**[2019] UKUT 49 (TCC)**

**Reference number: FS/2018 / 044**

***FINANCIAL SERVICES– Decision Notice refusing application for permission to carry on debt adjusting and debt counselling activities-whether applicant will satisfy and continue to satisfy the threshold conditions-whether matter should be remitted for consideration in the light of Tribunal's findings-no-reference dismissed-ss 55B, 55Z3, 133 and para 2C, 2D and 2E Sch 6 FSMA 2000***

**UPPER TRIBUNAL**
**TAX AND CHANCERY CHAMBER**

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|---|---|
| **LEWIS ALEXANDER LIMITED** | **Applicant** |
| **- and -** | |
| **THE FINANCIAL CONDUCT AUTHORITY** | **The Authority** |

**TRIBUNAL: Judge Timothy Herrington**
**Sue Dale**
**Sandi O'Neill**

**Sitting in public at The Royal Courts of Justice, Rolls Building, London EC4 on 7 and 8 January 2019**

**The Applicant in person through its Director, Richard Johnson**

**Simon Jones, Counsel, instructed by the Financial Conduct Authority, for the Authority**

DECISION

## Introduction

1. On 17 April 2018 the Financial Conduct Authority ("the Authority") gave a decision notice (the "Decision Notice") to the Applicant, Lewis Alexander Limited ("LAL") refusing its application (the "Application") for permission to carry on the regulated activities of debt adjusting and debt counselling under Part 4A of the Financial Services and Markets Act 2000 ("FSMA"). By a reference notice dated 14 May 2018 LAL referred the matter to the Tribunal.

2. In summary, in the Decision Notice the Authority decided that it was not satisfied it could ensure (as required by s 55B (3) FSMA) that, if the Application were granted, LAL would satisfy, and continue to satisfy, the Threshold Conditions relating to effective supervision, appropriate resources and suitability as set out in paragraphs 2C, 2D and 2E of Schedule 6 to FSMA respectively.

3. In its Statement of Case in these proceedings, the Authority asks the Tribunal to dismiss the reference. It relies on the matters summarised at [4] and [5] below.

4. The Authority considers that over the course of the assessment of the Application, LAL has on a number of occasions:

(1) questioned why it is required to provide information to the Authority in a forceful and argumentative manner;

(2) demonstrated a reluctance to provide information to the Authority and comply with the Authority's rules and other legal requirements;

(3) adopted an uncooperative and/or hostile attitude when reacting to the provision of information or feedback given; and

(4) adopted an uncooperative and/or hostile attitude when complying with requests made by the Authority.

5. In the light of the above, taking LAL's responses and conduct as a whole over the course of the assessment of the Application, the Authority is not satisfied that:

(1) it will receive adequate information from LAL to enable it to determine whether it is complying with the requirements and standards under the regulatory system for which the Authority is responsible;

(2) LAL is fit and proper as it has not demonstrated that it has been, and will be, open and cooperative in its dealings with the Authority, and that it is ready, willing and organised to comply with the standards and requirements of the regulatory system; and

(3) LAL has in place appropriate human resources that are both able and willing to understand, and ensure that LAL complies with, regulatory standards and requirements.

6. LAL disputes that it does not satisfy the Threshold Conditions. It contends that its attitude towards the Authority is solely due to being treated differently by its previous regulator, the Office of Fair Trading ("OFT"), and the Authority who both used superior strength and influence to intimidate and force it to do things that other larger operators were not doing and that the Authority seemed incapable of getting them to do. LAL says it has always acted with morality in what was an unregulated arena and has never had any upheld consumer complaints. LAL contends that it has during the application process complied with the Authority's requests but the Authority's staff dealing with the Application have engaged in "unusual and emotive activities".

**Relevant legal and regulatory provisions and background**

7. Part 4A FSMA contains (in sections 55A to 55G) provisions relating to applications for permission to carry on a regulated activity.

8. Before April 2014, firms carrying on consumer credit activities were authorised and regulated by the Office of Fair Trading ("OFT") under a licensing system provided for by the Consumer Credit Act 1974. Firms carrying on "ancillary credit businesses", a category which included credit brokerage, debt adjusting, debt counselling and debt administration, were required to obtain an OFT licence before carrying on those activities.

9. Parliament decided in 2013 to transfer responsibility for the regulation of the consumer credit industry to the Authority. The Authority published a consultation paper (CP 13/10) setting out its detailed proposals for its regulation of consumer credit in October 2013 and a policy statement (PS 14/3) in February 2014. The latter document set out a summary of the new rules relating to consumer credit to be made by the Authority and when they would come into force.

10. The transfer of responsibility for the regulation of the consumer credit industry from the OFT to the Authority took effect on 1 April 2014. This transfer was effected in legislative terms by specifying various consumer credit activities as regulated activities for the purposes of the general prohibition in s 19 FSMA and the requirement for a permission in s 20 FSMA. Consequently, as from 1 April 2014 a firm which was not at that time an authorised person under FSMA (such as LAL) requires the appropriate permissions under Part 4A of the Act before it can lawfully carry on consumer credit regulated activities.

11. Pursuant to transitional provisions a firm such as LAL, which immediately before 1 April 2014 held an OFT licence in respect of consumer credit activities, acquired on 1 April 2014 an interim permission to carry on as regulated activities the consumer credit activities that were covered by its OFT licence without the Authority having to undertake any consideration as to whether the firm concerned met the Threshold Conditions. This was subject to the firm having notified the Authority that

it wished to have an interim permission. However, the effect of the transitional provisions is that a firm would lose its interim permission unless it applied by a date specified by the Authority for a Part 4A permission to include the activities covered by the interim permission. The Authority could only grant the permission if it was satisfied that the firm met the Threshold Conditions in relation to the activities concerned.

12. The term "debt management" is commonly used to describe two related activities which are now regulated by the Authority 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". The former 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. The latter 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.

13. LAL obtained an interim permission on 1 April 2014 by virtue of the operation of the transitional provisions and on 6 March 2015, within the application period directed by the Authority, applied to the Authority for a Part 4A permission. A number of consumer credit related regulated activities were applied for but ultimately the Application was limited to permission to carry on the consumer credit regulated activities of debt adjusting and debt counselling.

14. Section 55B (3) FSMA provides, among other things, that in giving a Part 4A permission the Authority must ensure that the applicant will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the Threshold Conditions for which the Authority is responsible.

15. The Threshold Conditions are specified in Schedule 6 to FSMA. Those which are relevant to this reference are condition 2C, condition 2D and condition 2E.

16. Condition 2C provides, so far as relevant:

> "(1) A must be capable of being effectively supervised by the FCA having regard to all the circumstances including-
>
> (a) the nature (including the complexity) of the regulated activities that A carries on, or seeks to carry on;
>
> (b) the complexity of any products that A provides or will provide in carrying on those activities;
>
> (c) the way in which A's business is organised;
>
> …

…"

17. Condition 2D provides, so far as relevant:

"(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;

(b) whether A's non-financial resources are sufficient to enable A to comply with –

(i) requirements imposed or likely to be imposed on A by the FCA in the exercise of its functions, or

(ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator…"

18. 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, or requests made by the FCA, relating to the provision of information to the FCA 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 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;

…"

19. That part of the Authority's Handbook known as COND gives guidance on how the Authority interprets the Threshold Conditions.

20. In relation to condition 2C the guidance states that in considering whether a firm is capable of being adequately supervised the Authority will, among other things, consider whether it is likely that the Authority will receive adequate information from the firm to determine first whether the firm is complying with the requirements and standards under the regulatory system for which the Authority is responsible and secondly to identify and assess the impact on its statutory objectives. This will include consideration of whether the firm is ready, willing and organised to be open and cooperative with the Authority and the Authority's requirements regarding the provision of information to the Authority.

21. In relation to condition 2D the guidance states that in considering whether the firm has sufficient resources the resources must be appropriate in relation to the regulated activities that the applicant seeks to carry on. The Authority interprets "appropriate" as meaning sufficient in terms of quantity, quality and availability, and "resources" as including all financial and non-financial resources.

22. In relation to condition 2E, the Authority will have regard to the firm's compliance procedures as well as to whether the firm has been open and cooperative in all its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system.

23. In considering the Authority's assessment of whether LAL was able to satisfy the Threshold Conditions, account must be taken of the Authority's approach to supervision of small firms such as LAL. As appears from the evidence of Ms Maria Lancaster, on behalf of the Authority, which we refer to in more detail later, the firms that the Authority regulates are divided, based on size, into two categories:

(1) "Fixed Portfolio Firms": these are the largest firms and are subject to an ongoing, proactive relationship with the Authority through a dedicated team of named individual supervisors.

(2) "Flexible Portfolio Firms": these firms are supervised at market level, through thematic and market-based work. These firms are not, generally, individually and proactively supervised.

24. Further, the Authority's supervision work is based around three pillars of activity:

(1) Pillar I is proactive firm supervision, that is applicable to fixed portfolio firms.

(2) Pillar II is event-driven, reactive supervision. Pillar II focusses on reacting to crystallising, or crystallised, risks. Ms Lancaster explains that this pillar is engaged when the Authority becomes aware of significant risk to, or damage to, consumers.

(3) Pillar III is issues and products supervision. Under Pillar III the Authority engages in thematic and market-based work, focussing on issues and risks for a

sector of the market as a whole. Ms Lancaster notes that this is the "primary form of proactive work for flexible portfolio firms."

25. If authorised LAL would be a flexible portfolio firm. LAL would therefore not receive its own supervisor but would instead be supervised through Pillar II and Pillar III-based activity.

26. As Ms Lancaster said in her evidence, due to the fact that flexible portfolio firms are not proactively relationship-managed, the Authority relies heavily on the information that such firms provide, both in response to information requests and by way of self-reporting where required. The Authority's supervisory model requires these firms to be cooperative with the Authority in order for the Authority to effectively assess and mitigate risks that those firms might present to consumers. A failure to provide information by such a firm prevents the Authority from building a proper understanding of the nature and extent of any risks to consumers and can prevent the Authority from understanding the full extent of the firm's possible failings.

27. Section 55Z3(1) FSMA provides that an applicant who is aggrieved by the determination of an application made under Part 4A FSMA may refer "the matter" to the Tribunal.

28. Section 133 FSMA contains some general provisions regarding proceedings before the Tribunal.

29. Section 133 (4) FSMA provides that, on a reference, the Tribunal may consider any evidence relating to the subject matter of the reference whether or not it was available to the decision-maker at the material time. It is well understood that a reference is not an appeal against the Authority's decision but a complete rehearing of the issues which gave rise to the decision.

30. Section 133(5) to (7) FSMA provide as follows:

"(5) In the case of a disciplinary reference or a reference under section 393(11), the Tribunal-

(a) must determine what (if any) is the appropriate action for the decision-maker to take in relation to the matter, and

(b) on determining the reference, must remit the matter to the decision-maker with such directions (if any) as the Tribunal consider appropriate for giving effect to its determination.

(6) In any other case, the Tribunal must determine the reference or appeal by either-

(a) dismissing it; or

(b) remitting the matter to the decision-maker with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.

(6A) The findings mentioned in subsection (6) (b) are limited to findings as to-

(a) issues of fact or law;

(b) the matters to be, or not to be, taken into account in making the decision; and

(c) the procedural or other steps to be taken in connection with the making of the decision.

(7) The decision-maker must act in accordance with the determination of, and any direction given by, the Tribunal."

31. The "decision-maker" in relation to this reference is the Authority.

32. It is common ground that this reference is not a "disciplinary reference" and accordingly the Tribunal's powers in determining the reference are limited to those prescribed by s 133 (6) and (6A) FSMA.

33. The approach to be taken in the exercise of these more limited powers is that set out by this Tribunal in *Carrimjee v FCA (No.2)* [2016] UKUT 447(TCC) where the Tribunal said at [37] that its role was to determine whether the decision made by the Authority was one that falls within the range of reasonable decisions it was open to the Authority to make. If having reviewed all the evidence and the factors taken into account by the Authority in making its decision and having made findings of fact in relation to that evidence and such other findings of law that are relevant, the Tribunal concludes that the decision is one that is reasonably open to the Authority then the correct course is to dismiss the reference: see [38] of the decision. If the Tribunal is not satisfied that in the light of its findings that the decision is one that in all the circumstances is within the range of reasonable decisions open to the Authority, the correct course is to remit the matter with a direction to reconsider the decision in the light of those findings: see [38] of the decision.

34. Although *Carrimjee* concerned the imposition of a prohibition order made under s 56 FSMA, the principles to be applied are the same in a case such as the present one, which relates to the question of whether the Authority can be satisfied that if the Application were granted LAL would satisfy the Threshold Conditions: see on this point *Köksal v FCA* [2016] UKUT 478 (TCC) at [25] to [28].

35. As regards s 133 (4) FSMA, it is clear that the Tribunal may consider any matters arising after the issue of a Decision Notice: see *Carrimjee* at [26] to [27] and *Köksal* at [30] to [33].

36. The Tribunal at [37] and [38] of *Köksal* set out how the burden and standard of proof operates in references of this kind. Mr Jones, counsel for the Authority, correctly summarised the position to be as follows:

(1) the initial, legal burden is on the Authority. The burden is to show on the balance of probabilities, why the Authority cannot ensure that the Applicant will satisfy, and continue to satisfy, the Threshold Conditions in respect of suitability, effective supervision and appropriate resources. This is not to be equated with a requirement that the Authority proves that the Applicant positively does not satisfy those Threshold Conditions;

(2) Once this is established, the burden switches to the Applicant who must establish that there are matters that justify remitting the matter to the Authority for further consideration.

37. From the date LAL obtained its interim permission, it was required to comply with the Authority's regulatory requirements, as set out in the Authority's Handbook. Of particular relevance to LAL are:

(1) the Consumer Credit sourcebook ("CONC"), chapter 8 of which sets out the standards applicable to debt management firms;

(2) the Principles for Business ("PRIN");

(3) the Senior Management Arrangements, Systems and Controls sourcebook ("SYSC"); and

(4) the Client Assets sourcebook ("CASS").

38. Reference to specific provisions of these rules is made as and when necessary later in this decision.

39. Following the issue of the Decision Notice LAL's interim permission lapsed and it was no longer an authorised person under FSMA. As a consequence, it could no longer conduct regulated activities without being in breach of the general prohibition contained in s 19 FSMA nor could it claim to be an authorised person: see s 24 FSMA. Neither could LAL then communicate an invitation or inducement to engage in investment activity (a term which includes debt management activities) without being in breach of s 21 FSMA. Breach of any of those provisions is a criminal offence.

**Evidence**

40. On behalf of the Authority, we had three witness statements from Ms Marina Lancaster, a Manager in the Authority's Authorisations Division. In her first statement, Ms Lancaster set out helpful background as to the Authority's regulation of the debt management industry and the authorisation process for firms previously regulated by the OFT. Ms Lancaster then provided detailed evidence as to the interactions between LAL and the Authority during the process for the consideration of the Application. She explained why the Authority was not satisfied that (i) it would be able effectively to supervise LAL, (ii) LAL had appropriate non-financial resources and (iii) that LAL was fit and proper, with the consequence that the Authority had concluded that the standard for authorisation was not met.

41. Ms Lancaster explained that the Authority's concerns were based upon LAL's conduct over the course of the assessment of the Application, involving LAL's response to (i) initial feedback provided to LAL concerning customer files, (ii) requests for LAL's client account acknowledgement letter, (iii) requests for information concerning the date the customer reviews of debt management plans took place and (iv) feedback concerning the requirement for LAL's website prominently to include a link to the Money Advice Service website. Ms Lancaster's evidence was that those matters raised concerns regarding the ability of the Authority to monitor

effectively LAL's compliance with regulatory standards and requirements, the adequacy and appropriateness of LAL's human resources to willingly understand and ensure regulatory compliance and the fitness and propriety of LAL and whether it is ready, willing and organised to comply with the standards and requirements of the regulatory system.

42. In Ms Lancaster's second witness statement, she responded to the points made by Mr Richard Johnson, the sole director of LAL, in his Reply to the Authority's Statement of Case on behalf of LAL and concluded that the Authority's concerns, as summarised above, remained outstanding following consideration of that Reply.

43. In her third witness statement, Ms Lancaster clarified an outstanding point arising out of the evidence in her second witness statement.

44. We found Ms Lancaster to be an honest and truthful witness, with a good understanding of the events which had occurred during the course of the Application and thereafter. Ms Lancaster was cross-examined by Mr Johnson, although much of her evidence was unchallenged. The main area of dispute was the accuracy of the note of a key telephone conversation which took place towards the end of the Authority's consideration of the Application on 27 October 2017, a call in which Ms Lancaster participated. On that point we have, as with the rest of Ms Lancaster's evidence as to the facts, accepted her evidence. There was, also, of course, a dispute between the parties as to whether the Authority's view, as set out by Ms Lancaster, that LAL's conduct during the course of the Application justified the Authority's conclusion that LAL had failed to satisfy the Threshold Conditions.

45. Mr Johnson, who is the sole director of LAL and its sole human resource, gave evidence on behalf of LAL, as well as representing it at the hearing. In view of the fact that the Reply contained evidence as well as a reply to the points made in the Authority's Statement of Case, the Tribunal directed that this document should also stand as a witness statement by Mr Johnson on behalf of LAL. Mr Johnson was cross-examined by Mr Simon Jones, counsel, on behalf of the Authority.

46. Mr Johnson, on his own admission, is not a well-educated man, but we found him to be naturally intelligent and articulate. He is clearly passionate about LAL's business and what he perceives to be failings in the manner in which the Authority, and before it, the OFT regulated other debt management firms, in particular the larger firms. Mr Johnson's perception is that those firms did not comply with certain of the rules relating to debt management firms in the manner, which it was indicated to LAL during the course of the Application, that was expected of LAL. As we discuss, that perception was the central feature in his response to the Authority's various requests for information and, as we discuss below, Mr Johnson's concerns were forcefully put.

47. Mr Johnson conducted LAL's case before the Tribunal with considerable skill. We found him to be an honest and truthful witness, demonstrating the passion which was a feature of his dealings with the Authority regarding the Application, but not in a manner which we found to be inappropriate. He was, however, prepared to debate every point he put to Ms Lancaster or which was put to him by Mr Jones at length,

even where the answer to the point was obviously against him. Where we have not accepted Mr Johnson's evidence, for example on what was said during the telephone conversation of 27 October 2017, it is not because of any concerns about Mr Johnson's honesty, but because in our view he had mistakenly persuaded himself of the accuracy of his own recollection of the events concerned.

48. We were also provided with a substantial bundle of documents, consisting primarily of the extensive correspondence between LAL and the Authority during the course of the Application and thereafter.

**Findings of fact**

49. From the evidence that we heard, and the documents which we reviewed, we make the following findings of fact.

*Background to the Application*

50. The matters summarised at [51] to [58] below are largely derived from Ms Lancaster's unchallenged evidence on these matters.

51. LAL was incorporated on 17 February 2003 and has been trading as a debt management firm since 23 March 2003. Between that date and 31 March 2014, LAL was licensed and regulated by the OFT.

52. On 1 April 2014, LAL became regulated by the Authority through an interim permission as a result of the transitional provisions relating to the transfer of responsibility from the OFT to the Authority for the regulation of consumer credit and from that time was required to comply with the Authority's rules, including CONC, CASS and the other provisions referred to at [37] above.

53. As well as the Authority's publications referred to at [9] above, the Authority had also published (in March 2014) a detailed guide for consumer credit firms which, as the guide said, provided a high-level summary of how the Authority would regulate such firms. The guide provided an overview of the various rules in the Authority's Handbook which would be relevant, making particular reference to both the provisions of Chapter 8 of CONC and Chapter 11 of CASS, with links to the relevant parts of the Handbook. We find that this guide would have been readily accessed by a straightforward search on the Authority's website at the time LAL obtained its interim permission, as it still is today. In addition, on 21 March 2014 the Authority sent an email to those firms which had signed up for consumer credit updates notifying firms that it had published its rules for consumer credit firms and making reference to the availability of the guide. We had no evidence that Mr Johnson had signed up for consumer credit updates, and in the light of his conversation with the Authority which we deal with at [64] to [74] below it is likely that he did not, and we so find.

54. Mr Johnson is the sole shareholder and director of LAL, as well as its sole human resource for the purposes of carrying out its day-to-day business.

55. The business model operated by LAL was to source indebted customers, predominantly through "word-of-mouth" referrals, personal recommendations and advertising through its website (the "Website"), provide advice in relation to their debts, and ultimately administer debt management plans ("DMPs").

56. DMPs are non-statutory agreements between one or more of the customer's lenders, the aim of which is to liquidate or discharge the customer's debts by making regular payments. These payments can be made directly by the customer, or by a third party, such as a debt management firm. The role of a debt management firm is to collect the monthly payment from the customer and then to distribute money to the creditors. If the customer agrees to enter into a DMP, the debt management firm, such as LAL, proceeds to negotiate with the customer's creditors to set up repayment plans in respect of each debt, following which it will receive and administer the customer's payments to creditors.

57. In contrast to most debt management firms, whose fees were generally expressed as a percentage of the outstanding debts due, LAL's income was derived from fixed monthly fees from customers who were on active DMPs. The fees charged were:

(1) £35 for customer payments of £100 to £249;

(2) £50 for customer payments of £250 to £349; and

(3) £65 for customer payments of £350 and upwards.

58. LAL has since the time of submitting its Application been a small firm. At that time, it had 100 customers but by 7 October 2017 that number had reduced to 41 customers.

*The Application and events up to its determination*

59. As mentioned above, the Application was submitted on 6 March 2015. In accordance with the Authority's procedures, the Application was allocated to a case officer. Five different case officers had conduct of the Application as follows:

(1) Mr Khalead Matthews was allocated the Application on 3 June 2015. He left the Authority in February 2016, having sought some further information from LAL as mentioned below.

(2) Between 3 February 2016 and 21 March 2016 Mr Joshua Meehan acted as a stand-in case officer but did no substantive work on the Application.

(3) Ms Elaine Abdullie was allocated the Application on or about 15 August 2016. At the request of Mr Johnson, Ms Abdullie ceased to deal with the Application later that month.

(4) Ms Erin Beharry took over the conduct of the Application on 25 October 2016 and, again at the request of Mr Johnson, ceased to deal with the Application at the end of February 2017.

(5) The application was allocated to Mr Paul Hosier on 27 February 2017 and, under the supervision of Ms Lancaster from October 2017, he remained responsible for it until it was determined.

60. As can be seen, there are a number of time gaps between the various allocations which Ms Lancaster explained as being due to the large number of applications (we were told over 50,000) under consideration. This necessitated making internal decisions concerning the ordering of case assessments. Those decisions took account of the need to deal with, as a priority, firms who presented the greatest risk to the Authority's consumer protection and other relevant objectives.

61. Mr Matthews requested some information from Mr Johnson on 15 June 2015. Mr Johnson replied with the information requested on 6 July 2015. It is to be noted, in particular, that one of the questions related to the bank account in respect of which LAL received monies from clients. Mr Johnson provided a copy of the latest bank statement of that account, as well as the latest client money reconciliation.

62. Nothing further of significance happened in relation to the Application until August 2016. On the 15th of that month Mr Johnson had separate telephone conversations with three different employees of the Authority. It is clear from the transcripts of those calls (which were made available to us along with recordings of the conversations) that by this time the Application had been allocated to Ms Abdullie, because Mr Johnson is recorded as referring to Ms Abdullie as the case officer dealing with the Application.

63. The first of those calls was made to the Authority's Press Office and clearly had followed an earlier call that Mr Johnson had had with Ms Abdullie. We have no record of the previous call with Ms Abdullie. Mr Johnson attempted to obtain interest from the Press Office as regards his view that the manner in which the debt management industry was regulated was unfairly operated in favour of larger firms and how the Authority was expecting LAL to follow guidance that they had never told it about, matters which Mr Johnson said he was "going to blow open wide" to the embarrassment of the Authority. Mr Johnson was asked to express his concerns in an email to the Press Office.

64. The second call was with an employee, identified only as "Robin", to whom Mr Johnson was transferred following a call to the Authority's Contact Centre. Before being transferred to Robin, Mr Johnson had stated on the call that "we are really confused as to what the FCA expect a debt management company to follow as guidance."

65. Mr Johnson spent about 25 minutes talking to Robin. Our assessment of the call is that Robin went out of his way to be helpful to Mr Johnson and was very patient with him, particularly as Mr Johnson continually talked over Robin and interrupted him as he was trying to help.

66. At the beginning of the conversation with Robin, Mr Johnson referred to the fact that he previously followed the OFT debt management guidance. He expressed awareness of the existence of CONC but asked whether the Authority had given debt

management companies "last April" information setting out how the FCA rules for debt management companies were different to the old guidance.

67. Robin explained that it was largely the firm's responsibility to make sure it had everything in place to meet the Authority's requirements and that the Authority's website and handbook had specific consumer credit debt counselling sections, particularly in CONC which he offered to take Mr Johnson to. Mr Johnson replied at that point that "We don't even know what CONC is."

68. Mr Johnson did not appear to be willing to listen and started to raise his concerns about how the rest of the industry operated. Robin's response was to move the conversation back to the question of the relevant regulatory requirements and ask whether he should show Mr Johnson exactly where CONC was in the Handbook but was interrupted by Mr Johnson who said he was trying to identify "at what point have these requirements been pointed out to us". Robin replied that it was entirely the firm's responsibility to ensure it was up to date. He observed that the firm could engage a compliance firm, and that he could put Mr Johnson in contact with an organisation that could help him to find the right firm. Mr Johnson responded that he could not afford to pay for such things.

69. Mr Johnson repeatedly asked where he goes to find all the material he needs in "one centralised place", and Robin repeatedly attempted to direct Mr Johnson to CONC, finally being able to guide Mr Johnson during the call to the part of the Authority's website on which CONC 8 can be found and which sets out the relevant provisions for debt advice.

70. At this point Mr Johnson changed his tone. He said he was "going to the press" and that Robin had been "rather cantankerous to me" saying that he was being asked to go look for "a needle in the haystack".

71. After further inconclusive discussion, Robin, with some difficulty because he was being constantly interrupted, also referred Mr Johnson to PS 14/3, which, Mr Johnson replied was an "another item we were not aware of".

72. At this point Mr Johnson's tone became belligerent and aggressive saying he was "taking this to the press and we're going to hand back our licence", also referring to other larger companies who he contended were operating without complying with the rules.

73. Further on during the call, Mr Johnson did access PS 14/3, stating "it would just have been nice to have been given it" and expressing the view that it did not help him.

74. Finally, Robin attempted to bring matters to a close by urging him to look at the provisions he had been referred to and speak with an external compliance firm. Mr Johnson's response was to comment that Robin was "washing your hands of it" and that he would like to make a complaint and speak to Robin's supervisor. Mr Johnson was put on hold so that could happen but the call some minutes later terminated.

75. The third call was with a member of the Authority's complaints team. Mr Johnson said he had a "very serious complaint to make about somebody that I have just dealt with… in consumer credit" and that the person, who he identified as Robin, "was just being totally cantankerous" and demonstrated "rudeness to me". Based on our listening to the call with Robin, we do not share that assessment. As we have said, in our view Robin did his best to assist Mr Johnson, who was not interested in anything other than an explanation as to why he had not been told about the Authority's specific provisions for debt management firms and why they could not all be found together in one place.

76. Mr Johnson followed up these calls with a lengthy email to the complaints department, repeating his complaints about Robin and complaining about LAL's treatment at the hands of the OFT.

77. On 23 August 2016 Ms Abdullie telephoned Mr Johnson to discuss with him some customer files which had been provided by Mr Johnson at her request in order that an assessment could be made of the quality of the advice being provided against the requirements contained in the Authority's Handbook. During the call, Mr Johnson was informed that some pieces of important information were missing from the files and that a number of breaches of CONC had been identified.

78. No recording was made of this call, but Ms Abdullie prepared a detailed note, which was available to us. Mr Johnson accepted in cross examination that the note was an accurate record of the conversation.

79. The note records a similar pattern to the call with Robin; Mr Johnson interrupted Ms Abdullie and had to be reminded on a number of occasions to keep the conversation in line with the purpose of the call.

80. Mr Johnson disputed the breaches identified by Ms Abdullie. The note records her response as being "off the back of reviewing the customer files she would be minded to refuse his application as there were a number of breaches", giving him some options to consider with regard to how he would like to proceed with the Application, including the possibility of withdrawing it until the firm was in a position to comply with the regulatory requirements. The note then records that Mr Johnson "angrily" asked what would happen to his clients in that situation and accused Ms Abdullie of bullying him. Ms Abdullie is recorded as denying that and stating a lack of appreciation at being "shouted at" when "trying to do her job".

81. The note records that Mr Johnson then became extremely angry and told Ms Abdullie he would no longer like to deal with her, requesting that the call be escalated. Ms Abdullie apologised for the fact that Mr Johnson felt that way and that she had tried to deal with the matter as best she could, following which Mr Johnson put the phone down. Ms Abdullie followed up with an email in which she said "let me apologise if you were upset by the telephone call today it was not my intention". She confirmed that the matter would be passed to a new case officer.

82. We can only think that Ms Abdullie felt the need to apologise because she thought she had perhaps gone too far in indicating that she was minded to refuse the application, a matter which with hindsight might have been better addressed in correspondence with a detailed explanation, but bearing in mind the obvious hostility shown by Mr Johnson during the call when told that a number of breaches had been identified, we can understand why she might have felt it appropriate to "send a shot across the bows" at this stage.

83. Following on from the previous enquiries made by Mr Matthews, on 16 August 2016 Ms Abdullie requested that LAL provide a copy of the correspondence that LAL had had with its bank confirming that the money held within its bank account represented client monies. On 2 February 2017 Ms Beharry, who was by now the allocated case officer, specifically requested a copy of what is known as the client account acknowledgement letter ("CAAL") which is a letter required by CASS to be provided in a prescribed form by the bank with whom the firm's client account is held, acknowledging that money held in that account was client money and would not be combined with the firm's general bank accounts in the event of an insolvency.

84. It appears that LAL did download the prescribed form of letter and send it to its bank, Royal Bank of Scotland, for completion and return, the assumption therefore being that such a letter had not previously been obtained as it should have been. Royal Bank of Scotland had to be chased on numerous occasions for this letter, and it is clear that LAL pursued the bank on this with some vigour and it was ultimately provided on 19 May 2017.

85. In his various responses to the Authority's requests for a copy of the CAAL Mr Johnson made a number of statements which were not relevant to the issues arising in respect of his Application.

86. In particular, in an email of 3 February 2017 Mr Johnson accused the Authority of misuse of its resources in the various requests that it was making of LAL stating "I actually think your organisation and the general establishment around it is corrupt in favour of creditors who have lobbied to get more funds out of people they think are withholding monies for repayment" and that "the credit industry lobbied parliament to get the [Authority] to enforce rules which are unfair to consumers and only fair to creditors and free to client services…and utilise the fee charging sector to do so!".

87. This was despite earlier requests by Ms Beharry in November and December 2016 that she was only interested in matters which progressed the Application and that Mr Johnson's wider concerns about how the industry was regulated had been passed to the relevant departments who would deal with them.

88. On 6 February 2017 Mr Johnson was asked for a 3 year financial forecast for LAL to be provided by 16 February 2017. Mr Johnson responded to this request on 19 February 2017 in a long email. The information requested was not provided with that email which covered a number of other points not directly relevant to the Application and which included the following statements:

(1) "You have currently reduced us to not taking on clients and refusing advice based on your lack of ability to police the industry regarding breaches of advertising and non-compliant acquisition of clients";

(2) "[LAL] cannot forecast due to your lack of policing and control of the industry… I cannot wait until you revoke my license";

(3) "How bent are you lot? It is quite ridiculous now and I have to go to the press as it cannot be accepted that I keep quiet about such massive collusion and breaches of governance/regulation";

(4) "So, I think you know the answer to your request for a forecast estimation do let me know when you have controlled the industry and given some simple to follow rules out for those not degree level educated and I will give you a forecast";

(5) "The lack of guidance or understandable simple guidance from the [Authority] is a disgrace!"

89. A similar pattern emerges from requests made by the Authority for information concerning the annual DMP reviews of customers that LAL was bound to undertake pursuant to the provisions of CONC. On 25 November 2016 Ms Beharry asked for, amongst other things, the date of each of LAL's last annual reviews.

90. In his initial response by email on 25 November 2016, Mr Johnson did not address directly the information requested and finished the email as follows:

> "You can answer my requests in your own timeframe but I must state that my intent is to contact the national press and Met Police as stated before.
>
> As stated on the phone, I lost respect for your authority when I lost trust in it relating to my claims being stonewalled, they are not going away Erin…. The [Authority] and OFT represent more of an organised crime structure to me than an authority I grew up being taught respect for."

91. On 5 December 2016 Mr Johnson provided a substantive response to Ms Beharry's request as regards the DMP annual reviews. The answer given was that the date of the last review for all of its customers occurred "between July 2016 and December 2016" which clearly was not an answer to the specific question raised.

92. On 8 December 2016 Ms Beharry requested confirmation from LAL as to whether it kept a record of the date that annual reviews were started and completed. Mr Johnson confirmed that it did so "in each client file".

93. On 2 February 2017, Ms Beharry requested Mr Johnson to join a conference call with her and other colleagues to discuss the recent management information sent along with the client files, and to talk about the next steps of the application. That call took place on 6 February 2017. The call was recorded and we have a transcript of it.

94. During the call, the Authority asked again as to the exact date of the DMP annual review for all customers. Mr Johnson explained that on his system he only had a "next contact date" and that it was necessary to go into each file to find the last

contact date. Consequently, following the call, Ms Beharry sent an email to Mr Johnson asking for the management information previously provided to be updated so as to give the exact date of when each customer review was completed. Ms Beharry indicated that once that was submitted, she would then request further client files to review. Mr Johnson was asked to provide this information by 16 February 2016.

95. The information requested was not provided by that deadline but on 23 February 2017 a telephone conversation did take place between Ms Beharry and Mr Johnson. We have no details as to what was discussed in that call, but on the same day Mr Johnson sent an email to Ms Beharry referring to the fact that the call was terminated by her. Mr Johnson said that this happened because "I will not be spoken down to… and treated like a less worthy citizen". Mr Johnson complained about being contacted by other employees in the Authority, resulting in duplication of requests for information.

96. Mr Johnson then said that he could no longer deal with Ms Beharry "due to the same issue as your colleague before", namely his allegation that he was being "spoken down to".

97. The Authority agreed to this request and by 1 March 2017 Mr Hosier had taken over as the case officer for the Application. On that day, Mr Hosier set out in an email to Mr Johnson the information that was outstanding from Ms Beharry's previous requests, namely information as to the annual reviews (which Mr Johnson was asked to supply by 3 March 2017), the 3 year forecast (which was requested by 24 March 2017) and the CAAL (which was requested as soon as it had been received from the bank).

98. It would appear that Mr Johnson did provide some updated management information in an email of 5 March 2017, as referred to in a further email sent to Mr Johnson on 7 March 2017. The information provided evidently was not sufficient because Mr Hosier explained in clear detail why the Authority needed the date that each annual review had been undertaken, referring to the relevant requirement in CONC. He also referred to a "dear CEO" letter which was sent by the Authority on 8 December 2016 to all firms that administer debt management plans (which would have included LAL).This reminded firms of the need to review DMPs at least annually so that the customer's financial position and circumstances were regularly monitored with a view to helping to ensure, among other things, that all customers continued to receive appropriate advice and that their debt solution continued to be suitable to their individual needs. Mr Hosier then set out clearly the information required in respect of each of the case files that had previously been provided to Ms Beharry and asked for this to be provided by 22 March 2017.

99. We find Mr Hosier's email to be helpful and designed to assist LAL in ensuring that the information that the Authority had was up to date, which would obviously help to progress the Application.

100. Mr Johnson replied by email on 8 March 2017. The first two lines of the text of this email read as follows:

"COPIES OF EMAILS NOW BEING SENT TO THE METROPOLITAN POLICE DUE TO SUSPECTED FRAUDULENT CIVIL SERVICE ACTIVITY"

101. In the substantive text of the email, Mr Johnson described the information request as "quite ridiculous" stating that the Authority was "purposefully stopping me from being able to carry out my normal working day… By duplicating and overloading workload". He did say that the email would be responded to but then made the following request of Mr Hosier "ASK YOU TO CONFIRM WHY YOU ARE USING BULLYING LEGAL TACTICS BY PLACING A TIME FOR A RESPONSE ON A CERTAIN DATE".

102. Mr Johnson then suggested that "you or someone from your office with DMP experience gets their posteriors up to Manchester to look at our software that cannot disclose certain information by extraction due to the way it was built for security purposes".

103. On 13 March 2017, LAL purported to provide the dates requested by the Authority, but when those dates were checked against the customer files in its possession it was found that the dates provided by LAL related to action undertaken on each file, rather than the date of the annual review of the DMP.

104. The Authority responded to Mr Johnson's rather rude request for a visit. This was set up following a call from Mr Hosier to Mr Johnson on 21 April 2017 in which Mr Hosier helpfully explained the areas of concern as regards the current state of the Application and the matters that needed to be discussed at the visit. Mr Hosier's detailed note of this conversation records that Mr Johnson spent a considerable time on the call rehashing his issues with the OFT and with others in the debt management industry.

105. The visit took place on 9 May 2017. Mr Hosier and a colleague, Mr Alexander MacDermott, a technical specialist, made the visit. Following an examination of LAL's records, Mr Johnson agreed that they did not evidence the date upon which annual reviews of particular DMPs had taken place. However, Mr MacDermott did say at the meeting when asked about the status of the Application by Mr Johnson that "It's yours to lose, Richard."

106. We agree with Ms Lancaster when she said in her evidence that LAL's inability to evidence compliance with the relevant requirements of CONC in response to the Authority's straightforward requests was only identified by way of significant and lengthy correspondence and explanations, along with a detailed comparison exercise being conducted at LAL's premises during the visit made on 9 May 2017.

107. On 16 May 2017, Mr Hosier wrote to Mr Johnson setting out the various items it required from LAL over the next 6 weeks in order to advance consideration of the Application.

108. Further information was provided over the next few weeks, but it was clear that by 21 August 2017 the Authority was of the view that LAL had not by that point satisfied it that LAL met the Threshold Conditions, as a consequence of the

outstanding information that had not been supplied. On that date Mr Hosier emailed Mr Johnson informing him that as things currently stood he was minded to refuse the Application. However, Mr Hosier stated in his email that if the outstanding information identified in his email was provided by the dates there specified LAL may be able to demonstrate that it can meet the relevant Threshold Conditions.

109. Mr Johnson replied, amicably, on 27 August 2017 providing some of the information and giving indications as to when the rest of it may be available.

110. The Authority finally moved towards the conclusion of the Application in October 2017. It was clear that by this time the Authority was considering that if authorisation was to be granted it would be what was known as a "non-standard authorisation" which would mean that there would be various requirements attached to it which LAL would need to comply with, in order to address various deficiencies identified by the Authority.

111. On 23 October 2017 Mr Hosier and Mr Johnson spoke by telephone. That call was subsequently referred to as the "happy call" in that it was clear that Mr Hosier had indicated that LAL could achieve non-standard authorisation if it was considered that LAL could meet the requirements which would be specified in that authorisation.

112. However, matters took a different course from 25 October 2017. By that point, Ms Lancaster had reviewed the Application and identified what she regarded as a breach of CONC 8.2.4R which requires all debt management firms to include prominently a link to the Money Advice Service ("MAS") on its website.

113. Accordingly, Mr Hosier sent an email on 25 October 2017 to Mr Johnson stating that in order to comply with this rule, the link must direct the user to the correct MAS webpage, using the address as set out in the rule. Mr Hosier stated that the link should be prominently included on the website homepage and that it should be in a format that stands out from the other information being provided.

114. Mr Hosier observed that LAL's website contained the link, but not on its homepage. Instead, the link was located on the "Useful Links" page which was only accessible from the homepage by way of another link located at the very bottom. Mr Hosier also observed that the link was not displayed prominently and that it directed the customer to the wrong webpage on the MAS website. Mr Johnson was asked to address these issues by noon on 27 October 2017.

115. Mr Johnson responded to these concerns by a series of emails over the course of the next two days. We agree with Ms Lancaster's assessment that these emails, based on their length, content and tenor demonstrated hostility towards regulatory bodies. He also once again returned to his theme that LAL was being asked to do things that other firms were not.

116. As we discuss later, we accept that Mr Johnson was perfectly entitled to debate with Mr Hosier whether the use of the word "prominently" in the rule necessarily meant that the link had to be put on LAL's homepage.

117. However, Mr Johnson's responses went well beyond what was necessary to engage in that proper debate. For example, he said:

> "I am considering contacting the metropolitan police as the racketeering and bullying and forceful nature of how you are making me make decisions is absolutely unacceptable and I am sure that there are laws somewhere against this type of treatment."

118. He also said:

> "Someone, somewhere is putting a stick in the spokes of my wheels and they are sitting quietly behind the scenes pulling the strings…. basically bent staff on a bung, or the authorisation team want to do everything they can not to authorise me and maybe pressure is coming from above…"

119. However, early on the morning of 27 October 2017, Mr Johnson emailed Mr Hosier to say that after consideration he had decided to place the link as requested on the homepage which he did "out of respect to you and in goodwill". By this time, the Authority had requested a conference call to discuss the issue. Mr Johnson said as a result of his action he hoped this would mean the conference call was not necessary. He went on to say "I hereby reserve the legal right to change this link back to its original format of being a link from the "homepage" to the useful links page" if the Authority did not clarify the legality of the request that the link be contained on the homepage.

120. The Authority nevertheless wished the conference call to proceed. Mr Hosier indicated in an email to Mr Johnson that the call would help to address the outstanding issues concerning the MAS link as well as the possible outcomes regarding the Application. It was clear from Ms Lancaster's evidence that the Authority did not consider that the changes Mr Johnson had made satisfied the requirements of the rule because the link was not sufficiently prominent, being located at the base of the Website's homepage in small font, where it did not stand out from other warnings and information.

121. On 27 October 2017 the conference call took place. Those participating from the Authority were Ms Lancaster, Mr Hosier, Mr MacDermott and Mr Richard Storey, the latter being the legal adviser on this matter.

122. This phone call was not recorded, although Mr Hosier prepared a detailed note of it on 30 October 2017. Mr Johnson disputed the accuracy of this note. In particular, the note stated that the call commenced at 4.20 pm and ended at 5.20 p.m. whereas Mr Johnson says that it finished at 5 pm. The note records that after warning Mr Johnson that this would happen, Ms Lancaster terminated the call on the basis that by that stage Mr Johnson was simply continuing to repeat points he had previously made. Mr Johnson's view was that he had no inkling that the call was going to be terminated and felt that progress was being made on the call. Mr Johnson's view is that the note is weighted in the direction of how the Authority would wish the RDC or the Tribunal to see what happened on the call. In particular, he disputed the statement in the note that he was only willing to comply with the Authority's request regarding the

prominence of the MAS link when the rest of the industry complied. He believes that the call was used to "set him up" for the refusal of authorisation that followed.

123. We accept the note as an accurate record of what was discussed. It was prepared very shortly after the call took place. Ms Lancaster, who was on the call and who we found to be an honest witness, confirmed its accuracy. From the evidence we have already reviewed, Mr Hosier had gone out of his way to be helpful to try and assist LAL to meet the conditions for authorisation and that flavour also comes across in the note. Mr Johnson also confirmed that Mr Hosier had been very helpful during the authorisation process and he indicated his respect for him in the email referred to at [119] above. There is therefore no evidence that the call was designed to "set up" LAL for failure. In the light of the way in which Mr Johnson had conducted previous calls, we can well believe that they would have come to a point at which the discussion was going round in circles and it would be necessary to terminate the call, in the manner in which Ms Lancaster did. As is often the case with a discussion that despite its length did not appear to cover a lot of ground, Mr Johnson could well have been mistaken as to its length.

124. Having said that, it was unfortunate that the call was not recorded, as other calls that were perhaps less important had been. Ms Lancaster accepted in her evidence that she was aware that it might be a difficult call and that with hindsight it would probably have been better had it been recorded, bearing in mind that as a result of what was said on the call, the Authority then finally made it up its mind on whether or not to authorise LAL.

125. In the light of that, we can turn to what was discussed on the call, on the basis of what is recorded in the note.

126. Mr Storey opened the conversation by stating that, as it presently stood, LAL should be able to satisfy the Authority that it met the standard for authorisation. However, he explained that, when considered in the context of the history of Mr Johnson's communication with the Authority, the recent emails were moving his application in a direction where it could potentially impact upon the Authority's assessment of the Application. This was because of the manner of LAL's compliance with the requests for information, whether it was being open and cooperative with the Authority and whether it is likely that the Authority will receive adequate information to enable it to determine whether LAL is complying with the requirements and standards under the regulatory system.

127. In the light of LAL's response on the MAS link issue, Mr Storey explained that the Authority was considering whether a decision to authorise would include the imposition of a requirement to amend the Website within a set period to ensure that the MAS link was prominent.

128. Mr Johnson contended that he had complied with the requirements of the rule and complained that the issue of the "prominence" of the MAS link had not been raised until very recently. He also said that he was only willing to comply with the Authority's request when the rest of the industry complied and he proceeded to

provide examples of other websites that he stated did not comply. Mr Storey replied that the "non-compliance" of those websites was not relevant to the issue of whether LAL complied. Mr Johnson then repeated his concerns about the way the Authority was policing other firms on this issue.

129. After further inconclusive discussion, Mr Johnson was asked whether if the Authority accepted that he had raised points that should be addressed through the proper channels, he would amend the Website to ensure it complied with the relevant rule. He replied that he would not. At this stage, Mr Storey suggested that as no further progress was being made, it would be best if the phone call was brought to a conclusion. Mr Johnson disagreed.

130. Mr Hosier then intervened to acknowledge the progress that LAL had made over the last 6 months in order to try and bring itself into compliance with the Authority's requirements. He said that the Authority will put its concerns regarding the prominence of the MAS web link in writing and if a response was provided, this could be considered as part of the Application. In our view, this offer indicates that Mr Hosier was giving Mr Johnson every opportunity to bring closure to the issue and therefore progress the Application. The offer is clearly inconsistent with Mr Johnson's contention that the purpose of the call was to "set up" LAL for a negative decision on the Application.

131. Although Mr Johnson strongly expressed his wish to carry on the discussion, he merely repeated points made previously at which point Ms Lancaster terminated the call.

132. Mr Johnson's reaction to the call followed his previous pattern of sending a series of hostile emails in quick succession containing a number of intemperate statements.

133. The first email was sent 8 minutes after the call concluded. As well as Mr Hosier and Mr MacDermott, the email was sent to Mr Andrew Bailey, the Chief Executive of the Authority. The message was headed "Police and threatening behaviour" and the first line read:

> "I would like to make a serious complaint about how 4 of your operators have just dealt with me on a conference call."

134. Mr Johnson accused the Authority of bullying, stating that the way the call was terminated was rude and unprofessional. He concluded the message by stating:

> "Please note I am also contacting the Metropolitan police regarding potential fraudulent activity of FCA staff…."

135. On the basis of Ms Lancaster's evidence, and our analysis of what was discussed on the call, there was no basis for Mr Johnson's allegation of bullying or unprofessional conduct, let alone any suggestion that matters had occurred which were worthy of a report to the police.

136. In another email sent approximately half an hour later, Mr Johnson stated that he was asking the Metropolitan Police to find out who at the Authority was involved in his dealings with the OFT and to investigate "bullying, harassment and discriminatory actions over the last 10 years."

137. In a further email he repeated his complaint that other firms were not positioning their link to the MAS website in the manner that the Authority had requested of LAL.

138. On 31 October 2017 Mr Hosier sent an email to Mr Johnson explaining the reasoning behind the Authority's request as regards the positioning of the MAS link. Mr Hosier said that although there was no definition as to what constitutes "prominently" in this context, the Authority would expect the MAS link to be on a firm's website homepage and in an appropriate format that ensures that it draws the consumer's attention with as much force as anything else displayed on the homepage. He confirmed the Authority's view that the MAS link on the Website as presented on the day of the telephone call did not meet the requirements of the rule and that the Authority was aware that, following the call, the MAS link was subsequently removed from the Website.

139. On the same day, a telephone conversation took place between Mr Johnson and Mr Hosier during which Mr Johnson informed Mr Hosier that the Website had been amended again, such that it now operated in compliance with the rule, which the Authority accepted to be the case.

140. On 17 November 2017 Mr Hosier emailed Mr Johnson to inform him that the Authorisation Division was going to recommend a refusal of the Application, informing him that if that recommendation was accepted, LAL would receive a Warning Notice and subsequently the right to make representations to the RDC and, if a Decision Notice was issued, to refer the matter to the Tribunal.

141. Ms Lancaster explained in her evidence the relevant factors that had been considered before deciding to recommend refusal of the Application as follows:

(1) The Authorisations Division had reached the view that LAL was able to provide debt advice to its customers broadly in compliance with regulatory requirements;

(2) LAL had agreed to the imposition of a voluntary requirement being placed on its permission, requiring it to inform the Authority if it administered more than 120 DMPs at any one time;

(3) The Authorisations Division considered that LAL's systems and controls satisfied the minimum standard required; and

(4) LAL had implemented (or provided sufficient assurance that it would implement) a number of changes identified by way of feedback by the Authority.

142. However, having considered these factors in the context of LAL's conduct during the course of the consideration of the Application, the Authorisations Division

concluded that it was unable to ensure that LAL satisfied the Threshold Conditions due to the fact that it had demonstrated a reluctance to provide information and comply with the rules contained within the Authority's Handbook, forcefully and argumentatively questioned why it is required to provide information, and adopted an uncooperative attitude.

143. Mr Johnson's response followed the usual pattern. On 19 November 2017 Mr Johnson left a voicemail for Mr Hosier. Mr Hosier made a record of that voicemail, which Mr Johnson did not dispute. The record shows that Mr Johnson started his message by stating that a "fraud report" would be lodged with Action Fraud and that a full report would be made to the Metropolitan Police "against" the Authority for "untoward activities… industrial espionage and fraud" as well as "intent to conspire".

144. The note also records Mr Johnson as saying he did not feel comfortable dealing with Mr Hosier, stating "you need to put someone on it". Mr Johnson clarified during his cross examination that he was not asking for Mr Hosier to be removed as the case officer, but that somebody else should be given responsibility for communicating with him because it was now a legal matter. We accept Mr Johnson's explanation; he confirmed in his evidence that there was no personal issue between him and Mr Hosier. The note also records that Mr Johnson, in a reference to what we assume to be the "happy call", thought that LAL was very close to getting authorised.

145. This voicemail was followed by a series of emails over the course of 20 and 21 November 2017. In those emails Mr Johnson accused the Authority of "bullying tactics" in the October 27 call, stated that the "questionable requests" made by the Authority were "tantamount to a form of racketeering" and that "the National Crime Agency and No 10 Downing Street have been made aware by me personally about the goings-on throughout this entire process of authorisation."

146. Because of the serious allegations, Mr Hosier sent Mr Johnson a detailed email on 22 November 2017 responding to the allegations about bullying and fraud which, unsurprisingly, were denied. In addition, Mr Hosier explained how despite the Authority's concerns as to the manner in which LAL engaged with the Authority, that until the call on 27 October 2017 the Authority considered that there was a reasonable prospect of concluding that LAL would meet the minimum standard for authorisation. Mr Hosier then explained that having given further consideration after that call, the recommendation that the Application be refused was based upon LAL's engagement taken as a whole over the course of the assessment of the Application and, specifically, LAL's failure to demonstrate the level of cooperation that would be expected of a regulated firm, as evidenced by the length, content and tenor of its communications in response to a number of requests for information.

147. Mr Johnson's response, in an email sent on the same day, was to say that Mr Hosier's email "does not suffice and is clearly full of lies." This was followed by further emails of the same tenor on the same day and the following day in which Mr Johnson stated, among other things, that the Authority "seems to be deluded with power and authority".

148. At this point, the Authority informed LAL that it did not consider that the points raised advanced assessment of the Application any further and that, as a consequence, it did not intend to engage in further correspondence in relation to them.

*The regulatory proceedings*

149. On 14 December 2017, the Authority gave LAL a Warning Notice setting out the reasons why it proposed to refuse the Application, which were in line with the explanation given by Mr Hosier to LAL in his email of 22 November 2017.

150. Mr Johnson made both written and oral representations to the RDC on the Warning Notice. It is clear from his representations on behalf of LAL that Mr Johnson continued to conflate his concerns about the ongoing regulation of the debt management industry with the issues that arose in respect of the consideration of the Application.

151. As is clear from the Decision Notice, the RDC effectively accepted the Authority's case as set out in the Warning Notice. In particular, it was found that the Authority was not satisfied that LAL was capable of being effectively supervised by the Authority as a consequence of its conduct during the course of the consideration of the Application.

*Events following the commencement of the Tribunal proceedings*

152. As mentioned above, the effect of the Decision Notice was to end LAL's interim permission. It was therefore no longer an authorised person for the purposes of FSMA which meant, among other things, that the restrictions on communicating financial promotions contained in s 21 FSMA now applied to LAL.

153. LAL had contemplated pursuing an application to the Tribunal to suspend the effect of the Decision Notice pending determination of the reference under rule 5 (5) of The Tribunal Procedure (Upper Tribunal) Rules 2008 which, if granted, would have the effect that the interim permission and hence LAL's status as an authorised person would continue until the reference was determined.

154. In the event, LAL did not pursue the suspension application, stating to the Tribunal in an email on 15 June 2018 that it just wished to leave the Website in place so that clients moving away could contact them for information.

155. As a consequence, on 20 June 2018 the Authority emailed LAL stating that it considered that LAL's continued operation of the Website placed it in breach of both s 21 and s 24 FSMA. As far as the former section was concerned, the Authority expressed the view that statements on the Website to the effect that LAL could still provide debt management services breached the prohibition on unauthorised persons issuing financial promotions. As far as s 24 is concerned, the Authority expressed the view that this was breached because LAL continued to represent on the Website that it was authorised and regulated by the Authority.

156. The Authority therefore informed LAL that it should amend the Website or alternatively pursue its suspension application.

157. LAL's response followed a similar tone and pattern to that demonstrated during the course of the consideration of the Application. In an email dated 21 June 2018, Mr Johnson accepted that "there may well be a technical breach of [ss 21 and 24 FSMA]" but that this was "based on your "overzealous" (overzealous being your lack of action with larger players over the years and intent to persecute me as will be evidenced) email" and went on to describe the points made by the Authority concerning the Website breaches as "vexatious stipulations".

158. On the same day following a further explanation from the Authority as to the purpose of its email, LAL confirmed that it would not be removing the Website and that the Authority was "merely trying to defend [its] overzealous actions".

159. Correspondence on this issue continued over the next few days, the Authority stating that its request that LAL address the issue was reasonable and proportionate in the circumstances.

160. On 26 June 2018, LAL confirmed that the Website in its previous form had been removed, whereupon it consisted of a homepage that stated that it "is currently down for maintenance" along with a contact telephone number.

161. LAL has now sold its customer contact information to another firm and sent a "Goodbye Letter" to its customers explaining the situation and setting out the customer's options. The letter included contact details for the firm concerned and the free advice available. On 6 June 2018 LAL informed the Authority that it had ceased to conduct any regulated activities and that any individuals who contacted it via the Website were being referred to the "fee-free" sector.

*Mr Johnson's explanation for his attitude to the Authority*

162. It was put to Mr Johnson extensively in cross examination that the confrontational style of his communications, the tone in which they were expressed and the lack of cooperation with the Authority during the course of the Application would make it very difficult for LAL to be effectively supervised.

163. Mr Johnson strongly disputed that proposition. He attempted to justify the approach he took for the reasons summarised below, but did accept that in a number of respects, looking at them now, some of the communications were inappropriate.

164. We can summarise Mr Johnson's response by reference to our findings set out above, taking each of the various issues on which the Authority relies in turn, by reference to the numbered paragraphs of our findings, as follows. We accept Mr Johnson's explanations as to why he communicated with the Authority in the manner in which he did.

*The call with Robin ([64] to [76] above)*

165. Mr Johnson did not believe that Robin was being helpful on the call. He said that his belief was that the Authority should have given him a reasonable list of things that he had to do as from the date of his interim permission and that, as was the case with the OFT, the guidance relevant for debt management companies should be all in one place. He did not accept that Robin had given him the opportunity to look at the various regulatory provisions that he had been referred to so that he could get up to speed with the applicable regulatory requirements.

*The dealings with Ms Abdullie ([77] to [[83] above)*

166. Mr Johnson did not accept that his tone with Ms Abdullie was inappropriate nor that it was inappropriate to accuse her of bullying. He said he did so because of what he regarded as a snap decision by Ms Abdullie to say that she was minded to refuse the application. He said that Ms Abdullie was dealing with a "kicked animal" and that explained his response because his livelihood was at stake, in circumstances where he had heard nothing about the Application for a long time but was then being told that the Authority was minded to refuse it.

*The dealings with Ms Beharry ([83] to [96] above)*

167. Mr Johnson defended the allegations he made about the Authority in his email of 3 February 2017 on the basis that he was trying to get the Authority to listen and address the concerns he had raised as to the manner in which other firms were being regulated. He said that he did not realise at the time that he would not be able to achieve that as part of the application process, but rather that he believed that the allegations against the Authority would get somebody to listen to his concerns. He did not accept that it was inappropriate to have continued to raise his wider concerns regarding the industry with the Authorisations caseworkers, notwithstanding Ms Beharry's request that he should not seek to do so in the context of the Application.

*The dealings with Mr Hosier: 3 year forecast and DMPs annual reviews ([97] to [111] above)*

168. Mr Johnson defended his response of 8 March 2017 to Mr Hosier's email of 7 March 2017 on the basis that he had received many emails from Mr Hosier requesting things in such a short space of time when Mr Hosier knew that LAL's resources were so small. He therefore said that his response, although looking bad in isolation, had to be looked at in the context in which it was made. He accepted that his communications may have created extra work for the Authority but felt that the Authority should have looked at how they were allocating their resources and why they were spending so much time on his case. Mr Johnson did not appear to accept that, in his request, Mr Hosier was trying to be helpful in order to progress the Application. Mr Johnson did not accept that the requests for an updated business plan had any bearing on whether LAL could meet the Threshold Conditions.

*The dealings with the Authority regarding the link to the MAS website ([112] to [139] above*

169. Mr Johnson regarded the issue concerning the MAS website link as being a very minor point and that in due course the Authority's concerns were addressed. He did not regard his approach to this point as raising concerns as to whether he would comply with legitimate requests made by the Authority if LAL were authorised, observing that the Authority may find it helpful to have his points and consider them in a wider context. He again justified the tone of his responses on the issue because of his concerns that he was, as a small firm, being bullied into complying with the rule whereas other larger firms were not being asked to do so. Whilst he now accepted he should not have referred to "bent staff on a bung", those words were said in the context of him being at the end of his tether and the words were used to capture attention.

170. Mr Johnson did not regard his statement that he would be contacting the Metropolitan Police following the October 27 call as being an overreaction because of what he had had to go through. On his analysis, he had been bullied by four employees of the Authority on the call, having been told shortly before the call that LAL was likely to be authorised, then he received a contrary message during the call and had the phone put down on him. Mr Johnson did not accept that the level of engagement required to get him to comply with the rule concerning the link to the MAS website was by far in excess of what could be expected for an issue of that kind.

*Events after the minded to refuse letter ([143] to [148] above)*

171. Mr Johnson did not accept that his communications were inappropriate in the light of what he regarded as the Authority's decision that it did not wish to have a relationship with LAL. He said it was difficult to take into account how somebody will communicate after their hopes had been raised and then dropped.

*Events following the commencement of the Tribunal proceedings ([152] to [160] above)*

172. Mr Johnson justified his response to the request that he alter the Website on the basis that this was the final attempt to close his business down and he wished the Website to remain for the benefit of LAL's customers. He did not accept that an excessive level of engagement was required in order to get to the point when he agreed to change the Website.

**Discussion**

173. We start by repeating for convenience the essence of the Authority's case that it cannot ensure that LAL would satisfy the Threshold Conditions if it is authorised. As set out in its Statement of Case, the Authority considers that over the course of the assessment of the Application, LAL has on a number of occasions:

(1) questioned why it is required to provide information to the Authority in a forceful and argumentative manner;

(2) demonstrated a reluctance to provide information to the Authority and comply with the Authority's rules and other legal requirements;

(3) adopted an uncooperative and/or hostile attitude when reacting to the provision of information or feedback given; and

(4) adopted an uncooperative and/or hostile attitude when complying with requests made by the Authority.

174. In the light of the above, taking LAL's responses and conduct as a whole over the course of the assessment of the Application, the Authority is not satisfied that:

(1) it will receive adequate information from LAL to enable it to determine whether it is complying with the requirements and standards under the regulatory system for which the Authority is responsible;

(2) LAL is fit and proper as it has not demonstrated that it has been, and will be, open and cooperative in its dealings with the Authority, and that it is ready, willing and organised to comply with the standards and requirements of the regulatory system; and

(3) LAL has in place appropriate human resources that are both able and willing to understand, and ensure that LAL complies with, regulatory standards and requirements.

175. The essence of LAL's response to those contentions, to be found in the points which Mr Johnson made in his Reply on behalf of LAL to the Statement of Case, his evidence in cross examination and his opening and closing submissions can be summarised as follows:

(1) He believes that it is incumbent on the Authority to direct him to the relevant provisions LAL needs to comply with as a debt management firm and that he was given inadequate help to do so. Nothing material was done until Mr Hosier took over the case and Mr Johnson then became aware of the relevant requirements in CONC, particularly as regards annual reviews of DMPs;

(2) The Authority spent too much time on his application and devoted too much resource to it despite the fact that no concerns had ever been expressed about how LAL dealt with its customers nor were there any upheld customer complaints;

(3) He was entitled to question and debate with the Authority as to why the rules required LAL to do certain things and he did comply with the Authority's requests as regards the DMP reviews, the MAS link and the content of the Website. He denies that excessive engagement was required to reach that position;

(4) He now realises the approach he took regarding the concerns he had regarding other firms' business models was not going to get him anywhere and says that he would deal with the Authority differently if authorised;

(5) The concerns the Authority has with his style of communication are all down to tonality; he expresses himself emotionally but the Authority has misconstrued his method of expression as shouting and demonstrating anger;

(6) His attitude to the Authority was understandable due to the fact that his concerns as to how the rest of the industry was regulated were not being listened to;

(7) He did not accept that much of what was being asked of LAL during the course of the Application had any bearing on LAL's ability to meet the Threshold Conditions. In particular that applies to the request for the business plan, and the MAS link which he described as a "minor point";

(8) His threats to go to the police and other authorities were justified because of the contrary messages he received from the Authority as to whether or not LAL was to be authorised, the manner in which he was bullied, particularly during the conference call on 27 October 2017, and the failure of the Authority to listen to his concerns about the industry; and

(9) the Authority's staff "ganged up" on him during the October 27 call which was designed to "set up" LAL for the refusal of the Application.

176. Although, for the reasons we give below, we comprehensively reject Mr Johnson's characterisation of the behaviour of the Authority and his justifications for the manner in which he communicated with it, in our view, in a limited number of respects the Authority might have done some things differently.

177. First, it is important that the way that the Authority has stated its case on this reference should not lead firms to be concerned that they cannot in an appropriate manner question and debate the basis of requests made by the Authority for information and its interpretation as to what the rules and other regulatory provisions require in any particular situation. Indeed, Ms Lancaster recognises in her evidence that firms are entitled to disagree with, and criticise, the Authority.

178. It is important that when there is a debate about the meaning of one of the Authority's rules that the Authority should not give the impression that once the Authority has pronounced on its view as to what the rule requires, that the firm is bound to accept that view and move on. For example, in this case there was a debate about what CONC 8.2.4 required. The rule states:

> "A debt management firm must prominently include:
>
> (1) in its first written or oral communication with the customer a statement that free debt counselling, debt adjusting and providing of credit information services is available to customers and that the customer can find out more by contacting the Money Advice Service; and
>
> (2) on its web-site the following link to the Money Advice Service website (https:// www.moneyadviceservice.org.uk/en/tools/debt-advice-locator)."

179. As we record at [113] above, Mr Hosier told Mr Johnson that in order to comply with this rule, the link referred to in the rule should be prominently included on the

website homepage. The implication was that no other siting of the link could be regarded as "prominent". However, by use of a less specific term, namely "prominent" rather than a mandatory provision that the link must be contained on the homepage, the rule clearly envisages that the requirement of prominence could be achieved in a different manner but to the same effect. I also note that there was no guidance attached to the rule which indicated that in the Authority's view the firm would meet the requirement by including the link on its homepage. In those circumstances, the Authority should listen to what the firm had to say if it wished to comply with the prominence requirement in a different manner and then consider whether what the firm was proposing met the requirement. If it disagreed, and the parties could not agree, then ultimately if the Authority wished to push the point it could use its statutory powers to impose requirements on the firm's Part 4A permission and if the firm did not agree, it could challenge the requirement through the Authority's decision-making processes and, ultimately, if it felt strongly enough about the point, in the Tribunal. As long as that debate took place in a professional and appropriate manner, nothing should be held against the firm simply because it wished to press its interpretation of the rule.

180. Secondly, the Authority might have been able to close down Mr Johnson's repeated attempts to address the question of how the Authority regulated the rest of the industry, a question that was irrelevant in the context of the Authority's consideration of the Application, had it explained more clearly how those concerns would be dealt with.

181. As we record at [87] above, Mr Johnson was warned that the Authority were only interested in matters which progressed the Application and that his wider concerns about how the industry was regulated had been passed to the relevant department which would deal with them. It does not appear that Mr Johnson was ever told how those matters had been dealt with. This is understandable because, as Ms Lancaster explained in her evidence, it is not open to the Authority for confidentiality reasons to inform third parties as to how it is dealing with the affairs of other firms. Therefore, if having been notified of Mr Johnson's concerns, Supervision had taken supervisory action against the firm's concerned for breaches of the rules, the Authority would not have been able to inform Mr Johnson that it had done so and what the outcome of that action had been. However, it does not appear that Mr Johnson had been told specifically that that would be the case and he may well therefore have thought that his concerns were being ignored. It might therefore have been helpful for the relevant department to have written to Mr Johnson in purely neutral and factual terms just to inform him that the matters were being looked into but for confidentiality reasons he could not expect to hear anything further on the issue.

182. Thirdly, although, as discussed below, Mr Johnson's conduct did result in the Application taking longer to conclude than it ordinarily should have done, there were long periods of delay caused by the Authority's lack of action in relation to the Application.

183. As Ms Lancaster explained in her evidence, the Authority is required, under s 55V FSMA to determine a Part 4A application within 6 months (beginning on the day that it received the application) or 12 months in circumstances where (as in this case) the application is incomplete. As Ms Lancaster accepted, the Authority clearly breached this deadline in this case, the Application taking over 2 ½ years to determine. There does not appear to be any sanction on the Authority for failing to meet the deadline; the application can only be approved if the Authority can ensure that the Threshold Conditions will be satisfied if the firm is authorised regardless of the length of time it takes to consider it.

184. Ms Lancaster explained that there were a number of cases where the Authority failed to meet the statutory deadline but nonetheless felt that the additional time was necessary in order to ensure a sufficiently robust assessment given the higher risk nature of a debt management firm's business. The Authority had informed the debt management industry accordingly.

185. Nevertheless, bearing in mind the size of LAL's business and its lack of complexity, the delay in progressing the application between July 2015, when Mr Matthews received the information he requested, and August 2016, when Ms Abdullie took over responsibility for the Application, seems difficult to justify. This delay was not caused because of difficulties in dealing with the Application, but because it did not allocate resource at that stage to deal with it. Understandably, this delay must have contributed to an extent to Mr Johnson's frustration once matters became active again and of course it creates a challenge to the Authority's credibility if it is seen to have done little on an application for a long period of time and then requests significant information with short deadlines.

186. Fourthly, it was unfortunate that Mr Johnson had his hopes raised during the call he had with Mr Hosier on 25 October 2017, only to see a new issue raised immediately thereafter, as a result of Ms Lancaster's review of the Application. Clearly, it would have been better if Mr Hosier's call had been delayed until after Ms Lancaster's review had been concluded. There is no doubt that this contributed to the way in which Mr Johnson behaved during the conference call on 27 October 2017, but, as we discuss below, it does not excuse his behaviour.

187. Finally, we have referred above to the fact that it was unfortunate that the 27 October conference call was not recorded.

188. Nevertheless, in our view these criticisms are clearly heavily outweighed by what we find to be the wholly professional way in which the Authority sought to deal with what turned out to be a very difficult application. We make these observations primarily with the objective of helping the Authority should similar situations arise in the future.

189. In our view, in this case the Authority, and in particular Mr Hosier, was extremely patient with Mr Johnson and did everything reasonably possible to steer the Application through a course that in all probability would, but for Mr Johnson's own conduct, have led to a successful outcome. Both Mr Hosier, and before him Robin,

did their best to assist Mr Johnson in being able to meet the Authority's requirements and provide a basis for LAL being able to satisfy the Authority that it met the Threshold Conditions.

190. It was over a year from the time that the Authority began to consider the Application actively again in August 2016 that it was determined. This is an extraordinary length of time in the context of what was a very straightforward business with a limited number of customers and issues to address. The protracted process, which we find was caused predominantly by the manner in which Mr Johnson responded to the Authority's legitimate requests, resulted in a disproportionate level of resource being devoted by the Authority to the Application. In our view it would not have been unreasonable for the Authority to have taken stock and made a "minded to refuse" decision on the Application as early as March 2017, following what we find to be the intemperate email sent by Mr Johnson to Ms Beharry on 6 February 2017, as summarised at [88] above. That email was sent at a time when significant information requested by the Authority was still outstanding. The events following that email led shortly thereafter to Ms Beharry being replaced by Mr Hosier, and in our view the Authority was extremely accommodating by agreeing to replace Ms Beharry and giving LAL further extended opportunities to provide the answers that were necessary for the Authority to progress the Application.

191. Likewise, even though it was clear from the visit that the Authority made to LAL's offices in May 2017 that LAL was not complying with the important requirements of CONC as regards annual reviews of DMPs, a visit that was made in response to a peremptory request from Mr Johnson and which would not normally have been made to a firm of this size, the Authority still indicated that the Application could be approved, and that it was LAL's "to lose".

192. We find that at the heart of the difficulties caused for the Authority in this case was the failure, right from the outset of the Application, of Mr Johnson to understand that it was primarily his responsibility to familiarise himself with the Authority's regulatory requirements and ensure that he could satisfy the Authority that LAL was in a position to meet them.

193. For this reason alone, in our view the Authority had sufficient reason to conclude that LAL was not ready, willing and organised to comply with the standards and requirements of the regulatory system.

194. There is a legitimate debate to be had as to the extent to which those firms who wish to be authorised to conduct regulated activities in the financial services sector can expect the Authority to explain to them in some detail how the Authority's requirements can be met in their particular case; or whether such firms should be expected to stand on their own two feet and work things out for themselves, bearing in mind the requirements can be complex and significant burdens, including considerable expense, can be placed on small firms with limited resources.

195. The Authority has chosen to adopt a particular approach to regulation which does put the responsibility primarily on the regulated firms themselves, but seeks to

assist firms by providing considerable guidance, either on its website or in targeted communications to regulated firms, informing them of the approach the Authority seeks to take and what its requirements mean, such as the Dear CEO letter to debt management firms and the detailed guidance issued in March 2014 which we refer to above. As the conversation that Mr Johnson had with Robin reveals, a firm who is struggling to find the relevant requirements can seek assistance from the Authority who will point them in the right direction so that they can see what they need to do.

196. However, it is not the role of the individual firm to dictate to the Authority how it should deal with the firm in question and, in particular, that it should depart from its business model for the firm's own convenience. If the firm thinks that the regulatory approach taken by the Authority is inappropriate, then that is a matter to be raised with those who have ultimate responsibility for the regulatory structure, namely Parliament and the Government.

197. In this case, we find that Mr Johnson's whole approach was not to cooperate with the Authority but to attempt to get it to deal with his firm differently. Having been informed by Robin as to the approach the Authority took, and that it was his responsibility to familiarise himself with the relevant requirements, and that if necessary he should obtain external advice, Mr Johnson's approach, as demonstrated by our account of the call with Robin, set out at [64] to [74] above, was to demand that he be spoon-fed with particular requirements relevant to his firm. It was clear that he had taken no steps to familiarise himself with the relevant regulatory requirements, which LAL had been obliged to comply with since the date of LAL's interim permission. It was also clear that he had made no attempt to access and understand the considerable amounts of information that were available to help him by that time, including the guidance issued in March 2014 or by signing up to receive alerts. Ultimately, it was only when Mr Hosier made the requests he did concerning compliance with CONC 8 that Mr Johnson became engaged with the process.

198. As regards the complaint that a small firm like his could not afford compliance advice, although we can understand why the obtaining of external advice at reasonable cost may be problematic for a small firm, a firm that finds itself in that position has a choice. It must either take responsibility itself for researching and understanding the relevant requirements, using all the material available to assist as described above; or, regrettably, it must conclude that it cannot pursue its application.

199. In that sense, the position is no different to someone who would like to have a commercial pilot's licence but says he cannot afford to pay for the necessary flying lessons. It is no answer to say that in that situation the Civil Aviation Authority should help him to meet the licensing requirements; just as it is the budding pilot's responsibility to ensure that he has the necessary competence to be a pilot, a firm which requires to be regulated in order to offer debt management services has the responsibility to ensure that it is in a position to meet the relevant regulatory requirements.

200. Nothing that Mr Johnson said during the course of the proceedings on this reference indicates that he understands his responsibilities in this regard, as indicated by the first of his submissions which we summarised at [175] above.

201. Because of his ignorance of the relevant regulatory requirements, Mr Johnson was in no position to debate sensibly with the Authority why LAL was required to meet certain requirements, such as the DMP annual reviews and the need for the Website to be compliant, both during the time of its interim permission and after that permission had ceased. He therefore had no basis for his seventh submission, as summarised at [175] above, that much of what was requested of LAL during the course of the Application had no significant bearing on LAL's ability to meet the Threshold Conditions.

202. As a result of Mr Johnson's approach, the efforts on the part of the Authority to obtain the information it needed properly to consider the Application were unnecessarily protracted. We accept Mr Jones's submissions that Mr Johnson demonstrated an attitude of pushing back on each of the requests made and we agree with Ms Lancaster's assessment that in general he reacted to the requests in a way that was overly aggressive, uncooperative and unwarranted.

203. We accept, as Mr Johnson submitted, that eventually LAL did meet the requests but we cannot accept his submission that the engagement with him by the Authority that was required to reach that position was excessive and, by implication, unnecessary. Our account of the time the various answers took, and the effort that was necessary to obtain them, as described at [88] to [160] above speaks for itself. Ms Lancaster was correct in her assessment that the amount of time that was taken, the level of resource used by the Authority to obtain (often straightforward) information and the level of resistance that requests for information met led properly to concerns that LAL would not be capable of being effectively supervised if authorised.

204. Therefore, to answer Mr Johnson's second submission, as summarised at [175] above, the reason the Authority spent so much time on the Application and devoted so much resource to it, including unusually for an application of this type, two members of the Authority's staff making a special visit at Mr Johnson's request to his offices, was because of the manner in which Mr Johnson dealt with the various requests for information. The fact that no concerns had been expressed and upheld as to the manner in which customers were dealt with did not mean that it was not incumbent upon the Authority to ensure that LAL was organised in such a manner that it was able and willing to meet the Authority's regulatory requirements.

205. We now turn to the tone of Mr Johnson's communications with the Authority. As our descriptions of them, as set out above, clearly demonstrate, they followed a clear pattern. Starting with the conversation with Robin, if Mr Johnson did not like what he heard, his immediate reaction was to blame the purveyor of the information and complain about the employee concerned, such complaint usually being accompanied by a totally unwarranted accusation that the person concerned had either been rude, cantankerous or bullying.

206. Things got worse as the Application progressed, and these complaints were accompanied with extremely unpleasant and frankly ridiculous allegations of criminal behaviour accompanied by threats to report the Authority and its staff to the police and other authorities. The Authority showed considerable restraint and professionalism in dealing with these allegations. Although they must have been unsettling for the staff concerned, a matter to which Mr Johnson appears to have paid no regard, the only comfort was that the allegations were so ridiculous that they could not possibly have been taken seriously. This is demonstrated by the fact that as Mr Johnson confirmed in an answer to a question from the Tribunal, the police never showed the slightest interest in following up on any of these allegations, nor did the press, who Mr Johnson also indicated were made aware of the allegations.

207. Any person acting reasonably would know that any allegation of fraudulent or other criminal activity has to be supported by cogent evidence. All of Mr Johnson's allegations against the Authority's staff were as a result of a knee-jerk reaction to properly formulated requests for information and, on his own admission, were designed purely out of the totally misguided view that they would make the Authority sit up and listen to his concerns about how the rest of the industry was being regulated. That of course cannot excuse the tenor and content of those communications.

208. In any event, the allegations of criminal behaviour and the threats to inform the police were made not only in the context of the concerns Mr Johnson raised about the rest of the industry, but also as a reaction to what he was told during the October 27 conference call about the status of LAL's application and following the "minded to refuse" letter of 17 November 2017. There can be no justification for those communications in that context; as is clear from our findings, our assessment of the conference call was that there was no evidence of bullying but plenty of evidence, from Mr Hosier's approach in particular, that the Authority was still willing to explore whether it could assist LAL to obtain authorisation.

209. Similarly, our findings in relation to the October 27 call are not consistent with Mr Johnson's submission that the Authority "ganged up" on him during the call or that the call was designed to "set up" LAL for the refusal of the Application: see [130] above.

210. Neither do we accept that the concerns with Mr Johnson's style of communication are all down to tonality. We have direct evidence of Mr Johnson's style from having listened to the recording of the call with Robin and our assessment from that call is that as the call progressed, Mr Johnson's tone became increasingly aggressive and inappropriate.The notes of subsequent telephone conversations, in particular Ms Abdullie's call of 23 August 2016 summarised at [77] to [81] above and the October 27 conference call are consistent with that assessment.

211. Finally, we turn to the question as to whether Mr Johnson would change his approach were LAL to be authorised.

212. We have no confidence that that would be the case. It was only in response to a question from the Tribunal that Mr Johnson accepted that the approach he took was misguided. Before that point, throughout the Tribunal proceedings and, in particular during the hearing itself, he sought to justify his past behaviour, although as we have observed, his conduct during the hearing was perfectly appropriate.

213. In our view the Authority's concerns that Mr Johnson would demonstrate the same pattern of behaviour were requests for information made of LAL as an authorised firm are fully justified. From our assessment of the evidence, in our view the approach that Mr Johnson took is inherent in his character and although he professes to have a respect for authority, our assessment is that he only shows that respect to the Authority when he agrees with what is being asked of him.

214. Although we have been highly critical of Mr Johnson's behaviour, we should end on a positive note. Mr Johnson has clearly demonstrated a passion for treating his customers fairly and the business model he adopted, in particular LAL's fee structure, is evidence of that.

215. Our assessment is that it will be very difficult in the future to authorise a firm where Mr Johnson is the sole human resource. However, there may be a way for his skills to be deployed in a firm where he can be properly supervised and directed and where he has no responsibility for dealing directly with the regulator, but where he can devote his efforts entirely to giving his customers a good service.

**Conclusion**

216. For the reasons that we have set out at [188] to [213] above, there is no reason to cast any doubt on the reasonableness of the decision by the Authority to refuse the Application.

217. In our view, bearing in mind the Authority's supervision model for small firms such as LAL and LAL's approach during the course of the Application and thereafter, on the basis of our findings the Authority was fully justified in concluding that it was unable to ensure that LAL satisfied the Threshold Conditions. We therefore agree with the Authority's assessment that LAL had demonstrated a reluctance to provide information and comply with the rules contained within the Authority's Handbook, forcefully and argumentatively questioned why it was required to provide information and adopted an uncooperative attitude.

218. We find that the Authority has made out its case on the matters on which it relies in this reference, as set out at [173] above, and that the Authority's assessment that as a consequence it is not satisfied as to the matters set out at [174] above is a decision which is reasonably open to it.

**Disposition**

219. The reference is dismissed. Our decision is unanimous.

**JUDGE TIMOTHY HERRINGTON**
**UPPER TRIBUNAL JUDGE**
**RELEASE DATE: 19 February 2019**

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