Appeal number CMS/2009/0004

CANCELLATION OF AUTHORISATION — company providing, or purporting to provide, service of relieving customers of their debts — business method incapable of succeeding — misleading advertising — whether cancellation of authorisation merited — yes — whether cancellation correctly carried out — yes — appeal dismissed

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(CLAIMS MANAGEMENT SERVICES)

MOMENTUM NETWORK LIMITED **Appellant**

- and -

THE MINISTRY OF JUSTICE
(CLAIMS MANAGEMENT REGULATOR) **Respondent**

Tribunal: Judge Colin Bishopp
Ian Abrams
Terry Carter

Sitting in public in London on 15 & 16 July 2010

Basil Rankine, director, for the Appellant

Robert Kellar, counsel, instructed by th e Cla ims Management Regulator for the Respondent

DECISION

Introduction

1. This is an appeal by Momentum Network Limited ("MNL") against the Regulator's decision, conveyed by a letter of 8 July 2009, cancelling MNL's authorisation to provide regulated claims management services with effect from 9 July 2009. MNL applied for authorisation on 9 October 2008 and it was granted on 13 November, but by 1 December the Regulator had already begun the investigation which ultimately led to the cancellation. The Regulator's reasons for the cancellation were, in essence, his belief that there had been a breach by MNL of general rules 5 and 17 and client specific rule 2 of the Conduct of Authorised Persons Rules 2007 ("the 2007 Rules"), which we shall describe in more detail later in this decision.

2. An application by MNL for suspension of the cancellation was heard by a differently constituted panel of the Claims Management Services Tribunal (since replaced by this tribunal) on 7 August 2009, and dismissed.

3. The first limb of MNL's challenge to the cancellation is that, because of a change in its business methods since it became authorised, it no longer carries on a regulated activity and therefore is not subject to the Regulator's oversight (a proposition which the Regulator challenges). The second limb is that, although it does not, on its own case, need authorisation, the cancellation is objectionable because MNL may wish to undertake regulated activities in the future, and the cancellation of its authorisation is a matter it would need to disclose in an application to any other regulatory authority should it need to make one. Third, it says that it has not breached any of the rules which apply to authorised persons and there was and is no proper ground for the cancellation. Fourth, it asserts that the Regulator did not comply with the procedural requirements which must be followed if an authorisation is to be cancelled.

4. MNL was represented before us by one its directors, Mr Basil Rankine, who also gave evidence, and the Regulator by Mr Robert Kellar of counsel. We heard further evidence from Ms Dawn Henri, a senior claims management officer employed in the Regulator's Claims Management Regulation and Compliance Unit, and Mrs Jan Farenden, the Deputy Head of that unit. In addition we were provided with copies of all the relevant documents.

MNL's business

5. In its application for authorisation MNL described its intended activities as "claims management", without elaboration, though elsewhere in the form it indicated that its activities would be confined to financial products and services. No further description was offered, though it is fair to say that none is requested. It was indicated that MNL used the trading names "The Cardfather", "The Rankines" and "Credit Card Killer", the last of those being the one most frequently used. It is uncontroversial that MNL's intention was to provide, in one manner or another, a service to debtors which was claimed to relieve them of their debts.

6. In February 2010 Hickinbottom J, sitting in the Birmingham County Court, delivered judgment in *Momentum Network Ltd v Office of Fair Trading* (unreported), an unsuccessful application by MNL to prevent the OFT from describing MNL's business model (a model not, however, confined to MNL) as a "scam", and from stating that representations to potential customers of a kind made by MNL and others (that they could relieve those potential customers of their debts) were "deliberately misleading". In the course of his judgment he gave the following description of MNL's business:

> "[5] Momentum is a company of which Mr Basil Rankine and his wife, Mrs Angela Rankine, are sole directors and shareholders ….
>
> [6] The application asserts that Momentum trades as 'Credit Card Killer', and has done so since November 2008. As I understand it, Mr and Mrs. Rankine themselves traded in that name before that date. The company 'purchases' debts from borrowers with a debt regulated by the [Consumer Credit Act 1974]—for, example under a personal loan or credit card—on the basis that the original borrower's liability is absolved and, following the transfer away of the debt, he is debt and obligation free. Once transferred to them, they claim that the debts are 'void' and unenforceable under the 1974 Act. The Rankines describe themselves as 'pioneers of the debt cancellation industry'.
>
> [7] They charge the borrowers a fee for this service, a variable fee but typically £450 plus 10% of the outstanding debt. A debt of £3,000 would therefore attract a fee of £750 (£450 plus £300, as the 10% of £3,000), payable on transfer. Although that has to be paid by the borrower/debtor 'up front', on the basis of the Claimant's representations that the borrower will be relieved of 90% of his debt, the attraction of such a transfer to those seriously and anxiously in debt is obvious.
>
> [8] The attraction, well advertised through agents and on the internet, has borne much fruit. … there is no direct evidence before me as to the success of the enterprise. However, in its appeal to the Claims Management Services Tribunal … to cancel its authorisation to carry out any claims management service, Mr Rankine provided some information as to take-up. In the two months to April 2009, he said that a total of £3m of debt was assigned (with consequent fees of more than £300,000); and in a release of 27 July 2009, Momentum asserted that it had 'purchased more than £10m of consumer debt' (CSM Tribunal determination of 7 August 2009, paragraph 15). In this application, Momentum say that just over 1000 consumers have paid fees in relation to debt purchase; and that it has, or had at one stage, 25 full time staff and 20 individual agents employing a further 70 people (Basil Rankine Statement 1 February 2010, paragraphs 2 and 7). That gives at least some indication of the scale of the enterprise. On the basis of those assertions, the recent income from the enterprise has been well in excess of £1m."

7. The reference in that passage to the CMS Tribunal was to the decision of this tribunal's predecessor, which we have already mentioned, refusing to suspend the cancellation of MNL's authorisation, and to the continuing proceedings leading to the hearing before us and this decision.

8. The inspiration for MNL's business was the successful avoidance by Mr and Mrs Rankine of the payment of consumer debts which they had themselves

incurred. Mr Rankine had, he told us, spent a great deal of time studying the Consumer Credit Act 1974 ("the CCA") and other legislation relating to personal debt, and had identified several loopholes which he and his wife had exploited, essentially relying on failures by the lenders—in the main banks and credit card companies—to comply with the technical requirements of the legislation, failures which, he said, made the debts unenforceable. He claims that, in all, he and his wife have avoided payment of some £120,000 of personal debt by this means. They came to the conclusion that they could help other debtors avoid payment of their debts by using similar tactics, and that their being able to do so presented them with a business opportunity. They accordingly began to offer such a service, through the medium of MNL. Debtors taking advantage of MNL's service were required to pay the fees Hickinbottom J described. Although the fees charged are substantial, they represent a relatively modest proportion of the outstanding debt and, as the judge said, the attraction to debtors is obvious.

9. The manner in which Mr and Mrs Rankine escaped their personal debts was described by His Honour Judge Simon Brown QC, sitting as a High Court judge, in *Basil Rankine v American Express Services Europe Ltd and related cases* (unreported), in a judgment delivered in May 2008:

> "[1] This is a judgment upon five related claims concerning Mr and Mrs Rankine and their financial affairs under the Consumer Credit Act 1974 and ancillary Regulations.
>
> [2] Mr and Mrs Rankine profess to be financial advisors and have some limited qualifications in the provision of financial services. They are the directors of two apparently dormant limited companies, [MNL] and Mortgage Love Limited. Since at least 1996 they have personally had credit from various financial institutions under credit card agreements and personal loans.
>
> [3] Recently eight (I believe) claims arrived in various courts in the Birmingham Civil Justice Centre about the Rankines' financial affairs. These are just five of them and an undisputed schedule of debts amounts to £20,231.50 and £17,334.80 in the cases of Mr and Mrs Rankine respectively. During evidence, Mr Rankine boasted to the court that they had managed to wriggle out of a further £65,000 of similar debts by raising Consumer Credit Act legal technicalities leaving the financial institutions to write them off as bad debts rather than take the trouble and expense of litigating for dubious reward by enforcement against two individuals who are apparently on income support …
>
> [5] Mr and Mrs Rankine have represented themselves throughout all these claims and have been granted the usual indulgences to litigants in person by the court and the advocates appearing for the financial institutions. However, Mr and Mrs Rankine have misused those indulgences to a great extent by producing blizzards of lengthy, argumentative and incoherent pleadings and witness statements that has meant the overriding objective has been impossible to achieve …
>
> [9] It is worth remembering that … the CCA … was introduced to protect the individual unsophisticated in financial affairs in contracts with unscrupulous and sophisticated financial institutions. It was not designed to

> help individuals … make money out of financial institutions through exploiting its undoubted technicalities."

10. The judge went on to decide all of the issues in the cases against Mr and Mrs Rankine. Nevertheless, as the judgment recorded, not all of their "wriggling" and "blizzards" had met with failure, and they evidently felt sufficiently confident of their ability to help others, or at least appear able to do so, that they embarked on the business which Hickinbottom J described.

11. We saw several examples of MNL's advertising material, most of it posted on MNL's websites, which it used at various times. The essence of it was that that MNL would "buy" the debt, and assume entire responsibility for it to the exclusion of the original debtor. However, even on its own case MNL did not, at any time, "buy" debts; it sold, if it sold anything, protection of the debtor against enforcement action by his creditors. Part of the Regulator's case is that it is not possible to sell such protection, and that MNL's advertising to potential customers is, at best, misleading. MNL's first response to that contention is that the advertising identified by the Regulator was aimed, not at consumers, but at its own agents, who could access it only through a password-protected website, and that it did not itself have contact with members of the public, who had to be introduced to it by the agents; it also does not accept that the advertising is misleading. We shall return to this point, though at this juncture it is appropriate to mention that in its application for authorisation MNL stated that it would accept referrals from exempt introducers, but thereafter it claimed that it had no relationships with exempt introducers but that it intended to recruit them from the financial services industry.

12. A significant part of the hearing was taken up with our trying to identify precisely how MNL set out to achieve for its customers what it claimed to be providing. Mr Rankine said to us, as he had said to the Regulator, that he was reluctant to disclose his methods because of the fear that others would steal his ideas but, even making an allowance for that supposed fear, the only epithet which comes to mind in relation to Mr Rankine's evidence on this point is slippery. He was evasive, unforthcoming and, we have concluded, deliberately concealed the true nature of MNL's activities from us. Exactly what MNL did is, therefore, not a matter on which we can make confident detailed findings of fact, but as far as we could determine from Mr Rankine's evidence—he produced no examples of completed contracts with customers, nor any documentary evidence of even one concluded case—MNL began by making challenges, one must assume in the debtor's own name, to the validity of the loan agreements. That approach met with limited success, for reasons which also did not become entirely clear though we suspect it was because Mr Rankine was not as adept at finding loopholes as he claimed to be, and MNL began instead to take (or purport to take) an assignment of its customers' debts, before mounting its own challenge to the validity of the loan agreements. That course too seems to have met with limited (and possibly no) success and MNL then adopted a different tactic, of requiring its customer to "terminate" or "cancel" his loan agreements, whereupon MNL took over—by what means is similarly obscure—the supposedly terminated or cancelled agreements.

13. The core of the Regulator's case, as we have said, is that MNL's business methods cannot succeed and, that being so, it cannot properly be permitted to offer a service it is incapable of providing. Mr Rankine himself conceded that the first plan, of challenging the validity of the agreements, failed because the legislation did not allow for a challenge to be made in the way he had chosen. Mr Rankine does not, we understand, have any legal qualification and it became apparent as he gave his evidence that his claim that his prolonged study of the CCA had made him an expert in the subject was not altogether borne out. We were left, rather, with the clear impression that his and his wife's success in avoiding their debts was due entirely to the tactics Judge Simon Brown QC had described, rather than to any true weakness, whether technical or on the merits, in the creditors' cases.

14. MNL's case is that the second of the methods we have described, of taking an assignment from the debtor of the burden of his debt, took its activities outside the Regulator's purview because it was now buying (in its rather distorted view of the meaning of that word) debts and making its own claims, and no longer offering a form of claims management service to its customers. We shall consider whether, assuming the premise is correct, the consequence is as MNL contends later, but we must first deal with the validity of the premise and the Regulator's contention that it is not possible to take an assignment of the burden of a debt, at least without the creditor's consent.

15. There is a mass of judicial and academic authority to the effect that no-one may assign the burden of a contract without the consent of the other party to the contract: there must, shortly put, be a tripartite agreement, between the original parties and the person to whom the burden is to be assigned, which will normally amount to a novation. We need cite only one of the authorities. In *Linden Gardens Ltd v. Lenesta Sludge Disposals Ltd* [1994] 1 AC 85 at 103, Lord Browne Wilkinson said:

> "The burden of a contract can never be assigned without the consent of the other party to the contract in which event such consent will give rise to novation … every lawyer knows that the burden of a contract cannot be assigned …."

16. Hickinbottom J dealt with the point, with reference to MNL's case, succinctly in the judgment to which we have already referred; at [18] he said:

> "It is trite law that debts are only assignable with the consent of the creditor. There is no evidence that any of the relevant consumer creditors have consented to the assignment of any consumer debt to Momentum."

17. That remains the position: Mr Rankine has produced no evidence of any kind, to us or the Regulator, that any lenders have ever consented, even informally, to such an assignment and, we have to say, it would be extraordinary if any did. Hickinbottom J recorded that Mr Rankine wished to rely on two authorities which he did not produce and which the judge did not take into account. Mr Rankine did produce them to us: they are *Wilson v First County Trust Ltd (No 2)* [2004] 1 AC 816, a decision of the House of Lords, and *McGuffick v Royal Bank of Scotland plc* [2010] 1 All ER 634, a decision of Flaux J. Neither has anything at all to say about the assignment of the burden of a debt.

18. We are somewhat hampered in determining whether the third of the methods described above can succeed in its supposed objective by Mr Rankine's refusal to explain to us precisely what MNL does, or attempts to do. What is particularly difficult to understand is how a debtor can, as Mr Rankine first put it, "terminate" his agreement with his creditor. The only legitimate means of doing so of which we are aware is to discharge the debt, but that cannot have been the method adopted since the purpose of the supposed termination was to escape payment. If instead the debtor was required to repudiate the agreement, it is at least as difficult to see how the burden of a repudiated agreement can be assigned as it is to see how, contrary to the authorities, MNL was able to take an assignment of a current agreement. Later, Mr Rankine suggested that rather than repudiate his agreement, the debtor was required to cancel it, by asserting that it was unenforceable. It is not altogether clear what, in Mr Rankine's eyes, is the difference between termination and cancellation and, again, it did not emerge how cancellation was effected, and how, save in a case in which there truly was a flaw in the agreement (and we were provided with not a single example), this approach could result in the debtor's avoiding his liability.

19. We conclude, therefore, that none of MNL's means of carrying on its business can succeed as a matter of law. That conclusion does not, however, dispose of the appeal. We need to consider whether, even if its methods fail, MNL is undertaking a regulated activity, both in relation to its contention that it does not need authorisation and in relation to its argument that the cancellation of MNL's authorisation, unnecessary though it might be, casts an unwarranted stain on it.

Whether MNL's business is a regulated activity

20. In this section of the decision we proceed upon the footing that, whether or not its methods succeed, MNL offered a service by which its customers would be able to relieve themselves of their debts. The definition of a regulated activity appears in s 4 of the Compensation Act 2006 ("the CA 2006"), as amplified by reg 4 of the Compensation (Claims Management Services) Regulations 2006 ("the Regulations"). Section 4, entitled "Provision of regulated claims management services", and so far as relevant in this case, is as follows:

> "(1) A person may not provide regulated claims management services unless—
>
> (a) he is an authorised person,
>
> (b) he is an exempt person,
>
> (c) the requirement for authorisation has been waived in relation to him in accordance with regulations under section 9, or
>
> (d) he is an individual acting otherwise than in the course of a business.
>
> (2) In this Part—
>
> (a) 'authorised person' means a person authorised by the Regulator under section 5(1)(a),

(b) ‘claims management services’ means advice or other services in relation to the making of a claim,

(c) ‘claim’ means a claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made—

(i) by way of legal proceedings,

(ii) in accordance with a scheme of regulation (whether voluntary or compulsory), or

(iii) in pursuance of a voluntary undertaking,

(d) ‘exempt person’ has the meaning given by section 6(5), and

(e) services are regulated if they are—

(i) of a kind prescribed by order of the Secretary of State, or

(ii) provided in cases or circumstances of a kind prescribed by order of the Secretary of State.

(3) For the purposes of this section—

(a) a reference to the provision of services includes, in particular, a reference to-

(i) the provision of financial services or assistance,

(ii) the provision of services by way of or in relation to legal representation,

(iii) referring or introducing one person to another, and

(iv) making inquiries, and

(b) a person does not provide claims management services by reason only of giving, or preparing to give, evidence (whether or not expert evidence).

(4) For the purposes of subsection (1)(d) an individual acts in the course of a business if, in particular—

(a) he acts in the course of an employment, or

(b) he otherwise receives or hopes to receive money or money’s worth as a result of his action.”

21. Mr Rankine agreed that MNL is not exempt by virtue of s 6(5) (which applies to members of specified bodies) and that the need for its authorisation has not been waived. It is also beyond dispute that MNL was acting “in the course of a business”, within the meaning of sub-s (4). The remaining question is whether what it was providing amounts to “regulated claims management services”. The Regulator says that one does not need to go further than sub-s (2)(b) and (c), in that MNL was providing (or purporting to provide) a service in relation to the making of a claim, which includes securing relief from an obligation. The essence of MNL’s business is (by whatever means) to establish that its customers’ debts are unenforceable.

22. By way of reinforcement Mr Kellar referred us also to the Regulations, made in accordance with s 4(2)(e) of the CA 2006. Regulation 4 is entitled "Regulated services"; the material parts of the regulation are in these terms:

> "(1) For the purposes of Part 2 of the Act, services of a kind specified in paragraph (2) are prescribed if rendered in relation to the making of a claim of a kind described in paragraph (3), or in relation to a cause of action that may give rise to such a claim.
>
> (2) The kinds of service are the following—
>
> (a) advertising for, or otherwise seeking out (for example, by canvassing or direct marketing), persons who may have a cause of action;
>
> (b) advising a claimant or potential claimant in relation to his claim or cause of action;
>
> (c) subject to paragraph (4), referring details of a claim or claimant, or a cause of action or potential claimant, to another person, including a person having the right to conduct litigation;
>
> (d) investigating, or commissioning the investigation of, the circumstances, merits or foundation of a claim, with a view to the use of the results in pursuing the claim;
>
> (e) representation of a claimant (whether in writing or orally, and regardless of the tribunal, body or person to or before which or whom the representation is made).
>
> (3) The kinds of claim are the following— …
>
> (f) claims in relation to financial products or services …."

23. Mr Kellar argued that if there is any doubt about the application of s 4, it is resolved by this regulation: MNL was advertising, within the meaning of para (2)(a), and making claims falling within para (3)(f). It may be that its activities also fell within para (2)(b) and (d).

24. Mr Rankine's argument, as we have briefly recorded it above, is that MNL's taking over of liability for a debt cannot be regarded as a regulated activity because it is MNL itself which is seeking relief from the debt. The CA 2006, however, was directed at the offering of a service to those who had, and by implication retained, a claim—including one for relief from a debt. He added that the Regulator had not properly identified the activity which he claimed was regulated; that advertising a service is to be distinguished from the service itself; that MNL's activity was not regulated because it was offering its service only to intermediaries, and not to the public; and that if what MNL offered was, contrary to our conclusion above, possible as a matter of law, the Regulator's decision, predicated as it was on the premise that it was not possible, was fatally undermined. In our judgment all of those arguments must fail.

25. We agree with Mr Kellar that there is no possible room for doubt that what MNL was doing was a regulated activity. It is plain from the examples of MNL's advertising which were produced to us that MNL offered a service by which it would not only take over the debt, but also deal itself with the creditor, procure that the debtor was no longer concerned in any way with the creditor, and that in

addition it would procure that the record of the loan was expunged from the debtor's credit agency records. Thus there can be no doubt, from the advertising material itself, that MNL was undertaking the activity of "advertising for … persons who may have a cause of action" (taking "cause of action", as the legislation makes clear, to include a claim to have a debt annulled); or that, once it had found such people, "advising [the person so found] in relation to his claim or cause of action". Mr Rankine did not suggest that the service offered differed from that which was advertised; he merely argued that it did not fall within the statutory definition.

26. In our view section 4(2)(b) and (c) could not be more clearly in point. On its own case, MNL was providing, or purporting to provide, "other services in relation to the making of a claim", the claim being "relief … in respect of an obligation". And we agree with Mr Kellar that reg 4 makes it clearer still, for the reasons he gave. How the provider deals with the claim is immaterial; what the section and the regulation are aimed at, as their wording puts beyond doubt, is the provision of any service relating to a claim. What MNL does before it agrees to "buy" a debt is as much within the legislation as what it does after: as reg 4(2)(a) indicates, merely advertising for potential customers is enough to bring it within the scope of the CA 2006. MNL's argument, in our view, is entirely without merit. It might have some merit if Mr Rankine were right to contend that MNL, and only MNL, made a claim, and if only para 3(f) of reg 4 were in point; but his argument requires one to disregard para (2), and in particular sub-paras (a) and (b).

27. The argument that the Regulator had not adequately identified the regulated activity is equally without merit. It is perfectly plain that the Regulator meant the business activity carried on by MNL. That one part of it, if it were possible to consider it discretely, might not amount to a regulated activity is, in our view, irrelevant; it is necessary to consider whether the statutory requirements are engaged by any part of the business. If it were otherwise it would be simple for the unscrupulous to escape the statutory requirements.

28. We have already dealt in part with Mr Rankine's contention that advertising must be distinguished from the service advertised. Since advertising is itself a regulated activity, we can see no substance at all to this argument. Even if it were possible to draw a distinction, and MNL were (contrary to the effect of the legislation as we have found it) able to exclude its advertising from the scope of regulation, it is in our view clear, for the reasons we have given, that MNL's other activities are regulated.

29. We do not consider the argument that MNL's activity was not regulated because it was offering its service only to intermediaries sound as a matter of law—there is nothing in s 4 of the CA 2006, or elsewhere, which brings within its ambit only those who offer their services directly to the public, and the tenor of the section is quite to the contrary—but we can in any event dispose of it quickly as an issue of fact. Mr Rankine produced no evidence of the identities of the intermediaries (and, we should record, has been patently evasive on the same topic in his dealings with the Regulator, both in the manner described above and in his failure to provide any information about the supposed intermediaries, to

which we shall come later). The claim is in addition wholly inconsistent with MNL's advertising, which is plainly addressed to members of the public. Throughout, it invites potential customers to "sell *your* credit agreements to the professionals"; and it includes questions such as "How do I transfer the rights to *my* debts to Credit Card Killer?" [emphasis added]. This material can in our view be taken only as evidence that MNL was offering a direct service, and we reject Mr Rankine's claim that it was not doing so.

30. It follows from our rejection of Mr Rankine's contention that MNL's method of operation, that is of taking assignments of debts or of repudiated credit agreements, is effective that we must also reject his argument that the Regulator's decision is fatally flawed because it proceeds from a false premise.

The investigation

31. MNL's application for authorisation, as it was presented, did not raise any evident cause for concern and on 4 November 2008 the Regulator's staff wrote to it to indicate that authorisation would be granted once the requisite fee had been paid. It was duly paid and a certificate of authorisation was issued, dated 13 November 2008. In the meantime, Mr and Mrs Rankine appeared, on 10 November, on the BBC's Panorama programme. They were interviewed about their success in avoiding their own debts, and they outlined their business methods, to a somewhat sceptical reception from the interviewer. Their appearance on the programme came to the notice of the Regulator's staff, and it prompted an enquiry into MNL and its business methods.

32. The evidence we heard from Ms Henri and Mrs Farenden related to the progress of the investigation, in the course of which a good deal of further information came to the Regulator's notice. In November 2008, only days after Mr and Mrs Rankine's appearance on Panorama, they learnt of the judgment of Judge Simon Brown QC, to which we have already referred, and which had not been disclosed in the application for authorisation. It raised concerns which Mr and Mrs Rankine were asked to address, and it is fair to say that they did respond, even though their response did not satisfy the Regulator.

33. Some advertising and similar material was produced by MNL—the material we have described above—which indicated to the Regulator, and correctly as we have determined, that MNL was offering a service which it was impossible to deliver. They were asked to desist from advertising as they were doing, but there was clear evidence, which Mr Rankine did not deny, that the advertising continued largely unchanged. By February 2009 the Regulator had evidence of numerous complaints from consumers that, despite having paid the fees required by MNL for its supposed service, they were still pursued by their creditors, and also from lenders to the effect that MNL's activities were disrupting their relations with their own customers.

34. Mr Rankine did not challenge the truth of the evidence secured by the Regulator nor, in view of the provenance of much of it, and the incontrovertible nature of other parts, could he realistically do so. His cross-examination of Ms Henri and Mrs Farenden was directed to trying to establish a procedural failing in a manner which, in the light of the observations of Judge Simon Brown QC we

have set out above, we take to be typical of his approach. The supposed failings to which he directed his attention were all of a pettifogging nature, and even if any were established—and there is nothing before us from which we might conclude that any were—they were wholly inconsequential. In short, Mr Rankine tried to trip Ms Henri and Mrs Farenden up, and failed to do so.

35. In April 2009 Mr and Mrs Rankine attended a meeting with the Regulator's staff at which MNL's business methods were discussed. It was made clear to them that the Regulator was seriously concerned about what MNL was doing, and what it was advertising. Further information, particularly information about the identity of "associated businesses" which Mr Rankine insisted were referring claims to MNL, was requested by formal notice issued pursuant to s 8(4) of the CA 2006 and, when no reply was received, MNL was told that its failure to supply the required information amounted to an offence (see s 10 of the CA 2006). That warning was unheeded and on 23 June 2009 the Regulator wrote to MNL to the effect that he was minded to cancel its authorisation; he invited representations by 7 July. None were received and the authorisation was accordingly cancelled on 8 July. The reasons relied on were, in essence, that MNL had failed to comply with the requirement to provide information, and that its advertising was misleading.

36. More specifically, the Regulator relied on what he considered to be breaches of the 2007 Rules, made in accordance with reg 22 of the Regulations, and particularly general rules 5 and 17 and client specific rule 2. General rule 5 is as follows:

> "A business shall observe all laws and regulations relevant to its business."

37. The Regulator's position is that this rule was breached by MNL's failure to supply the information required by the formal notice to which we have referred, and by its use of misleading advertising, misleading in that, as we have said, it stated that MNL could offer a service it was incapable of providing.

38. General rule 17 reads:

> "A business shall provide the Regulator with any additional information that the Regulator may reasonably request."

39. The failure to respond to the formal notice is, he says, a clear breach of that rule. Mr Rankine did not assert that the information required by the Regulator had been provided, nor that the requirement was in any way unreasonable, and we are satisfied that there was a breach of this rule.

40. Client specific rule 2 is that

> "All advertising and marketing and other soliciting of business must conform to the relevant code—
>
> The British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code …."

41. The CAP Code includes, among others, rules which require that advertisements are "legal, decent, honest and truthful" (rule 2.1), and "prepared with a sense of responsibility to consumers and to society" (rule 2.2); and that they "should not state or imply that a product can be legally sold if it cannot" (rule 4.2). There was, for the same reasons as before, a clear breach of this rule as well.

42. Mr Rankine's response was that the importation by client specific rule 2 of the CAP Code was *ultra vires* since the Regulator was required to make his own rules, and was not permitted to adopt rules made by another body. In addition, or alternatively, if the Regulator was able to import the CAP Code, he could not proceed on his own perception that there was a breach, but was dependent on a ruling by the CAP, and there was none in this case.

43. There is not a scintilla of merit in that argument. It is no more than another example of the pedantry by which Mr Rankine, before us and (as their judgments reveal) the courts, attempts to divert attention from the substance of the case by identifying pitfalls, or more usually supposed pitfalls, with which his opponents have failed to deal properly. There is no such pitfall here; the CA 2006 and the Regulations cannot be read in a manner which restricts the Regulator's rule-making powers as Mr Rankine claimed, and he was unable to direct us to any provision within them which could possibly be interpreted as such a restriction. There is, in our view, good sense in the Regulator's adopting a well-established and respected code, rather that invent his own. Nor is there any substance to the argument that, having adopted the CAP Code, the Regulator was obliged to await an adjudication by the CAP. The Regulator's view can be tested, if necessary, on appeal to this tribunal. Conspicuously, Mr Rankine had no answer to the gravamen of the Regulator's case that, if MNL was unable to provide what it offered, its advertising was misleading; he simply did not address the issue.

Conclusions

44. We are satisfied that MNL's activities, whether or not they succeed in their objective of relieving its customers of their debts, amount to a claims management service regulated by the CA 2006, and that MNL did and does require authorisation if it is to continue providing such a service. We are, however, also satisfied that it is impossible to provide the service which MNL offers, for the reasons we have already given. It accordingly follows that the advertising used by MNL (which, as we have found above, is directed at potential customers and not exclusively at agents, if this is a relevant point at all) is misleading. We have already found breaches of those of the 2007 Rules on which the Regulator relied. We find no procedural error in the decision cancelling MNL's authorisation, or in the steps leading to it. The Regulator was right to cancel the authorisation, and he did so for the right reasons. The appeal must therefore be dismissed.

45. We should, however, add some further comments. There was evidence before us that MNL had continued to advertise its services, in the same or a very similar manner, not only after its authorisation had been cancelled, but also after it had failed in its attempt to secure suspension of the cancellation. It is apparent from the judgment of Hickinbottom J to which we have referred (delivered in February 2010) that MNL was still trading then, in exactly the same business, and that it did not make any attempt to conceal what it was doing. The Regulator relied on the fact of continued trading, in his statement of case and before us, but we spent relatively little of the hearing on the topic since Mr Rankine again did not deny that MNL was trading, but attempted to justify its doing so by his view that MNL was relieved from the need for authorisation because the business did not amount to a regulated activity, and it was advertising only to intermediaries

(which we have found was not what it was doing, as a matter of fact, and is an alleged feature of the business which is conspicuously absent from the judgment of Hickinbottom J).

46. We do not accept that Mr Rankine genuinely believed that MNL did not require authorisation. We are quite satisfied that he simply ignored the cancellation of its authorisation, and the tribunal's refusal to suspend the cancellation, just as he ignored the formal notice requiring the provision of information. He is, we have concluded, a man who will use the law when he thinks it suits him, but who is quite ready to ignore it when it does not. Even if we had found in MNL's favour on any of the other issues before us, we would have concluded that it, and Mr Rankine, are manifestly unfit to be authorised, and that the authorisation should be cancelled on that ground, a determination we are permitted to make by s 13(3)(d) of, and para 5(1) of the Schedule to, the CA 2006.

47. We conclude by returning to observations made by judges who have dealt with MNL's and Mr and Mrs Rankine's appearances in the courts, since we consider they deserve wider dissemination. It will be recalled that the question before Hickinbottom J was whether he should grant an injunction to prevent the OFT from describing businesses such as that pursued by MNL as a "scam", and their advertising as misleading. At [26] he said "This claim, on its underlying merits, is hopeless." He was, in other words, endorsing the description of MNL's business as a "scam". Soon after, in April 2010, MNL, and Mr and Mrs Rankine, appeared again in Birmingham County Court as defendants to an action by Birmingham City Council by which the Council sought an order preventing MNL, or Mr and Mrs Rankine, from carrying on business as they were doing. At [36] His Honour Judge Robert Owen QC said:

> "I am satisfied on the evidence adduced before me that the business activity of [MNL], … procured and encouraged and permitted by [Mr and Mrs Rankine] …may properly be described as bogus. It is procured by reason of the use of false information and is likely to deceive the customers …."

48. We agree.

Colin Bishopp

Tribunal Judge

Release Date:

4 November 2010