
FINAL NOTICE

**Mr Nasser Yusuf
T/A Advance Money Management
Cariocca Business Park
Unit 7
2 Hellidon Close
Ardwick
Manchester
M12 4AH**

20 April 2016

ACTION

1. By an application dated 29 December 2014 Mr Yusuf, a sole trader trading as Advance Money Management, applied under section 55A of the Financial Services and Markets Act 2000 for Part 4A permission to carry on the regulated activities of Debt Adjusting and Debt Counselling.
2. The Application was completed by the provision of further information on 29 July 2015.
3. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

4. By its Warning Notice dated 29 January 2016 the Authority gave notice that it proposed to refuse the Application and that Mr Yusuf was entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from Mr Yusuf 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.

6. By its Decision Notice dated 7 March 2016, the Authority gave Mr Yusuf notice that it had decided to take the action described above.
7. Mr Yusuf 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.
8. 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 Mr Yusuf Final Notice of its refusal.
9. For the reasons set out herein, the Authority cannot ensure that Mr Yusuf will satisfy, and continue to satisfy, the Threshold Conditions set out in Schedule 6 of the Act.
10. In particular, the Authority cannot ensure that Mr Yusuf will satisfy Threshold Conditions 2C (Effective supervision), 2D (Appropriate resources) and 2E (Suitability). This is based on:
 - a. Mr Yusuf's failure to comply with his disclosure obligations. Mr Yusuf failed to disclose his disciplinary history with the OFT in response to specific questions in the application form about whether Mr Yusuf has ever been investigated or disciplined by any financial services regulator or government body and whether it has ever been investigated for the possible carrying on of unauthorised regulated activities. In particular, not disclosing his failure to refund brokerage fees. Accordingly, the Authority has concerns about Mr Yusuf's honesty and integrity and the ability of the Authority to effectively supervise Mr Yusuf;
 - b. Mr Yusuf not being ready, willing and organised to comply with the Authority's requirements. Mr Yusuf intends that client monies will be paid out to creditors but has not undertaken any action to open a client bank account. Additionally, Mr Yusuf has not provided a copy of the promotional material to be featured on its website; and
 - c. the skills and experience of Mr Yusuf. The Authority has concerns about his competence to operate a debt management firm that complies with the Consumer Credit Sourcebook.

DEFINITIONS

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

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

"the Application" means the application dated 29 December 2014 applying for Part 4A permission for Mr Yusuf as referred to in paragraph 1 above

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

"CASS" means the part of the Authority's Handbook entitled 'Client Assets Sourcebook'

"CONC" means the part of the Authority's Handbook entitled 'Consumer Credit Sourcebook'

"COND" means the part of the Authority's Handbook entitled 'Threshold Conditions'

"the Decision Notice" means the Decision Notice dated 7 March 2016 given to Mr Yusuf

"FIT" means the part of the Authority's Handbook entitled 'Fit and Proper test for Approved Persons'

"Mr Yusuf" means Nasser Yusuf, a sole trader trading as Advance Money Management

"OFT" means the Office of Fair Trading

"PRA" means the body known as the Prudential Regulation Authority

"RTC" means the Authority's Regulatory Transactions Committee

"SUP" means the part of the Authority's Handbook entitled 'Supervision Manual'

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

"the Warning Notice" means the Warning Notice dated 29 January 2016 given to Mr Yusuf

"the Decision Notice" means the Decision Notice dated 7 March 2016 given to Mr Yusuf

FACTS AND MATTERS

12. The Authority conducted an interview with Mr Yusuf on 29 July 2015, in which Mr Yusuf was asked a number of questions to ascertain his knowledge of debt solutions. Mr Yusuf said "*I cannot recall*" or "*I don't know*" to the following questions:

- a. what a statute barred debt is;
- b. the circumstances in which a Debt Relief Order would be revoked; and
- c. the difference between a Trust Deed and a Protected Trust Deed.

13. Mr Yusuf did not provide an answer to the following questions:

- a. how a Debt Relief Order affects a consumer's credit rating; and
- b. what a Debt Arrangement Scheme is and what the key step that a commercial provider of such schemes must make is.

14. Mr Yusuf does not have a client bank account although he intends that client monies be paid out to creditors. In the interview on 29 July 2015, Mr Yusuf stated that he would open a client bank account in the future but did not specify when. To date, Mr Yusuf has not informed the Authority that he has opened such an account nor has he provided the Authority with a client bank account letter.

15. Mr Yusuf does not have a website. On 26 June 2015 Mr Yusuf was asked to provide a demonstration of how the website would look once it is live. Mr Yusuf responded that it would take two to three weeks to create the website. The Authority clarified that only a written representation of the website's content was required, to which Mr Yusuf responded that the content will be discussed with the web developer, which would take a few weeks. The progress of the website was discussed during the interview on 29 July 2015 and Mr Yusuf stated that it was *"going well, it will be up and running"*. To date, there is no live website and Mr Yusuf has not provided the Authority with any website content.
16. On review of Mr Yusuf's Facebook page, the Authority noted that the following statement appeared: *"we can freeze the interest on your account"*. Mr Yusuf was made aware on 18 August 2015 that this statement was a breach of the CONC rules and it has since been removed.
17. In the application form Mr Yusuf completed, the question has *"[t]he Applicant ever been: criticised, censured, investigated, disciplined, suspended, expelled, fined, or been subject to any other disciplinary intervention action by any financial services regulator or government body in the UK or overseas?"* was answered *"No"*.
18. Mr Yusuf has been subject to disciplinary intervention/action with his previous regulator, the OFT:
 - a. the OFT issued a warning letter to Mr Yusuf on 22 February 2007 for failing to notify the OFT of a change of address;
 - b. On 22 March 2008, Mr Yusuf's OFT licence lapsed;
 - c. on 8 April 2008, the OFT issued a further warning letter to Mr Yusuf concerning an advertisement which appeared in the Yellow Pages directory for 2007/2008 which the OFT viewed as a consumer credit advertisement in breach of the Consumer Credit Act 1974 and Consumer Credit Regulations 2004. This resulted in Mr Yusuf agreeing to provide an undertaking under section 219 of the Enterprise Act 2002 not to publish, devise or procure any credit advertisement which fails to comply with regulation 2 of the Consumer Credit Regulations 2004;
 - d. on 12 June 2008 a warning letter was issued by the OFT concerning unlicensed trading. Subsequently, Mr Yusuf made relevant amendments to his website;
 - e. on 18 June 2008 Mr Yusuf submitted an application to the OFT for a consumer credit licence;
 - f. the OFT later discovered that, despite the warning in June 2008, the website was once more visible and therefore sent a letter to Mr Yusuf on 19 February 2009 requiring immediate cessation of any activities being undertaken for which a consumer credit licence was required;
 - g. a Minded to Refuse Letter was issued by the OFT on 4 September 2009;
 - h. Mr Yusuf responded to this on 25 September 2009;
 - i. subsequently a Determination of the Minded to Refuse Notice was issued on 22 January 2010. This notice referred to: *"...difficulty encountered by complainants and public bodies in contacting you, evidences a degree of*

dysfunctionality in your internal arrangements for handling complaints and regulatory issues, and that as a whole reflects adversely on your competence to engage in licensable credit activities". The Notice also detailed that Mr Yusuf failed to refund brokerage fees to customers on several occasions, despite warnings from local trading standards bodies and the Financial Ombudsman Service, and failed to respond to complaints in a timely manner; and

- j. Mr Yusuf appealed to the First Tier Tribunal on 22 February 2010. This resulted in a Consent Order (issued on 17 June 2010) being agreed by Mr Yusuf, detailing requirements to be imposed on him.

19. This history has never been disclosed by Mr Yusuf to the Authority.

20. Mr Yusuf is the only member of staff, other than his wife who has been identified as the locum. Mr Yusuf's wife has had no formal training and has no relevant qualifications. Her only experience is having worked with Mr Yusuf previously. In Mr Yusuf's absence, his wife would be responsible for all duties.

21. In support of the application, Mr Yusuf has provided various policies and procedures and confirmed that a compliance firm assisted with the drafting of some of them. Mr Yusuf's Compliance Breach policy refers to senior management and directors, however Mr Yusuf is a sole trader. Similarly, the Risk Management Procedure refers to risks being assessed on organisational, departmental and staff levels, despite the fact that Mr Yusuf is a sole trader. Further, the Compliance Monitoring and Internal Audit Policy refers to agents engaged with Mr Yusuf in the UK or overseas, despite the fact that Mr Yusuf does not operate outside of the UK.

IMPACT ON THE THRESHOLD CONDITIONS

22. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

23. The Authority considers that, having regard to all the circumstances, it cannot be satisfied that Mr Yusuf will satisfy, and will continue to satisfy the threshold conditions for which the Authority is responsible (as required by s55B(3) of the Act in order for the Authority to grant authorisation). In particular, the Authority does not consider the Threshold Conditions are met in relation to 2C (Effective supervision), 2D (Appropriate resources) and 2E (Suitability).

Effective Supervision

24. The Authority notes that Mr Yusuf failed to disclose in the application to the Authority the disciplinary intervention/action taken by the OFT as detailed above and has not since disclosed to the Authority this disciplinary history. The Authority considers this non-disclosure to give rise to concerns about the Authority's ability to effectively supervise Mr Yusuf were he to be authorised, as it is not clear that the Authority will receive adequate information from him to enable it to determine whether he is complying with the requirements and standards under the regulatory system.

25. In addition, the Authority notes that Mr Yusuf acted in contravention of the OFT's warning letter of June 2008 by continuing to offer services on his website for which he did not have permission. The Authority considers that this gives rise to a risk that Mr Yusuf could not be effectively supervised by the Authority as he has acted in contravention of the directions of another regulatory body.

Appropriate Resources

26. The Authority is concerned that if Mr Yusuf were to be authorised, Mr Yusuf lacks the requisite knowledge to impart accurate financial advice, demonstrated by Mr Yusuf not being able to adequately answer the technical questions in the interview.
27. Although Mr Yusuf has identified his wife as being the individual who will be responsible for all duties in his absence, it is not clear whether she will have the necessary skills, experience and competence to undertake all regulated activities on his behalf as she has no formal training or qualifications and her only experience is having worked with Mr Yusuf previously. The Authority considers that, in the absence of any formal training, the only training Mr Yusuf's wife would have received is from Mr Yusuf, in respect of whom the Authority has concerns in relation to competence. The Authority considers that Mr Yusuf does not have appropriate non-financial resources, having regard to the skills and experience of Mr Yusuf and his locum Ms Yusuf and the regulatory requirements to be imposed on Mr Yusuf (paragraph 2D(4) of Schedule 6 to the Act), including in relation to the systems and controls Mr Yusuf has in place (COND 2.4.2G(2A)).
28. The Authority considers that Mr Yusuf is not ready, willing and organised to comply with regulatory requirements and lacks the requisite skills and experience expected of a debt management firm. Notably, the Authority would have expected to see a copy of the client bank account acknowledgement letter. As Mr Yusuf has not taken any action to open a client bank account or provided the Authority with a client bank account acknowledgement letter, the Authority is concerned about Mr Yusuf's knowledge of, and therefore compliance with, the CASS rules that will apply to Mr Yusuf. The Authority considers that this gives rise to a risk of consumer detriment.
29. The Authority notes that the Determination of the Minded to Refuse Notice issued by the OFT in 2010 detailed concerns about Mr Yusuf's competence to engage in credit activities. The Authority considers that this aggravates the current concerns about whether Mr Yusuf has appropriate non-financial resources.

Suitability

30. Mr Yusuf has not satisfied the Authority that he has adequate skills and experience to conduct the regulated activities for which he has applied for permission (as required by paragraph 2E(1)(e) of Schedule 6 to the Act) and that he is ready, willing and organised to comply with the regulatory requirements that will apply to him. In particular, Mr Yusuf has not taken any action to open a client bank account (which demonstrates that he is not being ready, willing and organised) and has provided to the Authority inadequate paperwork (including no content of website being provided and policies and procedures being provided that do not appear to take account of the nature of the firm's activities nor how the firm will conduct its business), demonstrating that Mr Yusuf is not a fit and proper person having regard to all the circumstances. It is essential that a client bank account is opened as this segregates a firm's financial resources from funds paid to the firm by customers which are owed to creditors. The Authority considers that this demonstrates that Mr Yusuf does not have adequate skills and experience and that he is not ready and organised to comply with the regulatory requirements that will apply to him.
31. Further, the Authority is concerned about Mr Yusuf's honesty and integrity as a result of his failure to disclose his disciplinary history as detailed above. The

Authority considers this non-disclosure demonstrates a deliberate failure to disclose Mr Yusuf's disciplinary history.

32. Mr Yusuf has not satisfied the Authority that he is a fit and proper person having regard to all the circumstances, including the need to ensure that its affairs are conducted soundly and prudently.

Summary

33. On the basis of the facts and matters described above, the Authority has concluded that Mr Yusuf will not satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which Mr Yusuf would have permission if the application was granted.

IMPORTANT NOTICES

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

Publication

35. 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.
36. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

37. For more information concerning this matter generally, contact Marina Lancaster, Manager, Debt, Credit and Regulatory Permissions, Credit Authorisations Division, at the Authority (direct line: 02070665250/ email: Marina.Lancaster@fca.org.uk).

Katherine Webster
Chair 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 are set out in 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

4. 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. The main considerations in relation to the action specified are set out below.

Threshold Condition 2C: Effective supervision

5. COND 2.3.3G states that, in assessing the Threshold Condition set out in paragraph 2C of Schedule 6 to the Act, factors which the Authority will take into consideration include, among other things, whether it is likely that the Authority will receive adequate information from the firm to determine whether it 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

6. 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.
7. 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.

COND 2.4.4G states that, when assessing whether a firm has appropriate resources, the Authority will have regard to matters including:

- a. the skills and experience of those who manage the firm's affairs; and
- b. 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 and any other requirement in relation to whose contravention the Authority would be the appropriate regulator for the purposes of any provision of Part 14 of this Act.

Threshold Condition 2E: Suitability

8. COND 2.5.2G(2) states that the Authority 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 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.
9. COND 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the Threshold Conditions, the Authority 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 Threshold Conditions, the Authority may have regard to any person appearing to be, or likely to be, in a relevant relationship with the firm, in accordance with section 55R of the Act (Persons connected with an applicant). For example, a firm's controllers, its directors or partners, other persons with close links to the firm (see COND 2.3), and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the Threshold Conditions, would be in a relevant relationship with the firm.
11. COND 2.5.3G(1) states that the emphasis of the Threshold Conditions set out in paragraphs 2E and 3D of Schedule 6 of the Act is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the Authority and/or the PRA, as appropriate, under the approved persons regime (see SUP 10 (Approved persons) and FIT). In certain circumstances, however, the Authority may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.

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:

- a. the nature (including the complexity) of any regulated activity that the firm carries on or seeks to carry on;

- b. the need to ensure that the firm's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
- c. whether the firm has complied and is complying with requirements imposed by the Authority in the exercise of its functions, or requests made by the FCA, relating to the provision of information to the Authority and, where the firm has so complied or is so complying, the manner of that compliance;
- d. whether those who manage the firm's affairs have adequate skills and experience and act with probity; and
- e. whether the firm'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.