
FIRST SUPERVISORY NOTICE

To: Campbell & Associates Independent Financial Advice Limited

Reference Number: 602550

Address: Suite 1,
Chatmohur Estate,
Crawley Hill,
West Wellow,
SO51 6AP

Date: 9 February 2023

1 ACTION

1.1 For the reasons given in this First Supervisory Notice, and pursuant to section 55L(3)(a) of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority ("the Authority") has decided to impose the following requirements on Campbell & Associates Independent Financial Advice Limited ("CA" or "the Firm") and to vary the Part 4A permission to remove its regulated activities pursuant to section 55J(2)(a)(ii), ("the Requirements") with immediate effect.

Restriction on activities

- 1) The Firm must immediately cease carrying on all regulated activities for which it has a Part 4A permission, other than where it has the express written consent of the Authority, following the issuance of the First Supervisory Notice.

Notification requirements

- 2) The Firm must, within 72 hours of the receipt of the notice, write to the following:
 - a) All its customers; and
 - b) All platforms upon which its customers are placed informing each of them of the imposition of the Requirements and their effects, in a form and further to a method of delivery each to be agreed in advance with the Authority;
- 3) Once the notifications referred to in sub-paragraph (2)(b) above have been made, within 24 hours, the Firm must provide to the Authority:
 - a) A list of all parties to whom notifications have been sent; and
 - b) Confirmation that, to the best of its knowledge, the Firm has sent the specified notifications (in the form agreed with the Authority) to all relevant parties.

Retention and notification requirements

- 4) The Firm must secure all books and records and preserve all information, including material held via online/cloud-based systems to which the Firm has access, in relation to regulated activities carried on by it. These include but are not limited to all:
 - a) Client lists;
 - b) Communications with clients; and
 - c) Financial records.

These books and records must be retained in a form and at a location within the UK to be notified to the Authority within 24 hours of the receipt of this notice. The records must be retained in a form and at a location such that they can be provided to the Authority, or to a person named by the Authority, promptly upon its request.

Asset requirement

- 5) Save as set out in sub-paragraph (6) below, the Firm must not, without the prior written consent of the Authority, take any action which has, or may have had the effect of in any way disposing of, withdrawing, transferring, dealing with or diminishing the value of any of its own assets, whether in the United Kingdom or elsewhere (including, but not limited to, any assets of funds held by the Firm with Virgin Money);
- 6) Sub-paragraph (5) above does not apply to monetary payments or the disposal of assets in the following circumstances:

- a) Payments to the Firm's suppliers and in satisfaction of any existing contractual obligation by the Firm, on the proviso that any such payment (other than those envisaged pursuant to sub-paragraph (7)) has first been approved in writing by the Authority. To enable the Authority to consider any such requests for payment, the Firm must first provide the Authority with written details of the proposed recipient of any such payment, the amount of the payment and a justification for the payment.
- 7) The following will not be regarded as payments in the ordinary course of business or necessary living expenses:
 - a) The making of any distribution to the Firm's shareholders and/or director whether by way of capital distribution, dividends or any other means;
 - b) The making of any gift, loan or dividend; and
 - c) Salaries to any staff employed by the Firm which has not been approved in writing by the Authority.
- 8) The terms and effect of sub-paragraphs (5) to (7) above comprise an asset requirement within the meaning of section 55P(4) of the Act.

1.2 These Requirements shall take immediate effect 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).

2 REASONS FOR ACTION

Summary

2.1 The Authority has concluded, on the basis of the facts and matters described below that, in respect of CA, it is necessary to exercise its power under section 55L(3)(a) of the Act to impose the Requirements on the Firm and to vary the Part 4A permission to remove its regulated activities pursuant to section 55J(2)(a)(ii) because the Firm is failing, or are likely to fail, to satisfy the Suitability Threshold Condition (Paragraph 2E of Schedule 6 of the Act).

2.2 The Authority has very serious concerns about the conduct of the Firm in that the Authority is concerned that the Firm's sole director may have:

- 1) Misappropriated £1.5 million of a client's funds, including handing client funds without the required Part 4A permission; and
- 2) Failed to repay the client's funds as promised.

3 DEFINITIONS

3.1 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;

“the Firm” means Campbell & Associates Independent Financial Advice Limited;

“FSN” means a First Supervisory Notice;

“Handbook” means the Authority’s online handbook of rules and guidance (as in force from time to time);

“Part 4A permission” means permission to conduct regulated activities, granted by the Authority under Part 4A of the Act;

“Requirements” means the terms imposed on the Firm by this First Supervisory Notice as outline in section 1 above;

“Suitability Threshold Condition” means the condition set out in Paragraph 2E of Schedule 6 of the Act and COND 2.5; and

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

4 FACTS AND MATTERS

Background

4.1 The Firm was incorporated as Campbell & Raffle Independent Financial Advice Ltd on 14 February 2013 and was authorised by the Authority to perform regulated activities from 4 October 2013. The Firm changed its name to Campbell & Associates Independent Financial Advice Ltd on 18 November 2020. It has permissions to provide advice and arrange deals in investments and pensions. It does not have permission to hold client money.

4.2 The Firm has one director who is also a holder of senior management functions.

Misappropriation of client funds

4.3 In July 2022, a consumer transferred a total of £1.5 million to the Firm’s bank account having accepted the Firm’s advice to invest in bonds due to mature in January 2023. As stated above, the Firm does not have permission to hold client funds.

4.4 The consumer was told that the funds were to be invested in bonds issued by a bank. The Firm provided the consumer with a number of documents seeking to prove that the investment had been made via the bank, however, the bank has confirmed that it does not offer such bonds and has no record of any investment relating to this consumer having been made.

4.5 The Authority obtained the Firm’s own bank statements, and an analysis of those statements shows that, contrary to what the consumer had been told, the funds were not invested in any kind of investment. In fact, the statements appear to show that between July 2022 and January 2023, the consumer’s funds were transferred to the personal accounts of the Firm’s director or otherwise used to purchase a property for the Firm’s director to live in.

Failure to repay client funds

4.6 The consumer repeatedly contacted the Firm to arrange for their investment to be repaid as planned. In response, the Firm's director:

- 1) advised the consumer to "roll-over" the investment;
- 2) claimed that the repayments had been made;
- 3) again claimed that repayments had been made, but were being erroneously held up by the Firm's bank; and
- 4) claimed that the investment had been accidentally rolled over and could not be repaid.

4.7 In fact, an analysis of the Firm's bank accounts shows that the Firm's director had misappropriated the great majority of the funds and there were insufficient funds in the Firm's bank account to make the repayment. The Firm has since repaid a proportion of the funds, however £1.15 million remains unpaid, along with any accrued interest.

4.8 Further, once the consumer had expressed their concerns to the Firm's director about their failure to repay the funds owed, the Firm's director appears to have falsely claimed, on 26 January 2023, that their plan of action to remedy the issue included a meeting that they had scheduled with the Authority, during which they would fully disclose the details of the incident and set out their plans to put things right. The Firm's director has not made contact with the Authority in connection with this matter and no such meeting was ever scheduled.

5 CONCLUSION

Threshold Conditions

5.1 The Authority has serious concerns about the Firm's ability to meet the Threshold Conditions. The Threshold Conditions are minimum requirements that firms need to meet in order to be authorised and to continue carrying on regulated activities. In particular, the Authority considers that the Firm is failing, or is likely to fail, to satisfy the Suitability Threshold Condition because it appears that the Firm's director may have misappropriated at least £1.15 million of client funds. It is therefore proportionate and appropriate for the Authority to impose the Requirements and to remove the Firm's Part 4A permission to address this ongoing risk.

The Authority's operational objective of consumer protection

5.2 The Authority's operational objective of consumer protection requires the Authority to ensure an appropriate degree of protection for consumers (section 1C(1) of the Act). The Firm represents a serious ongoing risk to consumers due to the evidence that its sole director has:

- 1) Misappropriated significant client funds; and

2) Taken a number of steps to conceal that misappropriation.

5.3 On the basis of the facts and matters set out, it appears to the Authority that it is desirable to impose these requirements in order to advance the consumer protection objective contained in Section 1C of the Act.

5.4 The Authority has concluded, in light of the matters set out above, that it is necessary to exercise its own-initiative power under section 55L(3)(a) of the Act by imposing the Requirements to prevent any dissipation of assets and to vary the

Part 4A permission to remove its regulated activities pursuant to section 55J(2)(a)(ii) with immediate effect in order to protect the interests of consumers.

5.5 The Authority considers that the Requirements are a proportionate and appropriate means to address the current and immediate risks, and are desirable in order to advance the Authority's operational objective of consumer protection.

Timing and duration of the Requirements

5.6 It is necessary to impose the Requirements on an urgent basis given the seriousness of the risks and the need to protect consumers.

5.7 The Authority considers that it is necessary for the Requirements to remain in place indefinitely.

6 PROCEDURAL MATTERS

Decision-maker

6.1 The decision which gave rise to the obligation to give this First Supervisory Notice was made by an Authority staff member under executive procedures according to DEPP 2.3.7G and DEPP 4.1.7G.

6.2 This First Supervisory Notice is given under section 55Y(4) and in accordance with section 55Y(5) of the Act.

6.3 The following statutory rights are important.

Representations

6.4 The Firm has the right to make written representations to the Authority (whether or not it refers this matter to the Tribunal). The Firm may also request to make oral representations but the Authority will only consider this in exceptional circumstances according to DEPP 2.3.1AG. The deadline for providing written representations and notifying the Authority that the Firm wishes to make oral representations is 14 days from the date of the FSN or such later date as may be permitted by the Authority. Any notification or representations should be sent to emma.reilly2@fca.org.uk and the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

The Tribunal

- 6.5 The Firm has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is part of the Tribunal which, amongst other things, hears 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.
- 6.6 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: The 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).
- 6.7 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>
- 6.8 The Firm should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to emma.reilly2@fca.org.uk and the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Confidentiality and publicity

- 6.9 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).
- 6.10 The Firm should note that section 391(5) of the Act requires the Authority, when the First Supervisory Notice takes effect, to publish such information about the matter to which the notice relates as it considers appropriate.

Authority contacts

- 6.11 For more information concerning this matter generally, contact Emma.Reilly2@fca.org.uk.
- 6.12 Any questions regarding the executive procedures decision-making process should be directed to the SPC Decision Making Secretariat (SPCDecisionMakingSecretariat@fca.org.uk).

Annex

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers, and protecting and enhancing the integrity of the UK financial system.
2. Section 55J of the Act allows the Authority to vary the Part 4A permission of an authorised person if it appears to the Authority that the authorised person is failing, or likely to fail to satisfy the Threshold Conditions (section 55J(1)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55J(1)(c)(i)). This power is referred to as the Authority's own-initiative power.
3. Section 55L of the Act allows the Authority to impose a new requirement on an authorised person if it appears to the Authority that the authorised person is failing, or likely to fail to satisfy the Threshold Conditions (section 55L(2)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)).
4. Section 55N of the Act allows a requirement to be imposed under section 55L of the Act so as to require the person concerned to take specified action (section 55N(1)(a)), or to refrain from taking specified action (section 55N(1)(b)).
5. Section 55P of the Act allows a requirement to be imposed under section 55L of the Act prohibiting the disposal of, or other dealing with, any of an authorised person's assets (whether in the UK or elsewhere), or restricting such disposals or dealings.
6. Section 55Y(3) of the Act allows a requirement to take effect immediately (or on a specified date) 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).
7. 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) But the Authority may not publish information under this section if in its opinion, publication of the information would, be unfair to the person with respect to whom the action was taken or proposed to be taken [or] prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- (7) Information is to be published under this section in such manner as the Authority considers appropriate.”

RELEVANT REGULATORY PROVISIONS

The Threshold Conditions

8. The section of the Handbook entitled 'Threshold Conditions' (COND) gives guidance on the Threshold Conditions. COND 1.2.3G provides that the Authority may exercise its own-initiative powers under either section 55J of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions or is likely to do so.
9. COND 2.4.1A UK reflects the provisions of the Act (Paragraph 2D to schedule 6) to the effect that firms must have the skills and experience to manage the firm's affairs. It can include whether firms have the appropriate decision makers operating the firm and whether it has sufficient systems and controls in place.
10. COND 2.5.1AUK reflects the provisions of the Act (Paragraph 2E to Schedule 6) to the effect that a firm must be fit and proper having regard to all the circumstances. These can include the nature of the firm's connection with any person (COND 2.5.1AUK(1)(a) and the need to ensure its affairs are conducted in an appropriate manner having regard to the needs of consumers (COND 2.5.1AUK(c)) and whether the firm has complied and is complying with the Authority's requirements (COND 2.5.1AUK(1)(d)).
11. COND 2.5.4G provides 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, the Suitability Threshold Condition. These include, but are not limited to, whether the firm conducts its business with integrity and in compliance with proper standards, has a competent and prudent management and can demonstrate that it conducts its affairs with the exercise of due skill, care and diligence.

The Enforcement Guide

12. The Authority's approach in relation to its enforcement powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
13. EG 8.1.1 reflects the provisions of section 55L of the Act by stating that the Authority may use its own-initiative power to impose requirements on an authorised person where, amongst other factors, the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible (EG 8.1.1(1)), or it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).

14. 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)).
15. EG 8.2.3 states that in the course of its the Authority 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 55L of the Act to impose a requirement to ensure such requirements are met. This may include where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)), or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).
16. EG 8.3.1 states that the Authority may impose a requirement 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.
17. EG 8.3.2 states that the Authority will consider exercising its own-initiative power as a matter of urgency where: 1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and 2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.
18. 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; 2) information indicating that a firm's conduct has put it at risk of being used for the purposes of financial crime, or of being otherwise involved in crime; 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.
19. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include:

EG 8.3.4 (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 *FCA's exercise of own-initiative powers* will be appropriate, to protect the consumers' interests.

EG 8.3.4 (2) The extent to which *customer* assets appear to be at risk. Exercise of the *FCA's own-initiative power* may be appropriate where the information available to the *FCA* suggests that *customer* assets held by, or to the order of, the *firm* may be at risk.

EG 8.3.4 (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.

20. EG 8.3.4(9) includes 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.