



LawWorks Briefing

Financial Guidance and Claims Bill. Committee Stage

Introduction

LawWorks (the Solicitors Pro Bono Group) facilitates access to various pro bono legal services, including supporting a network of independent free legal advice clinics throughout England and Wales. The pro bono advice provided at the clinics cover a broad spectrum of legal issues, but the focus of clinics' work is on civil, social welfare and family law issues which often intersect with or involve debt matters (sometimes involving consumer credit). We are providing this briefing in support of an amendment to address a problem in respect of the regulation of debt advice as it applies to the specific context of pro bono clinics in the LawWorks clinics network.

Amendment NC12

"Provision of advice on consumer credit matters by legal advice clinics"

(1) In exercising its functions, the single financial guidance body must have regard to the availability of consumer access to advice on consumer credit matters.

(2) The single financial guidance body must specifically consider the impact on consumers of Part XX (Provision of financial services by members of the professions) Financial Services and Markets Act 2000 preventing pro bono legal clinics from providing advice on consumer credit matters.

(3) If the single financial guidance body considers that allowing members of the professions to provide advice on consumer credit matters would be conducive to its functions it must advise the Secretary of State to amend the Financial Services and Markets Act 2000.

(4) On receipt of advice from the single financial guidance body under subsection (4), the Secretary of State may by regulations made by statutory instrument amend Part XX of the Financial Services and Markets Act 2000.

(5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

Member's explanatory statement

This new clause would require the single financial guidance body to consider the effect on consumers of the prohibition on pro bono legal clinics giving legal advice and if it considers necessary recommend that the Secretary of State amend the Financial Services and Markets Act 2000 to allow pro bono legal clinics to provide this service.

The amendment addresses a prohibition on volunteer solicitors and pro bono legal advice clinics delivering regulated consumer credit advice. This prohibition has arisen from what we believe were the unintended consequences of secondary legislation under the Financial Services and Markets Act 2000 (FSMA); a consequence that has been arguably inconsistent with the Government's overall approach to regulatory reform and policy intention.

Background

In 2014 responsibility for regulating consumer credit and consumer credit advice 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; the Law Society was a group licence holder, under which clinics in the LawWorks network were previously licensed to undertake credit-related activities.

The regulatory transfer has not impacted not-for-profit organisations, such as local Citizens Advice, providing comparable services who had been operating under an OFT group licence, as they can 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). Despite being a not-for-profit organisation, neither LawWorks nor the clinics in the LawWorks network have been able to rely on these grandfathering provisions because they did not benefit from their own group licence before 1 April 2014. As a consequence, 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 advice 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).

We have sought our own pro bono advice on this matter. Our lawyers provided a memoranda looking at various ways in which current regulations might be construed to give protection for Clinics, however they have concluded that none of these offer a solution as there is no adequate exclusion or exemption within the current regulatory framework in context of clinic legal pro bono work. The detailed appendix provides a summary of the legal position and the possible solutions.

The role of the Single Financial Guidance Body

We welcome the establishment of the SFGB and hope it will work in partnership with the pro bono sector in the delivery of debt advice. Given the negative impact of the above prohibition on the availability of consumer access to advice on consumer credit matter, we believe it would be a useful addition to the role and remit of the SFGB to be able to address this issue. The amendment gives a power for the SFGB to review this to recommend the appropriate regulatory change.