[2016] UKUT 0548 (TCC)

Reference number: FS/2016/014

FINANCIAL SERVICES - Decision Notice refusing permission for authorisation to carry on debt adjusting and debt counselling activities- giving of Decision Notice terminated Applicant's Interim Permission to carry on those activities – Application under Rule5(5) Tribunal Procedure (Upper Tribunal) Rules 2008 for direction to suspend effect of Decision Notice until reference determined - whether Tribunal satisfied that the direction to suspend the effect of the notice would not prejudice the interests of consumers – No - Application refused

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

BETWEEN:

STEVEN MAOUDIS T/A MONTANA DEBT MANAGEMENT

Applicant

- and –

THE FINANCIAL CONDUCT AUTHORITY

Respondent

Tribunal: Judge Greg Sinfield

Sitting in public at Birmingham Civil and Family Justice Hearing Centre, Priory Courts, 33 Bull Street, Birmingham, B4 6DS on 30 November 2016

Steven Maoudis in person

Mark Fell, counsel, instructed by the Financial Conduct Authority, for the Respondent

DECISION

Introduction

1. On 16 September 2016, the Financial Conduct Authority ('the FCA') issued a Decision Notice to the Applicant ('Montana') refusing its application for a Part 4A permission to carry on the regulated activities of debt adjusting and debt counselling. By a reference notice dated 29 September 2016, Montana referred the matter to the Tribunal.

2. Until the issue of the Decision Notice refusing its application, Montana had been carrying on the regulated activities of debt adjusting and debt counselling under an interim permission granted by the FCA. When the Decision Notice was issued, the interim permission immediately ceased to have effect by operation of the relevant provisions of article 58 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 ('the 2013 Order'). In its reference notice, Montana applied for a direction that the effect of the Decision Notice be suspended pending the determination of the reference pursuant to Rule 5(5) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the Rules'). The effect of the application, if granted, is that Montana would be able to carry on the regulated activities of debt adjusting and debt counselling under the interim permission until the Upper Tribunal has heard and determined the substantive issues in the reference.

3. The application was heard on 30 November 2016 in Birmingham. At the conclusion of the hearing, I announced my decision which was that the application should be refused. This decision sets out my reasons for refusing the application.

Background

4. The term 'debt management' is commonly used to describe two related activities which are now regulated by the FCA by virtue of having been specified as regulated activities under the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 ('the RAO'), namely 'debt adjusting' and 'debt counselling'. Debt adjusting is defined by article 39D of the RAO as, in relation to debts due under a credit agreement or consumer hire agreement, (a) negotiating with the lender or owner, on behalf of the borrower or hirer, terms of the discharge of the debt; (b) taking over, in return for payments by the borrower or hirer, that person's obligation to discharge a debt; or (c) any similar activity concerned with the liquidation of the debt. Debt counselling is defined by article 39E of the RAO as advice (relating to a particular debt and debtor) given to (a) a borrower about the liquidation of the debt due under a credit agreement; or (b) a hirer about the liquidation of a debt due under a consumer hire agreement.

5. Debt management usually involves consideration of what are referred to in the FCA Handbook Glossary as 'debt solutions': that is, an arrangement, scheme or procedure, whether statutory or not, the aim of which is to discharge or liquidate a customer's debts. Mr Fell, who appeared for the FCA, submitted (and I did not understand Mr Maoudis to disagree) that, in the circumstances of this case, there are five key debt solutions, namely:

> (1) debt management plans or ('DMPs'), which are non-statutory agreements between a debtor and one or more of its creditors under which a debtor makes regular payments to discharge their debts;

(2) full and final settlement agreements, which are non-statutory agreements between a debtor and a creditor in which the creditor accepts an amount that is less than they are owed in full and final settlement; and

(3) three statutory procedures provided for by the Insolvency Act 1986 ('IA 1986') under which a debtor's debts are released, compounded or written off, being:

(a) debt relief orders ('DROs') which are orders under Part VIIA of the IA 1986 under which a moratorium on enforcement by certain creditors is imposed and certain qualifying debts are written off after a certain period;

(b) individual voluntary arrangements ('IVAs') which are binding legal arrangements under Part VIII of IA 1986 between a debtor and creditors for implementation of a composition in satisfaction of their debts or a scheme of arrangement for their affairs; and

(c) bankruptcy, a legal process governed by Part IX of IA 1986 under which the debtor obtains release from their debts with their estate being realised by a trustee in bankruptcy and the proceeds distributed to creditors.

6. Before 1 April 2014, consumer credit firms, which included firms providing debt management activities such as debt adjusting and debt counselling, were authorised and regulated by the Office of Fair Trading ('OFT') under Part III of the Consumer Credit Act 1974. Firms carrying on debt adjusting and debt counselling, were required to obtain an OFT licence before carrying on those activities.

7. On 1 April 2014, the regulation of consumer credit activities was transferred from the OFT to the FCA. This transfer was effected in legislative terms by specifying various consumer credit activities as regulated activities for the purposes of the general prohibition in section 19 of the Financial Services and Markets Act 2000 ('the Act') with the consequence that, as from 1 April 2014, a firm requires the appropriate permissions under Part 4A of the Act before it can lawfully carry on consumer credit regulated activities. As a consequence, the OFT licences were revoked and consumer credit firms previously licensed by the OFT were granted interim permission by the FCA to carry on their consumer credit regulated activities.

8. Having been granted interim permission, the consumer credit firms wishing to carry on the regulated activities of debt adjusting and debt counselling were required to apply for full permission under Part 4A of the Act by a date specified by the FCA. In setting the date by which applications had to be made, the FCA had regard to, among other things, the level of risk they posed. Debt adjusting and debt-counselling were regarded by the FCA as higher risk activities. In reaching that view, the FCA took account of the OFT's findings in September 2010 that debt management was a market where poor practices, including the provision of poor advice based on inadequate information, appeared to be widespread.

Evidence

9. The FCA provided statements of three witnesses, namely Robert Westwood, a senior associate in the Authorisations Division of the FCA; Garry Hunter, a senior manager in the Authorisations Division of the FCA; and Colin Kinloch, a debt advice strategy and innovation manager at the Money Advice Service. The contents of the witness statements were not challenged by Mr Maoudis for the purposes of the

application and I accept them. Mr Maoudis did not produce a witness statement but his written and oral submissions included his evidence on various points. Mr Maoudis appeared to me to be frank and credible and I accept his evidence on matters of fact. In addition, oral evidence was given by Montana's part-time administration assistant, Ms Alison Richards, about the processes adopted by Montana when dealing with its customers which I also accept. On the basis of the evidence, I find the facts relevant to the application to be as set out below.

Facts

10. Montana is a debt management business carried on by Mr Maoudis, as a sole trader, with administrative assistance provided by Ms Richards. From 1 April 2014, Montana carried on the regulated activities of debt adjusting and debt counselling, as defined in articles 39D and 39E of the RAO, under an interim permission conferred by article 56 of the 2013 Order. Until the suspension of its interim permission, which is the subject of this application, Montana advised its customers how to deal with their debts, negotiated with creditors on behalf of those customers and then advised them how much they should pay their creditors. The debt solutions offered by Montana to clients are DMPs (administered by the customer themselves) and full and final settlement agreements. In each case, Montana conducts any necessary negotiations with creditors. Montana does not offer services in relation to DROs, IVAs or bankruptcy. Unlike many other debt management firms, Montana did not receive money from its customers in order to distribute payments to creditors.

11. The way Montana deals with its clients is as follows. There is an introductory meeting with the client to assess their income and expenditure, produce a list of debts and creditors and establish their disposable income. The client completes a client analysis questionnaire. Mr Maoudis then discusses available options with the client. As already stated, Montana only offers two debt solutions itself, namely DMPs and a full and final settlement agreements. If the client wishes to proceed with a DMP then the client signs a letter of authority allowing Montana to negotiate with creditors on the client's behalf. Montana then sends a standard letter to each creditor. The letter encloses a copy of the letter of authority, asks the creditor to provide a current balance on the account and stay any recovery action for 30 days while Montana gathers the relevant information and finalises a statement of the client's income and expenditure. The creditor responds with a current balance and confirmation of the stay of action. Montana sends the creditor a copy of the finalised income and expenditure form and an offer of payment based on the client's disposable income. The creditor either accepts this amount or proposes a counter-figure which Montana then discusses with the client before accepting. Most creditors accept Montana's first offer. Montana then informs the client that the creditor has accepted the offer and advises the client to set up a monthly payment by standing order in favour of the creditor (Montana provides the bank details and reference number) to ensure payments are not missed.

12. Once a debt management programme is in place it is only necessary to review the clients position every six months or annually. The creditor usually requests a review of the client's situation after six months or a year. At that point, Montana contacts the client to ask if there are any changes to their financial circumstances and, if so, pass these on to the creditor. Usually, creditors agree that the DMP will continue at the same rate for a further period. However, the whole process may start again when, as often happens, the creditor assigns the debt to a third party. Montana then repeats the process

again from the stay of action stage and negotiates directly with the third party in order to set up a DMP with the third party.

13. After the DMP has been in place for some time (often one year or maybe more), Montana contacts the client to ask if they would like to request a settlement figure from the creditor. If the client agrees, Montana sends a standard offer of 10% of the outstanding debt balance to the creditor and awaits the response. Often, the creditors do not accept the initial offer and come back with a much higher counter-offer. Montana informs the client and either Montana continues negotiation until an acceptable settlement amount is agreed or the client continues with their DMP at the agreed rate for a further period.

14. At the time of the suspension of its interim permission, Montana had approximately 120 active clients. The average client of Montana has debts of between £20,000 and £25,000. The clients are individuals who have incurred debts, often as a result of unfortunate circumstances. Montana charges clients a monthly fee of £10 for the first debt plus £2 for each subsequent debt. The average client paid approximately £20 per month. Montana's largest client had, together with his wife, 43 or 44 debts totalling £415,000 and paid Montana £75 per month. Mr Maoudis said that the existing clients would not qualify for a DRO because they had assets over £1000, or an IVA because none of them had sufficient disposable income and most of them wished to avoid bankruptcy because of the stigma attached to it. I accept, for the purposes of this application, that the existing clients as at the time of the hearing do not qualify for DROs or IVAs and many of them might regard bankruptcy as undesirable.

15. By application dated 24 March 2015 and amended on 20 August 2015, Montana applied for permission under Part 4A of the Act to carry on the regulated activities of debt adjusting and debt counselling limited to counselling with no debt management activity. Montana provided further information on 4 May 2016. Section 55B(3) of the Act provides that, in granting permission, the Authority must ensure that the firm will satisfy and continue to satisfy the threshold conditions set out at Schedule 6 to the Act ('the Threshold Conditions') in relation to all of the regulated activities for which the firm wishes to have permission.

16. Following a meeting with Mr Maoudis on 16 July 2015 and a further conference call on 3 September 2015, the FCA had concerns about Mr Maoudis' knowledge and understanding of debt solutions. This was based on Mr Maoudis stating that he does not offer advice on DROs, IVAs or bankruptcy and on the fact that Mr Maoudis acknowledged that his knowledge and understanding of these debt solutions was limited. In a letter dated 20 October 2015, the FCA expressed its concern about the deficiencies in Mr Maoudis' knowledge of debt solutions. In response to the FCA's expression of concern, Mr Maoudis informed the FCA, in a letter dated 23 November 2015, that he had improved his knowledge of DROs, IVAs and bankruptcies. To assess any improvement in Mr Maoudis' understanding, the FCA posed several scenario-based questions to Mr Maoudis in a telephone interview on 7 April 2016. The FCA considered that the answers given by Mr Maoudis demonstrated that he continued to lack the level of skills and knowledge required to ensure that he complied with regulatory requirements imposed on him. Specifically, Mr Maoudis failed to identify:

(1) that disposable income in excess of £50 per month and being a homeowner are both reasons why a customer would be ineligible for a DRO;

(2) the advantages and disadvantages of bankruptcy or an IVA as debt solution models; and

(3) that a Magistrates' Court fine would not fall within a DRO.

17. As stated above, the FCA issued a Decision Notice to Montana on 16 September 2016 refusing its application for a Part 4A permission to carry on the regulated activities of debt adjusting and debt counselling. The Decision Notice stated that the FCA could not ensure that, in relation to the regulated activities for which permission was sought, Montana would satisfy and continue to satisfy the Threshold Conditions. Specifically, the FCA did not consider that Montana would satisfy condition 2D (appropriate resources) and condition 2E (suitability) set out in Schedule 6 to the Act.

18. Condition 2D so far as relevant provides:

> "(1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.
>
> (2) The matters which are relevant in determining whether A has appropriate resources include -
>
> (a) the nature and scale of the business carried on, or to be carried on, by A;
>
> …
>
> (4) the matters which are relevant in determining whether A has appropriate non-financial resources include -
>
> (a) the skills and experience of those who manage A's affairs;
>
> …"

19. Paragraph 1A(2) of Schedule 6 states that the non-financial resources of a person include any systems, controls, plans or policies that the person maintains, any information that the person holds and the human resources that the person has available.

20. Condition 2E provides, so far as relevant:

> "A must be a fit and proper person having regard to all the circumstances, including -
>
> (a) …
>
> (b) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;
>
> (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 FCA in the exercise of its functions … 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 act with probity;
>
> …"

21. The Decision Notice set out the reasons why the FCA considered that Montana did not and would not satisfy the Threshold Conditions in paragraphs 8 and 9 and in more detail at paragraphs 36 and 39. In summary, those reasons are as follows.

22. The FCA was not satisfied that Montana, in the person of Mr Maoudis, who is the sole debt adviser, has sufficient knowledge about certain debt solutions, including DROs, IVAs and bankruptcy, that may be available to his clients. In particular, Mr Maoudis lacks knowledge of insolvency based debt solutions and Montana could only provide advice on DMPs and full and final settlement plans. The FCA was concerned that Montana required customers to research all available debt solutions on Montana's website and determine which were appropriate before Mr Maoudis provided debt advice that was restricted to DMPs and/or negotiation of full and final settlement plans. Accordingly, the FCA considered that, as a result, there was a risk that customers would receive debt advice which was not appropriate to their circumstances. Mr Maoudis had informed the FCA that he engaged an "Advisory Board" to assist him. However, the FCA did not consider that the extent of the engagement of the Advisory Board was sufficient to address the issues and, in any event, noted that the responsibility for debt advice remained that of Mr Maoudis. The FCA was also concerned that Montana's business continuity plan was not appropriate to a firm offering debt management solutions as it did not establish a reliable system for ensuring continuity of advice to customers in the event of Mr Maoudis' absence from the business.

23. The effect of the giving of the Decision Notice was that Montana's interim permission and therefore its ability to carry on regulated activities lawfully ceased. The application for suspension is designed to preserve Montana's interim permission pending the determination of Montana's reference to the Upper Tribunal.

Legislation

24. Under rule 5(5) of the Rules, the Upper Tribunal has the power to direct that the effect of the decision in respect of which the reference is made (in this case the giving of the Decision Notice) is to be suspended pending the determination of the reference:

> "… if it is satisfied that to do so would not prejudice –
>
> (a) the interests of any persons (whether consumers, investors or otherwise) intended to be protected by that notice;
>
> (b) the smooth operation or integrity of any market intended to be protected by that notice; or
>
> (c) the stability of the financial system of the United Kingdom."

25. It was common ground that rule 5(5)(b) and (c) of the Rules are not relevant in the circumstances of this reference. Accordingly, the only issue in this application is whether I am satisfied that the condition in rule 5(5)(a) is met, namely that the suspension of the effect of the Decision Notice would not prejudice the interests of any consumers intended to be protected by the Decision Notice. For the purposes of this application, the relevant consumers are the existing and future clients of Montana.

26. Rule 2(1) of the Rules states that the overriding objective of the Rules is "to enable the Upper Tribunal to deal with cases fairly and justly". Rule 2(3) provides that the Upper Tribunal must seek to give effect to the overriding objective when it (a) exercises any power under the Rules, or (b) interprets any rule or practice direction.

Guiding principles

27. The key principles to be applied in considering applications under Rule 5(5)(a) of the Rules were set out by this tribunal in *Walker v FCA* (FS/2013/0011) and *PDHL v FCA* [2016] UKUT 0129 (TCC). Mr Fell provided a helpful summary of the principles

in his skeleton argument as he had done in *Koksal (t/a Arcis Management Consultancy) v FCA* [2016] UKUT 0192 (TCC). In *Koksal*, Judge Herrington, who had decided both *Walker* and *PDHL*, was happy to adopt that summary and so am I. The principles are as follows:

> (1) The Tribunal is not concerned with the merits of the reference itself and will not carry out a full merits review but will need to be satisfied that there is a case to answer on the reference: see *Walker* at [20] and *PDHL* at [31];
>
> (2) The sole question is whether, in all the circumstances, the proposed suspension would not prejudice the interests of persons intended to be protected by the notice: see *Walker* at [20];
>
> (3) The persons intended to be protected by a decision notice refusing to grant a Part 4A permission to a firm with an interim permission, include the existing or potential customers of that firm: see *PDHL* at [26];
>
> (4) Detriment to the applicant, such as it being deprived of its livelihood, is not relevant to this test: see *Walker* at [21];
>
> (5) The burden is on the applicant to satisfy the Tribunal that the interests of consumers will not be prejudiced: see *Walker* at [21] and *PDHL* at [30]; and
>
> (6) So far as consumers are concerned, the type of risk the Tribunal is concerned with is a significant risk beyond the normal risk of a firm that is doing business in a broadly compliant manner: see *Walker* at [22] and *PDHL* at [27] to [31].

28. It follows that I cannot suspend the effect of the Decision Notice unless Montana satisfies me, on the balance of probabilities, that suspension will not prejudice the interests of Montana's existing and future clients. That poses a significant hurdle for Montana to overcome. If the FCA, by its own evidence or submissions casting doubt on Montana's evidence, shows that there is a realistic, not fanciful, risk that Montana's clients might be prejudiced if the effect of the Decision Notice is suspended then I must refuse Montana's application.

29. Even if I am satisfied that suspending the effect of the Decision Notice would not prejudice the interests of Montana's existing and future customers, I am not obliged to grant the application. The use of the word "may" in Rule 5(5) means that it is a matter of judicial discretion as to whether or not a suspension should be granted. Accordingly, I consider that I must carry out a balancing exercise in light of all relevant factors and decide whether, in all the circumstances, it is in the interests of justice to grant the application. The power is a case management power which must be exercised in accordance with the overriding objective in Rule 2(2) of the Rules to deal with the matter fairly and justly: see *PDHL* at [33].

Submissions and discussion

30. Mr Maoudis said that he was passionate about helping people to get out of debt and tried to do the best for them. I accept this, as does the FCA in paragraph 3 of appendix B to the Decision Notice. The FCA also stated that it makes no criticism of Mr Maoudis' dedication or his willingness to help customers in financial distress. That, however, does not assist Montana in this application. The issue is whether Montana has satisfied me, on the balance of probabilities, that the interests of consumers will not be prejudiced if I grant the application.

31. I start by considering whether I can be satisfied that there is a case to answer on the reference. Although I am not concerned with the merits of the reference itself, if I considered that the facts stated and/or reasons given in the Decision Notice were not capable of demonstrating that Montana had failed to meet the Threshold Conditions then I could take the view that suspending the effect of the Decision Notice would not result in a significant prejudice to the interests of consumers. In my view, there is no doubt that Montana has a serious case to answer on the matters raised in the Decision Notice. While he contests the FCA's views, I did not understand Mr Maoudis to say otherwise. The matters that gave rise to the FCA's concerns described above are clearly issues which should be considered by the Upper Tribunal at the hearing of the reference.

32. As there is a case to answer, I assume for the purposes of this application only and without deciding the point, that Montana does not meet the Threshold Conditions. On the basis of that assumption, I must now decide whether I am satisfied that the suspension of the effect of the Decision Notice would not prejudice the interests of Montana's customers. Clearly, there would (or should) be no risk of prejudice where, by the time of the hearing of the application, an applicant has addressed and remedied the matters that gave rise to the concerns described in the Decision Notice. Mr Maoudis says that Montana has done so and, in any event, there is no risk of prejudice to his clients. The FCA disagrees. The FCA says that there is a risk that the clients would be prejudiced by the fact that Montana has gaps in its knowledge and is not giving advice on the full range of debt solutions and lacks a business continuity plan.

33. As stated above, Montana does not provide services in relation to DROs, IVAs or bankruptcy. Mr Maoudis did not accept that he lacked sufficient knowledge to advise clients when they might benefit from such solutions and Montana had arrangements in place to provide such advice. He said that the telephone scenarios on which he had been tested were unfair and were not representative because he was required to give advice in less than two minutes whereas he had always taken his time to advise clients and consider the position for doing so. Mr Maoudis stated that there is information on Montana's website, recently upgraded, that explains DROs, IVAs and bankruptcy solutions. All clients were required to read the website before the first meeting and if a client has any questions about them then Mr Maoudis would refer the client to the appropriate member of his Advisory Board. The Advisory Board includes individual advisers and firms (a barrister, solicitors, a chartered accountant specialising in insolvency and Debt Lifeboat who are IVA specialists) who are mostly personal friends of Mr Maoudis or occupants of the same building as Montana. Mr Maoudis frankly acknowledged that the Advisory Board was an informal arrangement.

34. I find that Mr Maoudis could call on the members of the Advisory Board when he wished to do so but he was under no obligation to refer clients to them and they were under no obligation to Montana to advise the clients. It is obvious that the effectiveness of the Advisory Board depends on the clients having read Montana's website and/or Mr Maoudis recognising that a DRO, IVA or bankruptcy was a more appropriate debt solution than a DMP. If, as the FCA considered following it scenario-based tests, Mr Maoudis was not fully aware of all of the debt solutions that may be available to his clients then there is obviously a risk that customers might be given advice that is not appropriate to their circumstances and their interests being prejudiced as a result.

35. Mr Maoudis gave examples of how he had assisted clients who were in difficulties and stated that the FCA had not provided any evidence that he had ever

given incorrect advice to his customers. He said that there is no risk to his clients at all because Montana did not take money from the clients other than their fees. Mr Maoudis submitted that Montana was not putting its clients at risk but was actually removing that risk from the client by negotiating formal payment plans on their behalf and keeping their creditors happy. He said that the clients do not want to be 'fobbed off' to some charitable organisation, such as StepChange or the Money Advice Service, and have to start the process of debt counselling and debt management again. In support of this, Mr Maoudis produced two letters from creditors to clients informing them that the creditors could no longer deal with Montana following the removal of its interim permission. The clients were understandably disturbed that Montana could no longer act for them.

36. Montana has not provided any evidence about the circumstances of individual clients, the specific advice given to them, the qualifications and experience of the Advisory Board and how it actually assisted Montana's clients. In the circumstances, I cannot be satisfied that the arrangements for giving advice are such as to ensure that the clients' interest would not be prejudiced if I were to grant the application. I accept that Mr Maoudis has a good relationship with his clients and there have not been any complaints about Montana providing incorrect advice. Those facts do not, however, address the issue of the risk of the clients' interest being prejudiced by the provision of incomplete advice or a failure to give appropriate advice due to insufficient knowledge of the full range of debt solutions. This means that there is a risk that clients, who are in a vulnerable position, could choose or continue with unsuitable debt solutions. As a result, they may pay more than they would otherwise pay or the process may last longer than it need have done. As Montana has not satisfied me that there would be no risk to the interests of existing and future clients, I must refuse to grant the application to suspend the effect of the Decision Notice.

37. That is enough to dispose of the application but I should also deal briefly with the issue of business continuity. In relation to business continuity, Mr Maoudis said that Montana has full files on all its clients and, if the worst happens, those clients would be provided with their files and they could go to another adviser or charitable organisation such as StepChange. When asked how the clients would know what to do in the event of some unforeseen disaster, Mr Maoudis said that he had told the clients verbally about the arrangement. I do not consider that the arrangements are satisfactory as a continuity plan. I agree with Mr Fell who submitted that proper continuity arrangements require more than simply saying that an administrator will send the customers' files back to the customers. What is required is arrangements to ensure that the clients continue to be properly advised.

38. Finally, I should deal with Mr Maoudis' submission that the clients would be worse off if Montana's interim permission is not restored. I do not accept that the clients would be in a worse position if Montana cannot act for them. The FCA has arrangements in place with creditors and the Money Advisory Service. The evidence shows that clients will receive a letter from the FCA advising them of their options and the FCA has already negotiated forbearance arrangements with creditors. The Money Advice Service arrangements that the FCA has put in place will provide Montana's customers, if they take advantage of it, with a debt management service that includes initial and ongoing advice on all available debt solutions, including DMPs if appropriate.

39. In conclusion, I consider that, on the basis that there is a case to answer, there is a risk of prejudice to customers unless Montana can satisfy me that it has changed its business so as to remove the possibility of such risk. Essentially, Mr Maoudis asked me to accept that Montana has met all the concerns raised by the FCA in the Decision Notice. I am unable to do so for the reasons given above. It follows that I am not satisfied that allowing Montana to continue trading pending the determination of its reference will not prejudice the interests of consumers, namely the existing and future customers of Montana.

Decision

40. For the reasons given above, I refuse Montana's application to suspend the effect of the Decision Notice.

Postscript

41. Following the refusal of such an application, I would normally ask the parties to cooperate so as to bring the reference to a substantive hearing as soon as possible. However, after I announced my decision orally at the conclusion of the hearing on 30 November 2016, Mr Maoudis said that he wished to withdraw his reference. I gave Montana seven days to reflect and reconsider whether it wished to withdraw the reference. By email on 7 December, Mr Maoudis confirmed that he wished to withdraw his reference. Mr Maoudis said that he would no longer trade as Montana, had closed his website and would be writing to all Montana's clients over the next few days informing them of his decision. The FCA consented to the reference being withdrawn.

Judge Greg Sinfield

Release date: 15 December 2016