



Briefing Sheet

Consumer Credit & Debt Advice

In this briefing note we provide an update on changes to the regulation of consumer credit and debt advice at pro bono clinics – January 2015.

Overview

On the 1st April 2014, the regulation of consumer credit activity moved from the Office of Fair Trading (OFT) to the Financial Conduct Authority (FCA) and the OFT group licencing regime was abolished.

Solicitors providing pro bono advice were previously covered to provide Consumer Credit and Debt advice by the group licence issued to the Law Society and administered by the SRA. The removal of the group licencing regime means that solicitors are no longer covered to provide pro bono debt advice at free legal advice clinics across the country. LawWorks therefore had to advise all clinics not otherwise covered by FCA limited permission authorisation to stop advising in all areas of consumer credit and debt from the 1 April 2014.

LawWorks has made a number of submissions to the FCA illustrating the impact of these changes on pro bono services and requested that a waiver be granted to cover pro bono consumer credit and debt advice. The FCA has stated that there is no scope for them to grant a waiver from the requirement to be authorised and has directed LawWorks to pick this up with HM Treasury (HMT) directly. It would appear that legislative reform will be required to create scope for an exemption that could cover pro bono work. LawWorks has initiated

conversations with HMT to discuss LawWorks securing a specific exemption for pro bono debt and consumer credit advice.

LawWorks Pro Bono Clinics provide a valuable, free and necessary service to vulnerable consumers across the county and we believe the removal of these services is counterintuitive to legislation designed to protect the consumer. To strengthen our argument to the regulators LawWorks is currently collecting case studies and information to illustrate the impact of the removal of the Law Society's Group Licence on pro bono services. If firms, clinics or advice agencies have any information that you think is relevant please do send it through, so that we can make our case as compelling as possible.

Background

LawWorks (the Solicitors Pro Bono Group) supports a network of 177 free legal advice clinics operating across the country in a number of areas of law. A pro bono clinic is a free drop-in or appointment based service that provides legal advice, delivered by volunteer legal professionals to those who cannot afford to pay for legal assistance and aren't eligible for legal aid. Clients are not charged for this service and legal advisors provide their time and expertise on a purely volunteer basis.

On 1 April 2014, the regulation of consumer credit activity became a mainstream financial





services activity regulated by the Financial Conduct Authority (FCA). Both the group licencing regime and standard consumer credit licences held under the Office of Fair Trading (OFT) were abolished.

LawWorks registered clinics previously provided consumer credit and debt advice under a Group Licence, that was issued by the OFT to the Law Society and administered by the SRA. Therefore all solicitors holding a practising certificate were covered to advise in the areas of:

- Consumer Credit
- Credit Brokerage
- Debt-Adjusting
- Debt-Counselling
- Debt Collecting
- Debt Administration
- Provision of credit information services (including credit repair)

HM Treasury (HMT) and the FCA have confirmed that there will be no equivalent group authorisation available under the new regime.

To carry out consumer credit activities without the relevant authorisation, permission or exemption after the 31 March 2014 is a breach of FCA Regulation and is a criminal offence under section 23 [1A] of the Financial Services and Markets Act 2000 (FSMA).

LawWorks advised all clinics not covered by limited permission authorisation (see below) or an individual licence to stop advising in all areas of consumer credit from 1 April 2014.

Limited Permission Authorisation

The FCA has granted certain not-for-profit organisations (the National Association of Citizens Advice Bureaux (CABx), the Law Centres Network (LCN) and Advice UK) limited permission authorisation due to the fact that these not-for-profit organisations held their own group licences prior to 31 March 2014. These organisations can operate under a reduced regulatory regime for:

- Debt Adjusting;
- Debt Counselling; and
- Credit Information Services

The FCA have confirmed that the 'grandfathering' provisions for not-for-profit debt counselling bodies are set out in article 60 of SI 2013/1881, and apply only where the body in question was covered by a relevant OFT group licence immediately before 1 April 2014.

LawWorks is also a not-for-profit organisation, but did not hold its own group licence prior to 31 March 2014, because advice was being provided by individual solicitors able to operate under the group licence issued to the Law Society, unlike other not-for-profit organisations that required a group licence to cover non-solicitor volunteers.





If a clinic is 'grandfathered' by an interim permission licence then they can continue to advise clients in the areas of debt adjusting, debt counselling and credit information services. Please note that it is now too late to be 'grandfathered' under a not-for-profit limited permission licence. The deadline was the 31 March 2014 when regulation of consumer credit activities was still under the OFT.

Impact

Prior to the 1 April 2014, 78 of LawWorks registered clinics provided consumer credit under the Law Society's Group licence. In the period April 2013 to March 2014, 29,279 people accessed the LawWorks Clinics Network and debt advice constituted 7% of all advice delivered. The clients accessing clinic services are some of the most vulnerable members of society: 75% of clinic clients earn below the Joseph Rowntree Foundation's socially acceptable minimum standard of income.

As a result of the removal of the group licencing regime, LawWorks clinics not covered by limited permission (to our knowledge 61 clinics in our network that previously offered pro bono debt advice services are not covered by limited permission) have had to suspend all debt advices services, thereby leaving many vulnerable clients across the country without any options for accessing free legal advice for debt matters. Those clinics covered by limited permission authorisation (for example those

hosted at a Citizens Advice Bureaux) are seeing an increased demand for debt advice in their already oversubscribed services. Furthermore, they have had to reduce the advice given to clients to only the areas covered by limited permission authorisation which is more restrictive than the previous Law Society Group Licence.

Scope

The FCA has set out the consumer credit activities which fall within the scope of their regulation here - <http://www.fca.org.uk/your-fca/documents/credit-ready-jargon-buster>

Table 2.1 on page 18 of the FCA '[Detailed rules for the FCA Regime for Consumer Credit](#)' categorises consumer credit activities into the areas that fall into 'Limited permission activities' and are therefore covered by an interim permission licence. The table also lists the areas that fall into the category of 'Higher-risk activities' which interim permission does not cover.

Table 2.1 – Categorisation of activities

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| <p>Limited permission activities</p> | <p>Consumer credit lending (where the main business is selling goods or non-financial service and there is no interest of charges) – this excludes hire-purchase and conditional sale</p> <p>Consumer Hire</p> <p>Credit broking (where the main business is selling goods or</p> |
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| | <p>non-financial services and broking is a secondary activity</p> <p>Credit broking (where the main business is selling goods or non-financial services and broking is a secondary activity)</p> <p>Credit broking in relation to the Green Deal</p> <p>Not-for-profit debt counselling and debt adjusting</p> <p>Not-for-profit credit information services</p> <p>Local authorities (lending within the scope of the CCD)</p> |
| <p>Higher-risk activities</p> | <p>Consumer credit lending (including personal loans, credit card lending, overdrafts, pawnbroking, hire-purchase, conditional sale, etc.)</p> <p>Credit broking (including introducing consumers to lenders as a main business activity)</p> <p>Debt adjusting</p> <p>Debt counselling</p> <p>Debt collection</p> <p>Debt administration</p> <p>Credit information services</p> <p>Credit reference agency services</p> <p>Peer-to-peer lending</p> |

The FCA website lists scenarios of areas that fall in/out of FCA regulation of debt counselling, this lists examples of what is and is not debt counselling which you can view via this link -

<http://fshandbook.info/FS/html/FCA/PERG/17/7>

Only those clinics that are grandfathered by an interim permission licence are covered to provide debt counselling services.

Part 20 FSMA Exemptions

Some consumer work counts as exempt regulated activity under Part 20 of the Financial Services and Markets Act (2000) FSMA. This is regulated activity to which the general prohibition, under section 19 FSMA, on carrying on regulated activity without authorisation does not apply. Section 327 of the FSMA sets out the conditions for exemption.

The FCA have stated that it is open to firms to provide pro bono legal advice (including debt advice) provided that – the debt advice (as regulated activity) is incidental to (i.e. arises out of or is complimentary to) the professional services offered to clients, and the firm is a member of a Designated Professional Body (DPB) which has rules approved by the FCA under Part 20 FSMA in respect of consumer credit.





LawWorks Engagement with the FCA

In identifying a solution to the problem, LawWorks considers that the best option would be for clinic volunteers advising at LawWorks registered clinics to be waived from FCA regulation that requires firms to have individual authorisation in place.

LawWorks, with the support of the Law Society, has made a number of submissions to the FCA illustrating the significant impact the removal of the group licencing regime for consumer credit and debt advice is having on the LawWorks Clinics Network. We requested that a waiver be granted to pro bono clinics operating in the network so that these valuable services can be reinstated.

Unfortunately, the FCA has confirmed that there is no scope for them to grant a 'waiver' from the requirement to be authorised, where a regulated activity is carried on without a relevant exemption or exclusion. They have said that this is a matter for HMT and directed LawWorks to approach HMT directly on this matter. It would appear that legislative reform will be required to create scope for an exemption that could cover pro bono work.

LawWorks have illustrated to the FCA that we urgently need a solution as soon as possible and has suggested extending limited authorisation to the entire LawWorks Clinics Network as an interim solution until a long term solution can be reached. The FCA have stated

that the 'grandfathering' provisions for not-for-profit debt counselling bodies are in article 60 of SI 2013/1881, and apply only where the body in question was covered by a relevant OFT group licence immediately before 1 April. The FCA therefore has stated that they have no scope to apply them to other bodies and have again directed LawWorks to consult with HMT on this directly.

Next Steps

LawWorks has initiated conversations with HMT to discuss LawWorks securing a specific exemption for pro bono debt and consumer credit advice. We have stressed the need for a solution as soon as possible.

To feed into our ongoing discussion with the regulators and HMT, LawWorks is currently collecting clinic case studies to illustrate the impact of the removal of the Law Society's Group Licence. In particular, we are looking for case studies and evidence that highlight any of the following:

- Case studies/information on services that previously were running before 1 April 2014 that had to close following the enforcement of the new regulations (scale, type of work delivered, beneficiaries, positive impact on clients etc.)
- Any data on unmet demand for pro bono advice services since 1 April 2014 (numbers turned away, typical cases etc.)
- Specific case studies of individuals that have been turned away because of the licencing issue.





If firms, clinics or advice agencies have any further information that you think might be relevant please do send it through to enable us to present as full a picture of the impact of these changes as we can and make our case as compelling as possible.

LawWorks would also be interested in hearing any ideas for innovative solutions to address this problem, especially in this interim period until a long term solution is reached with the regulators. Please do get in touch with any ideas which we can share with the network and expand the number of services operating.

SRA Open Consultation on Consumer Credit

In October 2014, the SRA opened a consultation on their proposal to withdraw from the FCA's DPB regime. As part of this the SRA has proposed that the Part 20 FSMA regime should not be available to firms in relation to consumer credit activities. The result of this proposal would be that firms wishing to carry on regulated consumer credit activities would be required to seek authorisation from the FCA directly.

Pro bono work was not factored into the SRA's Consultation paper and impact assessment and LawWorks has therefore submitted a response illustrating the potential impact of the proposed changes on pro bono services.

The FCA has confirmed that solicitors can rely on the Part 20 exemptions in respect of pro bono work. However, solicitors have taken a

prudent approach on extending these exemptions to pro bono work at clinics as they are unsure whether advice delivered at clinics constitutes 'complimentary to the professional services offered to clients...' Solicitors would need further clarification that the exemptions covered extend to issues incidental to the particular service provided to clinic/pro bono clients. Solicitors are taking a cautious approach preferring to not take on any cases in this area given the ambiguities in the legislation and in light of the fact that to carry out consumer credit activities without the relevant permission or authorisation is a breach of FCA regulation and a criminal offence under section 23 [1A] FSMA.

It is LawWorks contention that the Part 20 exemptions need to be more clearly defined and extended so that they explicitly cover pro bono work, and should not be removed.

The **LawWorks Clinics Team** provides consultancy and advice to help establish and support free legal advice sessions carried out by volunteer lawyers and students.

Contact us at: clinics@lawworks.org.uk

