any person;

(b) the nature (including the complexity) of any regulated activity that A carries on or seeks to carry on;

(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;

(d) whether A has complied and is complying with requirements imposed by the FCA in the exercise of its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where A has so complied or is so complying, the manner of that compliance;

(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; and

(g) the need to minimise the extent to which it is possible for the business carried on by A, or to be carried on by A, to be used for a purpose connected with financial crime.

## **Relevant provisions of the Authority's Handbook**

### **Threshold Conditions - COND**

6. 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 include those set out below.

#### General guidance

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. Under COND 1.3.3AG, in determining the weight to be given to any relevant matter, the Authority will consider its significance in relation to the regulated activities for which the firm has, or will have, permission, in the context of its ability to supervise the firm adequately, having regard to the Authority's statutory objectives. In this context, a series of matters may be significant when taken together, even though each of them in isolation might not give serious cause for concern.
9. 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.
10. COND 1.3.3CG provides that, when assessing the FCA threshold conditions, the FCA may have regard to any person appearing to be, or likely to be, in a relevant relationship with the firm, in accordance with section 55R of the Act (Persons connected with an applicant). For example, a firm's controllers, its directors or partners, other persons with close links to the firm (see COND 2.3), and other persons that exert influence on the firm which might pose a risk to the firm's

satisfaction of the FCA threshold conditions, would be in a relevant relationship with the firm.

#### Threshold Condition 2C: Effective supervision

11. COND 2.3.3G states that, when the FCA is assessing threshold condition 2C, factors which the FCA will take into consideration include, among other things, whether:

- (1) it is likely that the FCA 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 FCA 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 FCA;
- (2) the structure and geographical spread of the firm, the group to which it belongs and other persons with whom the firm has close links, might hinder the provision of adequate and reliable flows of information to the FCA; factors which may hinder these flows include the fact there may be branches or connected companies in territories which supervise companies to a different standard or territories with laws which restrict the free flow of information, although the FCA will consider the totality of information available from all sources; and
- (4) in respect of a firm not carrying on, or seeking to carry on, a PRA-regulated activity, it is possible to assess with confidence the overall financial position of the group at any particular time; factors which may make this difficult include lack of audited consolidated accounts for a group, if companies in the same group as the firm have different financial years and accounting dates and if they do not share common auditors.

#### Threshold condition 2E: Suitability

12. 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 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.

13. COND 2.5.3G(1) states that the emphasis of threshold condition 2E is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the FCA and/or the PRA, as appropriate, under the approved persons regime (see SUP 10 (Approved persons) and FIT). In certain circumstances, however, the FCA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.

14. COND 2.5.4G(2) states that examples of the kind of general considerations to which the FCA may have regard when assessing whether a firm will satisfy, and continue to satisfy, threshold condition 2E include, but are not limited to, 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) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

15. COND 2.5.6G provides that examples of the kind of particular considerations to which the FCA 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 is ready, willing and organised to comply with the requirements and standards under the regulatory system in addition to other legal, regulatory and professional obligations;

(1A) the Firm has made arrangements to put in place an adequate system of internal control with the requirements and standards for which the FCA is responsible under the regulatory system; 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.

1. FIT 2.1.3 G provides that:

The matters referred to in FIT 2.1.1 G to which the FCA will have regard, and to which an SMCR firm should also have regard, include, but are not limited to:

(13) whether, in the past, the person has been candid and truthful in all their dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.

2. FIT 2.3.1 G provides that:

In determining a person's financial soundness, the FCA will have regard, and an SMCR firm should also have regard, to any factors including, but not limited to:

(1) whether the person has been the subject of any judgment debt or award, in the United Kingdom or elsewhere, that remains outstanding or was not satisfied within a reasonable period;

(2) whether, in the United Kingdom or elsewhere, the person has made any arrangements with their creditors, filed for bankruptcy, had a bankruptcy petition served on them, been adjudged bankrupt, been the subject of a bankruptcy restrictions order (including an interim bankruptcy restrictions order), offered a bankruptcy restrictions undertaking, had assets sequestrated, or been involved in proceedings relating to any of these.