UT Neutral citation number: **[2022] UKUT 247 (TCC)**

UT (Tax & Chancery) Reference Number: **UT-2021-000128**

Upper Tribunal (Tax and Chancery Chamber)

Hearing venue: The Rolls Building, London EC4A 1NL

Sitting in public on 6-7 July 2022

Judgment given on 12 September 2022

Before

JUDGE RUPERT JONES

MEMBER PETER FREEMAN

Between

PRZEMYSLAW SOSZYNSKI

T/A PHENIX CONSULTANCY

Applicant

and

THE FINANCIAL CONDUCT AUTHORITY

The Authority

Representation:

The Applicant in person

Calum C Macdonald, counsel to the Financial Conduct Authority, for the Authority

DECISION

Introduction

1. This is our decision in respect of a Reference Notice dated 25 June 2021 (the "Reference") made to the Upper Tribunal by the Applicant (Mr Soszynski trading as Phenix Consulting or "Phenix"). The Reference is in respect of a Decision Notice (the "Decision") issued by the Financial Conduct Authority ("the Authority") on 28 May 2021. The Decision refused the Applicant's application under s.55A Financial Services and Markets Act 2000 ("FSMA") to carry on various regulated activities in respect of claims management activity. This was on the basis that the Applicant had failed to meet Threshold Conditions under FSMA. As a result, the Authority refused permission to the Applicant to conduct his business.

2. The Applicant is a claims management business or claims management company ('CMC'). Mr Przemyslaw Soszynski is the business's principal and he operates as a sole trader. He has no employees. His primary business is advising and representing clients in the small claims track in the County Court for a range of civil claims and in the Employment Tribunal. Mr Soszynski can both offer advice and appear on behalf of clients in those jurisdictions but as he is not a UK-qualified lawyer, he can only represent claimants in other courts/tracks as a lay representative or McKenzie friend, e.g., by providing advice on the conduct of a case. Mr Soszynski also provides tax and accountancy services.

3. The Applicant was regulated between 9 May 2011 and 31 March 2019 by the Ministry of Justice through the Claims Management Regulator, and then became regulated by the Authority under a temporary permission on 1 April 2019. As a consequence of the giving of the Decision on 28 May 2021, the temporary permission held by the Applicant to carry out the claims management activities referred to above ceased to have effect by operation of Article 82 of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.

4. The primary basis of the Applicant's Reference challenging the Decision is that the regulatory requirements imposed upon him by the Authority are disproportionate and that he has been directly or indirectly discriminated against, as a Polish national, both by the Courts in their dealings with him and by the Authority in refusing to authorise his business. The Applicant also disputes the Authority's conclusions that he does not and will not satisfy the Threshold Conditions to be authorised as a CMC.

5. The Applicant applied in his Reference for a direction ("the Suspension Application") that the effect of the Decision refusing his authorisation be suspended pending the determination of the Reference pursuant to Rule 5(5) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Rules"). The Applicant also applied for disclosure of certain documents by the Authority ("the Disclosure Application"). Judge Herrington dismissed both the Suspension Application and the Disclosure Application in a decision dated 18 February 2022. The Judge directed that the Reference be swiftly determined, so as to ameliorate the fact that he had been unable to grant the Suspension Application.

The hearing

6. The hearing of the reference took place on 6 and 7 July 2022. On each day of the hearing we heard oral evidence and submissions from Mr Soszynski as the Applicant. We heard oral evidence from Mr Greg Williams and submissions from Mr Macdonald on behalf of the

Authority. We are grateful to each of them for their assistance. We have considered carefully all the evidence and submissions in reaching our decision even if we have found it unnecessary to refer to it all below.

The Decision which is the subject of the Reference

7. On 31 July 2019 the Applicant submitted his application for authorisation of his business. He sought permissions under s 55A of FSMA to carry on the regulated activities of:

a) seeking out, referrals and identification of claims or potential claims (personal injury claim; financial services or financial product claim; housing disrepair claim; claim for a specified benefit; criminal injury claim; employment related claim);

b) advice, investigation or representation in relation to a personal injury claim;

c) advice, investigation or representation in relation to a financial services or financial product claim;

d) advice, investigation or representation in relation to a housing disrepair claim;

e) advice, investigation or representation in relation to a claim for a specified benefit;

f) advice, investigation or representation in relation to a criminal injury claim; and

g) advice, investigation or representation in relation to an employment related claim.

8. On 5 February 2021 the Authority issued the Applicant a warning notice stating that it was proposing to refuse his application.

9. On 28 May 2021 the Authority issued its final Decision refusing the Applicant's application. The Decision was given because the Authority considered that the Applicant had not been able to demonstrate that Phenix could meet the Authority's standards in relation to each of the claims management sectors in respect of which it applied for permissions.

10. In short, the reasons for the Decision were that the Authority decided that it could not ensure that the Applicant satisfied and would continue to satisfy the Threshold Conditions as set out at 2C (Effective Supervision), 2D (Appropriate Resources) and 2E (Suitability) of Schedule 6 to FSMA.

11. The Authority's reasons for its Decision were summarised at [5]-[7] of its Notice dated 28 May 2021:

> '(5) Phenix has failed on a number of occasions to provide in a timely manner documentation that is essential to the Authority's assessment of its application. Additionally, Mr Soszynski, Phenix's sole employee, informed the Authority that he should not have to provide detailed information to the Authority about how Phenix operated. This gives rise to concerns that, if authorised, Phenix would not meet the standards of the Handbook, in particular, Principle 11 of the Principles for Businesses, which requires an authorised firm to deal with the Authority in an open and co-operative way.
>
> (6) Phenix has been unable to demonstrate that it has adequate or compliant professional indemnity insurance ("PII") cover, has failed to show that it can meet the prudential requirements for a firm of its nature, and does not meet the CASS requirements for protecting

client money. Phenix has also failed to demonstrate that it has adequate business continuity plans. Further, Phenix has not demonstrated that it has adequate or appropriate human resources. Mr Soszynski has demonstrated a lack of awareness of the rules with which Phenix must comply, which suggests that he is not competent to run the firm in a compliant manner.

(7) Moreover, Mr Soszynski does not have rights of audience, and instead acts for clients as a McKenzie friend. Phenix does not have the systems or controls to ensure that this is communicated to clients in a fair and transparent manner, so there is a risk that Phenix's clients would not be able to understand the services that Phenix can and cannot provide. Phenix therefore lacks the controls to protect the interests of its consumers, and to ensure continued compliance with the Authority's rules.'

Relevant Law

12. We are grateful to Mr Macdonald for an exposition of the relevant law which we adopt below as being a fair and accurate summary.

Regulation of CMCs

13. Before 1 April 2019, firms carrying on claims management activity were regulated by the Claims Management Regulator ("CMR") in the Ministry of Justice. Following increasing concerns about misconduct in the CMC sector, the Claims Management Regulation Review Final Report was published on 16 March 2016 (the Brady Review). Thereafter, Parliament decided in 2018 to transfer responsibility for the regulation of the claims management industry to the Authority through The Financial Guidance and Claims Act 2018. The Authority published a consultation paper (CP 15/18) setting out its detailed proposals for its regulation of CMCs in June 2018 and a policy statement (PS 18/23) in December 2018.

14. The transfer of responsibility for the regulation of CMCs from the CMR to the Authority was effected by specifying various claims management 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 (see the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018).

15. Consequently, as from 1 April 2019, a business or firm which was not at that time an authorised person under FSMA (such as the Applicant) required the appropriate permissions under Part 4A FSMA before it could lawfully carry-on claims management activities.

16. Pursuant to the transitional provisions, a business or firm which immediately before 1 April 2019 held a CMR authorisation in respect of claims management activities (as the Applicant did), acquired an interim permission to carry on the claims management activities that were covered by its old authorisation without the Authority having to undertake any consideration as to whether the firm concerned met the Threshold Conditions (provided the firm registered with the Authority).

17. The transitional provisions provided that a firm would lose its interim permission unless it applied by a date specified by the Authority (the relevant date being 31 July 2019) for a full Part 4A permission to include the activities covered by the interim permission.

Relevant parts of FSMA – The Threshold Conditions

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

19. Section 55B (3) FSMA provides, inter alia, that in granting a Part 4A permission, the Authority must ensure that an 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.

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

21. Condition 2C (the "effective supervision Threshold Condition") provides, so far as relevant, that:

> "(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;
> …"

22. Condition 2D (the "appropriate resources Threshold Condition") 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; 7 (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…"

23. Condition 2E (the "suitability Threshold Condition") 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 and 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."

24. The Applicant submitted his application on 31 July 2019 and his application was deemed complete on 11 December 2019. The statutory deadline for the Authority to determine it was therefore 10 June 2020 (six months thereafter - pursuant to s. 55V (1) FSMA). As above, the Authority issued the Decision on 28 May 2021 so that it failed to meet the statutory deadline – however the Applicant benefited from the interim permission throughout this period.

25. Following the Decision, the Applicant's interim permission lapsed by operation of law and he was no longer an authorised person under FSMA. Consequently, he could no longer conduct regulated activities without being in breach of the general prohibition contained in s. 19 FSMA nor could he claim to be an authorised person (per s. 24 FSMA).

Regulatory guidance

26. From the date the Applicant obtained his interim permission, 1 April 2019, he was required to comply with various of the Authority's regulatory requirements, as set out in the Authority's Handbook. The most relevant requirements are to be found in:

a) the Claims Management: Conduct of Business sourcebook ("CMCOB"), which sets out the standards applicable to CMCs;

b) the Principles for Business ("PRIN"); and

c) the Threshold Conditions chapter of the Authority's Handbook which provides guidance on how the Authority interprets the Threshold Conditions ("COND").

Procedure on reference of a decision to refuse authorisation

27. Section 55Z3(1) FSMA provides that an applicant who wishes to challenge the Authority's determination of an application made under Part 4A FSMA may refer "the matter" to the Upper Tribunal.

28. The hearing of the reference is not an appeal against the Authority's decision but a complete rehearing of the issues which give rise to the decision - see for example, *Lewis Alexander Ltd (LAL) v FCA* [2019] UKUT 0049 (TCC) ('*Lewis Alexander*') at [29].

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.

30. Sections 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 present case is not a "disciplinary reference" (as defined under s. 133(7A) FSMA). Therefore, the procedure set out at sections 133(6) and (6A) FSMA applies. The decision-maker in this Reference is the Authority (acting through its Regulatory Decisions Committee or 'RDC'). The Tribunal in *Hussein v FCA* [2018] UKUT 0186 (TCC) described the Tribunal's jurisdiction as "*a supervisory rather than a full jurisdiction; in that unless the Tribunal believes the reference to have no merit and therefore dismisses it its powers are limited to remitting the matter to the Authority with a direction to reconsider its decision in accordance with the findings of the Tribunal."*

32. The Tribunal explained the extent of its powers on a non-disciplinary reference in *Carrimjee v FCA* [2016] UKUT 0447 (TCC) at [38] and [39] as follows:

> 38. 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 to prohibit is one that is reasonably open to the Authority then the correct course is to dismiss the reference.
>
> 39. Alternatively, 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. For example, that course would also be necessary were the Tribunal to make findings of fact that were clearly at variance with the findings made by the Authority and which formed the basis of its decision. That course would also be necessary had there been a change of circumstance regarding the applicant which indicated that the original findings made on which the decision was based, for example as to his competence to undertake particular activities, had been overtaken by further developments, such as new evidence which clearly demonstrated the applicant's proficiency in relation to the relevant matters. Such a course would not usurp the Authority's role in making the overall assessment as to fitness and propriety but would ensure that it reconsidered its decision on a fully informed basis. In our view such a course is consistent with the policy referred to at [31] and [32] above as it leaves it to the Authority to make a judgment as to whether a prohibition order is appropriate.
>
> [Emphasis Added]

33. Although *Carrimjee* concerned the imposition of a prohibition order, the Tribunal has confirmed that the principles to be applied are the same in an authorisation case: see *Lewis Alexander* at [33] to [34] and *Köksal v FCA* [2016] UKUT 478 (TCC) at [25] to [28].

34. The effect of the above, is that the Upper Tribunal must dismiss the Reference unless it makes findings of fact and/or law which lead to a conclusion that the Decision was not one that was reasonably open to the Authority.

35. Furthermore, even if the Tribunal finds flaws in the Authority's decision-making process, for example by making findings of fact which contradict or are inconsistent with the findings on which the Authority based its decision, it should not remit the Reference if it is of the view

that despite such failings, it is inevitable that if the matter were remitted, the Authority would come to the same conclusion.

Burden and standard of proof

36. The Tribunal set out the burden and standard of proof for references of this kind in *Köksal* at [37] to [38]. This was summarised with approval in *Lewis Alexander* at [36] (which concerned the same Threshold Conditions as the present case):

> "(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."

The Applicant's case

37. The Applicant's grounds for his reference as set out in his Reference Notice form can be summarised as follows. Specific parts of the Applicant's grounds are addressed below in our factual findings. In essence, the Applicant's case contains two principal criticisms of the Authority's approach to his application: (i) that it has been acting in a discriminatory manner; and (ii) the Authority's regulation of small CMCs such as his, and the requirements imposed on him thereby, is disproportionate.

Discrimination

38. The Applicant submits that the Authority had been discriminating against him on the ground of race (and / or nationality). He argues that the approach of the Authority to him would be different if he was British and that the decision to refuse the application was an act of discrimination. The Authority stated during the RDC hearing that if an applicant suffers from discrimination, they would offer help and support. However, the Authority stated that the offer had not been made because the Applicant did not provide evidence that he had been discriminated because of his race (or nationality). He submits that this was a false statement. The Authority was aware of the ongoing fraudulent court proceedings against him since December 2019. The decision to refuse his application in early 2021 was made on the date of the damages hearing in relation to the court proceedings.

39. The Applicant further submits that the reasons provided in the Decision notice do not justify the decision to refuse the application for authorisation. In general, [he argues] that the Authority rejected the fact that he has been discriminated on the ground of race and suffers from distress and anxiety. He submits that it is obvious that discrimination has had an impact on his performance. The Applicant argues that the Authority's claims that it is separate from the Judiciary and Ministry of Justice in respect of regulating the CMC firms is nonsense. The Authority regulates legal services providers and has a public duty to eliminate discrimination, harassment, victimisation (section 149 of the Equality Act 2010).

Proportionality

40. The Applicant submits that the Authority established rules that put non-British applicants at a disadvantage when compared to British applicants. The prudential resources rules require

a firm with a total income of less than £1million to have resources of £25,000. He argues that it is obvious that the requirement will be not met by non-British nationals or residents. During the consultation period the Authority considered lowering requirement for small firms (to 1/6 of overheads expenditure) but later they decided to set the prudential requirement of £5,000. He contends that this was disproportionate for the firms with turnover below £50,000 (most of the sole traders). He submits that the Authority exercised its power in a disproportionate manner to the objective it pursued. Parliament decided to pass the regulation of the CMC to the Authority because of poor marketing practices. The Authority decided that sole traders pose a high risk and as a result the number of sole traders authorised as CMCs has been decimated. He had asked the Authority to provide information in respect of number of firms that applied for temporary permission in April 2019. The request was rejected.

Facts

41. We received witness statements from Mr Greg Williams for the Authority and from Mr Soszynski and Mr Jan Grzegorczyk[1] for the Applicant. We heard oral evidence from Mr Williams and Mr Soszynski who were each cross examined.

42. We make the following findings of fact on the balance of probabilities. Where relevant, we provide our reasons for not accepting any of the evidence that has been given.

43. The Applicant is a sole trader who runs a claims management business providing advice and representation for clients in relation to claims across a range of sectors. He holds a master's degree in Polish Law and has described himself as a "*paralega*l". He is described variously in Employment Tribunal judgments as a "*Lay Representative*" or "*consultant*". His business is to represent clients in the small claims track in the County Court and in the Employment Tribunal. He offers advice and appears on behalf of clients in those jurisdictions but as he is not a UK-qualified lawyer, he can only represent claimants in other courts/tracks as a lay representative or McKenzie friend, e.g. by providing advice on the conduct of a case.

44. In his application for authorisation as a CMC dated 31 July 2019, he applied for permission to conduct claims management activities across all six claims management sectors regulated by the Authority, namely providing advice, investigation, or representation in relation to: (a) a personal injury claim; (b) a financial services or financial product claim; (c) a housing disrepair claim; (d) a specified benefit claim; (e) a criminal injury claim; and (f) an employment related claim.

[1] He gave written evidence in relation to being represented by the Applicant in a claim at the Employment Tribunal and why it was wrong for the employment judge to characterise the Applicant as having failed to comply with directions for service of the bundle in the claim without good excuse. However, this allegation was one of those conceded by the Authority not to go to the satisfaction of the Threshold Conditions and only go to the reliability of the Applicant's evidence. In the Authority's pleading it conceded: 'that Due to their recent inclusion in the exhibits to PS1 and / or occurrence since the Authority filed its SoC [Statement of Case], these matters were not part of the SoC. The Authority has not filed an amended SoC in respect of these matters. Having regard to the Court of Appeal's guidance at [156] to [158] of *Burns v The Financial Conduct Authority* [2017] EWCA Civ 2140, the Authority therefore does **not** seek to plead these as substantive matters going directly to the Applicant's ability to meet the Threshold Conditions.'

45. The Applicant did not apply for the permission relating to lead generation (i.e. "*seeking out, referrals and identification of claims or potential claims*"). This was proactively raised by the Authority on 4 March 2020 and the Applicant agreed that his application be amended to also include this permission.

46. The Authority noted that, due to his lack of professional indemnity insurance ("PII"), the Applicant was unable to conduct claims management activities in respect of personal injury claims. It was clear from the Applicant's oral evidence and his Reply in response to the Authority's Statement of Case that this position is agreed. As a result, it follows that the Applicant is longer seeking the personal injury claims permission or authorisation.

Evidence on behalf of the Authority – Greg Williams

47. Mr Greg Williams gave evidence on behalf of the Authority. His statement explained that Mr Soszynski's application had initially been assessed by James Fisher, a case officer in the Claims Management Companies Department ('CMCD'), with oversight from Tina Archer, a Manager in that department. Mr Fisher and Ms Archer both attended the meetings which led to Mr Soszynski being issued with a Warning Notice on 5 February 2021 and a Decision Notice on 28 May 2021. Mr Fisher had since left the Authority and Ms Archer was still on leave.

48. As a result, Mr Williams made his statement based on his knowledge of the case as a result of his involvement from January 2022, his reading of the Notices, submissions and evidence, and his conversations with a case officer, Ms Butt. He was also able to set out CMCD's expectations of applicants for authorisation based on his knowledge and experience gained as a Manager in CMCD since April 2019.

49. He was cross examined by the Applicant on the basis that the Decision was both disproportionate and discriminatory. Mr Williams rejected these suggestions and stated that if he had been called upon to make the authorisation decision he would have arrived at the same conclusion for the same reasons as set out in the Decision.

50. We are satisfied that Mr Williams was a reliable witness and his evidence essentially relied upon and summarised the documentary evidence which set out the rationale for the Decision. The rationale for the Decision consists of both primary facts and evaluative conclusions. We are satisfied that the primary facts relied upon by the Authority were established on the balance of probabilities. We set out those facts immediately below and we rely upon them in our discussion section when we consider the evaluative conclusions - whether the Applicant failed to satisfy the Threshold Conditions, whether he would continue to do so and whether it was reasonably open to the Authority to refuse his authorisation on this basis.

Facts relevant to the effective supervision Threshold Condition

51. We are satisfied on the balance of probabilities that the Applicant failed to provide information in a timely manner. We accept the Authority's evidence.

52. The key primary facts relied upon in relation to the effective supervision Threshold Condition are established and summarised below.

53. On 31 July 2019, the Applicant's application was submitted (this date was the deadline for CMCs seeking to be regulated by the Authority to do so). It was substantially incomplete when

received. The only supporting documents received with the application were a very brief Business Plan, a Compliance Procedures Document and a Claims Management Individual Form.

54. On 17 September 2019, the Authority requested that the Applicant provide additional supporting documents which ought to have been submitted with the application. The Authority gave a deadline of 1 October 2019 to provide these. The documents, except the Business Plan, were provided by the Applicant in tranches on 10, 11 and 14 October 2019.

55. On 27 November 2019, the Authority made a written request for the Applicant's Business Plan with a deadline of 11 December 2019. The Applicant provided his Business Plan on this date and an explanation for the delay in providing it the following day.

56. On 4 March 2020, the Authority requested further information by 18 March 2020. The Applicant provided a partial response to this request on 18 March, noting that he was self-isolating and that the outstanding information would be provided later that day. On 20 March, the Authority extended the deadline to 27 March 2020. The Applicant responded on 27 March providing the outstanding information.

57. On 31 March 2020, the Authority requested further information by 14 April 2020. On 14 April, the Applicant sought a brief extension until 16 April 2020 and provided the information on that date explaining that the delay was due to him continuing to experience COVID-19 symptoms.

58. On 13 May 2020, following its first competency interview with the Applicant, the Authority requested further information by 27 May 2020. The Applicant responded the same day (13 May 2020) stating he would reply in due course, raised concerns regarding discrimination and made a number of Freedom of Information Act ('FOIA') requests.

59. On 28 May 2020, the Applicant provided a partial response. He also queried the proportionality of certain rules applicable to CMCs. On 1 June 2020, the Authority requested the outstanding information be provided by 3 June 2020. The Applicant replied on the same date stating his response was delayed due to the "*current political and social situation (in short protests after Mr George Floyd's death)*".

60. On 4 June, the Authority responded setting a new deadline of 9 June 2020. On 10 June, the Applicant provided a partial response. On 12 June 2020, the Applicant provided additional information and stated the remaining information "*will be sent shortly*". By 19 June 2020, no further information had been provided and the Authority emailed the Applicant requesting the outstanding information by 1 July 2020. On 24 June 2020, the Applicant confirmed he would send the information by 1 July 2020. However, on 2 July 2020, the Applicant updated the Authority with a partial response stating he may be unable to provide the outstanding information until he had received a response from the Authority's FOIA team regarding requests he had made about the Authority's regulation of sole trader CMCs. In response, on 17 August 2020, the Authority raised several concerns regarding the Applicant's ability to comply with the Threshold Conditions and invited him to a second competency interview.

61. The Authority's emails of 13 May 2020 and 17 August 2020 highlighted a number of concerns with the application and explained that, in the Authority's view, the Applicant did not appear to meet the Threshold Conditions. A number of these concerns have not been addressed despite multiple attempts to obtain clarification by the Authority. For example, the Applicant

sent an email to the Authority on 12 June 2020 questioning the fairness of the rules in CMCOB in respect of the prudential requirements for CMCs, rather than demonstrating compliance with those requirements.

62. On 23 September 2020, following the second interview, the Authority requested the Applicant's latest management accounts and replacement PII policy by 30 September 2020. The Applicant responded on 1 October 2020 that he was on annual leave and would respond by 7 October 2020. No response was received by this date and so the Authority emailed on 16 October informing the Applicant a response was required no later than 21 October 2020. On 21 October 2020, the Applicant partially responded stating that he had requested the terms of his new PII policy.

63. Overall, in the course of the application, the Applicant failed to comply with Authority deadlines on twelve occasions. The applicant only provided all the basic supporting documentation required in the application some 19 weeks after it was submitted. This was despite the fact the Authority's scheme for the regulation of CMCs had been communicated as early as December 2018 by PS 23/18 and that many of these documents ought to have been readily available to the Applicant.

64. By the time of the hearing, the following information remains outstanding from the Applicant (despite in some cases multiple requests from the Authority):

a) the Applicant's latest management accounts;

b) evidence the Applicant meets the applicable prudential resources requirement;

c) a replacement PII policy (or updated documentation to reflect the fact that the Applicant is no longer seeking the personal injury claims management permission); or

d) evidence that the Applicant complied with CMC wind-down procedures following the lapsing of his temporary permissions.

65. The Applicant has attributed certain delays to illness. The Applicant has, for instance stated "*food poisoning*", "*toothache"*, and "*COVID-19 symptoms*" impacted his ability to reply in a timely manner during the application process. Whilst the Applicant has not provided any medical or other evidence of these illnesses, the Tribunal accepts that some level of delay may have been impacted by circumstances beyond the Applicant's control.

66. Notwithstanding these circumstances, the Tribunal is satisfied that the Applicant missed numerous deadlines without providing notice and only provided an explanation and / or sought an extension of time when challenged by the Authority. Further, the Tribunal does not accept that the "*current political and social situation*", "*a No Deal Brexit*", the Applicant's general workload or his assertion that he had been the victim of racial discrimination by the judiciary in unrelated proceedings (which he states caused him mental health issues) are reasonable explanations for the delays. This is particularly given the Applicant's failure to provide any medical or other cogent evidence in support of their impact on his performance or ability to comply with requests and deadlines set by the Authority.

67. The Tribunal also notes the Applicant's continued inability to comply with deadlines and orders in these Tribunal proceedings and finds that this is a feature of the Applicant's attitude towards compliance rather than any given set of circumstances.

68. In respect of proceedings before this Tribunal, the Applicant was required to submit a Reply no later than 26 August 2021. Following his repeated failure to do so, this Tribunal made an unless order on 4 October 2021. This directed the Reply be provided no later than 18 October 2021. For completeness, the Authority notes the Applicant provided evidence of a positive COVID test dated 1 August 2021, but this does not fully excuse a delay in filing his Reply in these proceedings.

69. The Applicant was also required to provide submissions in relation to his Suspension Application within 21 days of the 23 August (i.e. by 13 September 2021). He failed to do so. These submissions were also made subject to the unless order. On the 18 October 2021 (i.e. the day of the deadline), the Applicant informed the Tribunal that due to continuing health issues, he would not be able to comply with this deadline. The Applicant filed a Reply and Suspension Application submissions on 20 October 2021.

70. The Applicant was required to exchange and file witness statements no later than 18 March 2022. The Applicant failed to do so and did not provide an explanation or seek an extension of time until this was raised by the Authority on 21 March 2022. He stated that "*the delay is connected with the military conflict in the Ukraine*". On 25 March 2022, the Applicant requested a further extension of time until 31 March 2022 and expanded on his explanation for delay. The Applicant ultimately provided witness statements on 31 March 2022, the Tribunal having consented but noting that the Applicant's behaviour was not acceptable.

71. In summary, the Applicant was required to provide a number of supporting documents when he applied for authorisation. However, he did not provide all the required documents until approximately 19 weeks after he submitted the application. Following this, the Applicant failed to meet deadlines for the provision of information a further 12 times during the authorisation process. The information requested included documents such as management accounts which should have been readily available to the Applicant.

72. The Applicant also questioned the legitimacy of the Authority's requests. He told the Authority, as a follow-up to the first competency interview on 5 May 2020, that he should not have to provide detailed information to the Authority about how his business operated.

Facts relevant to the appropriate resources Threshold Condition

73. We are satisfied that the Authority has established the following primary facts on the balance of probabilities that relate to the appropriate resources Threshold Condition.

Professional indemnity insurance (PII)

74. Between 1 April 2019 and 28 June 2020, the Applicant was, by virtue of his temporary permissions, subject to the Authority's rules, including CMCOB. In respect of personal injury claims, CMCOB requires CMCs to hold adequate PII insurance (CMCOB 7.4.3R).

75. In his oral evidence, the Applicant referred to the only PII documentation that he had produced – an annual policy in force from November 2019 to November 2020. The Applicant's PII policy did not cover any regulated activities under FSMA, including claims management activities. He did not provide any policy covering the earlier and equally relevant period from 1 April 2019 (the policy for November 2018 to November 2019) but the Applicant suggested there may have been a change in the terms and the previous policy would have covered

regulated activities. We are satisfied on the balance of probabilities that this had not occurred, the terms of the policy remained the same and that it too did not cover regulated activities.

76. As a result, the Applicant was in breach of this rule. We are prepared to accept that his lack of the necessary insurance may have been unknowing as he was not aware of the exemptions or exclusions in his PII policy. His evidence was not that it would be impossible to obtain the necessary PII cover but that it would be uneconomical.

77. Nonetheless, for more than a year he was managing personal injury claims without appropriate insurance. This was a material breach of FCA requirements which ought to have been notified to the FCA pursuant to SUP 15.3.11R (1).

Client money

78. Between 1 April 2019 and 28 June 2020, the Applicant was required to hold any client monies in accordance with the Authority's CASS rules. The Applicant applied for permission to hold client money and, at the date of his application stated he held £8,158.00 in client money. As at the date of his first interview with the Authority (5 May 2020), the Applicant's business arrangements clearly entailed holding client money. In his oral evidence he only accepted that he was holding client money until August or September 2019 but the obligation remained nonetheless.

79. However, the Applicant was unable to provide a duly countersigned acknowledgement letter from his bank (in breach of CASS 15.2.2R), stating in his second interview that the bank had refused to counter-sign. Again, the Applicant had not notified the Authority of the breach pursuant to the Supervision Section of the Authority's Handbook ('SUP') 15.3.1R. The Applicant suggested he viewed his approach as appropriate because he intended to challenge the Authority's rules on client money and prudential requirements. He also suggested in his oral evidence that it was the bank's fault for failing to counter-sign. This was but one example of many where he blamed others for his failings.

80. It is accepted that the Applicant no longer proposes to hold client money. However, no changes to relevant client documentation have been made which still explicitly refer to the Applicant holding client monies.

Prudential requirements

81. The Authority's rules in relation to CMC's prudential requirements came into effect four months later than other requirements which came into effect on 1 April 2019. Therefore, from 1 August 2019 until 28 June 2020, the Applicant was subject to the Authority's prudential requirements for CMCs. Due to the Applicant's size, he was classed as a "Class 2 CMC" (CMCOB 7.5.2R). Applying CMCOB, the Applicant therefore had a prudential resources requirement of at least £5,000.

82. On the basis that the Applicant held client money at the date of the application (31 July 2019), and his acceptance in oral evidence that he was holding client money until at least August or September 2019, he was historically subject to an additional client money requirement of £20,000, bringing his total prudential resources requirement to £25,000.

83. At his first interview, on 5 May 2020, the Applicant's description of his business arrangements clearly indicated he still handled client money as at that date (the Applicant

disputed the handwritten notes of this meeting but we are satisfied that it is a more accurate record of what was said then the Applicant's memory given our findings on his reliability as set out below). This was despite the fact that in communications with the Authority on 1 August 2019, the Authority had explicitly confirmed to him that the prudential resources requirement applied without exception from that date. The Applicant therefore continued to hold client monies whilst knowingly in breach of this requirement.

84. There is no evidence that the Applicant ever had prudential resources of £25,000 and the Applicant has admitted as much in writing and in his oral evidence. During oral evidence he accepted that the financial breakdown he provided in his application stated that he had £20,000 value in the contents of his property but his net property and assets were still valued at less than £15,000 during the relevant time.

85. He was therefore in breach of the prudential resources requirement during his period of temporary authorisation and failed to notify the Authority of this.

86. It is important to note that when the Authority has requested information from the Applicant as to his current prudential resources, he disputed the proportionality and appropriateness of these rules, stating he intended to challenge them, rather than providing evidence of how he meets them. Further, the Applicant continues to dispute the proportionality of the lower £5,000 prudential requirement that is now applicable to his business. Again, the Applicant indicated he disagreed with the rules and was entitled to grace periods to bring him into compliance.

Complaints and telephone calls

87. The Authority requires that CMCs must record all telephone calls with customers and retain all other relevant communications with them (CMCOB 2.3.2R). Of concern are the various reasons the Applicant has provided for his inability to conduct telephone calls.

88. During his second interview, the Applicant told the Authority he was unable to have telephone calls with clients as he was unable to record the calls. In addition to stating he was unable to take client calls due to not having recording software, he has also claimed clients do not want calls recorded, that it is an 'Orwellian' invasion of privacy, that he does not want to have to deal with phone calls and / or that the requirement is inappropriate due to issues of privilege (he accepted that communications with clients would not benefit from legal professional privilege). During his evidence he accepted that he could record calls on his smartphone should he wish to but submitted that his clients did not or would not want this and it was not in their best interests.

89. Further, the Applicant does not mention this limitation to his services in any contractual documentation.

90. As a result, it is clear that he is genuinely able to record phone calls, could make reasonable efforts to do so but takes issue with the Authority's requirements. He also suggested the rules were impossible to meet. The Applicant stated that customers may still make a complaint by telephone by leaving a voicemail. The Tribunal is satisfied that this does not constitute compliance in all circumstances. Further he stated that his clients were vulnerable by virtue of their English language difficulties so preferred to deal with matters in writing. However, we are not satisfied it was appropriate to impose this on all clients in all circumstances.

91. The Authority was reasonably entitled to expects firms to be able to take and record complaints by any reasonable means (DISP 1.3.2G) – this includes by telephone.

Contracts / communications to clients

92. The Applicant's contractual documentation explains that he is not a solicitor or barrister. However, they do not explain that as a McKenzie friend he lacks rights of audience and so in some circumstances he will not be able to make oral representations on behalf of the client and that clients will need to represent themselves as a litigant in person. The Applicant states that "*rights of audience are only required in claims that are allocated to the fast track or multi track*" and he is able to represent clients as a "*lay representative in small claim track and proceedings before tribunals*" Reply. These limits to his jurisdiction are not in dispute.

93. However, the Applicant further asserted orally and in writing that "*clients are aware of Applicant's limited rights by the sentence that the Applicant is neither a solicitor nor barrister*" as the equivalent Polish terms are well understood. However, this argument is undermined by his subsequent admission in writing that "*Polish customers would not understand the term right of audience or right to conduct litigation*" [ibid].

94. The Authority was therefore reasonably entitled to conclude that the Applicant should therefore provide a clear explanation in his contractual documents of what services he can and cannot provide rather than rely on clients (whom he states are all vulnerable) drawing inferences from / analogies to a different legal jurisdiction.

95. As set out in Annex B to the Decision Notice, the Applicant applied for the broadest set of CMC permissions across all sectors. Clients may want or need to pursue claims outside the boundaries of the services the Applicant is able to provide. In his Reply, the Applicant states his approach if litigation outside the Employment Tribunal or small claims track became necessary:

"*The Applicant had been only accepting claims that were not complex and should be settled by the ADR (personal injury sector). If the claim had to be decided by the County Court at the hearing then the Applicant would arrange independent interpreter and help to find a barrister or end the contract and help the client to find the solicitor's firm*."

96. The Authority was entitled to conclude that such an approach is unlikely to be in clients' best interests if clients need to find new / additional legal representation if a claim cannot be settled. Further, no information is provided (either to the Authority or in the contractual documentation) as to whether the Applicant will still charge (i) commission (if a barrister is engaged alongside the Applicant) or (ii) basic charges for work already incurred (if a solicitor's firm is engaged). Rather than consider amendments to his contractual documents, the Applicant disregards the Authority's concerns stating it "*proves the Authority doesn't understand what legal services the CMC firms [sic] can provide*".

97. In addition to failing to address his limited ability to represent clients, the client documentation did not reflect how the Applicant would handle client money and engage with clients other than on the phone.

Business continuity arrangements

98. The Authority had alleged that the Applicant lacked appropriate business continuity arrangements. The Authority specifically raised this issue with him in advance of his second interview. His response at interview was effectively that business continuity was a risk faced by all sole traders and that it was mitigated because clients were expected to be litigants in person. The Authority accepted that the issue can be particularly acute for sole traders – it therefore expects them to have in place risk management systems appropriate to their business model (as per PRIN 3).

99. The Applicant has previously stated that he could handle a maximum of 22 cases at any one time and seeks to be able to handle 30 to 40 cases. The only proposals the Applicant made in respect of managing business continuity risk during the application were that (i) he could work from his sick bed if necessary and that in the event of serious disruption etc. (ii) clients would be directed to seek other representation (by his wife if necessary).

100. In his Reply and in his oral evidence, the Applicant also blamed the Authority for not supplying him with a list of all authorised CMCs prior to 19 July 2021 (in response to an FOIA request) for his failure to make appropriate business continuity arrangements. This argument is unmeritorious for two reasons. Firstly, the Applicant could have identified alternative CMCs or other back up providers himself using the Financial Services Register or other resources. He suggested that this was a very difficult and time-consuming task but he was able to search the register when it suited him for the purposes of making the argument that he had been the subject of discrimination. Secondly, the Applicant filed his Reply on 20 October 2021, which meant he had three months to arrange a locum using the information the Authority provided.

101. The Applicant acknowledged that business continuity, such as during a time of illness, was a key risk. His response in writing was that he would "work harder". However, he did not take the reasonable step to put in place locum arrangements. We reject his suggestion that approaching other CMCs to provide locum would also have necessarily led to his clients being poached.

102. This evidence is again indicative of the Applicant's tendency to blame the Authority for his own failure to have in place appropriate resources when regulatory responsibility for doing so rests with him. At no point has the Applicant provided evidence of any locum / business continuity arrangements nor of taking any steps to make such arrangements.

Mr Soszynski's evidence

103. Mr Soszynski provided a witness statement dated 31 March 2022 and gave oral evidence.

104. We begin by noting that the Applicant is an experienced user of the courts and tribunal system and as a legal services provider can and should understand what professional conduct and standards are required.

105. As is clear from the matters set out above the Applicant did not fundamentally challenge the primary findings of fact relied upon by the Authority as to his failure to meet the three relevant Threshold Conditions. When questioned about the primary facts relating to his compliance with the relevant requirements he accepted that he had not unambiguously complied with rules and requirements. As early as his opening submissions he accepted he would not argue that he met all the relevant criteria. He accepted his compliance was below the standard expected.

106. However, he sought to blame the Authority and others for his non-compliance with obligations and deadlines – either suggesting that the rules were not appropriate or proportionate or that it was difficult and onerous to comply or that he had been discriminated against.

107. In his written and oral evidence, as in his submissions, he concentrated upon allegations of discrimination and disproportionality which we return to further in the discussion section below. Nonetheless, to the extent it is relevant to the matters in issue, that we did not find him to be a reliable witness on these topics and do not accept the allegations that he has been the subject of discrimination. The Authority has established on the balance of probabilities that no direct or indirect discrimination occurred. We set out our reasons below.

108. The Applicant noted that his firm had been authorised to provide services since May 2011. He stated that he applied for the authorisation in June 2010 and believed that the Ministry of Justice (CMR Unit) intentionally delayed the progress of his application, because he was Polish. The average time for processing the application made at the same time by 'white-British' was 61 days. He believed that the decision about his application was made 10 months after it was received.

109. We reject any suggestion that there was any intentional delay in the processing of his original application to the CMR based upon him being Polish. There was no prima facie evidence to support this allegation of discrimination on the grounds of race, nationality or ethnicity.

110. The Applicant stated that he attended most of the meetings organised by the Authority before the Authority became the regulator for CMC firms (from 1 April 2019). He provided the Authority with most of the information that was requested (pre- and post- transition). In June 2018 he had a conversation with the members of the FCA team about the problems that CMC firms encounter. He stated that he had been clear from the beginning that he believed that the proposed regulation by the Authority would have a negative effect on small businesses owned by non-British nationals. He suggested that the prudential resources requirements might not be met by firms owned by non-British nationals or residents.

111. On 1 August 2019 he sent an e-mail to the Authority with a question about amendment of the financial requirement of £20,000 if the firm holds client money. The Authority replied that no change would be made and the firms must meet the requirement.

112. The Applicant provided no prima facie evidence to support this allegation of a discriminatory effect of the Authority's rules and their application thereof. We do not accept that regulation by the Authority had any discriminatory effect on small businesses owned by people of non-British background, heritage, nationality or ethnicity. The Authority has established on the balance of probabilities that their regulatory requirements do not have a discriminatory effect and were authorised by Parliament as being justified in the public interest.

113. On 16 July 2019 the Applicant attended a hearing at Kingston County Court as the Claimant to an action. He made an application seeking to set aside previous orders of the Court that had been made against him on grounds which included that the orders had been made because of his Polish nationality / race. He believed he had been unlawfully discriminated against. He believed that at that hearing the District Judge stated that he had always had a doubt that Polish was a race and whether the Polish people were protected from discrimination.

The Applicant informed the Authority about this fact when he made his application for authorisation (on 1 August 2019).

114. The County Court at Kingston went on to deliver a reserved judgment dated 16 October 2019 that dismissed his application and found it had no reasonable prospect of success. He appealed the judgment and was refused permission to appeal on the papers by HHJ Lethem on 13 January 2020 and thereafter following a hearing on 1 July 2021 by HHJ Freedland QC.

115. He stated that on 27 January 2021 the County Court at Kingston issued an order stating it approved a judgment for over £50,000 against him. The proceedings eventually stopped because the counterclaimant was declared bankrupt in December 2020. However, the Authority made its initial recommendation on 21 January 2021 and issued its Warning Notice on 5 February 2021. The Applicant believed that the Authority issued its warning decision at the same time as the damages award against him and the Authority was aware of this.

116. The Applicant believed that he had suffered harassment and victimisation from some members of the justice system. This had had a detrimental effect on his mental health. He started to believe that he was on a black-list and this would not stop unless he left the UK. He did not go to his GP because he did not believe that he would receive help. He reported the problem with the District Judge to various institutions but they refused to act. He believed that judges are allowed to discriminate.

117. We reject each of these allegations. The Applicant failed to provide evidence to support the above allegations and acted unreasonably in making them. He repeatedly accused the District Judge involved in the 2019 proceedings of being a "*racist*" and of "*hate speech*" in his Reply to the Authority's Statement of Case, RDC Representations and the Reference. He has also alleged that the judge had sought to victimise him because the refusal of the application was "*orchestrated*" by the same judge. His accusations of discrimination or racism have been rejected by the courts: see for example HHJ Freedland QC refusing permission to appeal and at [84] of the District Judge's judgment of 16 October 2019: "*Dealing with the allegation of bribery, it is a cardinal principle of English law that allegations of criminal behaviour cannot be made without evidence of such behaviour being advanced by the person making the allegation. The Claimant has not provided any such evidence.*".

118. In other documents he further accused the Ministry of Justice of "*covering up racism in the judiciary*"; he accused a transcription services provider of being involved in the falsification of the court transcript of the July 2019 hearing and stated that "*your company might be subject to a retaliation if you fail to meet someone's expectations*"; and in an email to the Delivery Manager of Kingston County Court stated: "*My right for fair hearing was infringed. It is obvious that the problem was caused by maladministration. I will take this further if the problem is not rectified at this stage. Every person involved in sweeping this problem under the carpet will have own publicity as the correspondence will be made public*."

119. We have read the underlying material and are satisfied that each of these allegations is manifestly without foundation. Notwithstanding any mental illness which he was experiencing, the Applicant has made personally threatening remarks or unwarranted, and potentially criminal, allegations against staff and officials involved in the administration of justice. The Applicant's behaviour goes far beyond legitimate criticism and / or complaint. His health is not a reasonable excuse for the tone and content of his communications. The Applicant has a legal education, regularly acts in legal settings and should be cognisant of the need for professional behaviour in such a context. In *Lewis Alexander,* which concerned another

applicant making allegations of criminal conduct, the Tribunal noted at [207] "*Any person acting reasonably would know that any allegation of fraudulent or other criminal activity has to be supported by cogent evidence*."

120. These matters go to undermine the Applicant's reliability as a witness: he has made repeat allegations of criminality and bad faith without a proper basis for doing so, such allegations having been rejected by the courts.

121. Similar allegations are now levelled against the Authority and members of its staff in the Applicant's documentary material – eg: '*The next matter to consider is the conduct of the Authority during the final stage of the authorisation process. Has the Authority acted in good faith? The Authority claims that the date of the initial decision has nothing in common with the date of the hearing in the proceedings the Applicant's*{sic} *believes are fraudulent and are continuous acts of discrimination and victimisation*'.

122. Having read the material provided by the Authority and heard the evidence of Mr Williams, we are satisfied that there is no substance in these allegations whatsoever. There is no prima facie, let alone, cogent evidence of the Authority discriminating against the Applicant, whether indirectly, by relying upon or accepting the decisions of the Courts in the application process, or directly by discriminating against him when refusing to grant him authorisation.

123. We accept that the Applicant genuinely believes he was subject to discrimination on the grounds of his race (his Polish nationality) on a regular basis. We also accept this has had a negative effect on him and his mental wellbeing. He started to believe that his application for authorisation by the Authority would be unsuccessful in any event because he was Polish. He believed that the application process would have been different if he had not been suffering from the mental health issues.

124. However, the Authority, rightly, decided that his evidence of being victim of discrimination was not sufficient and assistance was refused. Discrimination played no part in his application for authorisation being rejected. We are satisfied that the Authority acted reasonably and flexibly in giving the Applicant sufficient time to correspond and meet deadlines within the application process – its approach to the application process was reasonable.

125. The Applicant also complained that the Authority gave authorisation to a British sole trader ('the individual') to conduct a CMC business who he believed was in the same situation as him. The individual had been authorised by the Ministry of Justice since May 2007. The individual had to apply for authorisation to the Authority at the same time as the Applicant (31 July 2019). The decision on the Applicant's application was made on 28 May 2021. The Applicant showed the Tribunal a copy of the entry to verify the dates. The decision to approve the individual's application was made on 27 December 2021.

126. The Applicant did not accept the argument that there was any legitimate reason that individual's application took longer to process than his application. He believed that the Authority was being more flexible and offering the individual more time to respond to correspondence and to comply with requirements than he received and it did so on the grounds of race or nationality. This conduct was illegal as the Authority must comply with the obligation imposed by the Equality Act 2010 (Public Sector Equality Duty).

127. Again, there is no substance to these allegations – there is no evidence as to the nationality or ethnicity of the individual, nor the reasons why his application for authorisation took the time that it did to process. However, there is no prima facie evidence of any direct or indirect discrimination by the Authority. The evidential threshold has not been met.

128. We accept that the Applicant genuinely believes he is the victim of discrimination but he provided no medical evidence that supports his belief that this perception had an impact on his performance. Indeed there was evidence, as set out above, that he had not complied with the Authority's requirements, such as the lack of business continuity arrangements, from the outset of their regulation on 1 April 2019 and prior to the hearing before the District Judge in July 2019.

129. Further the Authority's role is not to investigate any allegations of discriminatory behaviour by courts or other bodies but to determine the application for authorisation as a CMC (ie. whether the Threshold Conditions are satisfied).

130. The Applicant, in the present proceedings and in other litigation (evidence of which he has disclosed during these proceedings), has demonstrated: (i) a repeated disregard for deadlines and orders imposed by courts and tribunals; and (ii) unprofessional behaviour for an individual who is an experienced user of legal services and is seeking regulatory approval to provide legal advice and representation in various jurisdictions.

The Applicant's submissions

131. The Applicant's submissions largely mirrored his written and oral evidence.

Discrimination

132. The Applicant contended that the Authority created and imposed rules that are in favour of CMCs of British nationality. He argued that the financial thresholds are disproportionate barriers that exclude CMCs with non-British backgrounds. A financial barrier had been rejected by the Ministry of Justice ('MOJ') in the past. The Authority had not fully explained why the financial thresholds were imposed and what effect they have on applicants who were previously authorised by the Ministry of Justice. The requests for information under the Freedom of Information Act were delayed and watered down.

133. He submitted that many applicants of non-British background had previously been successful in their application for authorisation to provide legal services under the old MOJ regime. However, the Threshold Conditions had eliminated over half the CMC firms that had previously been providing the services and far fewer firms had been authorised as CMCs by the Authority.

134. The Applicant argued that the requirement to record all phone calls is a barrier that prevents CMCs from safeguarding their clients' interests. Communications between clients and CMCs do not attract any right to legal professional privilege. This requirement has a negative effect on trust between clients and the services providers. The clients are in a better position if they choose to instruct solicitors. Another problem is the possibility of release of confidential information to third parties. Once an audio recording is in the internet or public domain then it can be obtained by unscrupulous opponents. Only corporations with IT teams are able to prevent the release of recording. Small firms can only rely on call recording services providers

which also decrease the clients' trust. Most of the small firms are owned by non-British residents or nationals.

135. He submitted that the Authority had stipulated during its internal hearing of 13 April 2021 that it offers assistance to the firms affected by discrimination but the help was not offered to the Applicant because it stated there was no evidence of discrimination. The Authority could have allowed for amendments to his application. The Applicant could not ask for permission to hold client money and for authorisation for advising, representing clients in the personal injury sector (because of problems with obtaining the acceptable professional indemnity policy). The permissions that the application progressed are: Financial Services sector, Employment sector, Housing Disrepair sector, CICA claims sector.

136. The Applicant argued he would cooperate with the Authority if the Authority acknowledged that he was the subject of discrimination and unfair treatment by the HM Courts and Tribunal Services.

137. He contended that the Authority treated more favourably another individual who was a successful applicant and was authorised as a sole trader CMC. The individual did not share the Applicant's characteristics. The individual made the application at the same time as the Applicant. His application process lasted 11 months longer than the Applicant's. This was the evidence that the Authority treated the Applicant less favourably than the other applicants. The breach of equality laws was sufficient reason for the Tribunal to uphold his reference. The Authority had failed to provide an explanation why it believed that there was no evidence of discrimination of the Applicant.

138. The Applicant submitted that the Authority must act fairly and take into account all circumstances that may affect the Applicant's performance. Their discrimination was not a crime but it was a serious breach of the law. The Applicant had 10 years of experience with clients who were victims of discrimination. The individuals affected seek mental health advice etc. This is the only reason why the Applicant did not seek help from mental health practitioners himself and provide evidence regarding the effect of discrimination upon him.

139. He submitted that the decision to refuse authorisation was not reasonably open to it. He invited the Tribunal to make findings and remit his application to the Authority and to give guidance how it should be dealt with.

Discussion and Analysis

140. We begin by addressing the Applicant's case before turning to the Threshold Conditions.

Proportionality

141.The Applicant submits that various of the Authority's rules are disproportionate, unreasonable or inappropriate for sole traders to comply with and seeks to justify much of his conduct during the application and proceedings on this basis.

142.This issue has already been considered by Judge Herrington, at [29] to [31] of the Suspension and Disclosure Applications decision with which this Tribunal respectfully agrees:

‘29. Mr Soszynski also misunderstands the extent of the Tribunal’s jurisdiction with regard to its review of the activities of the Authority. Mr Soszynski submits that the Tribunal has to consider if the rules set by the Authority are reasonable and are not discriminatory towards non-British applicants.

30. Those are not matters that fall within the jurisdiction of the Tribunal. The Upper Tribunal is a creature of statute and can only exercise the functions given to it by Parliament. In that regard, it hears references of decisions made by the Authority, including decisions such as the one in this case to refuse an application for authorisation to carry on regulated activities. In relation to such references, the role of the Tribunal is to determine the lawfulness of the Authority’s decision by reference to the legal framework set out in [FSMA] and the rules made thereunder by the Authority under the authority of Parliament. The Tribunal must interpret the requirements of those rules as they have been made and has no jurisdiction to substitute its own view, or that of the applicant, as to the reasonableness or appropriateness of the rules. That would be an unwarranted exercise of judicial law making, contrary to established constitutional principles. The Tribunal must apply the law as it has been laid down by Parliament or, in this case, by the Authority under the authority of Parliament, and cannot disapply or modify the requirements of any rule or regulation on the grounds that the rule is either unreasonable or inappropriate.

31. If any person, including a person regulated by the Authority, considers that any particular rules are unreasonable or inappropriate then the appropriate course is to lobby the Authority or, where appropriate, Parliament for a change in the rules. In the meantime, if the firm wishes to have the benefit of authorisation by the Authority it must comply with the rules as it finds them, not as how it would wish them to be.’

143. In light of the above dicta, it was not necessary for us to decide any point of principle as to the proportionality of the regulatory regime as a whole. Further, the Applicant’s challenge consisted of no more than an unparticularised and unsubstantiated complaint unsupported by any reference to any legal principles. Nonetheless, the Tribunal has already effectively found that the regulatory regime for CMCs, as mandated by Parliament and operated by the Authority, is proportionate in principle in that it satisfies the public interest in consumer protection and regulation of prescribed activities. It is for the legislature to decide the nature and extent of regulatory requirements and proportionality of restrictions. The legislature has decided that CMCs required a higher level of supervision than under the previous regime and the Authority should be given the power to enforce the conditions for authorisation.

144. We have also found that the Authority’s application of the regulatory regime was proportionate in so far as it affected the Applicant. We make brief further observations in relation to the reasonableness and proportionality of how the Authority approached its regulatory functions:

a) The Authority specifically considered issues associated with a “one-sized fits all” approach to CMC regulation during consultation. The Applicant provided his views as he was entitled to do so. Some requirements are in fact less onerous for smaller CMCs (e.g. prudential requirements and regulatory fees). We are satisfied that sole traders are not held to a higher or lower standard by the Authority than other firms. They are held to the standards appropriate and proportionate to their specific business model, the manner in which they are supervised and the particular risks associated with the range of permissions they apply for.

b) The Applicant alleges the rules applying to CMCs amount to indirect discrimination and that no assessment was made in accordance with the Equality Act. This is simply incorrect. Chapter 13 of PS 18/23 provided detailed feedback in response to the Equality Impact Assessment that was carried out as part of the Authority’s consultation process.

145. We are satisfied that there was a consultation paper on the new rules that support the Authority's suggestion that there was reasonable consideration before Parliament enacted the relevant Act placing regulation of CMC in the hands of the Authority. Further, sole traders, such as the Applicant were given advance notice rule changes by virtue of the December 2018 policy statement so had 4 months' notice and had a reasonable opportunity to get their business arrangements in order to ensure that they could comply.

146. We are satisfied that the requirements and obligations were not too onerous. We were given evidence by the Authority that at least 33 CMCs obtained appropriate authorisation from the Authority (including a limited number of sole traders) and 40 firms that must have obtained bank counter signed authority letter or necessary PII. We are satisfied it was reasonably possible for applicants to comply with the new regime in operation from 1 April 2019.

147. In practice, the temporary permission regime and the deadline of 31 July 2009 gave the Applicant further time to comply with the Authority's requirements. When considering the application of the regulatory regime to the Applicant we are satisfied that the Authority acted proportionately, flexibly and reasonably in its dealings with the Applicant. Throughout the application process it made reasonable allowances for the Applicant's circumstances – it permitted him to combine answering requests alongside his work commitments or illness. During this time the Applicant had the benefit of a temporary or interim permission to continue his business and he was given an extended period of time to demonstrate compliance.

148. At one point the Applicant in his submissions suggested that he only sought authorisation in order to wind down his business. This was not supported by the documentary evidence provided in support of his application which anticipated further and fresh business being conducted (his application stated that he had 20 clients at the time of authorisation and hoped to have 30 by 12 months after). In any event, it would have no bearing on his need to satisfy the Threshold Conditions.

Discrimination

149. We have considered the Applicant's allegations of discrimination against the Courts and the Authority and made factual findings notwithstanding the observations of Judge Herrington in his decision dated 18 February 2022, with which we agree. Judge Herrington stated the following at [61]-[70] in his decision on the Suspension and Disclosure Applications:

'61. Mr Soszynski says that he was the subject of discrimination as a Polish national and received a biased judgment in the County Court, as a result of which he reported the judge to the Judicial Conduct Investigation Office and the Ministry of Justice. He considers the decision by the Authority to give Phenix a Warning Notice proposing to refuse the application for authorisation is an act of victimisation for reporting the judge. He notes that this decision was made at a meeting on 27 January 2021, the same day on which a hearing had been scheduled for the determination of damages and costs in the civil matter, whereas the Authority had been required to make its decision on Phenix's application by 10 December 2020.

62. Mr Soszynski contends that this Tribunal is obliged to consider the fact that Phenix was subject to discrimination by the Authority. He also says that the Tribunal must consider the conduct of the Authority during the final stages of the authorisation process. He rejects the Authority's contention that the date of the Warning Notice and the County Court hearing were a coincidence. Accordingly, he has

asked the Authority to disclose information which he needs to establish that the Authority was guilty of discrimination against him in the decision-making process.

…

66. The Tribunal's jurisdiction in this case is concerned with the question of whether the Authority was right to have refused Phenix's application on the grounds that it had failed to satisfy the Authority that it had met the Threshold Conditions for authorisation. The subject matter of the reference is therefore confined to considering whether the Authority has reached a decision on the application that could have been reasonably arrived at. That determination is made by reference to the matters on which the Authority relies as set out in its Statement of Case. As can be seen from the summary of the Decision Notice set out above, the question is whether the Authority was entitled to rely on the matters that it did in refusing the application.

…

70. All of the requests made by Phenix relate to the Authority's processes for assessing applications for authorisation. In the light of what I have said above as to the nature of the Tribunal's jurisdiction and its role, the documents requested by Mr Soszynski are clearly irrelevant to the questions that the Tribunal needs to determine on this reference, namely, whether the Authority's decision to refuse authorisation was reasonably arrived at. That question will be determined without any need to consider whether or not Mr Soszynski has been discriminated against by the Authority on the grounds of race. The Tribunal will look purely at the way in which the business operates and the fitness and properness of Mr Soszynski. As I have indicated above, that is a fresh assessment made without reference to the manner in which the Authority reached its decision.'

150. In addition to his allegations regarding indirect discrimination, the Applicant alleged at several points in his submissions and evidence that he is the victim of direct discrimination / victimisation by the Authority. This allegation was previously raised before the Authority's Regulatory Decisions Committee.

151. The Applicant was also entitled to make a formal complaint in respect of the Authority's handling of the application. He took up this opportunity. However, the Authority's Complaints team ultimately closed the complaint due to the Applicant's repeated failure to provide further information.

152. The only new argument the Applicant made in support of his case as to discrimination related to another individual operating as a sole trader whom he claims the Authority treated differently. The Applicant provided several documents relating to this sole trader. We have rejected these documents as giving rise to any prima facie evidence of discrimination. We also find that this evidence is irrelevant: it is for the Applicant to satisfy the Authority that he will meet the Threshold Conditions: a comparison to a different applicant, in different circumstances who may or may not be of a different nationality does not evidence why the Applicant should be authorised.

153. We have rejected all these allegations for the reasons set out within our factual findings. Importantly, we have also found that the Applicant has demonstrated a pattern of making baseless accusations against public bodies and their staff of criminal and / or discriminatory behaviour. The Tribunal does not need to consider the law regarding the Equality Act or the Tribunal's public sector equality duty. This is for the simple reason that the Applicant has not come close to meeting the evidential burden to raise as a substantive issue that the Authority's Decision was based on discrimination against the Applicant due to his Polish nationality.

<u>The Threshold conditions</u>

154. For the reasons set out below we are satisfied that the decision to refuse the Applicant authorisation to operate as a CMC was reasonably open to the Authority. We are satisfied that on the balance of probabilities that the Applicant did not meet the three Threshold Conditions as relied upon by the Authority.

The effective supervision Threshold Condition – 2C

155. We rely on the findings of primary fact that we have made above. We are satisfied that the Authority has established on the balance of probabilities that the Applicant failed to provide information in a timely manner and cooperate with the Authority in the ways set out.

156.We should note that the Authority is reliant on firms providing adequate information in a timely, open and cooperative manner in order to discharge its statutory objectives. This is particularly the case for smaller firms which are not subject to proactive supervision by dedicated supervisors (as here). This point was made by the Financial Services and Markets Tribunal in *Eversure Financial Services Limited and Frederick George Young v FSA* FIN 2005/0027; FIN 2005/0028 which related to a failure by the applicant to disclose relevant information on the application forms for the firm and Mr Young (its principal). The Tribunal upheld the Authority's decision to refuse to authorise Eversure and approve Mr. Young. At [58] the Tribunal stated:

> "[…] We start by observing that the Authority's regulatory function generally and its statutory approval function in particular is entirely dependent on its being provided with full and accurate information by the individuals seeking approval. Mr Honey's evidence is in point here. The Authority cannot carry out its statutory approval responsibility without having the information to assess the candidate's integrity and willingness to be open and honest with it. If it fails to insist on absolute disclosure, it will not be fulfilling its public function. In this regard the Authority is entitled to expect anyone who performs or intends to perform controlled functions to adhere to high standards of competence and capability. […] Understandably the Authority, as Mr Honey explained, places a great deal of importance on an open and co-operative relationship with firms. Because small firms do not have regular contact with supervisory staff at the Authority, it is important that the Authority can rely on them to bring to its attention voluntarily any matters relating to their ability to comply with relevant rules and requirements."

157.This passage was cited with approval by the Tribunal more recently in *Jon Frensham v The Financial Conduct Authority* [2021] UKUT 0222 (TCC) at [69] and [70]. The effective supervision Threshold Condition was also considered in the cases of *Lewis Alexander* and *Köksal.* In *Lewis Alexander*, the applicant (Mr Johnson) ultimately provided much of the information requested by the Authority. However, the Tribunal noted at [202] to [203]:

> "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…"

158. In *Köksal*, the Tribunal found (at [150]):

> *"*Furthermore, we agree with Mr Baker that the manner in which Dr Köksal dealt with the Authority in relation to its requests for information means that the Authority could not be satisfied that Dr Köksal would engage with the Authority in an open and cooperative manner in relation to his consumer credit business, for the reasons we summarised at [134] above. The confrontational style that Dr Köksal adopted in relation to his correspondence with the

> Authority, and his contemptuous dismissal of the abilities of the Authority staff with whom he dealt, are not to be expected from a firm which seeks to be open and cooperative with its regulator. As the Authority's guidance in COND, set out at [16] and [17] above demonstrates, the Authority is entitled to take into account, when considering whether a firm meets the Threshold Conditions, whether the firm is ready, willing and organised to be open and cooperative with the Authority and whether it has in fact been open and cooperative in all its dealings with the Authority."

159. These dicta apply with equal force to the Applicant's attitude to and lack of cooperation with the Authority.

160. We are satisfied that on the balance of probabilities that the Applicant's approach to the application as set out above means the Authority cannot be satisfied that it will receive adequate and timely information in order to supervise the Applicant effectively. COND 2.3.3G states that an applicant must be ready, willing and organised to comply with Principle 11 and SUP. COND 2.3.3 G states that, when assessing this Threshold Condition:

> "*factors which the[Authority] will take into consideration include, among other things, whether (1) it is likely that the [Authority] will receive adequate information from the firm, and those persons with whom the firm has close links, to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the [Authority] is responsible and to identify and assess the impact on its statutory objectives; this will include consideration of whether the firm is ready, willing and organised to comply with Principle 11 (Relations with regulators) and the rules in SUP on the provision of information to the [Authority]*…"

161. We accept that when examining the provisions of COND one has to assess matters cumulatively – one isolated breach, depending on the type and severity, may not be sufficient or proportionate to establish that the Threshold Condition is not met. However, in the Applicant's case we are satisfied that there are repeated and consistent breaches across a number of key areas that entitled the Authority to conclude that the Threshold Conditions were not met.

162. The Tribunal, like the Authority, has concluded that the Applicant fails to satisfy the Condition and the COND criteria because:

a) He is not ready; as he took 19 weeks to supply the supporting documentation required in the application form and only after multiple requests from the Authority. Much of this documentation was basic and fundamental (e.g. the Business Plan, accounts, Vulnerable Customer Policy). Numerous other requests for information were not complied with within the timeframe provided.

b) He is not willing; as he has repeatedly disputed the need to comply with certain rules rather than provide requested information demonstrating his compliance. Certain requested information also still remains outstanding up to 21 months after it was sought.

c) He is not able or organised; as (in addition to the above delays) he has been apparently unaware of or failed to report regulatory breaches relating to PII, client money, and prudential requirements. The Applicant had also not applied for all the permissions necessary to conduct his business. He has also not amended his application to reflect the fact he is no longer seeking the personal injury claims management permission including by submitting revised documentation such as a Business Plan, financial accounts etc.

163. For these reasons, we, like the Authority, are satisfied on the balance of probabilities that the Applicant cannot and will not provide the Authority with adequate information in a timely or open and co-operative manner as required by Principle 11. The Authority was therefore entitled to conclude that the Applicant therefore does not meet the standards described in COND 2.3.3 G.

Appropriate resources condition – Threshold Condition 2D

164. The appropriate resources Threshold Condition supports the Authority's consumer protection objective by requiring firms to have effective means by which to manage risks (see COND 2.4.2G and PRIN 3). Guidance associated with this Threshold Condition includes COND 2.4.2 G. In so far as it is relevant, that guidance reads:

"*2) In this context, the [Authority] will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources…, non-financial resources and means of managing its resources...*

3) High level systems and control requirements are in SYSC. The [Authority] will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate nonfinancial resources for the purpose of the threshold conditions set out in paragraphs 2D and 3C to Schedule 6 of the Act."

165. COND 2.4.4(2) G states that relevant matters to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, this Threshold Condition may include whether there are any indications that the firm may have difficulties complying with any of the Authority's prudential rules.

166. We have made numerous factual findings in relation to the Applicant's non-compliance with requirements under the appropriate resources condition above.

167. For example, the Applicant has not demonstrated that he is able to meet and continue to meet its overall £25,000 prudential requirement specified by CMCOB 7.2.7 R and CMCOB 7.2.9 R. As noted above, the Applicant questioned the fairness of the rules in CMCOB with regard to the prudential requirements for CMCs, rather than demonstrating compliance with the requirements.

168. Further, the PII policy that the Applicant provided (which only provided cover until November 2020) did not meet the requirement in CMCOB 7.4.3 R for CMCs' PII to cover any claims for which they may be liable as a result of negligent acts, errors or omissions, as it features an exclusion specifically referring to claims under the Act. The Applicant was not aware of this exclusion and therefore has not had adequate PII cover during the times it was required.

169. The Applicant's general systems, controls, procedures and resources are inadequate. His vulnerable customer policy does not cover the importance of protecting vulnerable clients' personal data or ensuring they have appropriate legal representation where this is needed. This is particularly concerning as the Applicant is unable to represent clients in court himself. The Applicant is also unable to communicate with clients over the telephone, as he will not operate call recording facilities. These limitations are either omitted or misrepresented in the

Applicant's contractual documents, for example, because they refer incorrectly to the possibility of making complaints by telephone.

170. Moreover, the Applicant does not have systems and controls such as locum arrangements to mitigate business continuity risks. In the second competency interview on 9 September 2020, the Applicant did not provide any details of meaningful business continuity arrangements, and instead focused on the fact that many sole traders could have problems with business continuity. The Applicant therefore does not have adequate business continuity plans.

171. For these reasons, the Applicant does not appear to have adequate systems and controls to ensure his compliance with the Authority's requirements and the protection of his clients. He has not supplied evidence of the financial and non-financial resources the Authority would expect of compliant sole trader firms, such as a comprehensive PII policy, adequate prudential reserves and business continuity arrangements.

172. In addition, the Applicant has not demonstrated that he has adequate or appropriate human resources. The Applicant has demonstrated a lack of awareness of the rules with which he must comply, which leads to the conclusion on the balance of probabilities that he is not competent to run a firm in a compliant manner.

173. In terms of financial resources:

a) the Applicant's PII policy was inadequate during the period he was under a temporary permission. It has not been renewed;

b) the Applicant had failed to demonstrate how he will comply with the prudential requirements in CMCOB. Further, for the period he was authorised under a temporary permission, he was in breach of the overall £25,000 prudential requirement in CMCOB 7.2.7 R and CMCOB 7.2.9; and

c) the Applicant is not required to hold PII cover (on the basis he is no longer seeking the personal injury claims management permission). However, the importance of him having appropriate financial resources overall is illustrated by the Applicant having previously been counter-sued for professional negligence which, on his own account, could have resulted in his bankruptcy had the claim been successful. He has also previously had a costs order of £3,340 imposed on him by the County Court and experienced non-payment of fees (between £24,000 and £31,000).

174. In terms of non-financial resources, we, like the Authority, have concluded that the Applicant's systems, controls, procedures are inadequate, particularly in relation to his: a) approach to telephone recording and complaints; b) contractual documentation; and c) business continuity arrangements.

175. The Tribunal is satisfied that the Authority was entitled to conclude that the Applicant's failures to manage such risks could be particularly detrimental to customers when considered cumulatively. For instance, a lack of business continuity arrangements may be particularly detrimental to vulnerable customers who may struggle to arrange alternative representation at short notice and have not been clearly informed of this risk. The importance of such risk mitigation measures to avoid detriment to the Applicant's customers is illustrated by events to date: for example, the Applicant has routinely missed tribunal and regulatory deadlines due, in

part, to illness and in 2019 he faced a professional negligence claim which could have forced the wind-down of his business.

176. For all the reasons that have been set out above, we, like the Authority, have concluded that the Applicant has not complied with requirements conditions, rules and guidance. In conclusion, the Authority was entitled to conclude that Applicant has failed to satisfy the Authority that he has financial or non-financial resources appropriate to the regulatory activities he is seeking to carry on.

The suitability Threshold Condition 2E

177. The Tribunal relies on the factual findings outlined above and reasoning in respect of the effective supervision and appropriate resources when coming to its conclusion on the suitability Threshold. The Applicant made repeated, unfounded and abusive allegations against the Authority and the justice system which undermines the evidence he gave.

178. The Tribunal is satisfied that the facts and matters upon which the Authority relied, and the Tribunal has accepted, in relation to the 'Effective supervision' and 'Appropriate resources' Threshold Conditions, establish that the Applicant also fails to satisfy the Suitability Threshold.

179. The Tribunal's findings in relation to Threshold Conditions 2C (effective supervision) and 2D (appropriate resources) are relevant to the suitability Threshold Condition. The guidance in COND 2.5 makes clear that matters relevant to either of those Threshold Conditions can also be relevant to an assessment of an applicant's suitability. In particular:

a) COND 2.5.1A(1) states that the applicant must be a fit and proper person having regard to all the circumstances, including the need to ensure that the applicant'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.

b) COND 2.5.4G (2)(a) states that examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the suitability Threshold Condition include, but are not limited to, whether the firm can demonstrate that it conducts, or will conduct, its business with integrity and in compliance with proper standards; that has, or will have, a competent and prudent management; and can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

c) COND 2.5.6 G provides that examples of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, this Threshold Condition include whether the firm has been open and co-operative in all its dealings with the Authority and any other regulatory body (see Principle 11 (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the regulatory system (such as the detailed requirements of SYSC).

180. In summary, we, like the Authority, are satisfied that the Applicant has not cooperated with it in the way the Authority would expect of a regulated firm based on the repeated failures by the Applicant to supply the Authority with the information it needs to make an assessment of the application and has failed to rectify the concerns raised by the Authority. He has demonstrated an attitude of active frustration of the Authority based upon his misplaced sense of grievance. He has sought to justify his non-compliance based on blaming others rather than

taking responsibility for his own failures. In essence, he believes that the Authority's requirements are unjustified and he should not be required to comply. This attitude is long held, persistent and unlikely to change.

181. The Authority was entitled to conclude that the Applicant also does not appear to be competent to run the business in a compliant manner. For example, he has failed to communicate clearly to clients about the services that he can and cannot provide (including the fact that he does not have rights of audience, and instead acts for clients as a McKenzie friend), and implement compliant client money procedures. This means that the Authority was entitled to conclude that the Applicant has not demonstrated that he is ready, willing and organised to meet this Threshold Condition now, or that he would be able to continue to meet the required standard.

182. In conclusion, we are satisfied that the Authority was entitled to conclude that the Applicant is not a fit and proper person to run a regulated claims management business: he has failed to cooperate with the Authority in the manner it would expect of a regulated firm; he has failed to show he is competent or capable to implement appropriate systems and controls to enable his firm to comply with the Authority's rules; and he has failed to demonstrate that he is ready, willing or organised to comply with regulatory requirements and standards imposed upon him.

Conclusion

183. We, like the Authority, have drawn inferences about the Applicant's unwillingness and inability to cooperate with the Authority in the future based on his past behaviour such as: his failure to provide much information on time or at all and the level of resistance that the Applicant demonstrates when he considers requests to be disproportionate or rules to be unfair. This has led to the Authority having to expend unnecessary resources in order to obtain information from the Applicant that should have been provided without question.

184. Some of the individual instances of the Applicant's non-compliance with requirements within the Threshold Conditions or guidance might be relatively insignificant if they occurred in isolation but they have not. There have been a number of breaches of each of the three relevant Threshold Conditions and they have been repeated – they must therefore be viewed cumulatively. They demonstrate the Applicant's approach and mindset. It is telling that in his skeleton argument, the Applicant stated he would cooperate with the Authority if they would acknowledge that he has been subject to unfair or discriminatory treatment by the Courts and Tribunals system. It is apparent that the Applicant's cooperation with the Authority has been and would be entirely conditional – the Applicant will only comply with conditions and requirements when he chooses to and when he perceives them to be fair. His attitude is unsuitable for regulation. This situation of the Applicant's own making – there have been significant breaches of the Threshold Conditions when examined both individually and cumulatively that entitled the Authority to refuse the Applicant's application.

185. We are satisfied that the Authority was entitled to conclude that the Applicant is not ready, willing or able to be supervised or regulated by the Authority– his conduct throughout the application process, as confirmed by his evidence to us, establishes this. He repeatedly disputed the need to comply and failed to provide evidence of compliance with the Threshold Conditions which are designed to support consumer protection and reduce the risks inherent in carrying out regulated activity.

186. For the reasons outlined above, the Tribunals finds that the Authority's Decision to refuse the Applicant authorisation as a CMC was within the range of decisions reasonably open to it.

187. We dismiss the Reference.

Signed on Original

JUDGE RUPERT JONES
UPPER TRIBUNAL JUDGE

RELEASE DATE: 13 September 2022