FINANCIAL GUIDANCE AND CLAIMS BILL: BACKGROUND APPENDIX FOR BILL COMMITTEE ON CONSIDERATION OF AMENDMENT NC12.

1. INTRODUCTION

1.1 LawWorks (the Solicitors Pro Bono Group) is a charity that brokers free legal advice to the public.

1.2 We write this briefing with regard to the Financial Guidance and Claims Bill (Bill) currently in Committee (Commons Stages). At this stage of the Bill's passage we are seeking a process to secure a minor amendment to the Financial Services and Markets Act (Regulated Activities) Order 2001 (RAO)/(FSMA) or the FSMA (Exemption) Order 2001 to enable pro bono advice clinics to provide money advice without the need for Financial Conduct Authority (FCA) authorisation. The proposed amendment complements and furthers one of the Bill's main aims, namely to facilitate free and impartial money guidance to the public.

About LawWorks

1.3 LawWorks is the operating name of the Solicitors Pro Bono Group, an independent charity which offers a range of consultancy and brokerage services to bring together lawyers who are prepared to give their time without charge and individuals and community groups in need of legal advice and support. LawWorks has been facilitating access to various pro bono legal services through a network of independent free legal advice clinics (Clinics) since 1997.

1.4 The services provided at the Clinics cover a broad spectrum of legal areas but with a focus on civil matters, social welfare and family law, including issues that may involve personal debt and credit matters.

1.5 Clinic services are especially focused on issues and clients that are not eligible for legal aid; under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 general debt and consumer matters, for example, no longer qualify for legal aid (unless housing eviction is threatened). Clinic services can include offering advice where clients are borrowers under regulated credit agreements. Advice sought from clinics may include clients who wish to restructure multiple debts owed under credit agreements, advice on dealing with lenders, brokers or debt collectors, and may include servicing or enforcement activities for Clinic clients who have lent money to borrowers in arrears or default.

2. THE PROBLEM

2.1 On 1 April 2014, responsibility for regulating consumer credit in the UK was transferred from the Office of Fair Trading (OFT) to the FCA. As part of this regulatory transfer, the former legislative arrangement which set out a licensing framework was repealed, and replaced by an authorisation and permission regime for credit-related regulated activities in the FSMA and subordinate legislation. The group licencing regime was abolished as part of these changes. (Under the former licencing regime the Law Society was a group licence holder, under which Clinics in the LawWorks network were licenced to undertake credit-related activities.)

2.2 The regulatory transfer did not impact not-for-profit organisations providing comparable services who had been operating under a group licence under the OFT. They could continue to provide such services under the "grandfathering" provisions set out in article 60 of FSMA (Regulated Activities) (Amendment) (No. 2) Order 2013. This granted these organisations interim permission in relation to certain consumer credit activities based on their previous group licence. However, the Law Society's group licence could not transfer under these provisions because the Law Society is not a not-for-profit organisation as defined under article 60(2).

2.3 Despite being a not-for-profit organisation, neither LawWorks nor the Clinics have been able to rely on these grandfathering provisions because they did not benefit from their own group licence before 1 April 2014. Additionally, the scope of the interim permission provided by the grandfathering provisions is more restrictive than the Law Society's now-abolished group licence.

2.4 *As a consequence of the above, solicitors and firms who volunteer at Clinics are at risk of committing a criminal offence by breaching the general prohibition in FSMA when providing debt and consumer credit services. Such services are likely to constitute one or more regulated activities under specific provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO).*

2.5 To manage this potential criminal liability, Clinic pro bono solicitors and/or clinic firms would ideally find a way to benefit from an exclusion or exemption. Unfortunately, there is no adequate exclusion or exemption, within the current regulatory framework as volunteers cannot rely on the advocacy or litigation services exclusion, as it only applies to individual solicitors (the Article 39K exclusion); and Clinics will often be providing this advice in isolation for clients rather than as a 'complementary' activity to other professional services, meaning that they cannot rely on the designated professional bodies (DPB) exemption (the section 327 Part XX FSMA exemption).

2.6 As a result, LawWorks has had to advise Clinics in its network to stop carrying out any activities which could fall into under the definition of a regulated activity and require the 'person' carrying out the activity be authorised or exempt under the FSMA regime.

2.7 The services that Clinics have stopped providing previously accounted for 7% of the total pro bono advice delivered across the LawWorks Clinics network. In the year following the changes to the regulation of this area, the provision of these services fell to 2.9% of the total advice delivered across the network. Clinics' cessation of these services has led to significant problems for both Clinic clients and other organisations who used to rely or formerly relied on Clinic services. Clearly, Clinic clients who had previously obtained these services from Clinics are either unable to obtain the services they need or are forced to obtain these services from other sources. In addition, those bodies who are authorised with the relevant permissions under the FSMA, because of the grandfathering provisions and therefore are able to continue to provide these services (e.g. Citizens Advice, members of Advice UK), may have seen an increase in demand for their already busy services.

2.8 In the year from April 2016 to March 2017 over 38,000 individuals received legal advice at a Clinic in the LawWorks Network. It is challenging to know precisely how many individuals have been unable to receive debt advice from Clinics since the change. However, based on the previous (ie pre 2014) 7% proportion, without the changes, we would have expected approximately 2,600 individuals to have received pro bono advice debt matters. In actual fact, only 480 clients did. Three years on from the changes, potentially many individuals have been affected and as LawWorks continues to work on developing new pro bono clinic services, we expect the number of clients unable to access debt services to continue to grow.

3. THE UK REGULATORY REGIME

The general prohibition

3.1 The starting point for understanding how the Regulatory Transfer has adversely impacted Clinics' provision of services in the UK is section 19 of FSMA. This provision contains a 'general prohibition' that:

> *"No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is –*
>
> *(a) an authorised person; or*
>
> *(b) an exempt person."*

3.2 A person who contravenes the general prohibition commits a criminal offence under section 23(1) of FSMA and would be liable to imprisonment and/or a fine.

3.3 The risk of the general prohibition being contravened requires LawWorks to take the following steps in order to manage the risk:

(a) identifying the relevant 'person' who might be at risk of carrying on the regulated activity, for example:

  (i) the Clinic solicitor;

  (ii) the Clinic firm; and/or

  (iii) LawWorks itself.

(b) being confident that either:

(i) no regulated activity is carried on at all; or

(ii) the regulated activity that is carried on is not done by way of business in the UK; or

(c) an exclusion from the relevant regulated activities is available;

(d) the relevant 'person' identified in paragraph 4.3(a) is an exempt person; or

(e) the relevant 'person' is likely to succeed in applying to the FCA to become an authorised person.

Specified investments and activities

3.4 Subsection 22(1) of FSMA provides that a regulated activity is a:

(a) specified kind of activity;

(b) carried on by way of business;

(c) in relation to a specified kind of investment .

3.5 Part II of Schedule 2 to the FSMA sets out all such specified investments, the most relevant of which for our purposes is 'Loans and other forms of credit' at paragraph 23.

3.6 There are various specified activities set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 which those advising at Clinics appear to be at risk of carrying out depending on the nature of the advice sought. These include:

(a) debt counselling (article 39E);

(b) debt adjusting (article 39D);

(c) debt collecting (article 39F);

(d) debt administration (article 39G);

(e) credit broking (article 36A); and

(f) providing credit information services (article 89A).

3.7 These specified activities could be carried out at Clinics, in a number of ways, for example:

(a) Debt counselling: chapter 17 of the FCA's Perimeter Guidance manual (PERG) provides specific examples of what does and does not amount to debt counselling. Examples therefore include where:

(i) a Clinic client is advised to enter/not enter into a debt management plan;

(ii) a Clinic client is advised to prioritise paying back one debt over another debt; and

(iii) a value judgment is given about the best course of action for a Clinic client to take and/or a precise course of action is recommended for the Clinic client to take (e.g. enter into a debt management scheme).

(b) Debt adjusting could be carried out if a Clinic client's lender were contacted by the Clinic advisor to discuss or negotiate the restructuring of that borrower's debt on behalf of the Clinic client;

(c) Debt collecting could be carried out if a Clinic client lends money to a third party borrower, for example, a friend, relative or business associate etc, and that third

party falls into arrears or default or otherwise and refuses to pay it back and then the Clinic advisor assists the Clinic client to take steps to recover that debt;

(d) Debt administration could be carried out whilst assisting with the debt collecting activities referred to above.

(e) Credit broking could be carried out if a borrower were introduced to a third party such as a bank, pay day lender or broker, in order to (e.g.) refinance an existing loan; and

(f) Credit information services could be offered by a Clinic solicitor if they were to ascertain whether a credit information agency held information relevant to the financial standing of an individual or relevant recipient of credit.

Carrying on specified activities by way of business

3.8 No specified activity would constitute a regulated activity, unless it is "carried on by way of business".

3.9 LawWorks is unlikely to be carrying on any Credit Related Regulated Activities in Clinics from a regulatory perspective (because it does not itself provide advice or other money guidance services).

Clinic firms

3.10 Clearly a firm providing pro bono advice at a Clinic could be seen as carrying on the Credit Related Regulated Activities where their employees, consultants and/or partners attend at a Clinic to provide services.

3.11 PERG 2.3.7 sets out various factors to consider when deciding whether a person is to be treated as carrying on his own business or his employer's or principal's. The most pertinent ones are:

"(1) The degree of control the employer has over the individual;

(5) The degree to which the individual deals with the principal firm's customers in his own name."

3.12 For many Clinics, it is fairly clear that many of the Clinic solicitors who attend do so as part of their employment with a significant degree of direction and/or support from their employers or principals. Consequently, it is possible that firms would be caught by these provisions.

Clinic solicitors and Clinic volunteers

3.13 In some instances, Clinic solicitors and/ or Clinic volunteers may volunteer independently of any employment they have. Indeed some Clinic solicitors may not be given the degree of support or guidance provided by some Clinic firms and effectively be providing the services independently, even though their firm is aware of their attendance at a Clinic. It is conceivable that Clinic clients would consider the services received in these circumstances to be provided by the relevant Clinic solicitor or Clinic volunteer acting in their personal capacity rather than as an employee or a representative of a Clinic firm. As a result, individuals rather than firms will also be at risk of breaching the general prohibition. It is also possible that some Clinic clients may consider that they are receiving services from the Clinic or the umbrella body to which the Clinic belongs. There may therefore be a risk that Clinics themselves may breach the general prohibition.

By way of business

3.14 This leaves the risk that Clinic solicitors and firms would provide the Credit Related Regulated Activities 'by way of business'. PERG 2.3.3 states that this is:

> *"…a question of judgement that takes account of several factors (none of which is likely to be conclusive)…includ[ing] the degree of continuity, the existence of a commercial element, the scale of the activity and the proportion which the activity bears to other activities carried on by the same person but which are not regulated."*

Clinic firms or volunteers may well regularly provide Credit Related Regulated Activities and that this service is related (even tangentially) to their professional activities (i.e. they must have at least some legal background

relating to the regulation of debt), it is entirely possible that they are providing Credit Related Regulated Activities 'by way of business', despite the lack of a commercial element.

4. EXCLUSIONS FROM REGULATED ACTIVITIES

4.1 The RAO is framed in such a way that an activity will not be a regulated activity if a relevant exclusion applies. Additionally, it dispenses with the need for an exemption or authorisation to avoid contravening the general prohibition.

4.2 Article 39K of the RAO sets out the "activities carried on by members of the legal profession" exclusion to the regulated activities of article 39D (debt adjusting), 39E (debt counselling), article 39F (debt collecting) and article 39G (debt administration). This is defined as:

> "(1)…
>
> (a) a barrister or advocate acting in that capacity;
>
> (b) a solicitor…in the course of providing advocacy services or litigation services…;
>
> (e) a relevant person (other than a person falling within sub-paragraph (a) to (d)) in the course of providing advocacy services or litigation services."

4.3 Article 39K(2) provides the following definition of 'advocacy services' and 'litigation services':

> In paragraph (1) –
>
> 'advocacy services' means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings'
>
> 'litigation services' means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings

4.4 Clearly, whether Clinic solicitors or Clinic volunteers can rely on this exclusion depends on how broadly the phrases 'advocacy services' and 'litigation services' are construed. For example, it is possible that a very wide definition of 'litigation services' could encompass a number of Credit Related Regulated Activities.

4.5 The SRA has engaged in a consultation on the scope of the 39K Exclusion. The SRA's consultation paper of December 2014 indicated anxiety about the 39K Exclusion's narrow outlook, in particular in how, at the time of consultation, it only covered advocacy/litigation services provided in relation to proceedings that had already been issued and not proceedings that were yet to be issued. In particular, the SRA commented:

> "The exclusions referred to above [inc. article 39K] were added to the FSMA (Regulated Activities) (Amendment) (No 2) Order 2013 at a very late stage and did not appear in the draft of the Order that was consulted upon. Consequently, the SRA and others did not have the opportunity to consider and comment on the impact of the wording of these exclusions before the Order was made. Although there was a similar exemption under the CCA 1974, this was in the context of the group licence and any pre-issue work would have been covered by the group licence so would not need to be covered by the exemption."

4.6 As a result of discussions between the SRA, the FCA and HM Treasury, it was decided to broaden the scope of this definition to include pre-issue or contemplated proceedings (i.e. not just issued proceedings) through the FSMA (Miscellaneous Provisions) Order 2015, which came into force on 24 March 2015.

4.7 Despite the revised phraseology of "(litigation) services…exercise(ed)... in relation to contemplated proceedings" excluding a broader range of activities the position is not certain. The Law Society – in a response to an SRA consultation paper of June 2015 – argues that:

> "The exemption at article 39K of the FSMA 2000 Regulated Activities Order 2001 would apply on the basis that there would be the provision of 'litigation services' within the meaning of art 39(2) because the prospect of litigation will necessarily arise in the context of debt counselling and related work."

4.8 However, even on the assumption that the prospect of litigation will 'necessarily arise' in the context of some Credit Related Regulated Activities this may not necessarily extend to all of them. The Law Society has yet to comment on whether the prospect of litigation would automatically arise in relation to any other specific consumer credit activities.

4.9 Finally, from a purposive viewpoint it is clear that the FCA intended this exclusion to cover Clinic solicitors and volunteers who are providing a service that is contentious in nature. Given that the Clinic solicitor or volunteer who provides Credit Related Regulated Activities advice in a Clinic may provide an advisory service rather than a litigious one, it is not certain that the FCA would allow them to rely on the article 39K exclusion in relation to, for example, debt counselling. Moreover, reliance on article 39K would not provide a full solution to the problem at hand, as this article does not provide an exclusion to the regulated activities of credit broking (article 36A) and providing credit information services (article 89A). Assuming there is a real risk of these services being performed, this means that FCA authorisation would still be required for these other regulated activities being carried out at the Clinics despite falling within this exclusion.

5. EXEMPTIONS FROM THE GENERAL PROHIBITION

5.1 Section 327 of Part XX of the FSMA contains an exemption providing that the general prohibition will not apply where an 'exempt professional firm' is carrying out a regulated activity. A firm will be an exempt professional firm if it is already authorised and regulated by a designated professional body (DPB) such as the SRA. Additionally, certain conditions also have to be met for section 327 to apply:

> "(1) The general prohibition does not apply to the carrying on of a regulated activity by a person ('P') if –
>
> (a) the conditions set out in subsections (2) to (7) are satisfied."

These conditions prima facie would all be met in the case of Clinics giving Credit Related Regulated Activities (i.e. the SRA would be the DPB, etc).

6.2 This exemption was set up with a view to allowing law firms to carry on regulated activities without authorisation, where these activities are ancillary and incidental to the professional services they are providing to clients. LawWorks itself could not rely on the Part XX exemption as it is not authorised and regulated by a DPB.

6.3 However, the problem in relying on section 327 is that while this exemption is in many ways equivalent to the group licensing regime that existed under the OFT, it is much narrower in that it requires the consumer credit related activity "to arise out of, or be complementary to, other professional services provided to that particular client" (subsection 332(4)). As the SRA points out in its consultation paper, this means that it is no longer possible for an SRA authorised firm to carry on a consumer credit activity in isolation for a client (without authorisation), excluding many law firms from relying on Part XX because the only services they are providing to their client are services that involve regulated consumer credit activities. The FCA have clarified that this is the correct interpretation of subsection 332(4).

6.4 As some Clinic clients often come exclusively for the provision of Credit Related Regulated Activities advice, this could certainly not be seen as 'complementary' to the other services provided to them as subsection 332(4) requires. The Law Society has contemplated that Clinics could rely on this exemption because their Credit Related Regulated Activities services are "ancillary to the services they provide." However, although this may be accurate in reference to the condition at subsection 327(4) – which requires that the services provided by Clinics be incidental (i.e. not a major part) of all the services they provide to Clinic clients, it would clearly not be accurate in relation to subsection 332(4) where this will generally be the primary advice provided as part of the Clinic services and very rarely incidental.

7. FCA AUTHORISATION IS NOT A VIABLE OPTION

7.1 Clinic firms could apply to the FCA for Part 4A permissions to enable them to be FCA authorised to carry on the relevant regulated activities. However, this is not a practical solution since applying for FCA authorisation is a long, expensive and generally difficult process. Preparing an application takes a considerable amount of time. This is because of the need to submit a complete application form, to ensure systems are in place to comply with the FCA Handbook, determine the minimum regulatory financial requirements, prepare a business plan setting out the planned activities, budget and resources. Once an application is submitted, the

FCA can also take up to six months to decide whether to grant authorisation. Also, applying for FCA authorisation is expensive. The fees charged by the FCA for granting permissions vary. As an estimate the application fee for a consumer credit permission ranges between £600 and £15,000. The actual fee would depend on the level of complexity of the permission(s) required (from straightforward credit broking to complex debt counselling) and the firm's consumer credit income. Legal costs would also run to approximately £60,000 and then there is the cost of maintaining the licence.

8. SOLUTIONS

8.1 To enable Clinic firms, solicitors and volunteers to carry on Credit Related Regulated Activities without FCA authorisation, LawWorks seeks to persuade HM Treasury to enact legislative change to this effect.

8.2 We propose two alternative approaches to enacting legislative change in order to cover both Clinic volunteers and firms. We set out the two approaches below:

(a) A new exclusion

One approach is the insertion of a new exclusion by way of an extra clause after the current article 39KA in the RAO. This would exclude from the relevant Credit Related Regulated Activities those activities, when carried on by Clinic Solicitors and Clinic Firms. Drafting could be as follows:

> 39KB Activities carried on by reason of providing pro bono credit related regulated activities services
>
> (1) There are excluded from articles 36A, 39D, 39E, 39F, 39G and 89A activities carried on by a solicitor or qualifying law firm in the course of providing pro bono services and for the purposes of article 39KB(1), a body is a qualifying law firm if it would be able to rely on the exemption from the general prohibition specified at section 327 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 in respect of the regulated activities that it carries out but for the provision at section 332(4) of that Order.
>
> In this article, 'pro bono services' means any legal services provided to a client of a pro bono legal advice clinic where that person does not receive any pecuniary reward or other advantage from this client in exchange for the provision of these services.

(b) A new exemption

Alternatively, an exemption could be brought in by way of a FSMA (Exemption) Order. This is in reference to the FSMA (Exemption) Order 2001. This could be drafted as follows:

> Persons exempt in relation to particular regulated activities
>
> [Section] Subject to the limitations, if any, expressed in relation to this, each of the persons listed in Part [] of Schedule [] is exempt from the general prohibition in respect of any regulated activity of the kind specified by articles 36A, 39D, 39E, 39F, 39G and 89A FSMA 2000 (Regulated Activities) Order 2001.
>
> Schedule [] Part []
>
> 1. A solicitor providing pro bono services amounting to a credit related regulated activity:
>
> 2. A qualifying law firm providing pro bono services by way of giving credit related regulated activities advice.
>
> In this schedule –
>
> (a)'qualifying law firm' means a body which would be able to rely on the exemption from the general prohibition specified at section 327 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 in respect of the regulated activities that it carries out but for the provision at section 332(4) of that Order.
>
> (b)'pro bono services' means any legal services provided to a client of a pro bono legal advice clinic where that person does not receive any pecuniary reward or other advantage from this client in exchange for the provision of these services.

(c)'credit related regulated activities advice' means advice given to an individual concerning his rights and obligations under a specific credit agreement.

Supervision of new legislative regime?

8.4 If a new exclusion were suggested because of the reasoning above, the FCA would likely need reassurance that the carrying on of these Credit Related Regulated Activities would be supervised. This is because a person relying on an exclusion to a regulated activity will legally not be carrying out this regulated activity and therefore will not be subject to the Consumer Credit Sourcebook (CONC) regime. CONC specifically sets out conduct of business rules. For example, debt counselling, debt adjusting, providing credit information services and credit broking at CONC 2.5 and 2.6, as well as general conduct of business provisions for all consumer credit regulated activities. In contrast, a Clinic firm or volunteer relying on an exemption to a regulated activity must still comply with these conduct of business rules.

8.5 To this end, we suggest further legislative changes to ensure that those relying on the new exclusion would still be subject to suitable conduct of business rules. Provisions about the governance of these Credit Related Regulated Activities could be set out in a specific order. By way of fictitious example: the Consumer Credit Act (Pro Bono Legal Services) Order. This could replicate the conduct of business rules stated in CONC, especially at:

(a) CONC 2.5 and 2.6 which deals with credit broking and debt counselling, debt adjusting and providing credit information services, respectively.

(b) CONC 5.4 which deals with credit brokers;

(c) CONC 7.3 which deals with treatment of customers in default or arrears; and

(d) CONC 8 which deals with debt advice.

8.6 An appropriate reference point for these rules would be the amendments made to the SRA Financial Services (Conduct of Business) Rules 2011, which have been made to align the conduct of business rules for Part XX firms carrying on consumer credit regulated activities (who are supervised by the SRA) with the rules for FCA-authorised firms carrying on such activities (i.e. CONC). These give a good indication of the conduct of business rules which the FCA believe are key for persons carrying on consumer credit regulated activities.

8.7 From a supervisory perspective Clinic clients would by no means be lacking regulatory protection if the Clinic firms or volunteers offering the Credit Related Regulated Activities were able to give this advice without FCA authorisation, by relying on the new exclusion. This is due to the safeguards that would continue to be in place for Clinic clients, including:

(a) the fact that the Clinic solicitors and their Clinic firms are already regulated by the SRA and subject to the SRA code of conduct which, amongst other things, requires them to:

(i) treat their clients fairly;

(ii) ensure they have the appropriate resources, skills and procedures to carry out their client's instructions; and

(iii) inform clients whether and how the services they provide are regulated and how this affects the protections available to the client.

(b) the fact that the Clinic solicitors and their Clinic firms are required to have professional indemnity insurance to cover civil liability claims from Clinic clients in accordance with the SRA Indemnity Insurance Rules; and

(c) the recourse of Clinic clients to the Legal Services Ombudsman and the Office for Legal Complaints.

9. ADVICE REGULATION AND THE FINANCIAL GUIDANCE AND CLAIMS BILL.

9.1 We welcome this Bill which establishes a Single Financial Guidance body (SFGB) supported by the FCA's levy, building on the previous work of the Money Advice Service and its predecessor body (the Consumer Finance Education Body) and integrating the Pensions Advisory Service. The Bill also consolidates the regulatory role of the FCA, transferring across the regulation of claims management services from the Ministry of Justice. Both are welcome developments; there are a range of unmet information and advice needs across the whole spectrum of consumer finance and a need for a coherent strategy making the best use of the capabilities of non-profit sector and appropriately regulating the money advice market. It is important though that the role of pro bono is acknowledged, and that the SFGB supports its provision alongside other free/non-profit and low cost advice services. Pro bono activity is not a substitute for legal aid or for paid or other access to money guidance and debt advice services, as envisaged by this Bill or funded through the FCA levy. Nor can enabling pro bono realistically meet all of the need that is present in society; however within the context of a coherent strategy for the provision of freely accessible money and legal advice it has an important contribution.

9.2 The measures in the Bill to enable the SFGB to make recommendations for Secretary of State in respect of its debt advice function, including on associated regulatory matters, bring a welcome strategic coherence to policy making in the sector. We believe it would be appropriate and necessary for the SFGB to address the specific issues around the regulation and licensing of consumer credit debt advice. We hope that the SFGB might be able to review restrictions under Part XX (Provision of financial services by members of the professions) Financial Services and Markets Act 2000 as they apply to pro bono legal advice clinics. As we set out in this briefing, the restrictions appear to undermine the policy intention of provisions for not for profit organisations set out in article 60 of FSMA (Regulated Activities) (Amendment) (No. 2) Order 2013. SFGB should be able to assess whether there is a negative impact on availability of consumer access to advice on consumer credit matters. Based on the assumptions of debt casework volumes prior to the 2013, our estimation is that potentially around 2,100 individuals that would have been able to access debt advice before the changes to group licencing were introduced, but may have unable to do so as a result of the regulatory restriction

10 CONCLUSION

10.1 Clinics in the LawWorks' network often have close ties to and/or are embedded within local communities. Clinics offer advice across the whole range of social welfare law, including money matters. As a result, LawWorks has accumulated a great deal of experience and insight into, for example, the inter-relatedness of legal and/or money problems. That is to say that behind many debt problems presenting to Clinics, individuals regularly present other problems, including mental health, employment and family problems. It is often the combination of problems at once which create barriers to individuals seeking and/or accessing information and assistance regarding money matters, especially early on before problems really escalate.

10.2 The Clinics that LawWorks support are in a good position to deliver some elements of the intended benefits of the Bill, and can do so alongside these reforms and where there is an unmet legal need in relation to consumer debt matters. In all of the circumstances set out above, and following consideration of the issue by the proposed SFGB, we invite the Government to insert the legislative changes in order to permit the Clinics supported by LawWorks to deliver essential debt advice services to the public. Such legislative change sits well within the context of the Bill.

10.3 We can provide further information and/or evidence upon request.