



Reference number: FS/2015/0018

FINANCIAL SERVICES - Further application for direction to suspend effect of Decision Notice until reference disposed of - whether Tribunal satisfied that the direction to suspend the effect of the notice would not prejudice the interests of consumers - No - Application dismissed- Rule5(5) The Tribunal Procedure (Upper Tribunal) Rules 2008

**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

PDHL LIMITED

Applicant

- and -

THE FINANCIAL CONDUCT AUTHORITY

Respondent

TRIBUNAL: JUDGE TIMOTHY HERRINGTON

Sitting in private at The Royal Courts of Justice, Strand, London WC2 on 28 January 2016

Tom Weisselberg QC and John Virgo, Counsel, instructed by Michelmores LLP, for the Applicant

Javan Herberg QC and Mark Fell, Counsel, instructed by the Financial Conduct Authority, for the Respondent

DECISION

Introduction

1. Following a hearing held on 7 January 2016, the Tribunal emailed a draft decision to the parties which indicated that the Tribunal had decided to dismiss the application made by the Applicant (“PDHL”) pursuant to Rule 5 (5) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (“the Rules”) to suspend the effect of a Decision Notice given by the Financial Conduct Authority (“the Authority”) on 16 December 2015 (“the Decision Notice”). In accordance with the Tribunal’s normal practice, the decision had been circulated in draft purely for the purpose of inviting the parties to submit any typographical or similar errors for consideration by the Tribunal before it finalised the decision.

2. On 18 January 2016, prior to the draft decision being finalised, PDHL made a number of further applications to the Tribunal in the light of what it contended was a material change in circumstances that had occurred since the hearing on 7 January 2016. The essence of those applications was that the draft decision should be either reconsidered and reversed pursuant to the Tribunal’s case management powers in Rules 2 (1), 2 (2) and 5 (2) of the Rules or set aside under Rule 43 (1) of the Rules and reversed in the light of that change of circumstances. This decision deals with the question as to whether the draft decision should be reconsidered or set aside and the associated applications that if that were to be the case the conclusion in the draft decision that publication by the Authority of the Decision Notice should not be prohibited and that the Register of references maintained by the Tribunal should contain particulars of PDHL’s reference of the Decision Notice should also be reconsidered or set aside.

3. I gave oral decisions after the hearing of these further applications on 28 January 2016 dismissing the applications and what follows are my reasons for so doing.

Background

4. For the reasons set out below, as indicated to the parties at the conclusion of the hearing of the further applications, I have decided that procedurally the correct approach to take was to issue the draft decision in its original form, having incorporated the corrections submitted by the parties, and to treat the applications referred to at [2] above as a new application pursuant to Rule 5 (5) of the Rules for a suspension of the effect of the Decision Notice.

5. Consequently, this decision should be read in conjunction with the decision on the original Rule 5 (5) application which was released to the parties immediately following the hearing of the further applications on 28 January 2016. Many of the findings in that decision apply equally to the findings in this decision and rather than repeat them here I make reference to them where necessary and simply deal with the additional matters that have arisen since the hearing of the original application on the assumption that both decisions will be read together. Accordingly, terms and phrases

defined in the decision released on 28 January 2016 (“the Original Decision”) bear the same meanings in this decision.

Procedural matters

5 6. The basis of PDHL’s further applications is that the findings at [64] and [66] of the Original Decision that a trade sale of all or any part of PDHL’s business in the immediate future was unlikely had been overtaken by events since the hearing on 7 January 2016.

10 7. In those circumstances, PDHL contends that the Tribunal had power to reconsider the draft decision pursuant to Rules 2 (1), 2 (2) and 5 (2) of the Rules and by analogy with the judgments in *In re Barrell Enterprises* [1973] 1 WLR 19 and *In Re L* [2013] 1 WLR 634. Alternatively, it contends that the draft decision should be set aside pursuant to Rule 43 (1) of the Rules.

15 8. It is clear from the cases cited at [7] above that a judge is entitled to reverse his decision at any time before the order has been drawn up and perfected. However, it is also clear from those cases that the power should only be exercised in exceptional circumstances. At [27] of *Re L* Baroness Hale referred to the need to reconcile the statement of principle “with the very proper desire to discourage the parties from applying for the judge to reconsider, with the desire to do justice in the particular circumstances of the case”. It is also clear from the cases that a carefully considered
20 change of mind on the part of the judge can be sufficient, whether or not fresh evidence comes to light before the order is perfected.

25 9. Indeed, without referring to the authorities cited above, this Tribunal in its tax jurisdiction recently agreed to reconsider a decision which had been handed down in draft where the parties in considering the draft indicated that the judge had made a mistake as to the amount of tax at stake: see *Romie Tager QC v HMRC* [2015] UKUT 0663 (TCC). The judge relied on the overriding objective in Rule 2 of the Rules which requires the Tribunal to deal with cases fairly and justly.

30 10. It is clear, however, that the judge relied purely on the overriding objective in reconsidering his decision in *Tager* as a last resort. His decision, unlike the Original Decision here, was not an interlocutory or case management decision and the Rules make specific provision for revisiting such decisions.

11. In particular, Rules 5 (2) and Rule 6 (5) of the Rules provide as follows:

Rule 5 (2):

35 “The Upper Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.”

Rule 6 (5):

“If a party or any other person sent notice of the direction under paragraph (4) wishes to challenge a direction which the Upper Tribunal has given, they may do so by applying for a number direction which amends, suspends or sets aside the first direction.”

5 12. These provisions were considered by this Tribunal in its tax jurisdiction in *Clear PLC (In Liquidation) v Director of Border Revenue* (2014) where the tribunal held at [45] that it was open to the Tribunal to consider setting aside a previous direction provided it was satisfied that there was a change of circumstances or some other exceptional circumstances, although it should do so only if it was satisfied that in
10 accordance with the overriding objective it was in the interests of justice to do so.

13. It seems to me that these rules are particularly apposite in this case. Mr Weisselberg did in fact rely on Rule 5 (2) in his submissions but did so on the basis that it was open to me to rely on that rule in setting aside the draft decision. I accept Mr Herberg’s submission that it is not open to me to invoke the rule in the case of a
15 draft decision but it was common ground that I had that power in relation to the decision when perfected. Mr Herberg also accepted that a change of circumstances since the original direction was issued would provide a basis on which the power to set aside the earlier direction could be exercised. I agree with him that the situation is analogous to where injunctive relief has previously been given and a change of
20 circumstances would give rise to the necessity to reconsider the earlier decision.

14. It therefore seems to me that it is in the interests of justice in the light of the change of circumstances that have been presented by PDHL in this case that I should consider whether it is in the interests of justice to set aside the direction dismissing the Suspension Application and replace it with a direction that the effect of the Decision
25 Notice be suspended pursuant to Rule 5 (5) of the Rules.

15. For those reasons I decided at the end of the hearing of PDHL’s applications to hand down the Original Decision and treat the hearing as having been the hearing of an application to set aside the Original Decision and remake it so as to grant the suspension now sought.

30 16. For completeness, I deal also with Mr Weisselberg’s submission that the draft decision should be set aside pursuant to Rule 43 of the Rules. So far as is material the present purposes this rule provides as follows:

“(1) The Upper Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant part of it, if –

35 (a) the Upper Tribunal considers that it is in the interests of justice to do so; and

(b) one or more of the conditions in (2) are satisfied.

(2) The conditions are –

40 (a) a document relating to the proceedings was not sent to, was not received at an appropriate time by, a party or a party’s representative;

(b) a document relating to the proceedings was not sent to the Upper Tribunal at an appropriate time;

(c) a party, or a party's representative was not present at a hearing related to the proceedings; or

5 (d) there has been some other procedural irregularity in the proceedings.”

17. Mr Weisselberg submits that Rule 43 (1) is engaged because documents evidencing sales of PDHL's customer details were not sent to the Tribunal at an appropriate time (in that they were not then available but are relevant to the exercise
10 of the Tribunal's powers under Rule 5 (5)).

18. I reject this submission. The scope of Rule 43 was considered in detail in *Tager* where Judge Bishopp concluded at [16] to [18] as follows:

15 “16. It does not seem to me that this rule is engaged. While I accept that it is in the interest of justice to correct a decision which does not accurately reflect the evidence, and that correspondingly sub- rule (1) (a) is met, I am not persuaded that in this case any of the conditions listed in sub- rule (2) is satisfied. Miss McCarthy accepted that this was so in respect of paras (a) to (c), and relied instead on para (d). Her argument was that my misunderstanding or misinterpreting the evidence amounted to “some other procedural irregularity”, a phrase which should be given a wide interpretation.

20 17. While I agree that the phrase, by its own terms, invites a wide interpretation, and makes it clear that what appears in paras (a) to (c) does not represent an exhaustive list, it is apparent from the manner in which the conditions set out that para (d) must be read in its context, and be interpreted consistently with what precedes it. The prior paragraphs provide examples of errors affecting the conduct of the hearing: thus paras
25 (a) and (b) do not relate to a document which party has omitted to produce because he did not then realise its evidential significance, but which he now, belatedly, wishes to introduce, but one which was not available to the tribunal, or to one party, because of a transmission error. Paragraph (c), as worded, is a little odd because rr 37 (4) and 35 provide for circumstances in which a hearing may properly proceed in the absence of a
30 party..... and what is plainly meant is a case in which the tribunal erroneously believed that it was in order to proceed in the party's absence when it was not, for example in a case in which a party did not attend because the tribunal failed to notify him of the hearing or if he was prevented by an unforeseen circumstance from attending.

35 18. The error on which Miss McCarthy relies is not of the same character. It occurred, not because a document which should have been available to me was absent, because Mr Tager was not present, or for any similar reason, but because (if Miss McCarthy is right) I failed to understand the evidence available to me, or made a finding which was not supported by that evidence. That is, classically a judicial rather than procedural error. In my view the manner in which the rule has been drafted makes it clear that it
40 was intended to apply only in the case of failings which have led to a flawed hearing, and that it cannot be extended to encompass judicial errors.”

I respectfully follow that conclusion and reject Mr Weisselberg's submission that Rule 43 has any application in this case. None of the points he makes relate to any perceived procedural irregularity relating to the hearing held on 8 January 2016.

The change of circumstances

19. Mr Gerard Finneran, a director of PDHL, filed a third witness statement giving evidence of a material change of circumstances regarding the progress towards concluding sales of PDHL's client book to various third parties since the hearing on 7
5 January 2016. In addition, I was provided with various email correspondence relating to concerns regarding StepChange, one of the organisations that the Authority relies on in relation to the safety net arrangements it has put in place to deal with the possibility that PDHL and other firms with interim permissions lose those permissions. Mr Garry Hunter, a senior manager in the Credit Authorisations Division
10 of the Authority, filed a second witness statement in response to Mr Finneran's evidence to which Mr Finneran replied in a fourth witness statement. After the hearing, I made a further direction that Mr Hunter should file a third witness statement dealing with the StepChange position.

20. Mr Finneran's evidence shows that the third potential purchaser that I referred to
15 at [64] of the Original Decision (which I will now refer to as Purchaser A) was now on the point of exchanging contracts for the purchase of the customer details of 5,000 of PDHL's customers. This information was further updated at the hearing on 28 January 2016 in that an agreement had been entered into and in fact had now
20 completed. On the evidence before me at the hearing on 7 January 2016 I concluded that the conclusion of this transaction was unlikely in the immediate future. The completion of the purchase contract is clearly a change of circumstance that I should now take into account.

21. Mr Finneran's evidence also disclosed ongoing discussions with a number of
25 other potential purchasers to acquire the customer details of a large number of PDHL's other customers. The position on these was updated at the hearing as follows:

(1) A contract is being negotiated with Purchaser B for the acquisition of the details of a further 7,000 customers. All points of principle had been agreed and exchange of contracts expected on 29 January 2016 with completion early in the following week.

30 (2) A contract is being negotiated with Purchaser C for the acquisition of the details of a further 1,250 customers, with Purchaser D for the acquisition of the details of a further 400 or 500 customers, with Purchaser E for the acquisition of the details of a further 5,000 customers, again with exchange of contracts in all these cases expected on 29 January 2016 with
35 completion early in the following week.

(3) Discussions continue with other potential purchasers, including Purchaser F for the acquisition of the details of a further 3,000 customers but no heads of terms had yet been concluded in relation to that potential purchase, and Purchaser G for the acquisition of the details of a further
40 5,000 customers in respect of which heads of terms have been agreed and the parties were moving towards a legal agreement capable of exchange.

22. Taken together with the completion of the sale to Purchaser A, if all of these agreements were concluded then the customer details of substantially all of PDHL's

customers would have been made available to other firms who would be in a position to take forward possible new arrangements with those customers.

23. Mr Hunter has expressed concerns in his evidence as to the sales and potential sales which can be summarised as follows:

5 (1) It is unclear how many of the prospective purchasers will actually enter into a sale agreement and, if they do, that they will seek to contact all of the customers whose details they acquire.

10 (2) PDHL recognises that up to 40% of the customers concerned will need to be referred to the free sector for help. In those circumstances, delaying the lapsing of PDHL's interim permission and activation of the safety net arrangements so that it can explore a sale simply delays these customers getting the advice they need (and leaves them paying fees to PDHL for its services – about which the Authority has clear concerns – in the interim).

15 (3) It is through no fault of PDHL's customers that they will need to find a new debt management provider. In the circumstances, it is clearly to PDHL's customers' benefit that they will not be charged for the services that they will receive under the Authority's safety net arrangements.

20 (4) The Authority has serious concerns that the effect of PDHL's proposals would simply be to "move" the risk that customers will suffer detriment, either from one firm to another or by delaying a customer going to MAS.

25 (5) All of the potential purchasers currently hold interim permissions. The Authority has concerns as to the quality of the advice processes of a number of these firms from conducting file reviews and concerns that the increase in customer numbers (which in some cases is substantial and rapid) will occur in circumstances where it may not have had sufficient time to prepare and test its processes for the change, will impact the quality of advice that the firm can provide to customers.

30 24. As indicated at [21] above, PDHL entered into a contract with Purchaser A on 26 January 2016 for the sale of the data held by PDHL in respect of 5,000 of its customers. I was told that this agreement ("the Agreement") is also being used as a template for the agreements being or to be negotiated with other potential purchasers so it is helpful to set out some of its principal terms.

35 25. The Agreement is described as an "asset sale agreement"; the sole asset to be sold is the data referred to above. The consideration for the sale is primarily the payment to PDHL of a percentage of the revenue actually received by Purchaser A from a former PDHL customer who, having been appropriately advised, enters into a DMP with Purchaser A. These payments are to continue for a period of eight years from the date of completion of the Agreement.

40 26. The sale of the data under the Agreement is of course designed to facilitate the transfer of the customers concerned from PDHL to Purchaser A. For that to happen, the customers concerned will have to make contact with Purchaser A, receive

appropriate advice and then enter into a new agreement for a DMP or other product with Purchaser A.

27. Accordingly, the Agreement contains provisions to facilitate this transfer process. Schedule 1 to the Agreement provides that as soon as possible following completion of the Agreement and by no later than 28 days after such completion, Purchaser A will contact all of the customers concerned by means of sending in a single envelope two letters, one addressed from PDHL and one from Purchaser A.

28. The letter from PDHL informs the customer that PDHL “will no longer be managing your Debt Management Plan” and that the customer can now seek free advice from MAS or could explore whether to continue on a fee debt charging DMP with Purchaser A. The letter will then explain the transaction and how it relates to the customer’s existing contract and his data. The letter will also set out brief details of the current arrangements with PDHL and in particular how much he has paid under the existing arrangement, broken down between the amount paid on to creditors and the amount charged for fees as well as how much the firm is currently holding in respect of client money for that customer.

29. The letter then sets out what the customer needs to do in response, explaining that he needs to decide whether to seek free debt advice or whether he wishes to explore with Purchaser A or another debt management company whether a fee charging debt management plan is right for him. It then says in bold type that in the event that the customer ceases to be in a contract with PDHL he should review his payment arrangements and ensure that he ceases making payments to PDHL. Contact details for MAS are then provided and the customer is told that in order to receive debt management services from Purchaser A the latter will need to obtain his consent or acceptance and that Purchaser A will be writing to him in order to seek it.

30. It is clear from this letter that pending the customer taking any action as envisaged in the letter then his existing DMP with PDHL will continue and he will continue to pay fees under it.

31. The letter from Purchaser A refers to the letter from PDHL that the customer will have received and informs the customer that one of Purchaser A’s team will be in contact “very soon” by telephone to complete a full assessment of his situation. The letter does, however, give the customer the option of making contact on his own initiative and gives out contact details. The letter makes it clear that the initial assessment and advice provided will be free, but that certain services that meet the customer’s needs will incur fees. This letter also informed the customer that free debt advice can be accessed via MAS and gives its contact details.

32. As indicated at [27] above, the Agreement makes provision for customers to be contacted in stages over a 28 day period and there is an obligation on the part of Purchaser A “as soon as reasonably practicable and in any event no later than 2 months after a [customer] transfers re-advise that [customer]”.

33. I was shown a letter from KPMG dated 26 January 2016 addressed to Mr Finneran which gives some more detail as to how the transfer process is envisaged to operate in practice. In particular, KPMG say that in addition to sending the two letters referred to above:

5 “The purchaser will also make contact with the customers by telephone ensuring they receive the advice in a timely manner. This needs to be done as soon as is possible and we have discussed with the purchasers the need to make contact and provide advice within four weeks of completion.”

10 KPMG’s letter also expresses the view that if PDHL’s interim permission can be maintained for this four week period, the customers and customers’ creditors will benefit from a continuation of the existing services whilst simultaneously allowing the customer to be re-advised. The letter then states that once the migration has been implemented, PDHL will enter into a formal insolvency process, but that should the interim permission be lost, PDHL will have “no alternative but to enter into some form of formal insolvency process immediately and the ability to soft - land of the customers in this way will be lost.”

15 34. It therefore appears that notwithstanding the terms of the Agreement, PDHL envisages a transfer process that will result in all relevant customers being contacted and advised within four weeks. As far as potential arrangements with other purchasers are concerned, Mr Hunter refers in his evidence to the fact that somewhat longer timescales are envisaged in a number of those cases, typically between six and eight weeks. Mr Finneran disputes this and asks the Tribunal to accept KPMG’s position, as explained in its letter, that in all cases a period of four weeks would be sufficient to complete a proper handover. Mr Hunter in his evidence repeats the evidence he gave in respect of the Original Decision that the Authority anticipates writing to all PDHL’s customers within five days of PDHL’s interim permission ceasing to have effect and that MAS then anticipates being able to start dealing immediately with all of the customers concerned, with advice given within a month to those customers who approach it, against a background where MAS’s partners will be advising in the light of the creditor forbearance arrangements described at [76] of the Original Decision in respect of which I made findings at [89] and [90] of the Original Decision.

25 35. In his evidence, Mr Finneran states that both PDHL and KPMG remain positive about the prospects of being able to secure deals with some or all of the remaining prospective purchasers. He is critical of the Authority’s approach to these circumstances, contending that it is attempting to throw hurdles in the way, demonstrating that it has a predisposition against any trade sale.

30 36. Mr Finneran also points out that in common with the Authority’s proposed arrangements in the event of PDHL’s interim permission ceasing, all of PDHL’s customers will be referred to the free sector for help if the sales take place, within days of that occurring, but with the added comfort of also being referred for advice to a commercial debt management firm who will proactively contact the customer and undertake a holistic review of that customer’s circumstances, without the uncertainty

and difficulty of PDHL being in an insolvent situation and without that provider having to deal with the entirety of PDHL's book.

5 37. With regard to the position concerning StepChange, in the light of the confidential nature of the material provided, which but for the exemption provided by Regulation 5 of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 in respect of proceedings before this Tribunal, would be protected from disclosure by virtue of s 348 of the Act, I have recorded this evidence and my conclusions on it in an annex attached to this decision which will remain confidential between the parties.

10 **Relief now sought**

15 38. In the light of the change of circumstances described above, PDHL now seeks a suspension of the effect of the Decision Notice so as to preserve its interim permission until 29 February 2016. It contends that this will give it sufficient time to complete the potential sales identified and also to ensure that the customers concerned have been contacted by the relevant purchasers and given advice, as contemplated in the Agreement and similar agreements to be entered into with other potential purchasers.

20 39. Originally, in its application, PDHL was seeking the ability to give advice to customers during the period of suspension, although following argument it did not press this point and accepts that if relief were to be given it would be on the basis that the restrictions on carrying on any regulated activity contained in the vReq would continue to have effect during the period of suspension.

Discussion

25 40. Mr Weisselberg submits that the implementation of the proposed sales is in the best interests of PDHL's customers and therefore a suspension should be granted to enable them to be implemented as envisaged. In particular:

30 (1) The relevant purchaser will offer advice on transfer to each of the customers after a review of their existing DMPs. This will ensure the customer receives prompt and timely advice and within a timescale which is far quicker than the Authority's proposals which entail solely recommending customers to transfer to MAS. The prospect of completing the process of providing the necessary advice within a month, as shown by KPMG's letter, is real and concrete.

35 (2) There are grave concerns about the MAS contingency arrangements. These concerns relate not only to the capacity and capabilities of MAS and its partners, but also as to the inevitable limitations on those arrangements because they rely on customers being proactive in contacting MAS and MAS will only have customer names, not records of existing DMPs.

(3) The arrangements proposed by PDHL make provision for customers to be informed of the availability of a free debt advice service.

5 (4) In contrast to an insolvent liquidation or administration position, staff at PDHL will be in a position to assist the new providers and existing customers during the handover process. Consequently the disruption and prejudice that would be caused by provoking PDHL into an insolvency process would be avoided.

41. In response to the problems identified by the Authority in relation to PDHL's proposals:

10 (1) Although in theory the proposed sales could be completed by PDHL's administrators were it to go into administration, that is unlikely to be possible in an orderly fashion because the administrator was unlikely to retain the necessary staff PDHL to assist in the process and administration would give rise to all of the problems previously identified and referred to at [91] of the Original Decision.

15 (2) Although it is accepted that in the period before they receive advice from a purchaser, customers will continue to remain on and pay for a debt solution which may be unsuitable, the best approach to this problem is to have the customers concerned transferred to another provider as swiftly as possible and PDHL's proposals cater for this.

20 (3) With regard to the point that the sales envisaged will not cater for all of PDHL's customers, Mr Weisselberg referred to the obligation in the Agreement, and which it is envisaged will be contained in any other sale agreements concluded, for the purchaser to re-advise all customers who transfer to the purchaser.

25 (4) With regard to the concerns raised by the Authority concerning the resources of the potential purchasers to deal with the customers concerned and possible concerns about their compliance with CONC bearing in mind that they all still only have an interim permission, the firms concerned will be fully aware that the Authority will be keeping a close eye on their activities, the implication in the submission being that the firms concerned are unlikely to have considered entering into the arrangements without careful thought as to these matters.

30 42. In the light of the above submissions and my findings as to the change of circumstances, I now turn to the balancing exercise required to decide whether I should exercise my discretion to grant the further application for a suspension.

35 43. In that regard, my findings as to the current state of PDHL's business and its compliance with the required regulatory standards as set out at [95] to [109] of the Original Decision weigh heavily in the balance against granting a further suspension. 40 As Mr Herberg submitted, PDHL's proposals continue to leave its customers with a fee charging service provider in circumstances where there are serious concerns that many of those customers have been provided with unsuitable advice. Although

PDHL and its advisers expressed confidence that all relevant customers can be re-advised within the four week period for which a suspension is sought, that cannot be certain and in reality it is a target which I have no doubt the parties will use their best endeavours to meet but about which there must be some serious doubts, particularly with regard to potential purchasers whose resources to deal with the new influx of potential customers have not been verified and some of whose compliance arrangements remain untested.

44. There is therefore a strong likelihood that a substantial number of customers will be left uncontacted or unadvised during the four-week period. As Mr Herberg also submits, all customers are in any event being signposted to free advice sources such as MAS and a significant number are unlikely to respond to the invitation to transfer without there being the safety net arrangements proposed by the Authority.

45. It is clear therefore that PDHL's proposals do involve a risk of prejudice to its existing customers in that a significant number of them could be left with unsuitable arrangements for which they are paying fees. This is a significant risk even in respect of the four week period for which a suspension is being sought, but, as I have found, there is a significant risk that further time would be required before all the relevant customers who wished it could be advised. There are also risks associated with the status of those firms, holding interim permissions and resource implications which cannot be discounted.

46. In those circumstances, I would need to be satisfied that PDHL's proposals are demonstrably better than the Authority's proposals as far as the protection of the interests of consumers is concerned before I could consider granting the suspension that PDHL seeks. As I found at [111] of the Original Decision, if I were to take the view that existing customers are likely to be in a worse position if PDHL's interim permission terminated then notwithstanding my concerns about the risks to consumers inherent in PDHL's proposals, then I may give consideration as to whether continuing the interim permission is the "lesser of two evils".

47. Looking at the new evidence before me now and comparing that with my findings as to the Authority's proposals as set out in the Original Decision, I cannot be satisfied that if I were to grant the suspension sought that PDHL's customers would be in a demonstrably better position. It is unrealistic to expect the Tribunal to be able to review in detail the potential problems that the Authority has identified with PDHL's proposals, particularly as regards their current state of compliance with CONC and their available resources to deal with the potential large influx of new customers. I must however proceed on the basis that at least some of these concerns are likely to exist. This is no different to the position that I found myself in when assessing the Authority's proposals in the Original Decision. It is clearly the case that there are risks to consumers involved with both sets of proposals but I cannot be satisfied on the basis of the evidence before me that there are significantly less risks involved with PDHL's proposals.

48. However, I am influenced by the fact that the Authority's proposals would involve the immediate engagement of the arrangements which would entail all of PDHL's

customers being written to within five days and MAS being able to start dealing immediately free of charge with affected customers who contacted it, with advice being given to those customers within one month, alongside a promotional campaign and the findings I previously made regarding creditor forbearance.

5 49. Furthermore, in my view there is no reason why PDHL's proposals cannot sit
alongside the Authority's arrangements. Both signpost the availability of free advice
and the option of going to a commercial provider. Since one sale has already
completed, in effect that is already happening. If PDHL is right, then further
arrangements may well have been concluded in the period between the hearing of its
10 further application and the handing down of this decision.

15 50. Nor am I convinced that the prospect of administration were the suspension not be
granted would be as prejudicial to PDHL's proposals as it contends. If there were an
immediate administration the administrator has at least one valuable asset, namely the
agreement with Purchaser A in respect of which the administrator may well take the
view that it would be in the interests of creditors to implement and devote resources
to. Nor is it apparent why an administrator would not wish to pursue the completion
of existing opportunities which had not been completed at the time of his
appointment. As I found in the Original Decision, administration inevitably involves
some disruption as well as consequences regarding client money, but I have heard
20 nothing new which leads me to believe that those potential difficulties are such that
they should prevail over my findings about the risk to consumers if the suspension
were to be granted. I make no criticism of PDHL in this respect, but it is clear that the
proposals it has put forward have been developed with a view to maximising value
from the existing business in its own commercial interest.

25 51. Finally, as explained in the confidential annex, the new information regarding
StepChange does not in my view alter the position.

52. For all these reasons, in my view the balancing exercise comes out clearly against
the granting of the further application for a suspension of the effect of the Decision
Notice.

30 **Further Privacy Applications**

53. For the reasons I gave at [118] of the Original Decision, in the light of my
decision on the further application to suspend I must dismiss the further applications
for privacy in respect of the publication of the Decision Notice and the details to be
recorded on the Tribunal's register of references.

35 **Conclusion**

54. For all the reasons I have given I cannot suspend the effect of the Decision Notice.
As I indicated at the hearing, this decision will remain confidential to the parties for
the period during which it may be subject to an application for permission to appeal
and until any such application is determined.

40

TIMOTHY HERRINGTON

UPPER TRIBUNAL JUDGE
RELEASE DATE: 5 February 2016

5

10