
FINAL NOTICE

**Ms Linda Carole Stuart
t/a Rosemount Financial Enterprises
St Christopher House
217 Wellington Road South
Stockport
SK2 6NG**

ACTION

1. With effect from 1 April 2014, Linda Carole Stuart trading as Rosemount Financial Enterprises was granted interim permission pursuant to article 56 of the Financial Services And Markets Act 2000 (Regulated Activities) (No 2) Order 2013 to carry on the regulated activities of:
 - (a) Debt adjusting under article 39D of the RAO; and
 - (b) Debt-counselling under article 39E of the RAO.
2. By an application dated 30 December 2014 Ms Stuart applied under section 55A of the Act for Part 4A permission to carry on those regulated activities. The application was completed by the provision of further information on 21 April 2015.
3. For the reasons given in the Decision Notice issued on 13 October 2015 and in accordance with section 55X of the Act, the Authority has decided to refuse the application.
4. As a result of the Decision Notice, pursuant to article 58(1)(a) of the Financial Services and Markets Act 2000 (Regulated Activities) (No 2) Order 2013, Ms Stuart's interim permission ceased on 13 October 2015.

SUMMARY OF REASONS

5. The Authority cannot ensure that, in relation to the regulated activities for which permission is sought, Ms Stuart will satisfy, and continue to satisfy, the Threshold Conditions.
6. By its Warning Notice the Authority gave notice that it proposed to refuse the Application and that Linda Carole Stuart was entitled to make representations to the Authority about that proposed action.
7. By its Decision notice issued on 13 October 2015, the Authority gave Linda Carole Stuart notice that it had decided to take the action described above.
8. Linda Carole Stuart had 28 days from the date the Decision Notice was given to refer the matter to the Tribunal. No referral was made to the Tribunal within this period of time or to date.
9. Under section 390(1) of the Act, the Authority, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give Linda Carole Stuart Final Notice of its refusal.

DEFINITIONS

10. The definitions below are used in this Notice.

the "Act" means the Financial Services and Markets Act 2000;

the "Authority" means the Financial Conduct Authority;

"CONC" means the Consumer Credit sourcebook in the Handbook;

"COND" means the section of the Handbook entitled "Threshold Conditions";

"the Decision Notice" means the decision notice dated 13 October 2015. as given to the firm by the Authority.

"IVA" means Individual Voluntary Arrangement;

"SYSC" means the section of the Handbook "Senior Management Arrangements, Systems and Controls";

the "Handbook" means the Authority's Handbook of Rules and Guidance;

the "OFT" means the body in existence prior to 1 April 2014, known as the Office of Fair Trading;

"OFT Guidance" means the Debt Management Guidance dated March 2012 issued by the OFT;

"Principle" means one of the Authority's Principles for Businesses;

the "RAO" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“Threshold Conditions” means the conditions set out in Schedule 6 to the Act for which the Authority is responsible; and

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

“the “Warning Notice” means the warning notice dated 8 July 2015 as given to the firm by the Authority.

FACTS AND MATTERS

Background

11. Ms Stuart traded as a debt management firm under the trading name “Rosemount Financial Enterprises” from 29 February 2008. From then until 31 March 2014 she was licensed and regulated by the OFT.
12. On 1 April 2014, Ms Stuart became regulated by the Authority under Interim Permission reference 613432. Ms Stuart applied for full authorisation on 30 December 2014.
13. Ms Stuart applied for permission to conduct the regulated activities of Debt-counselling and Debt adjusting. Ms Stuart’s business model entails sourcing indebted customers who are seeking debt advice. Ms Stuart states that the advisers will assess a customer’s circumstances and provide relevant debt advice. They may refer consumers to alternative providers of debt solutions (for example, providers of IVAs), or to providers of free debt advice, or they may advise consumers to enter into a debt management plan. Many of Ms Stuart’s customers were obtained by her through the purchase of a book of business from another debt management firm.

Standard documentation

Pre-contractual information

14. Having reviewed the standard pre-contractual information provided by Ms Stuart, the Authority is not satisfied that these documents meet the Authority’s regulatory requirements in the following respects:
 - (a) They fail to provide (in a durable medium) information on the total cost of the firm’s service or an estimate of the anticipated likely total cost (contrary to the rule in CONC 8.3.1(3)). This requirement was derived from paragraph 3.40c of the OFT Guidance, which cited the failure to provide details of the total cost (or anticipated likely cost) in pre-contractual information in relation to debt management contracts as an example of an “unfair or improper business practice”.
 - (b) They fail to provide (in a durable medium) information about the consequences on the customer’s credit rating, including how long the matter will show on the customer’s credit file and that the customer may not be able to obtain credit or other financial services in the future (contrary to the rule CONC 8.3.1(10)). This requirement was derived from paragraph 3.38e of the OFT Guidance, which cited failing to provide adequate information to the consumer about the likely effect of the debt management option on his credit rating (including whether (and how long) it will show up on his credit report, and that he might not be able to obtain credit in the short and/or medium-to long-term either) as an example of an “unfair or improper business practice”.

15. The Authority considers that the rules in CONC 8.3 are of particular importance because they are designed to ensure that consumers have sufficiently clear information regarding the costs and consequences of entering into a particular debt solution, so as to enable them to make an informed decision.
16. Ms Stuart produced revised pre-contractual documentation which largely addressed the concerns set out at paragraph 14 above, although it contained conflicting information regarding fees, indicating a lack of care in its preparation. It was also defective in other respects: it contained advice on the debt solution recommended, but failed to contain the matters required by CONC 8.3.4(3)(a) and (b), namely a warning of the consequences of failing to pay taxes, fines and certain other specified payments, and of the actual or potential consequences of not continuing to make repayments under credit agreements or consumer hire agreements. It was also at odds with the fact that, at the same time as providing some of this documentation, Ms Stuart stated her intention not to take on new customers; in inadequately rectifying documentation of fundamental importance to consumers, while indicating that it would not in fact be used, the Authority considers that Ms Stuart exhibited a reactive approach to dealing with issues raised by the Authority rather than addressing the need to ensure ongoing compliance in relation to her business.

Call script

17. Having reviewed Ms Stuart's sales call script (received by the Authority on 4 February 2015), the Authority considers that calls conducted in accordance with this document would not meet the Authority's regulatory requirements, for the following reasons:
- (a) The script asked five initial questions which appeared to have been designed to screen out those debtors who were ineligible for a debt management plan or an IVA. Depending on the answers given, the call script then directed the employee to either proceed to gather income and expenditure information, or to terminate the call. The Authority considers that the termination option was non-compliant with the rule in CONC 8.3.7(3). This requirement was derived from paragraph 3.23g of the OFT Guidance, which cited failing to refer a consumer (where appropriate) to a not-for-profit advice organisation where the customer:
- (1) has priority debt problems and/or an immediate 'emergency' that the licensee is unable or unwilling to assist with and/or;
 - (2) does not have enough disposable income to meet the cost of paying the fees charged by the licensee
- as an example of an "unfair or improper business practice".
- (b) Calls conducted in accordance with the call script would be non-compliant with CONC 8.3.2(1), having regard to the guidance in CONC 8.3.3, by virtue of the fact that it failed to require a sufficiently full assessment of the financial circumstances of the customer – notably in relation to the absence of any questions in relation to the country within the UK in which the customer was resident. This requirement was derived from paragraph 2.6 of the OFT Guidance, which stated:
- "Licensees must act honestly and treat consumers fairly. They should ensure that:

- a. all advice given and action taken has regard to the best interests of the consumer

...

- c. reasonable care is taken to provide accurate information when dealing with (including advertising to) consumers from different countries in the UK, due to the differences in law, court procedures, possible enforcement actions, and the debt management options available to the consumer, in the different jurisdictions.”

Having regard to the guidance in CONC 8.2.2, the Authority considers this was also a breach of Principle 2.

- 18. Ms Stuart introduced amended call scripts following correspondence on this issue with the Authority’s Authorisations Division. However, Ms Stuart failed to identify the inadequacy of the call script of her own accord.

Record-keeping

- 19. Following a review of a sample of 20 of Ms Stuart’s client files by the Authority, the Authority is not satisfied that Ms Stuart has in place adequate record keeping procedures in relation to the following matters:

- (a) Her compliance with the requirement under CONC 8.4.1 that a firm has in place written contracts with its clients dealing with the various matters set out in CONC 8.4.2. None of the files sampled contained any evidence of this;
- (b) Her compliance with the pre-contractual information requirements under CONC 8.3. None of the files sampled contained any evidence of sufficient information about the options identified as suitable, or why these were considered suitable and other options unsuitable. Although many of these files related to customers who were part of the book of business purchased by Ms Stuart (so that it was not Ms Stuart or her advisers who entered into the initial arrangements with these customers), the sample included four files relating to other customers;
- (c) Her compliance with the monitoring and review obligations under CONC 8.8.1, including the obligation to provide an annual statement to customers under CONC 8.8.1(8), dealing with the various matters set out in that provision. Only one of the files sampled contained any evidence of an income and expenditure check being carried out, and none contained any evidence of an annual statement having been provided; and
- (d) The suitability of debt advice given to customers. For example, the Authority requested (by way of a sample) copies of call notes and correspondence for any customers for whom a debt management plan was set up during a particular week in November 2014, and Ms Stuart provided the notes for the only such customer. The notes were not sufficient to demonstrate that the quality and thoroughness of the adviser’s assessment of the customer’s income and expenditure were adequate; also, the notes contained no record of why the debt management plan recommended was suitable.

20. Ms Stuart produced an annual statement template which she stated is sent to clients. However, Ms Stuart did not provide any evidence of this template having been used in practice, and it does not comply with the detailed requirements of CONC 8.8.1, as it contains only single monthly figures for: payments made by the customer; fees paid to Ms Stuart; and the amount paid to creditors as a whole, together with an annual total for the same sums.
21. The Authority is not satisfied that Ms Stuart's record keeping is compliant with either SYSC 9.1 or CONC 8.8.1(9) and considers that Ms Stuart's records are wholly insufficient to enable the FCA to determine the extent to which Ms Stuart has complied with the requirements under the regulatory system.
22. CONC 8.8.1(9) was derived from paragraph 3.45i of the OFT Guidance, which cited the failure to maintain adequate records (for example, copies of correspondence and statements of account) relating to each debt management plan, until such time as the contract between the consumer and the licensee was completed or terminated, as an example of an "unfair or improper business practice".

OFT Guidance

23. As noted above, the relevant Authority requirements in CONC in relation to the matters set out in paragraphs 14-22 above were transposed or derived from guidance issued under the previous consumer credit licensing regime, regulated by the OFT; the Authority considers this exacerbates Ms Stuart's failure to follow the rules in CONC, as similar provisions had been applicable to her for a number of years.

Quality assurance

24. Ms Stuart stated that she had put in place quality assurance checks consisting of call monitoring assessments conducted by her office manager, which entailed a review of the advice given by advisers to ensure that it was compliant. She provided the Authority with a checklist; however, she did not provide any examples of completed checklists which had been used.
25. Ms Stuart provided the Authority with copies of notes made during a call assurance process for two customers during November 2014. However, the notes were not sufficiently detailed to demonstrate whether the customer received compliant advice: for example, it was not clear which debt solutions the adviser had recommended or why; nor was it clear whether the adviser had provided sufficient detail about the available solutions for the customer to be able to make an informed decision.
26. The Authority is not satisfied that Ms Stuart had, or has, the non-financial resources required to take the steps required to put in place adequate quality assurance checks of advice given by her staff to customers.

Compliance assistance and approach

27. Ms Stuart has engaged compliance assistance from an external firm in relation to the application for Part 4A permission, and to address certain issues raised by the Authority in the course of considering the application. Ms Stuart has also expressed a willingness to address any remaining concerns. However, in these respects, she has adopted a reactive approach to dealing with issues raised by the Authority rather than addressing the need to ensure ongoing compliance in relation to all aspects of her business.

IMPACT ON THE THRESHOLD CONDITIONS

28. The Authority considers that, having regard to all the circumstances, it cannot be satisfied that Ms Stuart will satisfy, and will continue to satisfy, the Threshold Conditions.
29. In relation to the Threshold Condition set out in paragraph 2D of Schedule 6 to the Act, the Authority is not satisfied that Ms Stuart has appropriate non-financial resources in relation to the regulated activities that she seeks to carry on, for the following reasons:
 - (a) Ms Stuart has repeatedly demonstrated an apparent lack of understanding of and/or compliance with the relevant requirements of the regulatory system as it applies to her business. Many of the express rules of CONC which apply to Ms Stuart were transposed from guidance under the previous consumer credit licensing regime, regulated by the OFT. The Authority therefore considers that this exacerbates Ms Stuart's failure to understand or follow the rules in CONC, as similar provisions had been applicable to her for a number of years.
 - (b) Ms Stuart has not been able to demonstrate that her systems and controls are adequate to ensure that she is compliant with the requirements of the regulatory system. The Authority is particularly concerned that Ms Stuart's record keeping systems are insufficient to enable the Regulator to monitor her compliance with the requirements under the regulatory system, and to ascertain that she has complied with all obligations with respect to clients.
 - (c) Ms Stuart has not been able to demonstrate that she is ready, willing and organised to carry out adequate internal quality assurance checks of debt advice given to consumers by her employees.
30. Ms Stuart has made certain amendments to her documentation and processes following dialogue with the Authority in relation to them, and has engaged compliance assistance from an external firm in relation to the application for Part 4A permission, and to address certain issues raised by the Authority in the course of considering the application. However, the Authority is not satisfied that Ms Stuart personally has the competence, or has other human resources, to ensure that she can comply with the requirements imposed on her, or likely to be imposed on her, by the Authority from time to time. She has adopted a reactive approach to dealing with issues raised by the Authority rather than ensuring she has the resources to be able to identify relevant issues and take the steps necessary to ensure ongoing compliance in relation to all aspects of her business.
31. On the basis of the facts and matters described above, the Authority has concluded that Ms Stuart will not satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which Ms Stuart would have permission if the application was granted.

IMPORTANT NOTICES

32. This Final Notice is given under section 390 (1) of the Act.

Publication

33. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

34. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

1. For more information concerning this matter generally, contact Fiona Mackinnon-Miller, Manager, Credit Authorisations Division at the Authority (direct line: 020 7066 6367 / email: Fiona.Mackinnon-Miller@fca.org.uk).

David Fisher

Chair of the Regulatory Transactions Committee

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

1. Section 55A(1) of the Act provides for an application for permission to carry on one or more regulated activities to be made to the appropriate regulator. Section 55A(2) defines the “appropriate regulator” for different applications.
2. Section 55B(3) of the Act provides that, in giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of Part 4A of the Act, each regulator must ensure that the person concerned 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 that regulator is responsible.
3. These threshold conditions are set out in schedule 6 of the Act. In brief, the threshold conditions relate to:
 - (1) Location of offices: paragraph 2B
 - (2) Effective supervision: paragraph 2C
 - (3) Appropriate resources: paragraph 2D
 - (4) Suitability: paragraph 2E
 - (5) Business model: paragraph 2F

Relevant provisions of the Authority’s Handbook

The Principles

4. Principle 2 provides: “*A firm must conduct its business with due skill, care and diligence*”.

COND

Appropriate Resources (Paragraph 2D of Schedule 6 to the Act)

5. COND 1.3.2G(2) states that, in relation to threshold conditions 2D to 2F, the Authority will consider whether a firm is ready, willing and organised to comply on a continuing basis with the requirements and standards under the regulatory system which will apply to the firm if it is granted Part 4A permission.
6. COND 2.4.1A reproduces paragraph 2D.
7. COND 2.4 1A(1) provides; “*The resources of A must be appropriate in relation to the regulated activities which A carries on or seeks to carry on.*”
8. COND 2.4.1A(2) provides: “*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;*
 - (b) *the risks to the continuity of the services provided by, or to be provided by, A...*”

9. COND 2.4.1.A(4) provides: *"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 it to comply with*
 - (i) requirements imposed or likely to be imposed on A by the Authority in the course of the exercise of its functions;*
 - (ii) any other requirement in relation to whose contravention the Authority would be the appropriate regulator for the purposes of any provision of Part 14 of the Act."*
10. COND 2.4.2G(2) states that the Authority will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources (though only in the case of firms not carrying on, or seeking to carry on, a PRA-regulated activity), non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.
11. COND 2.4.4G states that, when assessing whether a firm has appropriate resources, the Authority will have regard to various matters including:
- "(d) whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times."*

CONC

12. CONC 8.2.2(1) states: *"One aspect of conducting a firm's business with due skill, care and diligence under Principle 2 is that a firm should ensure that it gives appropriate advice to customers residing in the different countries of the UK. A failure to pay proper regard to the differences in options for debt solutions available to those customers and to the differences in enforcement actions and procedures is likely to contravene Principle 2 and may contravene other Principles"*.
13. CONC 8.3.2R(1) states:
- "A firm must ensure that:*
- (1) all advice given and action taken by the firm or its agent or its appointed representative:*
 - (a) has regard to the best interests of the customer;*
 - (b) is appropriate to the individual circumstances of the customer; and*
 - (c) is based on a sufficiently full assessment of the financial circumstances of the customer"*.

14. CONC 8.3.3G states: *"The individual circumstances of the customer include, for example, the customer's financial position, the country in the UK to whose laws and procedures the customer and the lender in question are subject, and the level of understanding of the customer."*

15. CONC 8.3.4R states:

"A firm must ensure that advice provided to a customer, whether before the firm has entered into contract with the customer or after, is provided in a durable medium and:

(1) makes clear which debts will be included in any debt solution and which debts will be excluded from any debt solution;

(2) makes clear the actual or potential advantages, disadvantages, costs and risks of each option available to the customer, with any conditions that apply for entry into each option and which debts may be covered by each option;

(3) warns the customer:

(a) of the actual or potential consequences of failing to continue to pay taxes, fines, child support payments and debts which could result in loss of access to essential goods or services or repossession of, or eviction from, the customer's home;

(b) of the actual or potential consequences of not continuing to make repayments under credit agreements or consumer hire agreements;

(c) of the actual or potential consequences of ignoring correspondence or other contact from lenders and those acting on behalf of lenders;

(d) that action to recover debts may be commenced, which may involve further cost to the customer; and

(e) that by entering into a debt management plan or another non-statutory repayment plan there is no guarantee that any current recovery or legal action will be suspended or withdrawn;

(4) where relevant to the debt solution, makes clear the risks, including the following risks:

(a) if the arrangement or deed fails, the risk of bankruptcy;

(b) homeowners may need to release equity from the value of their homes to pay off debts; and that a remortgage may attract higher interest rates or that if no remortgage is available, an individual voluntary arrangement may be extended for 12 months;

(c) there are restrictions on the expenditure of a person who enters into an individual voluntary arrangement or protected trust deed;

(d) the customer's lenders may not approve the individual voluntary arrangement or protected trust deed; and

(e) only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period and unsecured debts not included remain outstanding".

16. CONC 8.3.7R states: "A firm must:

(3) refer a customer to an appropriate not-for-profit debt advice body in circumstances where the customer:

(a) has problems related to debt requiring immediate attention with which the firm is unable or unwilling to assist the customer; or

(b) does not have enough disposable income to pay the firm's fees."

17. CONC 8.4.1R states "A firm must provide a customer with a written contract setting out its terms and conditions for the provision of its services." CONC 8.4.2R requires the contract to "include...the following matters:

(1) the nature of the service to be provided by the firm, including the specific debt solution to be offered to the customer;

(2) the duration of the contract;

(3) the total cost of the firm's service or, where it is not possible to state the total cost, the formula the firm uses for calculating its fees or charges or an estimate of the anticipated likely total cost...

(4) the circumstances in which a customer may terminate the contract and receive a refund in accordance with relevant law and any fees or charges the customer may be required to pay in that case; and

(5) ...the duration and conditions for exercising any right to cancel that may apply and any fees or charges the customer may be required to pay."

18. CONC 8.8.1R states:

"A firm in relation to a customer with whom it has entered into a debt management plan must:

...

(8) provide a statement to the customer at the start of the debt management plan, and at least annually or at the customer's reasonable request, setting out:

(a) a balance showing the amount owed by the customer, including any interest charges at the beginning of the statement period;

(b) fees, charges and other costs applied over the period of the statement, including any upfront fee or deposit, such as an initial arrangement fee, an arrangement fee, any periodic or management or administrative fee, any cancellation fee and any other costs incurred under the contract;

(c) a narrative explaining the type of fee applied, how the fee is calculated and to what it applies;

(d) the duration or estimated duration of the contract;

(e) *the total cost of the firm's service over the duration or estimated duration of the contract; and*

(f) *monthly or other periodic payments made to lenders;*

...

(9) *maintain adequate records relating to each debt management plan which the firm has administered for the customer until the contract between the customer and the firm is completed or terminated".*

SYSC

19. SYSC 9.1.1R states:

"A firm must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the appropriate regulator... to monitor the firm's compliance with the requirements under the regulatory system, and in particular to ascertain that the firm has complied with all obligations with respect to clients."