



**IN THE FIRST-TIER TRIBUNAL
(CONSUMER CREDIT)**

Case number CCA/2013/0002

GENERAL REGULATORY CHAMBER

Between:

Debt Connect (UK) Limited (“DCL”)

Appellant

and

The Office of Fair Trading (“the OFT”)

Respondent

On appeal from: The OFT’s determination reference ADJ/2484

Dated: 8th January 2013

Heard at: The Immigration and Asylum Tribunal, Piccadilly Exchange, 2
Piccadilly Plaza, Manchester M1 4AH

Date of hearing: 3rd September 2013 (sitting in public)

Date of decision: 14th October 2013

Before: Mr. Peter Hinchliffe, Tribunal Judge
Mr. D. Stuart McDonald
Mr Neil Pardoe

Attendances:

For the Appellant Mr J Cropper of DWF LLP.

For the OFT: Mr. M. Vinall instructed by the OFT.

Cases referred to: QSolvency Ltd. and the OFT (2009) CCA/2009/0004
Rowena Koning v OFT (2012) CCA/2012/0012

DECISION

1. The unanimous decision of the Tribunal is to dismiss the appeal. The decision of the OFT to reject DCL's application to renew their consumer credit licence under Section 29 of the Consumer Credit Act 1974 (the "Act") is confirmed for the reasons set out below.

BACKGROUND TO THE APPEAL

2. DCL appeals against the determination of the OFT dated 8th January 2013 to reject the application for renewal of DCL's consumer credit licence number 511240 (the "Licence").
3. The Licence issued to DCL commenced on the 7th of November 2001 and permitted DCL to undertake the following categories of consumer credit activity: consumer credit, consumer hire, credit brokerage, credit reference agency, debt adjusting / counselling and debt collecting. DCL submitted an application to renew their Licence on 15th November 2011. In this application DCL stated that they wished their Licence to cover the following activities: consumer credit, consumer hire, credit brokerage, debt adjusting on a commercial basis, debt counselling on a commercial basis, debt collecting and debt administration.
4. On 8th January 2013 the Adjudicator acting on behalf of the OFT gave the following reasons for determining that the application to renew the Licence should be refused:
"Having the considered the representations, the Adjudicator found that
 1. *The licensee has:*
 - a. *Contravened a provision made by or under Part 16 of the Financial Services and Markets Act 2000, within the meaning of Section 25(2A)(b)(ii) of the Act;*
 - b. *Engaged in unfair and improper business practices within the meaning of Section 25(2A)(e) of the Act.*
 2. *An associate of the licensee failed to demonstrate the necessary skills, knowledge and experience within the meaning of Section 25 (2)(b) of the Act"*

5. On 4th February 2013 DCL submitted an appeal against a decision of the OFT. In their grounds of appeal and in the addendum in support of the grounds of appeal, DCL denied that they contravened any provisions under Part 16 of the Financial Services and Markets Act 2000 or engaged in unfair and improper business practices within the meaning of Section 25(2A)(e) of the Act and further denied that the licensee failed to demonstrate the necessary skills, knowledge and experience within the meaning of Section 25(2A)(b) of the Act. DCL submitted that the Adjudicator's decision on behalf of the OFT was disproportionate and the decision to revoke DCL's Licence was incorrect based on the facts.

FACTS NOT IN DISPUTE

6. In the OFT's response to the notice of Appeal, the following facts were said to be undisputed; and at the hearing the parties accepted that such facts were not in dispute:
- Mr. Rahul Sharma ("Mr Sharma") is the Managing Director of DCL and has full day-to-day control.
 - DCL had eight employees at the time of the decision to reject the application for renewal of the Licence.
 - Mr Pardeep Kumar Sharma owned 100% of the shares in DCL but exercises no authority or control.
 - Mr Pardeep Kumar Sharma is Mr Sharma's father.
 - DCL is engaged in ancillary credit or debt management business.
 - The OFT considers debt adjusting and debt counselling to be high risk activities.
 - On 6th March 2012, the OFT served notice under Section 6(3) of the Act requiring further information from DCL in relation to its business.
 - The OFT requested a Trading Standards officer to visit DCL in order to further assess their fitness to continue to hold a consumer credit licence and to obtain further information about the nature of its business. This visit took place on the 14th of June 2012.
 - During this visit it was confirmed by Mr Sharma that DCL then offered debt management and debt settlement products and that it would not engage in consumer credit, consumer hire or debt collecting and that its business would not change were its renewal application to be granted.

- The debt management activities carried out by DCL involved the provision of advice regarding suitability of various debt solutions and the administration of debt management plans. It provides debt settlement by seeking to negotiate full and final settlement offers with consumers' creditors.
- Clients who sought advice on IVAs were, at that time, referred to Smooth Financial Consultants Ltd.

THE LEGISLATIVE BACKGROUND

7. Section 29 of the Act sets out the relevant position for a licensee seeking to renew their consumer credit licence. Section 29 states as follows:

"29 Renewal.

(1) If the licensee under a standard licence of limited duration, or the original applicant for, or any licensee under, a group licence of limited duration, wishes the OFT to renew the licence, whether on the same terms (except as to expiry) or on varied terms, he must, during the period specified by the OFT by general notice or such longer period as the OFT may allow, make an application to the OFT for its renewal.

(2).....

(3)The preceding provisions of this Part apply to the renewal of a licence as they apply to the issue of a licence, except that section 28 does not apply to a person who was already excluded in the licence up for renewal.

8. Section 25 of the Act deals with the requirements that the holder of a Consumer Credit Licence must be a fit person:

"25 – Licensee to be a fit person

(1) If an applicant for a standard licence –

(a) makes an application within section 24A (1)(a) in relation to a type of business, and

(b) satisfies the OFT that he is a fit person to carry on that type of business so far as it falls within the description or descriptions of business set out in his application in accordance with subsection (2) of that section,

he shall be entitled to be issued with a standard licence covering the carrying on of that type of business so far as it falls within the description or descriptions in question.

- (2) *In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)*
- (a) *The applicant's skills, knowledge and experience in relation to consumer credit business or ancillary credit business: -*
 - (b) *such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*
 - (c) *Practices and procedures that the Applicant proposes to implement in connection with any such business;*
 - (d) *evidence of the kind mentioned in subsection (2A).*
- (2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*
- (a).....;
 - (b) *contravened any provision made by or under—*
 - (i) *this Act;*
 - (ii) *Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;*
 - (iii) *any other enactment regulating the provision of credit to individuals or other transactions with individuals;*
 - (c) *contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);*
 - (d); or
 - (e) *engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not).*
- (2B) *For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the OFT to involve irresponsible lending.*

- (3) *In subsection (2A), “associate”, in addition to the persons specified in section 184, includes a business associate.”*

ROLE OF THE TRIBUNAL

9. Section 41ZB of the Act deals with disposal of appeals by the Tribunal. It provides that:
- (1) *The First-tier Tribunal shall decide an appeal under section 41 by way of a rehearing of the determination appealed against.*
 - (2) *In disposing of an appeal under section 41 the First-tier Tribunal may do one or more of the following—*
 - (a) *confirm the determination appealed against;*
 - (b) *quash that determination;*
 - (c) *vary that determination;*
 - (d) *remit the matter to the OFT for reconsideration and determination in accordance with the directions (if any) given to it by the tribunal;*
 - (e) *give the OFT directions for the purpose of giving effect to its decision.*
10. The issues to be decided by the Tribunal in this case are whether on the evidence before the Tribunal, it should conclude that DCL was a fit person to hold a consumer credit licence at the time that the appeal came before the Tribunal. The reasons given in the determination remain the foundation for the appeal, however the Tribunal is entitled to consider any further matter which has a bearing on DCL's fitness so long as DCL has been given the opportunity to make representations on such matters. The standard of proof on any issue is the usual civil standard of a balance of probability. As DCL are applying to renew their Licence it is for them to establish that they are fit to hold a consumer credit licence.
11. In the circumstance of this case the Tribunal is required to reach the decision on the following matters, amongst others, which were the principle focus of the evidence, arguments and representations of the parties prior to and at the hearing:-
- Whether DCL and Mr Sharma have the necessary skills, experience and knowledge required under the Act to carry on the type of business permitted under the Licence.

Whether DCL had contravened any provisions under Part 16 of the Financial Services and Markets Act 2000.

Whether DCL had engaged in unfair and improper business practices within the meaning of Section 25(2A)(e) of the Act.

The evidence relating to each of these methods is considered below.

FINDINGS OF FACT

Skills Knowledge and Experience

12. In the determination of the minded to refuse to renew notice issued by an Adjudicator on behalf of the OFT on 8th January 2013 (the "Determination") it was stated that Mr Sharma *"has not demonstrated the skills, knowledge and experience to ensure a compliant business."*

In the Appeal and addendum, Mr Sharma was stated to be

"sufficiently experienced and knowledgeable in the Consumer Credit Industry and has held a licence and management positions for a number of years."

Mr Sharma's relevant experience was stated to include A-C grades in Statistics, Business Studies and Economics at A-level; a BA (Hons) in Business Studies from Manchester Metropolitan University; employment with the Release Money Group where he was Group Project Manager for the Debt Release Direct business and responsible for;

"Systems and procedures for new products for existing customers; carried out feasibility studies; implemented actual work flows; created compliance sales packs for the new clients; carried out the administration process and procedures; integrated existing CRM system; prepared 12 month cash flow projections and budgeting for the new product/service; and presented this analysis and work to directors and compliance officers."

Mr Sharma originally started in DCL as a Sales Advisor, he then became Administration Supervisor and thereafter Office Manager. Mr Sharma was appointed a Director of DCL on 31st October 2011. He was appointed Managing Director and has made a number of changes to the business. He stated that he has turned a loss-making company to a profit-making company and has introduced various efficiencies including different recruitment strategy and a new customer relationship management system and has dealt with full range of business administration, sales and general business matters.

13. It was accepted by DCL that Mr Sharma is the sole source of knowledge and experience on compliance matters relating to consumer credit activities. He has held the position of Managing Director of DCL throughout the period covered by the application to renew the Licence and the subsequent dealings with the OFT and during the course of this Appeal. At the time of submitting the application for renewal of the Licence, DCL also submitted a credit competence plan. The plan stated that Mr Sharma has responsibility for ensuring the compliance of the business with the Act, other relevant legislation and OFT guidance. Mr Sharma was stated to be the Company Director and Compliance Officer, who;
- “has received on the job training and has gained the skills and knowledge over the last five years ... Rahul Sharma has the necessary skills and knowledge to run a debt solutions company and the knowledge and skills he has learnt over the last five years in the debt solutions industry”.*
- The source of these skills and this experience was stated to be; *“on the job training at the different debt solutions companies that I have worked at”.*
- The plan referred to Mr Sharma maintaining a copy of the debt management guidance issued by the OFT on September 2008. It stated that the firm would conduct a formal compliance review on a quarterly basis and that Mr Sharma would monitor all transactions and be responsible; *“for ensuring that the training/procedural manuals to be followed by the employees of the firm are in place and up-to-date.*
- The Plan went on to confirm that he would; *“work with an outside law firm to ensure that the procedures and manuals are kept up-to-date. The outside law firm will be consulted upon each quarterly review”.*
- It was confirmed that the compliance officer (Mr Sharma) was to be responsible for ensuring that all documents and manuals comply with the debt management guidance issued by the OFT and dated September 2008.
14. Mr Sharma had held a Consumer Credit Licence on a personal basis since 3rd December 2007 (since lapsed) under which he was authorised to carry out the following categories of work:
- “Consumer credit, consumer hire, credit brokerage, credit reference agency, debt adjusting/counselling, debt collecting.”*
- In addition, Mr Sharma is a director and shareholder of Connected Claims Limited (“CCL”), a company granted a consumer credit licence on 23rd

January 2012 and authorised to carry out the following activities: Consumer credit activities; credit brokerage, provision of debt counselling on a commercial basis, provision of debt adjusting on a commercial basis. This appeal by DCL was submitted and has been considered in parallel with an appeal by CCL in connection with the revocation of its consumer credit licence and the hearing of this appeal also heard evidence about and addressed the appeal by CCL against the decision to revoke its consumer credit licence. The Tribunal noted that Mr Sharma did not claim that his experience as a holder of a consumer credit licence in a personal capacity and as a director of CCL added to his relevant skills, knowledge and experience.

15. Mr Sharma was asked by the Tribunal, during the course of the hearing, whether he had undertaken any continuing professional development or training courses in order to improve or maintain his knowledge of consumer credit matters. He indicated that he had not taken any such courses. He said that he does go to industry forums and he seeks to stay on top of new developments. He is aware of the big changes in the regulation of consumer credit matters, as responsibility passes from the OFT to the Financial Conduct Authority. Mr Sharma also confirmed that he and DCL do not belong to any self-regulatory body or industry group, although joining the Debt Managers Standards Association Limited (“DEMSA”) has been considered and remains “on the horizon”. He stated in his evidence at the hearing that DCL had not consulted a law firm on consumer credit regulatory or legal issues and no legal advice had been taken, other than in connection with this appeal. No other source of regulatory advice had been put in place by DCL. All employees of DCL looked to him for expertise and guidance on consumer credit regulations and compliance matters. He confirmed that he did not wish to argue that the skills and experience or knowledge of other employees should be taken into account in assessing the overall capability of DCL.
16. The OFT argued that Mr Sharma’s skills, knowledge and experience were to be assessed in the light of the evidence regarding the contravention of a provision made by or under Part 16 of the Financial Services and Markets Act 2000 and the unfair and improper business practices in which DCL had engaged. These matters are considered in more detail below and the

findings of the Tribunal in relation to this evidence and its relevance to the skills, competence and experience of DCL and its associates is also referred to below, for ease of understanding. The OFT repeated their concern that Mr Sharma had not acted on the knowledge that he had gained from the OFT's clear statements in their letter of 23rd January 2012 to CCL about the improvements that they required CCL to undertake in order to comply with CCL's consumer credit licence obligations. Mr Sharma had received this letter. These detailed improvements were outlined at the time that the OFT first agreed to grant a consumer credit licence to CCL. Mr Sharma failed to implement the same improvements to DCL's business practices.

17. The Tribunal concluded from the evidence relating to DCL's skills, knowledge and experience that there was uncertainty about the adequacy of the systems and processes for obtaining, applying and disseminating necessary information about DCL's Licence obligations to its employees and for revising its systems and processes to ensure that they are up to date. DCL was entirely reliant upon Mr Sharma for the necessary regulatory and legal knowledge required to comply with the terms of its Licence and it was not clear to the Tribunal where Mr Sharma had obtained or would obtain the necessary knowledge, other than through the intervention of the OFT or other authorities from time to time.

Complaints Procedure

18. In the minded to refuse to renew notice issued to DCL under Section 29 of the Act on 20th October 2012 (the "Notice"), the OFT referred to the obligation on DCL arising out of Section 226A of the Financial Services and Markets Act 2000 to provide a complaint handling system which is compliant with the Financial Ombudsman Service (FOS) rules. Section 226A imposes this obligation on all businesses with a consumer credit licence. The OFT stated that the FOS rules require all businesses to have an effective and clear complaints handling procedure and this must include:

"The time limits for dealing with complaints and the consumer's ultimate right to refer unresolved disputes to the FOS. A summary of the complaints handling procedure must be made available to consumers and referred to in writing at, or immediately after, the point of sale, and where the contract does not involve a sale, at the point of first contact."

The OFT noted that DCL's complaints procedure indicated that their complaints handling system would be set out in DCL's Terms and Conditions and that Mr Sharma had confirmed that the procedure was set out in their Terms and Conditions when the on-site visit by a Trading Standards officer had taken place. However, the OFT had found no reference to the complaints procedure in DCL's Terms and Conditions, nor was there a reference in the pre-contractual information sent to clients or in DCL's call script. They concluded in the Notice that the complaints procedure was not available on DCL's website and that nothing in the DCL complaints procedure suggested that a summary of the complaints procedure would be automatically supplied to consumers when a complaint is acknowledged. As a consequence of these findings, the OFT concluded that DCL did not have a complaints handling system that complied with the rules prescribed by FOS and had thereby contravened a provision made by or under Part 16 of the Financial Services and Markets Act 2000 within the meaning of Section 25(2A)(b)(ii) of the Act.

19. DCL responded to the concerns expressed by the OFT regarding their complaints procedure and stated in their appeal that their complaints procedure had always been robust and that changes had been made as a result of the OFT's minded to refuse to renew notice. In DCL's response to the Notice they stated that they had accepted all of the OFT's recommendations and all of the changes required would be effective no later than Wednesday the 28th November 2012 or more likely before that. A document headed "How do I make a complaint?" was attached to DCL's response to the minded to refuse to renew notice. This contained a clear reference to the customer's right to make a complaint to the FOS. The OFT accepted that DCL's inclusion of the complaints procedure in their revised Terms of agreement would address the earlier failings referred to above, but took the view that these failings to comply with the rules prescribed by the FOS were established as fact.
20. The position in relation to the complaints procedure operated by DCL and the availability of information relating to the complaints procedure to DCL's customers was in dispute until immediately prior to the hearing. The position of DCL remained that it offered a robust complaints procedure and this

ensured that customers dissatisfied with the service they had received were able to complain to the FOS. Mr Sharma confirmed in his witness statement that *“reference to our internal and external facing complaints procedures are referred to in company documents and on the company’s website”*. The complaints received by DCL were logged and reviewed by him. A copy of the log of complaints, called the “comp log”, was disclosed to the Tribunal. Mr Sharma stated that DCL *“has a good record of resolving matters and any complaints which have gone to the Financial Ombudsman Service”*. He expressly referred to the changes that were made as a result of the OFT minded to refuse to renew letter. From the evidence submitted immediately prior to the hearing, it was clear that DCL did maintain a log of complaints. A copy of this log was provided to the Tribunal. However, it emerged that this log did not include details of complaints that went to the FOS. Mr Sharma described the procedure to be followed within the company and a copy of this procedure, headed ‘Debt Connect complaints procedure’, was provided. It provides a clear reference to the right of the customer to take their complaint to the FOS. The Tribunal sought to understand how this procedure, which appeared to be targeted at customers of DCL, was made available to those customers. Mr Sharma suggested at the hearing that a page setting out the procedure was now available on the website of DCL and a copy of this webpage as at 30th August 2013 was provided immediately prior to the hearing. At that time DCL were also able to provide a copy of their ‘Terms of agreement’ in a form that included a reference to the ability of customers to take complaints to FOS. However, the revised sales script that was provided to the Tribunal on the day of the hearing made no reference to a complaints procedure being available to customers or to the customers having access to the FOS. Mr Sharma was asked about the complaints procedure that was in operation within DCL and the arrangements that were in place in respect of the FOS. He explained that FOS was referred to in all letters to customers. However, no copies of such letters were provided to the Tribunal, nor were they provided to the OFT at an earlier stage in the process. Mr Sharma appeared to be confused about the process that had to be followed in the event that complaints were submitted directly to FOS, without being received and reviewed by DCL first. He stated that there was nothing that DCL could do about these complaints, but they would cooperate with the FOS process and await the outcome, whereas DCL would be expected to respond to such

a complaint unless it had been sent to the FOS after the timescale for DCL to respond had expired.

21. The OFT submitted evidence from the FOS, immediately prior to the hearing, which indicated that the FOS had closed a total of 13 complaints against DCL. Of these complaints 12 resulted in a substantial change in outcome. The Tribunal was concerned to note that all 13 complaints related to allegations that DCL had not forwarded payment on to creditors and that DCL had not sent any documentation relating to the complaint in 10 out of 13 cases and in one case had not communicated with the FOS despite at least nine attempts by the FOS to contact DCL before a final decision was issued by an Ombudsman. The FOS also indicated that DCL had been slow in making redress payments where those had been ordered by FOS, or where these had been required as part of a settlement of a complaint. This evidence from the FOS was submitted in a timescale that did not permit DCL to identify and respond to the assertions made by FOS in the individual complaints that they had seen. Mr Sharma stated that he did not recognise the evidence from the FOS as being accurate. He said that he does pay all complaints that are settled or resolved within the required time frame and he simply did not know if the statement from the FOS was factually correct. The Tribunal noted the difficulty that DCL had in responding in detail to the evidence from the FOS, when it had been submitted so late, however the Tribunal found it appropriate to attach weight to the evidence from the FOS and in particular, noted that this directly contradicted Mr Sharma's evidence that DCL had a "*good record of resolving any complaints which have gone to the Financial Ombudsman Service*"

22. The Tribunal noted the uncertainty in the evidence provided by DCL in relation to:
 - the information and documentation made available to consumers about the complaints process;
 - the changes in this information and documentation between the minded to refuse to renew notice and the date of the hearing,;
 - the adequacy of Mr Sharma's understanding of the requirements of the FOS with regard to the complaints procedure that DCL should operate;

- the lack of clarity about the number of complaints received and the time scales in which those were dealt with.

The Tribunal concluded from the facts that there was real cause for concern at the effectiveness or willingness of DCL to follow the procedures prescribed by FOS or to respond and meet their obligations under such processes.

Unfair or Improper Business Practises

23. The Notice stated that DCL had engaged in unfair or improper business practice within the meaning of S.25(2A)(e) of the Act and gave a number of examples of such practice. These included:

- IVA's and how DCL's website dealt with these
- Debt management and the apparent guarantee of outcomes that might be implied from DCL's website.
- Debt settlement, where the OFT also regarded the DCL's website as implying a guarantee of an outcome that was favourable to consumers.
- Credit rating, where the OFT regarded the warnings of the risk to the consumers credit rating as being insufficiently prominent.
- Comparative repayments, where the OFT regarded the DCL website as likely to mislead consumers regarding the appropriateness of debt management plans.
- Interest, where the DCL website and the call script operated by DCL were found to be unclear in the view of the OFT and potentially misleading.
- Online debt calculator, which the OFT found to be likely to entice customers to engage the services of DCL on the basis of misleading or imprecise assessments that would be corrected later.
- False or unsubstantiated statements regarding the reputation or status of DCL.
- Misleading impression that DCL would provide IVA's.
- The cooling-off period, where the DCL website indicated that a 14 cooling-off period would apply to consumers on their website but in their call script and in the Terms of agreement operated by DCL there was a reference to seven day cooling-off period being applicable.
- The OFT was concerned about the references to "free advice" on the DCL website and the possibility that this would mislead consumers who would fail to understand the commercial nature of DCL's business activity.

- Declaration of full understanding in the 'acceptance letter' that DCL required consumers to sign. This statement is contrary to paragraph 3.41a of the debt management guidance.

The OFT's concerns over these business practices was exacerbated by the OFT's knowledge that Mr Sharma had received the letter from the OFT dated 23 January 2012, in his capacity as director of CCL, which had raised a number of concerns that were identical or similar to those that they found existed at DCL and that Mr Sharma has failed to take the required steps to address these issues in DCL.

24. The Tribunal considered each of these alleged breaches and failures and reviewed and considered the evidence from OFT and DCL relating to the breaches. However, the Tribunal did not regard it as necessary to reach a definitive conclusion on the extent to which these instances did amount to unfair or improper business practices as it is common ground between the OFT and DCL that DCL took significant steps to address these concerns once the minded to refuse to renew notice was received. In the determination of the minded to refuse to renew notice the adjudicator acting on behalf of the OFT stated that:

"In response to the notice, DCL addressed most, although not all, the unfair business practices which the OFT has identified ... the specific business practices were not disputed and the changes were made promptly".

25. In the circumstances, the Tribunal found that its deliberations were assisted more by the evidence relating to, and the representations regarding, the actual or alleged failures of DCL to respond to the concerns raised by the adjudicator on behalf of the OFT in the Notice. A number of such issues were considered and addressed in the evidence provided by each of the parties to the Tribunal ahead of the hearing and in the evidence provided at the hearing. These issues included the following matters, which are considered in more detail in the paragraphs that follow:-
- Services in respect of IVA's.
 - Debt settlement services and terms.
 - Revised Terms and Conditions.
 - Revised call script.

- References to free services or free advice.
- Declaration of understanding in the letter of acceptance.

IVA's

26. The OFT had expressed serious concerns to DCL about the promotion of IVA's. These concerns are set out at in the Notice. DCL acknowledged these concerns and made a number of specific changes to their website that had been suggested by the adjudicator. The debt management guidance produced by the OFT sets out the requirements that must be met if IVA's are to be promoted. During the course of the appeal and at the hearing DCL stated that they do not offer IVA's to their customers. Where an IVA is an appropriate solution to their customer DCL have referred them to a firm that is experienced in this area. Mr Sharma confirmed in cross examination that they no longer referred clients to a particular firm and would merely assist them by providing a list of local firms with suitable skills. It was not a part of DCL's business model, at the time of the hearing, to receive a referral fee or other remuneration when assisting clients in finding someone who may be able to effect an IVA for them. The adjudicator acting on behalf of the OFT accepted in the Determination that DCL did not offer an IVA service and would refer customers to a third party IVA practitioner and that this is set out on DCL's website. However, the adjudicator pointed out in the Determination that, confusingly, the FAQ Section of DCL's website refers to the money that the client pays into any IVA being "*divided up by Debt Connect and paid to your creditors.*"

By the time the Appeal had come to a hearing, it was clear that some confusion still remained in relation to IVA's. DCL produced a copy of its web pages as they existed at 28th August 2013. In the "About Us" Section which is the most prominent part of the website, the heading "Our Services" listed the following; debt management; debt settlement and IVA's. The Section on IVA's stated that Debt Connect does not offer IVA services but can refer a customer to a third party IVA practitioner with their consent. The brief description of an IVA is set out in this Section, which does not imply that Debt Connect will provide the service. Mr Sharma was asked whether this complied with the Debt Management Guidance requirements. He stated that he thought the Section was fine as they did not provide IVA's in-house. The responsibility for complying with Debt Management Guidance would lie with

the company that they referred the customer to. Mr Sharma was specifically asked about the obligations that arise when promoting IVA's, rather than providing IVA services. He indicated that as DCL do not provide the IVA in-house he thought that the web page was satisfactory. When reminded at the hearing of the specific reference to the statements about IVA services by the adjudicator in the Determination, Mr Sharma confirmed that he could see the continuing references on the website were errors. He accepted that the combination of the website content about IVAs and the passing on of contact details of IVA practitioners, originally for a fee, but now, without any reward might amount to promotional activity and that the references to IVAs were his fault. He referred to this as an oversight but commented that IVA's were not part of the main business of DCL. When asked why the issue that had been specifically raised by the adjudicator on behalf of the OFT had not been finally resolved Mr Sharma confirmed that the point had simply not been addressed and that it was an error.

Debt Settlement

27. In response to the Notice, DCL made material changes to the section of the DCL website that dealt with debt settlement. This was acknowledged by the adjudicator on behalf of the OFT. However, the OFT raised the issue of the fees that were chargeable for the debt settlement service. In the application for renewal of the Licence DCL had indicated that the fee for debt settlement would be 15% of the amount by which the debt was reduced as a consequence of the settlement. During cross examination at the hearing, Mr Sharma confirmed that this was the correct fee. DCL's revised website provided by DCL and confirmed to be valid at 28th August 2013 contains a reference to fees in the 'Debt Collect terms of agreement'. The fees are "*17.5% of your monthly payment with a minimum of £30 per month.*" These fees appear to relate only to the debt management service, which features a monthly payment. There is no specific reference to fees for the debt settlement service and no other clarification of how fees might be levied for the debt settlement service, where there is no monthly payment. When questioned Mr Sharma confirmed that the fees for debt settlement were based upon 15% of the savings made and that this was not set out in the 'Debt Collect Terms of agreement' and it was not clarified in the call script that employees of DCL would be using. Mr Sharma agreed that there was no

accurate information on the website about the fees that would be payable for debt settlement and that the overall position was confusing.

Revised terms and conditions

28. Mr Sharma confirmed in his evidence that he had amended the terms and conditions used by CCL when asked to do so by the OFT in January 2012 in order to state that the 'cooling off' period was fourteen days and not seven. He confirmed that he had not done this for DCL until this issue was raised in the Notice. He said that this was an oversight. A copy of the 'Terms of agreement' with a reference to a "14 day cooling off period" was provided to the Tribunal.

Revised call script

29. DCL had been unable or unwilling to provide a copy of the revised call script used by DCL staff whenever they talk to customers to the adjudicator prior to the Determination. No revised call script had been provided to the OFT or to the Tribunal prior to the date of the hearing. When this matter was raised at the hearing, Mr Sharma was able to procure the delivery of a copy of the call script to the hearing and it was provided to the Tribunal and to the OFT at that time. Mr Sharma was unable to explain why a copy had not been provided at an earlier point and acknowledged that the adjudicator had expressly raised concern about the lack of information about any changes to the call script in the Determination. The OFT accepted that the call script provided on the day of the hearing had been amended from that which had originally caused concern at the time of the Notice. The revised call script refers to a fourteen day cooling off period instead of the incorrect reference to seven days. However, the script does not clarify the fees payable for debt settlement rather than debt management and is described only as the "debt management script". The Tribunal noted that the script appeared to work on the basis that consumers would provide, during the course of the phone call, all necessary creditor information and all information about their income and expenditure in sufficient detail for DCL to work out what the customer's disposable income was. DCL would, during the same call, then be able to calculate and advise how much the monthly payments by the customer into the debt management plan should be and what management fee DCL would levy on a monthly basis. Within the same call, the call script shows that the

customer would be invited to make the first payment to DCL so that DCL would be able to start working straight away. This script appeared inconsistent with the explanation provided by Mr Sharma at the hearing of how the DCL process would work. He had explained that the customer would be invited to make the first monthly payment only after DCL had worked out how much that monthly payment should be, using the information on income and expenditure provided by the customer. However, Mr Sharma had said that the customer was unlikely to ever make a payment to DCL and then find that the debt management proposals put to the customer's creditors by DCL were not acceptable to those creditors. He said that DCL would have approached most of the creditors with a proposal for managing the debts on the basis of a monthly payment, prior to the initial payment being made by the customer. When questioned further Mr Sharma, then suggested that DCL would, in fact, refund the first payment in the unlikely event that the creditors of the customer had not consented to the debt management proposal that DCL would put to them. The Tribunal was unable to gain a clear understanding of how the business practice described by Mr Sharma and the "debt management script" and the terms of conditions of DCL tied together in a consistent manner.

Free services.

30. In the Notice the adjudicator had raised concerns about a statement on the DCL website that "*Debt Connect currently offer ... simple, friendly, and Free Advice.*".

Paragraph 3.18b of the debt management guidance states;

the claim that debt advice is provided on a free basis when there is, in fact, a profit seeking motive constitutes conduct that is unfair and improper.

The OFT questioned Mr Sharma on why references to free advice and to an initial consultation being provided free of cost and free of obligation were included on DCL's website at the time of the Notice, when the debt management guidance issued by the OFT was so clear on this point and the letter to CCL of 23rd January 2012 has expressly stated that references to "free debt consultation" were in breach of the OFT's Debt Management Guidance and were potentially misleading. Mr Sharma said that this was not an oversight but that DCL does provide free advice; it will not charge people if

it talks to them and they go somewhere else for a debt solution. He indicated that he had changed other references to free advice but not the references to free debt consultation on the home page or front page of DCL's website. He had thought that the references to free debt advice had to be removed so as to ensure that people were not misled, however, he explained that he felt that the continued reference to free debt consultation was fair to consumers and was only conveying the fact that customers would not be charged for simply making an initial phone call to DCL. The Tribunal understood that the OFT accepted that this reference had been removed prior to the Determination.

Declaration of understanding.

31. In the minded to refuse to renew notice the adjudicator had stated that the DCL letter headed "my acceptance to debt management programme" which customers were invited to sign, included a declaration stating;
- "I have received your Summary and Recommendations, which I fully understand and would now like to enter the Debt Management Programme".*
- The adjudicator had pointed out that this was in breach of paragraph 3.41a of the debt management guidance which stated that consumers should not be required to declare that they fully understand the requirements of the contract or any words to the same or similar effect. Such a requirement was an example of unfair or improper business practice. DCL's response to this notice was to confirm that the provisions referred to by the OFT had been reworded in their 'sales pack' and it stated that it enclosed a copy for the OFT to review. The Determination stated that the adjudicator had not been provided with a copy of the revised acceptance letter. Despite this and subsequent references to this concern in the course of this appeal, no copy of the amended acceptance letter had been provided to the OFT or to the Tribunal prior to the date of the hearing. A copy of the revised letter was provided at the hearing and, despite some changes, it begins with the same sentence that is set out above and which the adjudicator stated was a breach of the Debt Management Guidance. Other changes had been made to the text of this letter to address other concerns raised by the adjudicator. Mr Sharma was unable to explain how this failure had arisen or why he had confirmed to the OFT that the change had been made when it had not.

32. The Tribunal considered the evidence in relation to the finding that DCL had engaged in unfair and improper business practices by providing misleading and inaccurate information to consumers, failing to be transparent about its business practices and failing to implement proper practices and procedures. The Tribunal noted that when these failings had been pointed out to DCL in the Notice, DCL had responded on most points with amendments and solutions that the OFT had found to be adequate in most cases. The Tribunal accepted that the OFT's letter to Mr Sharma in his role at CCL had raised identical or similar concerns nine months previously. The Tribunal noted the examples that the OFT had put forward of where DCL had failed to respond adequately to the concerns that the OFT had raised in the Notice. For the reasons set out above, the Tribunal found that the practice of DCL in relation to the promotion of IVA's, the pricing of debt settlement and the payment of fees for such work and the failure to amend the letter containing a declaration of understanding all pointed to continuing breaches of the debt management guidance issued by the OFT. These breaches continued at the time of the hearing, even though these issues had been raised in the Notice and repeated in the Determination. The Tribunal were not persuaded that the residual failings were of such gravity and seriousness that they would, of themselves, constitute grounds for concluding that DCL was not a fit person to hold a consumer credit licence. However, the Tribunal had serious concerns arising from the evidence relating to DCL's consideration of, and response to, the concerns that had been expressed about its business practices and regulatory compliance. The Tribunal formed the view that significant doubts existed with regard to the capability of DCL to comply with its obligation under the Licence and to identify and address issues of practical importance when dealing with consumers in an area with a high risk of consumer detriment, such as debt management.

DCL'S RESPONSIBILITIES

33. The OFT had drawn the attention of the Tribunal and DCL to previous decisions of the Tribunal including *Q Solvency Ltd. v the OFT* (2009) CCA/2009/0004 and *Rowena Koning v OFT* (2012) CCA/2012/0012 in cases where there had been "continuous evolution" of the applicant's proposed business model during the application and appeal process..

The Tribunal in the Q Solvency case had considered the approach that should be adopted when considering a case where there had been “continuous evolution” of the applicants proposed business model during the application and appeal process. The Tribunal is aware that its function is to decide whether DCL is a fit person to hold a consumer credit licence on the facts and the circumstances existing at the time of the hearing. However, where concerns have been raised by the OFT and addressed by DCL during the course of the application and appeal process the Tribunal can take account of matters that have been raised during the course of the process and the manner in which they have been addressed or resolved. The Tribunal takes the view outlined in the Q Solvency case that the assessment of fitness “*cannot be an iterative process; constantly noting issues and reverting to the applicant for amendments and/or improvements.*” The Tribunal can take account of such matters in determining whether DCL has the necessary skills, knowledge and experience and has put into place the required practices and procedures in connection with the business that will permit it to undertake the consumer credit activities that are the subject of its application for renewal of its Licence, without reliance upon regular monitoring or guidance by the OFT.

34. Under Section 25 (2) of the Act the OFT is required to have regard to any matters appearing to it to be relevant, including DCL’s skills, knowledge and experience in relation to consumer credit businesses and the practices and procedures that DCL propose to implement in connection with any such business. As stated above it is for DCL to satisfy the OFT that it is a fit person to carry on a consumer credit business. The Tribunal is in the same position as the OFT in considering this appeal; it is for DCL to satisfy the Tribunal that it is a fit person to carry on a consumer credit business. The activities for which DCL seeks a licence are high risk activities in terms of potential consumer detriment. The debt management guidance issued by the OFT makes this plain. The Tribunal takes the view that DCL should have approached the application to renew the Licence with a clear understanding that it had to establish that it possessed the capability required to carry out and continue to carry out consumer credit activities which carry a high risk of consumer detriment.

35. The Tribunal noted Mr Sharma's confirmation that he had sole responsibility for compliance within DCL and was the sole source of skill and expertise in relation to consumer credit and consumer credit licensing matters. In response to questions from the OFT and from the Tribunal, Mr Sharma confirmed that no compliance changes or improvements had been made at DCL during the period in which he was a Director other than as requested by the OFT. He accepted that he had not been able to address all of the legitimate concerns raised by the OFT. On those occasions where these concerns had not been addressed, Mr Sharma had either been unable to explain why this oversight had occurred (for example in relation to the failure to amend the declaration of understanding in the letter of acceptance), or he had substituted a judgement of his own rather than following the clear guidance set out by the OFT, (for example in relation to his view that references to IVA's provided by a third party were not to be regarded as a promotion of IVA's). It was not clear to the Tribunal that Mr Sharma understood the importance of maintaining adequate skills and knowledge in relation to the regulatory and legal obligations that are relevant to holding a consumer credit licence. Mr Sharma stated at the hearing that he had not received any specific training on consumer credit matters. He also confirmed that he has not provided any training from third parties to the employees of DCL. He has not sought any external legal advice on consumer credit matters. He has not engaged any consultants or other advisors in relation to compliance or regulatory matters relating to a consumer credit licence. This is despite a clear commitment to do so when submitting an application to renew the Licence. Mr Sharma's understanding of a number of key areas was poor or limited; he denied an association between DCL and CCL, (which is relevant to the OFT letter of 23 January 2012 to CCL expressing concerns over business practices that were found to also apply to DCL), whilst admitting or acknowledging all of the facts required to establish that such an association existed. His understanding of the complaints procedure that DCL was required to operate was poor and that limited understanding was not put into effect in such a way that it was clear to the OFT or to the Tribunal that DCL had met its obligations. To the extent that there is uncertainty over DCL's compliance capability then the Tribunal notes that the onus is on DCL to establish that it is fit to hold the Licence. The Tribunal noted that Mr Sharma had given assurances during the course of the application for

renewal of the Licence and after the Notice and appeal process that had turned out to be inaccurate; for example in relation to amending the acceptance letter and clarifying the pricing of the debt settlement. The cumulative effect of the practices and procedures put in place by DCL had also not been fully understood by Mr Sharma. He accepted during the course of the hearing that there was a need to advise consumers of the risk of a debt management proposal failing and their arrears increasing. Nevertheless no work had been done on this basis and it was not clear the point had been understood prior to the hearing. Mr Sharma described a process for ensuring that refunds were given to consumers where debt management solutions had not been possible but a fee had been taken in advance. There was no evidence that such an approach had been explained to consumers or to the employees of DCL or had happened in practice. Mr Sharma said that he had acquired the skills and knowledge required to manage DCL "on the job". The Tribunal was not satisfied that this was sufficient.

36. The Tribunal was concerned about Mr Sharma's ability to identify and pursue matters on a proactive basis. He had indicated that he did not review the documentation used at DCL when he took over in 2010 as the OFT had never indicated a concern with such documents. He stated that he had considered joining a professional body, DEMSA, but he had not gone into enough detail to know what is required to do so. However, from his discussions with them he felt that the obligations were too onerous, at least whilst the appeal was pending. He was unable to explain what obligations made it too onerous. Mr Sharma commented that the OFT had never outlined what further training was required within DCL and this was one of the factors that had meant that no further training had taken place. He stated that the OFT had never said what needed to be changed in the call script. This was one of the reasons why he had not submitted a revised call script to the OFT until the day of the hearing. He said that if he had known what the OFT had wanted by way of training, including what evidence they wanted of training, then he would of course have provided it. Mr Sharma accepted that he did not know how consumers would be aware of the complaints process in place within DCL until recently. He remained vague and confused about what process had been in place until recently. When asked, he could not explain why the changes that he had been asked to make to CCL's processes and

documentation by the OFT had not been repeated within DCL where the same problems or issues existed.

37. The Tribunal finds that DCL and Mr Sharma were aware or should have been aware of the requirements they had to satisfy in order to renew the Licence. If there was any doubt, then the Credit Competence Plan that they were required to complete should have highlighted all of the areas in which they have needed to ensure that they were meeting standards set out in the legislation or guidance issued pursuant to the relevant consumer credit legislation. DCL and Mr Sharma were expressly made aware of the requirements they would have to satisfy if they were to retain the Licence when they received the Notice. Such a document should be a wake-up call to any business and to any responsible and capable director. Nevertheless, the response of DCL and Mr Sharma to that document has been, in the view of the Tribunal, well-intentioned but inadequate. The Tribunal does not believe that the evidence established a basis for concluding that DCL or Mr Sharma have sought to gain any advantage by reason of any delay or failure to comply with the standards expected of consumer credit licence holders, nor has the Tribunal concluded that DCL or Mr Sharma acted with any lack of good faith or integrity. The Tribunal regards Mr Sharma's and DCL's inability to effectively and proactively comply with the obligations that they take on under the Licence as evidence of a lack of capability, not a lack of integrity. The Tribunal concludes that Mr Sharma has insufficient skill, knowledge and experience to enable him to guide DCL and its employees through the requirements that they must meet in order to discharge their responsibilities as a consumer credit licence holder operating in an area with a high risk of consumer detriment. As Mr Sharma is the sole or principal source of such skill, knowledge and experience the Tribunal finds that DCL also has insufficient skill, knowledge and experience to enable it to continue to meet the terms of its Licence.

DECISION OF THE TRIBUNAL

38. In all the circumstances of this appeal and having considered all the evidence and arguments, the Tribunal finds that DCL is not a fit person to be issued with a consumer credit licence and that the application for renewal of consumer credit licence should be refused. The Tribunal has considered

whether the imposition of requirements under the Act could be sufficient to address their concerns about the fitness of DCL. As their concerns relate to the skill, knowledge and experience required to ensure the compliance of DCL with their obligations and this lack of skill, knowledge and experience continues to be a problem many months after the need to address it first came to light, the Tribunal does not believe that any impositions could be imposed that would address their concerns over fitness. In the circumstances, the appeal is refused.

39. The Tribunal invited the views of the OFT and DCL on the issue of whether DCL should be authorised under Section 34A of the Act to retain its authorisation for a limited period and a limited purpose. The parties agreed and the Tribunal concurs that DCL is authorised under Section 34A of the Act to carry into effect any agreements made before the expiry of the License, subject to the conditions set out below. These authorisations are granted for a period of two months from the date of this decision. DCL must:
- Contact its existing customers within five days of the decision to refuse to renew its Licence, to advise them of the need to make alternative arrangements with regard to their debts;
 - Direct such customers to appropriate sources of further help such as the Directgov website <https://www.gov.uk/options-for-paying-off-your-debts>;
 - Make arrangements so that any client monies that will not be disbursed to creditors are returned to the consumer; and
 - Neither offer services to any new clients nor engage in further negotiations with creditors of existing clients.

P M Hinchliffe
Tribunal Judge