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**FIRST SUPERVISORY NOTICE**

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**To:** Eric Puzaitzer and Sarah Tabor-Thickett, Directors

**Of:** Total Debt Relief Ltd, Broadstone Mill, Broadstone Road, Suite 328, Stockport, Cheshire, SK5 7DL

**Permission Number:** 642742 (Interim Permission)

**Dated:** Wednesday 01 August 2018

**ACTION**

1. For the reasons given below and pursuant to 55L(2)(c) and 55L(3)(a) of the Financial Services and Markets Act 2000 ("the Act"), the Authority has decided to impose the following requirement on Total Debt Relief Limited (Interim Permission ref 642742) ("the Firm") with immediate effect:
  - 1.1. The Firm must not:
    - 1.1.1. advise any of its customers on the Service;
    - 1.1.2. name a provider of the Service to a customer or effect an introduction of a customer to a provider of the Service (or to another person with a view to that person doing the same); or
    - 1.1.3. sell, transfer or otherwise make available customer information to a provider of the Service (or to another person with a view to that person doing the same).

- 1.2. The requirement above takes effect immediately and continues to have effect indefinitely (i.e. subject to any subsequent variation or cancellation by the Authority).

## **2 DEFINITIONS**

- 2.1 In the above requirements:

“the Act” means the *Financial Services and Markets Act 2000* as amended by the *Financial Services Act 2012*;

“the Application” means the application by the Firm for Part 4A Permission in respect of the regulated activities of debt adjusting and debt counselling;

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

“the Firm” means Total Debt Relief Limited (Interim Permission ref 642742);

“the RAO” means the *Financial Services and Markets Act 2000 (Regulated Activities) Order 2001* (S.I. 2001/544) (as amended).

“the Service” means a service provided to a customer by a third-party (whether as an agent of TDR or otherwise) whereby that third-party examines/reviews a customer’s debts with the purpose of advising the customer on the enforceability of the customer’s debts.

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

## **3 REASONS FOR ACTION**

### **Summary**

- 3.1 The Authority has concluded, on the basis of the facts and matters described below, that, in respect of the Firm, it is desirable to exercise its power to impose a requirement under section 55L of the Act with immediate effect in order to advance its consumer protection objective under the Act.
- 3.2 The Firm currently carries on regulated activities under interim permission. The Authority is concerned that, in the circumstances, the Firm might decide to transfer or direct its customers or its customer data to a third-party provider of the Service. The Authority is aware of reports in the public domain that other firms, unconnected to the Firm but operating a similar business model, have taken action of this kind. Although the Authority acknowledges that there may be a potential benefit to the Service for some customers, it is not satisfied, because most or all of the Firm’s customers have already received a version of the Service and because of the risks associated with use of the Service, that this would be a suitable action for the Firm’s customers generally.

## 4 FACTS AND MATTERS RELIED UPON

### Background to the Firm

- 4.1 The Firm was incorporated on 15 December 2009 and has been acting as a debt management firm (carrying out the associated regulated activities of debt adjusting and debt counselling) since 16 May 2011. The Firm is currently conducting these regulated activities under interim permission, pending determination of the Application (whether by approval or refusal of that Application or the Firm withdrawing it unilaterally).
- 4.2 The Firm's business model entails sourcing indebted customers and providing those customers with debt advice. The debt solution offered by the Firm is a 'Debt Settlement Plan'. Broadly speaking, this is a product whereby the Firm receives money from its customers and accumulates that money (after deducting its own fees and monthly token payments to creditors) to allow it to make offers for the full and final settlement of its customer's debts.
- 4.3 As a result of this business model, the Firm accumulates and retains large sums of client money. As at 6 April 2018, the Firm was holding a total of £1,317,619.82 in client money. This equates to an average of £2,135.52 for each of the Firm's 617 customers.

### Overview of the Service

- 4.4 Broadly speaking, the Service involves:
  - a. The provider of the Service collecting, from the customer, details of the individual debts owed by that customer.
  - b. The provider of the Service proceeding to write to each of the customer's creditors, requesting copies of the written information (for example, the contract) that the creditor was required to provide to customers under the *Consumer Credit Act 1974*.
  - c. The provider of the Service receiving and assessing copies of the written information provided to the customer at the commencement of the credit relationship with the creditor. In the event that the documentation provided does not contain all of the required information, or is otherwise insufficient to demonstrate adherence to the Consumer Credit Act 1974 and associated Consumer Credit (Agreements) Regulations, the provider of the Service will advise the consumer of that fact, and/or may directly challenge the enforceability of the debt owed to that creditor, with the aim of convincing the creditor to write-off or reduce the balance of the debt owing.
- 4.5 Accordingly, the potential benefit to a customer is that the Service may result in a reduction in the balance of the debts that they owe to their creditors. Dependent on the result of the provider's investigations, the creditors' compliance with the *Consumer Credit Act 1974* and any subsequent negotiations between the creditor and the consumer or third-party firm acting on their behalf, there may be a total write-off of the debts owed by the customer.

- 4.6 The Service is commonly structured such that customers will pay an ongoing monthly fee at a level that matches their available disposable income. For the period that a provider supplies the Service, the customer will therefore be prioritising paying the provider rather than servicing their debts. In some cases additional fees may be payable, such as upfront fees taken from any savings already held by the customer or another party acting on their behalf, or fees chargeable should court proceedings be commenced in relation to a debt.
- 4.7 The total cost of the Service may or may not be subject to an upper limit linked to the outcomes achieved in respect of the customer's debts.
- 4.8 The Firm has a current and previous relationships with companies that provide the Service:
- a. In the period between 28 April 2014 and 31 May 2016 the Firm maintained a professional relationship with a firm that is outside of the Authority's regulatory perimeter, under which that firm provided the Service in respect of the Firm's customers.
  - b. In May 2017, the Firm confirmed it had maintained a professional relationship with a second firm that is outside the Authority's regulatory perimeter that provides the Service to the Firm's customers. The information available to the Authority suggests that this professional relationship had been operational since April 2016.

#### The Authority's Concern

- 4.9 The Authority is concerned that the Firm might decide that there is a commercial gain to be made from its customers being transferred or directed to a third-party. In principle this is not objectionable, provided such a transfer is in customers' interests.
- 4.10 However, in the circumstances and as explained below, the Authority is not satisfied that it would be in the Firm's customers' interests for them to be transferred to a provider of the Service.

#### Basis of the Authority's Concern

- 4.11 The Authority notes that it is open to the Firm to take a commercial decision to transfer or introduce its customers to a third-party firm (or otherwise sell customer data to a third-party firm), in exchange for monetary consideration.
- 4.12 Owing to its business model as a 'full and final' debt settlement firm, the Firm's clients have accumulated significant amounts of client money held within the Firm. The potential for some or all of that client money to be paid to a third-party in upfront fees may make the Firm customer base an attractive proposition to a buyer. The Authority further notes that the Firm's terms and conditions potentially allow it to (broadly speaking) transfer customers to a third-party Firm.
- 4.13 One potential buyer would be a firm that provides the Service. Indeed, the Firm has a current and previous relationships with companies that provide the Service – see paragraph 4.8 above.

- 4.14 The Authority acknowledges that the Service has the potential to provide a benefit for some customers. However, the Authority is not satisfied that the Firm can reasonably conclude that it would be a suitable step for the customers in its book generally, as:
- a. The prevalence of unenforceable debt within the market place (and therefore the extent to which it can reasonably be assumed that the Service may be of benefit to TDR's customers generally) is unclear. However, to the extent that there may be a benefit, this is diminished by the fact that the Firm states it has provided the Service already to most, if not all, of its customers through the two third-party firms referred to at paragraph 4.8 above;
  - b. whilst a provider supplies the Service, the customer will be prioritising paying the provider rather than servicing their debts. In the event that all or some of the customer's debts are enforceable, the customer will need to seek an alternative approach to discharge the debt which will typically involve payment towards the creditor; the ability to make such payments will be limited whilst the customer is paying fees for the Service. Further, whilst the customer's debts are under investigation there is a real risk/likelihood that they are not advised on other available/suitable debt solutions pending the outcome of the investigation on enforceability. The Service may accordingly extend both the time and cost before the customer will be debt free; and
  - c. in the event that interest and charges are not frozen by a creditor whilst the provider carries out the Service (for example, because the customer is no longer maintaining an agreed payment plan with their creditor), the customer's debt will increase.
- 4.15 Further, the Authority is not satisfied in the circumstances that the Firm would in practice be able to explain the nature and risks involved in the Service sufficient to its customers such that they could take a properly informed view on whether to proceed with it.
- 4.16 The Authority therefore considers that, should the Firm proceed with a transfer of its customers to a third-party provider of the Service, there is a real risk that the customers will suffer detriment (including but not limited to continued and extended indebtedness).
- 4.17 The Authority accepts that for some customers the Service may provide some benefit; this benefit would be greatest for a customer all of whose debts are unenforceable, reducing for a given customer as the value/proportion of such debts reduces. In the circumstances, the Authority considers it unlikely that the Firm could properly justify transferring all (or even a majority) of its customers to a provider of the Service, and is therefore of the view that it is desirable in order to secure an appropriate degree of protection for consumers that the Firm is prevented from effecting any such transfer.

#### Duration of the requirement

- 4.18 The Authority considers that it is necessary for the requirement to remain in place pending (as a minimum) the determination of its Application.

#### Competition Act 1998

- 4.19 In accordance with section 234K of the Act, the Authority has considered whether it would be more appropriate to proceed under the Competition Act 1998, and is satisfied that it would not be.

### **5 CONCLUSION**

- 5.1. The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex to this Notice.
- 5.2. From the facts and matters described above, and having regard to its operational objectives, the Authority has reached the following conclusions:
- 5.2.1. The Firm has the incentive and opportunity to transfer its customers to a third-party provider of the Service.
- 5.2.2. The transfer of customers is unlikely to be in the best interests of the Firm's customers, and may be positively unsuitable.
- 5.3. The Authority has therefore concluded, in light of the matters summarised in paragraphs 4.9 to 4.15 above, that it is desirable to exercise its own initiative power under s. 55L of the Act to impose the requirement set out at paragraph 1.1 above with immediate effect in order to secure an appropriate degree of protection for consumers. The Authority considers that the requirement in paragraph 1.1 is an appropriate and proportionate means to protect against the risks identified.

### **6 PROCEDURAL MATTERS**

#### Decision Maker

- 6.1. The decision which gave rise to the obligation to give this First Supervisory Notice was made by the Regulatory Transactions Committee.
- 6.2. This First Supervisory Notice is given under section 55Y(4) and in accordance with section 55Y(5) of the Act. Section 392 of the Act does not apply to this notice.
- 6.3. The following statutory rights are important.

#### Representations

- 6.4. The person to whom this First Supervisory Notice is given has the right to make representations to the Authority (whether or not it refers this matter to the Tribunal). The deadline for notifying the Authority that the Firm wishes to make oral representations is Friday 17 August 2018 or such later date as may be permitted by the Authority. The deadline for providing written representations is Friday 24 August 2018 or such later date as may be permitted by the Authority.

The address for doing so is:

## Regulatory Transactions Committee Secretariat

Financial Conduct Authority  
12 Endeavour Square  
London  
E20 1JN  
Email: [RTCsecretariat@fca.org.uk](mailto:RTCsecretariat@fca.org.uk)

- 6.5. The Authority must be informed in writing of any intention to make oral representations by Friday 17 August 2018. If the Authority is not notified by this date, the person to whom this Notice is given will not, other than in exceptional circumstances, be able to make oral representations.

### The Tribunal

- 6.6. 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.
- 6.7. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by the Firm and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are: Upper Tribunal (Tax and Chancery Chamber), 5<sup>th</sup> Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9700; email: [financeandtaxappeals@hmcts.gsi.gov.uk](mailto:financeandtaxappeals@hmcts.gsi.gov.uk)).
- 6.8. 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>
- 6.9. 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 filing a reference with the Tribunal. A copy of the reference notice should be sent to the RTC Secretariat at the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN.

### Confidentiality and publicity

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

### Authority contacts

- 6.12. For more information concerning this matter generally, contact Paul Williams or email: [paul.williams@fca.org.uk](mailto:paul.williams@fca.org.uk) at the Authority.
- 6.13. Any questions regarding the procedures of the Regulatory Transactions Committee should be directed to the RTC Secretariat (email [RTCsecretariat@fca.org.uk](mailto:RTCsecretariat@fca.org.uk)).

**Mike Wells**

**Chair, Regulatory Transactions Committee**



## **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.
2. Section 55L of the Act allows the Authority to impose a new requirement on an authorised person if it appears to the Authority that it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)).
3. 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)).
4. 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...
  - (7) Information is to be published under this section in such manner as the Authority considers appropriate.”
5. Article 56(9) of *The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 1881/2013* provides that “[s]ubject to article 59 (application of Act), an interim permission is to be treated as (a) if P was an authorised person immediately before 1st April 2014, a variation of permission, (b) in any other case, a Part 4A permission”. Save as mentioned below, Article 59 does not contain any material disapplications/distinctions for current purposes.
6. Article 58 of SI1881/2013 provides that:

“(6) Where P's interim permission ceases to have effect in accordance with paragraph (1) or (1B) -

  - (a) paragraph (7) applies in respect of an act or omission by P which occurred at a time when P had an interim permission;
  - (b) any requirement—
    - (i) imposed on P under section 55L, 55M or 404F(7) of the Act at a time when P had an interim permission, and

*(ii) which is in effect immediately before that interim permission ceases to have effect,*

*continues to have effect and paragraph (7) applies in respect of any contravention of that requirement.*

*(7) If P is no longer an authorised person, P is to be treated as an authorised person for the purposes of the following provisions of the Act—*

*(a) Part 11 (information gathering and investigations) and Part 14 (disciplinary measures);*

*(b) section 384 of the Act (power of FCA or PRA to require restitution)."*

7. Article 59(6) of SI 1881/2013 provides that:

*"(6) When the FCA or PRA—*

*...*

*(c) exercises its power under section 55L of the Act (in the case of the FCA) or section 55M of the Act (in the case of the PRA) (imposition of requirements by the regulator) in relation to A,*

*section 55B(3) of the Act (satisfaction of threshold conditions) does not require the regulator to ensure that A will satisfy, and continue to satisfy, in relation to the regulated activities for which A has an interim permission, the threshold conditions for which that regulator is responsible."*

## **RELEVANT REGULATORY PROVISIONS**

8. The Authority's policy in relation to its enforcement powers is set out in the Enforcement Guide (EG), certain provisions of which are summarised below.
9. EG 8.1 reflects the provisions of section 55J of the Act that the Authority may use its own-initiative power to vary or cancel the permission of an authorised firm where it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1(3)).
10. EG 8.1A provides that the powers to vary and cancel a person's Part 4A permission and to impose requirements are exercisable in the same circumstances.
11. EG 8.1B provides that the Authority will have regard to its statutory objectives and the range of regulatory tools that are available to it, when it considers how it should deal with a concern about a firm. 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.
12. EG 8.3 provides that the Authority will exercise its formal powers under section 55J or 55L of the Act, where the Authority considers it is appropriate to ensure a firm meets its regulatory requirements. EG 8.3 specifies that the Authority may consider it to be appropriate where:
  - a. the Authority has serious concerns about a firm, or about the way its business is being or has been conducted;

- b. the Authority is concerned that the consequences of a firm not taking the desired steps may be serious; and
    - c. the imposition of a formal statutory requirement reflects the importance the Authority attaches to the need for the firm to address its concerns.
13. EG 8.3.1G 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.
  14. EG 8.3.3G 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"; and "(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".
  15. EG 8.3.4G 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:
    - "(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.
    - (2) The extent to which customer assets appear to be at risk. Urgent 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.
    - ...
    - (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.
    - ...
    - (8) The firm's conduct. The Authority will take into account: (a) whether the firm identified the issue (and if so whether this was by chance or as a result of the firm's normal controls and monitoring); (b) whether the firm brought the issue promptly to the Authority's attention; (c) the firm's past history, management ethos and compliance culture; (d) steps that the firm has taken or is taking to address the issue."
  16. EG 8.3.4(9)G include 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 take into account the (sometimes significant) impact that a variation of permission may have on a firm's business and on its customers' interests, including the effect of variation on the firm's reputation and on market confidence. 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.