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FINAL NOTICE

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Dear Mr Ali

ACTION

1. On 1 April 2014, NDC was granted interim permission pursuant to article 56 of the Amendment Order to carry on the regulated activities of:
 - a. Debt adjusting, under article 39D of the RAO; and
 - b. Debt counselling, under article 39E of the RAO.
2. By an application dated 1 September 2014, NDC applied under section 55A of the Act for Part 4A permission to carry on these regulated activities. The application was complete.

3. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

4. For the reasons set out herein, the Authority cannot ensure that, in relation to the regulated activities for which Part 4A permission is sought, NDC will satisfy, and continue to satisfy, the Threshold Conditions. Specifically, the Authority does not consider that NDC will 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.
5. During its assessment of the Application, the Authority identified a number of failures by NDC to meet regulatory requirements. These included that NDC:
 - a. did not keep orderly records that are sufficient to enable the Authority to ascertain that the firm was complying with its obligations under CONC when giving debt advice, contrary to SYSC 9.1.1R. This meant that the Authority was not able to satisfy itself as to the quality of the firm's debt advice;
 - b. did not include in its written advice to its customers the matters specifically required by CONC 8.3.4R, 8.3.4R(1), 8.3.4R(2), 8.3.4R(3) and 8.8.1R(8);
 - c. sent unclear and misleading communications to customers in relation to the level of fees they pay to NDC, in breach of CONC 3.3.1R;
 - d. had a QA process in place that the Authority could not be satisfied was adequate. In particular, as a result of the failings in the firm's record keeping, the firm was unable even to confirm which files had been subject to QA; and
 - e. was charging, between April 2014 and October 2015, a significant number of its customers fees that were over 50% of the customer's disposable income, in breach of CONC 8.7.2R(2).
6. After the Authority raised these matters with it, NDC made a number of changes to its processes that it considered addressed the deficiencies in paragraphs 5a to 5d and agreed to pay redress to the customers affected by the firm's non-compliance with CONC 8.7.2R(2). Having considered the changes made by NDC to its processes, and having reviewed five sample files and a QA Log in respect of three of those files, the Authority considers that the matters referred to in paragraph 5b, with the exception of the concerns in relation to CONC 8.3.4R and 8.3.4R(1), and in paragraphs 5c and 5e have been addressed going forward. However, the firm did not demonstrate to the Authority's satisfaction that it had both fully understood the extent of the remaining deficiencies identified by the Authority and effectively implemented the necessary changes to rectify those deficiencies going forward. The Authority considers that the firm's failure to recognise the deficiencies identified by the Authority, and to remedy adequately some of those deficiencies, reflects on the adequacy and competence of the firm's human resources, including at a senior management level, and on the adequacy of its systems and controls.
7. Further, the Authority's review of certain of NDC's files, including the five most recent sample files, led to the Authority having concerns about the suitability of the debt advice provided by NDC which the Authority has been unable to address effectively due to NDC's inadequate record keeping. In particular, the Authority has been unable to ascertain whether, and how, in recommending a DMP to a customer, NDC took due account of the customer's interests, particularly in circumstances where, in a high proportion of the files the Authority reviewed, the customer had a low level of monthly

disposable income, was required to pay a relatively high proportion of that disposable income in fees to NDC, and was recommended a DMP with a long duration.

8. The Authority considers the failures and concerns outlined above to be serious, in particular, NDC's ongoing failure to keep records in compliance with SYSC 9.1.1R which has prevented the Authority from assessing the quality of NDC's debt advice. Consumers who approach debt management firms are typically in difficult circumstances and rely on the expertise and professionalism of such firms. As poor debt advice can lead to consumers attempting to make payments to reduce their debt that they cannot afford, it is particularly important that firms can demonstrate that they have had due regard to customers' interests and have given customers advice which is appropriate for their individual circumstances.
9. The Authority's concerns are heightened because NDC:
 - a. held, until the Authority gave NDC a Decision Notice on 24 January 2017, an interim permission and was therefore required to comply with the Authority's regulatory requirements and standards since 1 April 2014;
 - b. was (between 19 November 2008 and 31 March 2014) licensed and regulated by the OFT, which applied substantially the same standards to debt management firms as the Authority has applied to them since April 2014; and
 - c. would, if authorised, need to be capable of continuing to satisfy the Authority's regulatory requirements and standards on its own initiative and without supervision or guidance by the Authority.
10. Given the above, and in circumstances where (i) the firm failed to identify itself the deficiencies in paragraph 5; (ii) the firm has not been proactive in ensuring compliance with the applicable regulatory rules; (iii) the firm has been unable adequately to address all of the failures and concerns identified by the Authority; and (iv) the firm's senior management has not sought to undertake any training, obtain advice or provide for any expert external input, guidance or systems to be available to the firm, the Authority does not have confidence that NDC is ready, willing and organised to comply, and continue to comply, with the applicable regulatory requirements.
11. As a result, the Authority is not satisfied that:
 - a. it will be able to monitor effectively NDC's compliance with the regulatory standards and requirements applicable to a firm carrying on the regulated activities of debt adjusting and debt-counselling;
 - b. NDC has in place human resources (including at a senior management level) that are both able and willing to understand, and ensure the firm complies with, the applicable regulatory standards and requirements;
 - c. NDC has adequate processes, systems and controls in place, and is ready, willing and organised to comply with the applicable regulatory standards and requirements; and
 - d. NDC will conduct its business in an appropriate manner, having regard to the interests of consumers.
12. By way of a Decision Notice dated 24 January 2017, the Authority gave NDC notice that it had decided to refuse the Application.

13. On 25 January 2017, NDC referred the Decision Notice to the Tribunal and subsequently withdrew (with the requisite consent from the Tribunal) the reference on 30 November 2018.
14. In light of the above, the Authority has refused the Application.

DEFINITIONS

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

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

"Application" means the application dated 1 September 2014 made by NDC for Part 4A authorisation, as referred to in paragraph 2 above.

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

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

"CONC" means the section of the Handbook entitled "Consumer Credit Sourcebook".

"CFS" means Common Financial Statement.

"COND" means the section of the Handbook entitled "Threshold Conditions".

"DMP" means debt management plan.

"the Firm Visit" means the visit conducted by the Authority to NDC's place of business on 5 October 2015.

"the Handbook" means the Authority's Handbook of Rules and Guidance.

"I&E" means income and expenditure.

"IVA" means individual voluntary arrangement.

"NDC" means the applicant, Nationwide Debt Consultants Limited.

"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.

"SUP" means the Supervision manual part of the Handbook.

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

"Threshold Conditions" means the threshold conditions set out in Schedule 6 to the Act for which the Authority is responsible (see Annex A for more detail).

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

“the Warning Notice” means the warning notice given to NDC on 5 October 2016.

RELEVANT REGULATORY PROVISIONS

16. Details of regulatory provisions relevant to this Notice are set out in Annex A.

FACTS AND MATTERS

Background to the firm

17. NDC is a debt management firm that was incorporated on 6 May 2008.

18. Between 19 November 2008 and 31 March 2014, NDC held a license with the OFT to act as a debt management firm.

19. On 1 April 2014, NDC became regulated by the Authority under interim permission reference 617802 and applied for full authorisation on 1 September 2014.

Overview of NDC’s business

20. NDC’s business model entails sourcing indebted customers who are seeking debt advice. NDC offers advice on a range of debt solutions, although the only debt solution offered in-house by NDC is a DMP. In the event that a customer is recommended a debt solution other than a DMP, NDC refers that customer to an external provider.

21. In order to advise customers on the available suitable debt solutions, NDC 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). NDC’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 regulated activities set out in its business plan.

22. If NDC advises a customer that a DMP is a suitable means of dealing with their debts and the customer agrees to enter into a DMP, NDC proceeds to negotiate with some or all of the customer’s creditors to set up repayment plans in respect of each debt. If an agreement is reached with one or more of the customer’s creditors, NDC requires the customer to make monthly payments to NDC from which NDC deducts its fees and then distributes the customer’s payments to the creditors who have agreed to participate in the DMP in agreed monthly sums.

23. NDC’s principal source of income is from the monthly management fees it charges customers who are on active DMPs. NDC’s most recent terms and conditions indicate that the firm charges:

- a. 17.5% of a customer’s monthly payment where the monthly payment is in excess of £175.01;
- b. a minimum fee of £20 where a customer’s monthly payment is less than £60;
- c. a minimum fee of £25 where a customer’s monthly payment is between £60.01 and £125;

- d. a minimum fee of £30 where a customer's monthly payment is between £125.01 and £150; and
- e. a minimum fee of £35 where a customer's monthly payment is between £150.01 and £175.

Alternatively, where the fee is calculated based on the number of creditors a customer has (as opposed to the amount of their monthly payment), NDC charges £20 where a customer has between two and five creditors, with an additional £5 charged for up to every five additional creditors, subject to a maximum of £100.

- 24. In addition, NDC charges an arrangement fee equivalent to the first two monthly payments which is evenly distributed over the first six months. However, since the Authority reminded the firm in October 2015 of its obligation to comply with CONC 8.7.2R(2) NDC has capped the total monthly fee payable by a customer at 50% of the customer's monthly disposable income.
- 25. According to information provided by NDC on 17 June 2016, NDC had 1,037 debt management customers as at that date.

NDC's Record Keeping

- 26. 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 Authority 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 customers).
- 27. In the absence of these records, a firm is not able to demonstrate to the Authority that it is complying with requirements under the regulatory regime and the Authority is not able to ensure good consumer outcomes have and are being achieved; further, the firm is not able to satisfy itself that it properly understands the customer's history, can provide accurate advice that the customer will understand and can identify gaps in that information.
- 28. In order to comply with SYSC 9.1.1R, the Authority therefore considers that NDC 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.
- 29. During its assessment of the Application, the Authority identified deficiencies in NDC's record keeping. The basis for the Authority's concerns were:
 - a. During the Firm Visit, Mr Ali (the sole director of NDC) stated that NDC did not keep notes of advice given to customers.
 - b. A review of 25 customer files in relation to which NDC provided new/initial advice to customers during the period 7 March 2016 to 17 May 2016 confirmed that NDC did not keep notes of the I&E assessments carried out. In each case, NDC's record of the I&E assessment and the advice given during the meeting was limited to one or two sentences.
- 30. Given the limited nature of the firm's record keeping, the Authority was unable to

assess from reviewing the files whether in each case NDC complied with a number of relevant regulatory requirements in CONC 8 in relation to each (or indeed any) of the 25 customers. The Authority was concerned by this because I&E assessments are where NDC should be carrying out a reasonable and reliable assessment of the customer's financial and personal circumstances so that the customer can be advised of the most appropriate debt solution. Accordingly, the Authority could not be satisfied that the advice provided to these customers over the telephone was in compliance with, for example, CONC 8.3.7R(2) and (5), 8.3.2R(1) to (3), 8.3.4R and 8.5.4R(1) and (2).

31. By way of example, the entry for the "advice assessment" in the case of customer 293591 only stated "advised client IVA based on circumstances". Given the brevity of the note, the Authority could not identify (for example) what specific information the firm gathered as part of the fact-find, if the firm carried out a reasonable and reliable assessment of the customer's circumstances, the range of debt solutions discussed with the customer (and what was discussed about each solution), if the customer was provided with appropriate advice and if the customer was on a suitable debt solution.
32. The Authority raised the deficiencies in NDC's record keeping with the firm by way of a letter dated 1 September 2016. In response, NDC acknowledged that the customer files contained a "lack of detailed notes and documented evidence" and stated that it had updated its record keeping policy and that "all records are now retained and archived".
33. However, in that response NDC did not provide sufficient evidence to demonstrate that, going forward, it had established and effectively implemented a record keeping policy that ensured it complies with SYSC 9.1.1R.
34. On 21 October 2016, in response to the Authority's concerns in this area as set out in the Warning Notice, NDC provided the Authority with five sample customer files which, it stated, demonstrated that its record keeping now complies with SYSC 9.1.1R.
35. Whilst the notes within these five files of the firm's advice calls are more detailed than previously, the Authority considers that they still do not contain enough information for either the Authority or the firm itself to know what advice was given to each individual customer and on what basis that advice was provided. Accordingly, the Authority is unable to assess from reviewing the files whether NDC has complied with a number of relevant regulatory requirements in CONC 8, including:
 - a. CONC 8.3.2R(2), as the notes of the advice calls are not sufficiently detailed to enable the Authority to determine whether NDC provided the customers with sufficient information about the available options identified as suitable for the customers' needs (such as the advantages, disadvantages, risks, costs and estimated plan duration of the options identified as suitable); and
 - b. CONC 8.3.2R(3), as the notes of the advice calls are not sufficiently detailed to enable the Authority to determine whether NDC explained the reasons why the firm considered a DMP or other options (such as self-management, a consolidation loan or full and final settlement) suitable or unsuitable for the customers.

Suitability of advice given

36. As mentioned in paragraph 30 above, the limited nature of NDC's record keeping meant that the Authority could not be clear, when assessing the 25 files, what steps,

if any, the firm took when giving advice. However, there were a number of indications in the 25 files that the firm may not have given suitable advice:

- a. For customer 293593, on 10 March 2016 the file states that the customer was advised that an IVA was the most suitable debt solution but, as the customer was not in possession of all creditor information, a DMP was advised temporarily whilst the customer collected this information. The records for this customer go up to 27 June 2016 and there is no indication on the file that, since 10 March 2016, NDC reminded the customer to obtain all creditor information or that the firm took any other action to ensure that the customer was on what it had identified as the most suitable debt solution.
- b. For customer 293591, NDC recorded on the customer's financial statement an expenditure of £150 for housekeeping for a one-person household. Notwithstanding that this was only 43% of the relevant CFS guideline of £348 (which, according to information provided by NDC during the Authority's assessment of the Application, the firm uses to assist it in assessing expenditure levels), there was no evidence on the file that the firm explored this with the customer and obtained an adequate explanation.
- c. For customer 293597, NDC recorded on the customer's financial statement an expenditure of £240 for housekeeping for a two-person household. Notwithstanding that this was only 41% of the relevant CFS guideline of £584, there was no evidence on the file that the firm explored this with the customer and obtained an adequate explanation.
- d. For customer 293646, the file states that the customer cannot speak English. Notwithstanding this, there was no evidence on the file that NDC ensured that the customer understood the correspondence and advice (for example, by obtaining confirmation that the customer was being assisted by someone who could speak both English and their language).
- e. Information provided by NDC to the Authority showed that 21 of the 25 customers had monthly disposable income of £100 or less, and 16 of these 21 customers were paying 50% of their monthly disposable income in fees to NDC (with the other five customers all paying over 38% of their monthly disposable income in fees to NDC). The Authority has also seen details of the duration of the DMP for 12 of the 25 customers, 10 of whom had monthly disposable income of £100 or less, and the expected duration of the DMP for seven of those 10 customers was over 10 years, with the longest being over 90 years. In light of NDC's inadequate record keeping, the Authority is unable to ascertain whether, and how, NDC took into account a customer's low level of monthly disposable income and the relatively high proportion that they were paying in fees in advising the customer that a DMP of many years' duration was suitable for them. Without such information, the Authority cannot satisfy itself that NDC gave advice having regard to the best interests of its customers.

37. In addition, the Authority considers that the five sample customer files mentioned in paragraph 34 above did not alleviate its concerns as to the suitability of the advice provided by NDC. In all these five cases, the notes in the files failed to reassure the Authority that the advice provided by NDC had regard to the best interests of the customer (as required by CONC 8.3.2R(1)(a)) and/or was appropriate to the customer's individual circumstances (as required by CONC 8.3.2R(1)(b)). The Authority identified the following issues:

- a. In three of the files NDC recommended a DMP with a duration of over 40 years, but it was not clear why NDC considered that a DMP was in the best interests of the customer and appropriate to their individual circumstances given the very long period before the debt would be liquidated and the very large cumulative fees that would be paid throughout the life of the DMP.
- b. In two of the files NDC's advice appeared to be based on an assumption that the customer's financial circumstances would improve in the near future, but the file did not include an adequate justification for that assumption.
- c. The customers had informed NDC that they had a level of monthly disposable income of between £50 and £150. In each case, the customer was required to pay 50% of their monthly disposable income in fees to NDC for the first six months, and between 20% and 50% of their monthly disposable income in fees to NDC thereafter. The level of a customer's monthly disposable income, and the proportion which a customer would have to pay in fees, are relevant factors that should be taken into account in considering whether a DMP is the appropriate solution for that customer. The possibility of the customer not carrying on with the DMP for its intended duration would also need to be evaluated. However, none of the five files contain any information regarding whether and how NDC took these factors into account in advising on the suitability of the DMPs. Without such information, the Authority cannot satisfy itself that NDC gave advice having regard to the best interests of its customers.

Summary

38. In light of the above, the Authority considers that NDC does not keep records in a manner compliant with SYSC 9.1.1R. As a result, the Authority cannot identify whether NDC's debt advice is given in a manner that complies with CONC 8. This is of particular concern as the CONC provisions are designed to ensure that customers:

- a. are provided with advice that is specific to their financial and personal circumstances (and highlights the risks they face), and is not generic advice;
- b. are only advised to take out a DMP where this is suitable for them, taking into account their individual circumstances;
- c. 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
- d. understand and are kept apprised of the steps being taken by the firm on their behalf.

39. 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.

40. In addition, the limited nature of NDC's record keeping in relation to the basis of the advice that the firm provided has also affected the Authority's ability to address effectively the concerns with the suitability of that advice that it has identified from its review of the 25 customer files (see paragraph 36) and the five sample files (see paragraph 37). In particular, the Authority has been unable to ascertain whether, and

how, in recommending a DMP to a customer, NDC took into account the low level of the customer's monthly disposable income (i.e. £100 per month or less), the relatively high proportion that the customer would pay in fees to NDC (50% or not much lower), and the long duration of the DMP (over 10 years), that were features in a high proportion of the files that the Authority reviewed.

41. Further, the firm's failure to demonstrate that it has effectively implemented record keeping arrangements that comply with SYSC 9.1.1R, during a period where failures were being identified by the Authority, reflects on the adequacy and competence of the firm's human resources, including at a senior management level.

Adequacy of advice documentation

42. The Authority assessed the 25 files mentioned in paragraph 29(b) above against certain of the rules in CONC. Given the impact of the record keeping failing set out above (see for example paragraph 30), the Authority was generally only able to assess the adequacy of the firm's written advice documentation sent to customers.
43. The Authority found that in 16 of the 25 customer files NDC had failed to comply with CONC 8.3.4R, and that in each of the 25 customer files NDC had failed to comply with CONC 8.3.4R(1), 8.3.4R(2), 8.3.4R(3)(a) to (e) and 8.8.1R(8). In addition, throughout this period NDC failed to comply with CONC 8.2.4R(2).
44. These rules are set out in Annex A and are aimed at ensuring, amongst other things, that customers are properly advised as to their options (and so can make an informed decision) in respect of their debts and that customers are kept apprised of the firm's progress in dealing with their debts. The Authority was therefore concerned by the nature and level of the failings identified (both when each rule is looked at individually and collectively).
45. The Authority raised these failings with NDC in its letter of 1 September 2016 (see paragraph 32). In its response on 15 September 2016, NDC provided updated customer documentation. The Authority has carefully reviewed the updated customer documentation and considers that it meets the requirements of CONC 8.3.4R(2) and (3) and 8.8.1R(8). In addition, the Authority considers that NDC is now compliant with CONC 8.2.4R(2). However:

- a. the firm has not demonstrated that it has taken adequate steps to resolve the remaining breaches (of CONC 8.3.4R and 8.3.4R(1)) going forward (i.e. that the necessary changes have been made and effectively implemented); and
- b. the Authority notes that NDC did not identify and rectify the CONC 8.3.4R(2) and (3), 8.8.1R(8) and 8.2.4R(2) failings of its own volition, but only rectified them once they were drawn to its attention by the Authority.

46. The Authority considers that the firm's failure to identify the above failings, and to rectify adequately some of them (even after they were drawn to its attention by the Authority), reflects on the adequacy and competence of the firm's human resources, including at a senior management level, and on the adequacy of its systems and controls.

Unclear and misleading fees information provided to customers

47. In reviewing the 25 files referred to above, the Authority identified that NDC's "Welcome to NDC" letter did not accurately reflect the fees that the customer

subsequently paid to the firm.

48. By way of example, in the case of customer 293615, the "Welcome to NDC" letter dated 13 April 2016 stated:

"During our discussion you advised us that you have approximate outstanding balances totalling £22142.00. After assessing your financial circumstances we calculated you have a monthly disposable income of £55.00 per month. We distribute payments to your creditors from month one and evenly distribute our fees over the first 6 months which is equivalent to your first two months payment totalling £110.00, any further fees will be charged over the remaining lifetime of your plan.

There is an on-going monthly management fee equivalent to 17.50% of your monthly payment subject to a minimum fee of £20 per month depending on number of creditors and the complexity of your file. Based on your estimated plan of £55.00 per month this will be £20.00 per month and we use this to pay for the ongoing costs of administering your plan."

49. The Authority considers this letter to be unclear as to whether, in addition to paying fees to NDC of £18.33 per month for the first six months of the DMP (i.e. £110 over six months), the customer would be paying the ongoing monthly management fee of £20 from the first month or only after the first six months. In fact, information provided by NDC on 17 June 2016 shows that this customer was actually paying £27.50 a month in fees to the firm, a figure which is not reflective of either the stated arrangement fee (£110 over 6 months), the ongoing monthly management fee (£20) or the combined total of the two fees (£38.33 per month).
50. The Authority considers that the "Welcome to NDC" letters sent by NDC to 12 of the 25 customers whose files were reviewed were unclear and misleading in a similar way, because their description of the fee to be paid was confusing and because they did not provide the accurate fee that these customers were paying to the firm. Accordingly, the Authority considers that NDC was not complying with CONC 3.3.1R.
51. The Authority raised concerns with the "Welcome to NDC" letter with NDC on 1 September 2016. In its response, NDC "*acknowledge[d] that [the firm's] fees can be easily misunderstood by clients and [that the firm] needs to be clear in explaining that [the] management fee is payable from the first month in addition to the set-up fee at a maximum of 50% [of the customer's monthly disposable income]*" and stated that it had, in light of the Authority's concern, amended its customer documentation to make the fees information "*more detailed and easier to understand*". The Authority considers that the fees information in the amended documentation is not unclear or misleading, but notes that the amendments to the customer documentation were made only after the Authority drew this matter to the firm's specific attention.
52. The firm's failure to identify and rectify these failings without prompting by the Authority reflects on the adequacy of the firm's human resources, including at a senior management level, and its ability to take due account of the interests of customers.

NDC's QA Process

53. During its assessment of the Application, the Authority identified concerns with the adequacy of NDC's systems and controls in relation to its QA process.
54. During the Firm Visit, Mr Ali stated that both he and NDC's only other debt advisor carry out QA in respect of each other's cases and that 10% of all debt advice cases are

quality assured.

55. On 18 February 2016 and 7 June 2016, the Authority asked NDC to provide copies of all policies, procedures and guidance, including the QA policy. The Authority did not receive the QA policy in response to these requests; the QA policy was only provided on 15 September 2016 after the Authority had formally set out its concerns to NDC.
56. Further, when the Authority asked NDC on 7 June 2016 to provide information in relation to its book of debt management customers, it asked the firm to include details of which customers' files had been subject to a QA review by NDC. However, NDC did not comply with this part of the Authority's request. On 21 June 2016 Mr Ali informed the Authority that this QA information had not been provided as NDC was unable to determine which customer files had undergone a QA assessment.
57. On 21 October 2016, in its written response to the Warning Notice, NDC informed the Authority that it had reviewed its QA procedure and had put in place a QA register. It provided the Authority with a document entitled 'Quality Assurance Log' (i.e. the QA register) which showed that three of the five sample customer files mentioned in paragraph 34 above had been through the QA process between 10 and 19 October 2016 and that, for all three files, no compliance breaches had been found, no actions were required to rectify any breaches and the advice process met the Authority's rules and guidance. On 30 November 2016 Mr Ali informed the Authority that it was he who had carried out the QA review in respect of these three cases and that he carries out the vast majority of the QA reviews.
58. The Authority reviewed the QA Log and the three files and identified the following issues:
 - a. the limited notes in the files (see paragraph 35 above) meant that it was not possible to ascertain from the files whether suitable advice had been given. When this issue was raised with Mr Ali on 30 November 2016, Mr Ali replied that he asked the adviser whose work he was assessing to confirm that, in giving advice, the applicable CONC rules had been complied with. Mr Ali failed to appreciate that a QA process which relies on verbal assurances from an adviser that they had acted appropriately is clearly inadequate;
 - b. the QA Log does not enable either NDC or the Authority to determine which files went through the QA process before the QA Log was created;
 - c. the QA Log does not include details of who carried out the QA review;
 - d. none of the files which went through the QA process contain any records (such as a QA checklist) to demonstrate that they have gone through the QA process;
 - e. it is not clear, either from the QA Log or from the files, how relevant compliance issues had been considered in the QA process; and
 - f. Mr Ali failed to identify the concerns identified by the Authority in its review of the same files (as set out in paragraphs 35 and 37 above).
59. Mr Ali also informed the Authority on 30 November 2016 that he relied on his own experience to satisfy himself that he would carry out a QA review properly and that he had not considered it necessary to seek the assistance of any independent third party in rectifying any of the issues identified by the Authority since NDC became regulated

by the Authority. The fact that Mr Ali has not sought to undertake any training, and has not sought to obtain advice or provide for any expert external input, guidance or systems to be available to the firm, despite being aware that neither he nor anyone else in the firm had identified the failings that the Authority had pointed out to NDC, is of concern to the Authority, in particular because of his statement that he carries out the vast majority of the QA reviews.

60. Given the importance of the QA process (both in detecting issues with frontline advice and in feeding into management information for senior management) in ensuring a firm achieves suitable customer outcomes, the Authority is not satisfied that NDC has made arrangements to put in place an adequate QA process to comply with the requirements and standards for which the Authority is responsible under the regulatory system.
61. Further, the Authority considers that the firm's failure to provide the QA policy until seven months after the Authority had requested it and its failure to put in place an effective QA process, during a period when the firm was being evaluated by the Authority and failings were being brought to its attention, reflects on the adequacy and competence of the firm's human resources, including at a senior management level, as well as with the adequacy of its systems and controls.

Concerns as to level of fees

62. A firm must ensure that the obligations of a customer in relation to the amount, or the timing of the payment, of its fees and charges do not undermine the customer's ability to make significant repayments to their lenders throughout the DMP, starting with the first month of the plan (CONC 8.7.2R(2)). CONC 8.7.3G(1) gives guidance that an obligation is likely to be viewed as undermining the customer's ability to make significant repayments to their lenders if it has the effect that the firm may allocate more than half of the sums received from the customer in any one-month period from the start of the DMP to the discharge (in whole or in part) of its fees or charges.
63. Between April 2014 and October 2015 NDC charged a number of its customers fees that were not in compliance with CONC 8.7.2R(2), i.e. fees that were over 50% of the customer's disposable income and therefore had the potential to undermine the customer's ability to make significant repayments to their lenders. Further, as set out below, the Authority considers that NDC failed to act in its customers' interests by not promptly arranging to put these customers in the position they should have been in had NDC complied with CONC 8.7.2R(2). This is of significant concern given that it is likely (given the nature of customers who seek assistance from debt management firms) that these customers included those of limited means and/or in vulnerable circumstances.
64. Following a review of information supplied by NDC on 4 September 2015, the Authority noted that approximately 250 out of NDC's 1,122 DMP customers were paying over 50% of their disposable income in fees to NDC each month.
65. The Authority contacted NDC on 21 October 2015 in relation to its non-compliant fee structure during the period 1 April 2014 to 21 October 2015. Mr Ali's response was that, until the Authority's engagement on this issue, he had been unaware that the CONC rules on fees applied to customers who had been taken on as customers before 1 April 2014. NDC stated in response to the Authority's concern about the firm's misunderstanding of the CONC rules on fees that the firm had "*misinterpreted*" these rules. The Authority considers that NDC's failure to recognise its non-compliance with CONC 8.7.2R(2) over a prolonged period demonstrates that the firm does not pay sufficient regard to the interests of consumers and also reflects on the adequacy and

competence of the firm's human resources, including at a senior management level, and on the adequacy of its systems and controls.

66. On 2 November 2015, the Authority asked NDC to pay redress to the affected customers. In a conference call on 4 November 2015, Mr Ali displayed some initial reluctance to pay redress, on the basis that he had only become aware of the issue upon notification by the Authority and that he had ensured that, going forward, the firm would be compliant with the CONC rules. After further discussion, on 4 November 2015 Mr Ali agreed to provide redress to the affected customers.
67. On 5 November 2015, Mr Ali stated in an email *"I would like to confirm that as per our discussion on 4th November 2015 I am happy to refund the clients identified as being overcharged the redress...Finally I am committed to provide the redress and would be more comfortable in releasing the redress funds soon as authorisation is granted."* In an email to the Authority dated 10 November 2015, NDC stated *"I will be happy to provide the redress but I need some reassurance that FCA authorisation will be granted. I need confidence so I can keep colleagues reassured because due to delay in authorisation and uncertainty in the market they been anxious and worried about their jobs and it is difficult to retain good colleagues."*
68. The Authority recognises that redress was willingly provided to the affected customers, but is concerned that NDC did not seek to provide redress promptly and unconditionally. The Authority therefore cannot be satisfied that, in the absence of close supervision of NDC by the Authority, the firm's senior management will pay due regard to the interests of NDC's customers and ensure that they are treated fairly.

IMPACT ON THE THRESHOLD CONDITIONS

69. The regulatory provisions relevant to the Final Notice are referred to in Annex A.
70. In light of the facts and matters set out above and for the reasons set out below, the Authority cannot ensure, in respect of the regulated activities of both debt adjusting and debt-counselling, that if the Application were granted NDC will satisfy, and will continue to satisfy, Threshold Conditions 2C (Effective supervision), 2D (Appropriate resources) and 2E (Suitability).

Threshold Condition 2C: Effective supervision

71. Threshold Condition 2C requires that a firm must be capable of being effectively supervised by the Authority having regard to all the circumstances. This includes retaining orderly records of its business (including of the advice provided by the firm and information gathered from its customers) that are sufficient for the Authority to be able to monitor compliance with regulatory requirements.
72. The Authority does not consider that NDC satisfies, and will continue to satisfy, Threshold Condition 2C, in particular in relation to its debt-counselling activities, in light of the concerns identified above as regards NDC's record keeping and QA process. Despite the Authority notifying NDC of its concerns with NDC's record keeping and QA process, and despite NDC taking action to attempt to address those concerns, NDC continues to have inadequate records of the advice it has given and of the basis for that advice and, as a consequence, an inadequate QA process, and appears to be unaware of these deficiencies. The Authority therefore considers that NDC's record keeping and QA process are not sufficient to enable the Authority to monitor effectively the firm's compliance with the regulatory provisions in CONC relating to the giving of debt advice.

Threshold Condition 2D: Appropriate resources

73. Threshold Condition 2D requires that a firm's resources must be appropriate in relation to the regulated activities conducted or proposed. As COND 2.4.2G(2) provides, 'appropriate resources' includes financial and 'non-financial resources' such as human resources, effective means by which to manage risks and any systems, controls, plans or policies that the firm maintains. In this context, the Authority will interpret 'appropriate' as meaning sufficient in terms of quantity, quality and availability. Consideration will be given to whether these resources are sufficient to enable the firm to comply with the requirements imposed or likely to be imposed on the firm in the course of the exercise of its functions.
74. NDC has not demonstrated that it has senior management with adequate competence to both understand the applicable regulatory requirements and be able to ensure, either through their own actions or through implementing effective systems and controls, that the firm complies with them of its own accord. As a result, the Authority is not satisfied that NDC has in place human resources (including at a senior management level) that are both able and willing to understand and ensure the firm complies with regulatory standards and requirements.
75. The Authority's concerns with NDC's human resources (including at senior management level) are based on:
- a. NDC's failure to identify and rectify, on its own volition and without prompting from the Authority, its failures to comply with CONC and/or SYSC regulatory requirements in relation to: record keeping; its written advice documentation; its communications regarding the level of fees to be paid by its customers; its QA process; and the level of its fees;
 - b. The fact that NDC has not been proactive in ensuring compliance with the applicable regulatory rules, but has instead only reacted to concerns raised by the Authority;
 - c. NDC's failure to demonstrate, even after regulatory failings had been drawn to its attention by the Authority, that it had taken adequate steps to resolve all rule breaches going forward (i.e. that necessary changes had been made and effectively implemented), in relation to: record keeping; its written advice documentation; and its QA process;
 - d. Mr Ali's failure, when carrying out a QA review of three files which had been created after NDC had taken all steps that it considered were required to address the deficiencies identified by the Authority, to identify concerns identified by the Authority in its review of the same files; and
 - e. Mr Ali's decision not to seek expert external advice, guidance or assistance, nor to undertake or ask others to undertake any training, in order to enable NDC and its management to improve their understanding of the regulatory requirements that the firm must comply with and enhance the firm's ability to ensure proactively its compliance with its regulatory obligations.
76. As a result of these concerns, the Authority does not consider that it can ensure that NDC satisfies, and will continue to satisfy, Threshold Condition 2D.

Threshold Condition 2E: Suitability

77. Threshold Condition 2E requires that, *inter alia*, a firm must be fit and proper having regard to all the circumstances, including the need to ensure that its affairs are

conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system.

78. NDC has not satisfied the Authority that it is a fit and proper person having regard to all the circumstances, including the nature of the regulated activities that it seeks to carry on. In particular, the Authority considers NDC's lack of fitness and propriety to be evidenced by:

- a. its failure to put in place adequate processes to comply with applicable regulatory requirements and standards, in particular in relation to its record keeping and QA process, despite being regulated by the Authority since 1 April 2014 and previously by the OFT (which applied substantially the same standards);
- b. its failure to recognise its failings, including its prolonged failure to recognise that it was overcharging a significant proportion of its customers;
- c. its failure to take any pre-emptive steps to remedy its failings; and
- d. its apparent lack of awareness of issues that might cause harm to consumers, as demonstrated by its provision of inadequate advice documentation and unclear and misleading fees information to customers, and by its initial reluctance to pay redress promptly to customers that it had overcharged.

79. Further, following its review of certain of the firm's files, including five sample files, the Authority has concerns with the suitability of the advice given by NDC, as the files indicate that NDC may not have had regard to the best interests of the customer in recommending a DMP.

80. These concerns lead the Authority to conclude that NDC is not fit and proper having regard to all the circumstances, including the need to ensure that its affairs are conducted in an appropriate manner. Accordingly, the Authority does not consider that it can ensure that NDC satisfies, and will continue to satisfy, Threshold Condition 2E.

IMPORTANT NOTICES

81. This Final Notice is given under section 390(2) of the Act.

Publication

82. 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.

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

Authority contacts

84. For more information concerning this matter generally, contact Marina Lancaster,

Manager, Lending & Intermediaries Department at the Authority (direct line: 020 7066 65250 / email: marina.lancaster@fca.org.uk).

Mrs Sarah Hayes

Head of Department

Authorisations Division

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. Section 55X(4)(f) of the Act provides that, if a regulator decides to refuse an application under Part 4A of the Act, it must give the applicant a decision notice.
4. Under article 58(1)(a) of the Amendment Order, a firm’s interim permission, in so far as it relates to the regulated activities of debt adjusting and debt-counselling, ceases to have effect, if the firm applies to the appropriate regulator for Part 4A permission to carry on those activities, on the date on which that application is determined.
5. 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

Threshold Conditions - COND

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

Threshold Condition 2C: Effective supervision

9. COND 2.3.1A(1) states that a firm must be capable of being effectively supervised by the Authority having regard to all the circumstances including the way in which the firm's business is organised.
10. COND 2.3.3G 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

11. 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.
12. 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 Threshold Condition 2D.
13. COND 2.4.4G states that, when assessing whether a firm has appropriate resources, the Authority will have regard to matters including 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.

Threshold Condition 2E: Suitability

14. COND 2.5.1A UK states that the applicant must be a fit and proper person having regard to all the circumstances, including 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.
15. 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 Threshold Condition 2E.
16. COND 2.5.4G(2)(c) 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, but are not limited to, whether the firm can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.
17. 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 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's Handbook) in addition to other legal, regulatory and professional obligations; the relevant requirements and standards will depend on the circumstances of each case, including the regulated activities which the firm has permission, or is seeking permission, to carry on.
- (1A) The firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards for which the Authority is responsible under the regulatory system.

Consumer Credit Sourcebook - CONC

18. 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.

19. CONC 3.3.1R(1) states that a firm must ensure that a communication or financial promotion must be clear, fair and not misleading.

20. 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>).

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

- (1) all advice given and action taken by the firm or its agent or its appointed representative:
 - (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.

22. 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:
 - i. 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;
 - ii. of the actual or potential consequences of not continuing to make repayments under credit agreements or consumer hire agreements;
 - iii. of the actual or potential consequences of ignoring correspondence or other contact from lenders and those acting on behalf of lenders;
 - iv. that action to recover debts may be commenced, which may involve further cost to the customer; and
 - v. that by entering into a debt management plan or another non-statutory repayment plan there is no guarantee that any current recovery or legal action will be suspended or withdrawn.

23. 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 long 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.

24. 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.
25. CONC 8.7.2R states that a firm must ensure that the obligations of the customer in relation to the amount, or the timing of payment, of its fees or charges:
- (2) do not undermine the customer's ability to make (through the firm acting on the customer's behalf) significant repayments to the customer's lenders throughout the duration of the debt management plan, starting with the first month of the plan.
26. CONC 8.7.3G(1) states that for the purposes of CONC 8.7.2R (2), an obligation is likely to be viewed as undermining the customer's ability to make significant repayments to the customer's lenders if it has the effect that the firm may allocate more than half of the sums received from the customer in any one-month period from the start of the debt management plan to the discharge (in whole or in part) of its fees or charges.
27. CONC 8.8.1R states that a firm in relation to a customer with whom it has entered into a debt management plan must:
- (8) provide a statement to the customer at the start of the debt management plan, 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;
 - v. the total cost of the firm's service over the duration or estimated duration of the contract.

Senior Management Arrangements, System and Controls - SYSC

28. This section of the Handbook sets out the responsibilities of directors and senior management.
29. SYSC 9.1.1R states 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 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.