
FIRST SUPERVISORY NOTICE

To: Action On CIO

Address: Unit H
Fiveways Workshop
Ponsanooth
Truro
Cornwall
TR3 7JQ

FRN: 770254

Date: 3 June 2021

ACTION

1. For the reasons given in this First Supervisory Notice, and pursuant to section 55J of the Act, the Authority has decided to vary the Part 4A permission of Action On CIO ("the Firm") by removing the following regulated activities:
 - a) agreeing to carry on a regulated activity;
 - b) debt adjustment; and
 - c) debt counselling.
2. This variation shall take effect on 24 June 2021 and remain in force unless and until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

REASONS FOR ACTION

3. On the basis of the facts and matters described in this First Supervisory Notice, the Authority is taking the action set out in paragraphs 1 and 2, as it appears to the Authority that:
 - a) the Firm is failing to satisfy the suitability threshold condition, in that it is not a fit and proper person having regard to all the circumstances;
 - b) the Firm has failed to perform any regulated activities to which its Part 4A permission relates during a period of at least 12 months; and
 - c) it is desirable to do so in order to advance the Authority's consumer protection objective (set out in section 1C of the Act).

DEFINITIONS

4. The definitions below are used in this First Supervisory Notice:
 - "the Act" means the Financial Services and Markets Act 2000;
 - "the Authority" means the Financial Conduct Authority;
 - "CIO" means Charitable Incorporated Organisation;
 - "CONC" means the Consumer Credit Sourcebook;
 - "COND" means the threshold conditions chapter of the Handbook;
 - "EG" means the Enforcement Guide;
 - "the Firm" means Action On CIO;
 - "the Firm's Part 4A Permission" means the permission granted by the Authority to the Firm pursuant to Part 4A of the Act;
 - "the Handbook" means the Authority's Handbook of rules and guidance;
 - "Principles" means the Authority's Principles for Businesses;
 - "the RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below);
 - "the suitability threshold condition" means the threshold condition set out in paragraph 2E of Schedule 6 of the Act and recited at COND 2.5.1A;
 - "the threshold conditions" means the threshold conditions set out in Part 1B of Schedule 6 to the Act; and
 - "the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

FACTS AND MATTERS

Background

5. The Firm is a CIO which has been authorised by the Authority since 23 May 2017 and registered with the Charity Commission since 6 November 2015. The Charity is a solo-regulated, Limited Scope SM&CR firm with a Part 4A permission to provide debt adjustment and debt counselling services (on a not for profit basis).
6. The Firm holds a 'limited permission' by virtue of carrying on, or seeking to carry on, only "relevant credit activities". As per Paragraph 2G of Schedule 6 to the Act, these include the regulated activities of debt adjusting and debt counselling by a not-for-profit body.
7. The Firm was formed to work with councils and other local authorities to provide free debt advice to support people in financial hardship as an alternative to enforcement action. The Firm aims to offer advice on a range of debt solutions in order to assist people with managing their debts (e.g. court fines, parking fines, council tax and water bill arrears).
8. The Firm, despite being authorised, has not conducted any regulated activities covered by its Part 4A permission, whether at all or during a period of at least 12 months.

Threshold Conditions

9. As an authorised firm, the Firm is required to satisfy the threshold conditions. The threshold conditions set out the minimum conditions which authorised firms must satisfy, and continue to satisfy, in order to be granted, and to retain, a Part 4A permission to carry on regulated activities.
10. The threshold conditions which the Firm must satisfy include the need to be a fit and proper person having regard to all the circumstances (the suitability threshold condition).

Suitability

11. It appears to the Authority that the Firm is failing to satisfy the suitability threshold condition and is not a fit and proper person having regard to all the circumstances.

Compliance with requests for information

12. Since October 2018, the Firm has consistently failed to provide adequate and timely information to the Authority. This failing has included instances where the Firm has been formally compelled by the Authority using its statutory powers to provide information and/or documentation to enable the Authority to assess whether the Firm is satisfying the threshold conditions.
13. On multiple occasions, the Firm has failed to provide information and documentation to the Authority after having requested, and having been granted, an extension to the deadline provided for a response. Most recently, by way of example, the Firm's responses to two compelled information requirements dated 19 January 2021 and 3 February 2021 remain outstanding.

14. In the Authority's view, the Firm's failure to be open and cooperative in its dealings with the Authority constitutes a breach of Principle 11 (Relations with regulators) of the Principles.
15. By virtue of the Firm's failure to respond adequately or at all to statutory requirements to provide information to the Authority, the Authority considers that the Firm is failing to satisfy the suitability threshold condition.
16. It appears to the Authority that the Firm is also failing to comply with the suitability threshold condition in consequence of:
 - a. the Firm's failure to ensure its activities are conducted in an appropriate manner, having regard in particular to the interests of consumers;
 - b. due to those who manage the Firm's affairs lacking adequate skills and experience; and
 - c. the Firm's failure to ensure that its 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;as set out below.

Advice Script

17. The Firm aims to provide debt advice to customers using an advice script. However, the advice script, as currently drafted, is unable to deliver suitable advice which is capable of complying with regulatory standards (including the Authority's specific suitability rules for debt advice (e.g. CONC 8.3.2R and CONC 8.3.7R)).
18. The Firm's advice script contains a number of shortcomings including: irrelevant and needlessly intrusive questions, limited steps for dealing with vulnerable customers and the lack of prescriptive guidance to help the Firm's advisers determine which debt solution is in the best interests of each customer. A fundamental concern is that the script appears weighted toward recommending a particular debt solution from which the Firm gains a referral fee, namely an IVA, notwithstanding that other debt solutions may be available and better suited to a customer's financial circumstances.

Business Plan

19. The Firm's business plan is unsuitable and fails to address a number of material risks faced by the Firm. In particular, the business plan is predicated on the Firm having secured funding and working in partnership with local councils and enforcement agencies – however the Firm has no such arrangements in place and has never secured such funding.
20. Moreover, the Firm's business plan fails to make proper provision for several material risk categories including risks associated with the Firm's reliance on a volunteer workforce and competition for funding. Further, there is no consideration of the risk that the Firm may weight inappropriately its advice toward the IVA solution due to the referral fees on offer. The Authority previously raised a concern about this specific risk being absent from the business plan, but the Firm has failed to address the Authority's concern.

The skills and experience of those who manage the Firm's affairs

21. The Authority considers that those who intend to manage the Firm's affairs, when it engages in regulated activities, lack the requisite skills and experience to do so given the facts and matters set out above.
22. During a call with the Authority on 2 February 2021, those who manage the Firm's affairs stated, for the first time, that the Firm may have used its regulatory permissions, but were not sure and said they would need to confer with colleagues. The Firm has failed to respond to a compelled information requirement dated 3 February 2021 to provide information to the Authority regarding this issue. The Authority considers that this further indicates a lack of the requisite skills and experience in those who manage the Firm's affairs.
23. The Authority notes that, until August 2020, the Firm was in breach of a requirement not to have an association with any firm carrying on the regulated activities of debt adjustment, debt counselling or credit information services on a commercial basis. Moreover, the Authority is concerned that the Firm may have provided services outside the remit of its Part 4A permission and charitable objects. The Firm has failed to respond to a compelled information requirement dated 3 February 2021 to provide information to the Authority regarding this issue.

Conduct of regulated activities

24. The Firm has repeatedly stated, until 2 February 2021 (as set out in paragraph 22 above), to the Authority that it has not engaged in any regulated activity since being granted authorisation. On 2 February the Firm indicated that it was unsure whether it had conducted certain regulated activities, however, the Authority has seen no evidence that the Firm has done so. In such circumstances, the Act expressly permits the variation or cancellation of an authorised firm's Part 4A permission on the Authority's initiative. Specifically, section 55J of the Act provides that an authorised firm's Part 4A permissions may be varied or cancelled where it appears to the Authority that it has failed to perform any regulated activities to which its Part 4A permission relates during a period of at least 12 months (see sections 55J(1)(b) and 55J(2)(a) of the Act). In all of the circumstances, in particular the lack of response from the Firm to the Authority's requests for information about its activities and concerns regarding the content of its advice scripts, the Authority considers it appropriate to exercise its powers to vary the Firm's permission as set out in this Notice.

CONCLUSION

25. In view of the facts and matters set out above, it appears to the Authority that the Firm is failing to satisfy the suitability threshold condition. This places consumers at risk of suffering detriment (in the form of unsuitable debt advice), particularly as a result of the deficiencies in the Firm's advice script and business plan.
26. In addition, the Authority considers that the Firm has failed to conduct regulated activities during a period of at least 12 months and that it should exercise its powers to vary the Firm's permission.
27. Further, the Authority considers that the variation action in paragraphs 1 and 2 of this First Supervisory Notice is desirable in order to advance its statutory objectives, in particular the consumer protection objective (set out in section 1C of the Act).
28. The Authority, having regard to the grounds for taking the action set out in paragraphs 1 and 2 of this First Supervisory Notice, reasonably considers it

necessary that the variation action takes effect on 24 June 2021 and remains in force until such time as the Authority is satisfied that the Firm is able to satisfy, and will continue to satisfy, the threshold conditions. The Authority considers this action to be appropriate and proportionate in all the circumstances.

PROCEDURAL MATTERS

Decision-maker

29. The decision which gave rise to the obligation to give this First Supervisory Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website:

<https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc>

30. This First Supervisory Notice is given under section 55Y(4) and in accordance with section 55Y(5) of the Act. Sections 393 and 394 of the Act do not apply to this First Supervisory Notice.
31. The following paragraphs are important.

Representations

32. The Firm has the right to make representations to the Authority (whether or not it refers this matter to the Tribunal). The deadline for providing written representations is 21 June 2021 or such later date as may be permitted by the Authority. The address for doing so is:

Jack Williams
Decision-Making Committees Secretariat
Corporate Governance Division
The Financial Conduct Authority
12 Endeavour Square
London
E20 1JN
Email: DMCScaseinbox@fca.org.uk

33. The Authority must be informed in writing of any intention to make oral representations by 14 June 2021. If the Authority is not notified by this date, the Firm will not, other than in exceptional circumstances, be able to make oral representations.

The Tribunal

34. The Firm has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal, which considers references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Firm has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.
35. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by or on behalf of the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: Upper Tribunal (Tax and Chancery

Chamber), 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).

36. Further details are contained in "Making a Reference to the Upper Tribunal (Tax and Chancery Chamber)" which is available from the Tribunal website: <http://formfinder.hmctsformfinder.justice.gov.uk/t400-eng.pdf>
37. A copy of the reference notice (Form FTC3) must also be sent to the FCA at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to Sheena Baldev, Enforcement and Market Oversight Division at the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN.

Confidentiality and publicity

38. The Firm should note that this First Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).
39. The Firm should note that section 391(5) of the Act requires the Authority, when this First Supervisory Notice takes effect, to publish such information about the matter to which the notice relates as it considers appropriate.

Authority contacts

40. For more information concerning this matter generally, contact **Sheena Baldev**, Enforcement and Market Oversight Division at the Authority (020 7066 6760 or sheena.baldev2@fca.org.uk).
41. Any questions regarding the procedures of the Regulatory Decisions Committee should be directed to Jack Williams of the Decision Making Committees Secretariat (020 7066 1610 or Decision-MakingCommitteesSecretariatInbox@fca.org.uk).

John A. Hull
Deputy Chair, Regulatory Decisions Committee

ANNEX

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives are set out in section 1B of the Act and include securing an appropriate degree of protection for consumers (section 1C).
2. Section 55J of the Act allows the Authority to remove a regulated activity from those to which an authorised person's Part 4A permission relates where it appears to the Authority that: it is failing, or is likely to fail, to satisfy the threshold conditions for which the Authority is responsible (section 55J(1)(a)); it has failed during a period of at least 12 months to carry on a regulated activity to which its Part 4A permission relates (section 55J(1)(b)); or it is desirable to do so in order to advance one or more of the Authority's operational objectives (section 55J(1)(c)) .
3. Section 55Y of the Act allows a variation imposed under the own-initiative variation power to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the requirement to take effect immediately (or on that date).
4. Section 55Y(4) and (5) of the Act provides that if the Authority proposes to vary a person's Part 4A permission it must give them a written notice. The notice must give details of the variation and when it takes effect, the reasons for the proposed variation, of the right of the person to make representations to the Authority in respect of the notice and of the right to refer the matter to the Tribunal.
5. Section 391 of the Act provides that:

“[...]

 - (5) When a supervisory notice takes effect, the [Authority] must publish such information about the matter to which the notice relates as it considers appropriate.
[...]
 - (6) The [Authority] may not publish information under this section if in its opinion, publication of the information would be-
 - a) unfair to the person with respect to whom the action was taken or proposed to be taken,
 - b) prejudicial to the interests of consumers [...]
 - (7) Information is to be published under this section in such manner as the [Authority] considers appropriate.”
6. Paragraph 2E to Schedule 6 to the Act states that:

“A [i.e. an authorised person] must be a fit and proper person having regard to all the circumstances, including-

[...]

(c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;

(d) whether A has complied and is complying with requirements imposed by the [Authority] in the exercise of its functions, or requests made by the [Authority], relating to the provision of information to the [Authority] 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 have acted and may be expected to 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;

[...]"

RELEVANT HANDBOOK PROVISIONS

7. In exercising its power to impose variations of permission, the Authority must have regard to guidance published in the Handbook. The relevant main considerations in relation to the action specified in this Notice are outlined below.

Guidance concerning the relevant threshold conditions

8. Guidance on the threshold conditions is set out in the part of the Handbook entitled threshold conditions ("COND").

COND 2.5 – Suitability: Paragraph 2E of Schedule 6 to the Act

9. COND 2.5.1A reproduces paragraph 2E of Schedule 6 to the Act as set out, in part, above.
10. COND 2.5.4G(2) provides examples of general considerations to which the Authority may have regard in assessing whether a firm will satisfy and continue to satisfy the Suitability Threshold Condition. These include whether the firm conducts, or will conduct, its business with integrity and in compliance with proper standards; and has, or will have, a competent and prudent management.
11. COND 2.5.6G provides that the Authority may have regard when assessing whether a firm will satisfy, and will continue to satisfy the threshold conditions in respect of conducting its business with integrity and in compliance with proper standards, to whether the firm has been open and co-operative in all of its dealings with the Authority (see Principle 11) and is ready, willing and organised to comply with the requirements and standards under the regulatory system (see COND 2.5.6(1)G); and whether 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 (COND 2.5.6(1A)G).

CONC – Consumer Credit Sourcebook

12. CONC 8.3.2R requires firms to ensure all advice given and action taken has regard to the best interest of the customer; is appropriate to the individual circumstances of the customer and is based on a full assessment of the financial circumstances of a customer. Customers must receive sufficient information about the options

identified as suitable for the customers' needs and an explanation of the reasons why the firm considers those options to be suitable and others unsuitable.

13. CONC 8.3.7R requires firms to provide customers with a source of impartial information on the range of debt solutions available to them. Before giving advice or a personal recommendation, firms must carry out a reasonable assessment of the customer's financial position, personal circumstances and any other relevant factors. Firms must seek to ensure that customers understand the options available and the implications and consequences for the customer of the firm's recommended course of action

Principles for Businesses

14. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook.
15. Principle 11 provides:

"A firm must deal with its regulators in an open and cooperative way, and must disclose to the [Authority] appropriately anything relating to the firm of which that regulator would reasonably expect notice."

RELEVANT REGULATORY PROVISIONS

The Enforcement Guide

16. The Authority's approach in relation to its own-initiative powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
17. EG 8.1.1 reflects the provisions of section 55J of the Act that the Authority may use its power to vary an authorised person's Part 4A permission where: a firm is failing or is likely to fail to satisfy the threshold conditions (EG 8.1.1(1)); a firm has not carried on a regulated activity to which the Part 4A permission relates for at least 12 months (EG 8.1.1(2)); or where it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).
18. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, it will have regard to its statutory objectives and the range of regulatory tools that are available to it. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve (EG 8.2.1(2)).
19. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55J of the Act to vary a firm's permission to ensure such requirements are met. This may include where the Authority is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)) or where the imposition of a formal statutory requirement reflects the importance the Authority attaches to the need for the firm to address its concerns (EG 8.2.3(3)).

20. EG 8.3.1 states that the Authority may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
21. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include:
 - (1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests;
 - [...]
 - (3) evidence that the firm has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the firm's ability to meet its regulatory obligations;
 - (4) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.
22. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of an urgent variation of Part 4A permission or an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include:
 - “(1) The extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other adverse effect, the more likely it is that the [Authority]'s urgent exercise of own-initiative powers will be appropriate, to protect the consumers' interests.
 - [...]
 - (3) The nature and extent of any false or inaccurate information provided by the firm. Whether false or inaccurate information warrants the [Authority]'s urgent exercise of its own-initiative powers will depend on matters such as: (a) the impact of the information on the [Authority]'s view of the firm's compliance with the regulatory requirements to which it is subject, the firm's suitability to conduct regulated activities, or the likelihood that the firm's business may be being used in connection with financial crime; (b) whether the information appears to have been provided in an attempt knowingly to mislead the [Authority], rather than through inadvertence; (c) whether the matters to which false or inaccurate information relates indicate there is a risk to customer assets or to the other interests of the firm's actual or potential customers.
 - (4) The seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct that breach.
 - [...]
 - (9) The impact that use of the [Authority's] own-initiative powers will have on the firm's business and its customers.”
23. When assessing the impact that use of the Authority's own-initiative powers will have on the firm's business and on its customers, the Authority will need to be satisfied that the impact of any use of the own-initiative power is likely to be

proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives (EG 8.3.4(9)).

Decision Procedure and Penalties Manual ("DEPP")

24. DEPP 2.5.7G provides that the Regulatory Decisions Committee ("RDC") will take the decision to give a supervisory notice exercising the Authority's own-initiative power if the action involves a fundamental variation or requirement.
25. DEPP 2.5.8G provides that a fundamental variation or requirement includes removing a type of activity or investment from a firm's Part 4A permission.