

December 2017

Guy Opperman MP,  
Parliamentary Under Secretary of State for Pensions and Financial Inclusion  
Department of Work and Pensions  
[ministers@dpw.gsi.gov.uk](mailto:ministers@dpw.gsi.gov.uk)

*CC. Stephen Barclay MP - HM Treasury, Lord Keen - Ministry of Justice, Robert Buckland MP QC- Law Offices.*

Dear Under Secretary of State,

**Re: FINANCIAL GUIDANCE AND CLAIMS BILL: Regulated Pro Bono Consumer Credit Advice**

I am writing to request whether the Government might be open to considering an amendment in respect of relaxing the prohibition that currently applies to solicitors working in pro bono legal advice clinics from providing advice on consumer credit matters. This prohibition has arisen from some of the (what we believe were 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.

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 (and registered in the LawWorks clinics network). The pro bono advice provided at the clinics cover a broad spectrum of legal areas but focus especially on civil, social welfare and family law issues which often intersect with or involve debt matters (sometimes involving consumer credit). However, there is a problem in respect of the regulation of debt advice as it applies to the specific context of clinics in the LawWorks clinics network.

By way of 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 As part of this regulatory transfer, the former legislative arrangement which set out a licensing framework was repealed and replaced by an authorisation and permission regime for credit-related regulated activities in the FSMA and subordinate legislation.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 have 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. They have suggested that a specific legislative change through amendments to the FSMA and/or the RAO which would enable services to be provided without the need for FCA authorisation.

I attach a detailed note which you may wish to pass on to the Bill Team, based on the legal opinion we have received. I hope this matter can be considered as the legislation progresses through its next Parliamentary stages.

I have copied this letter to Stephen Barclay MP, Parliamentary Secretary at HMT, Lord Keen, Minister at the Ministry of Justice whose portfolio includes legal services regulation, and Robert Buckland MP QC, Solicitor General, given the cross-cutting nature of the regulatory issue highlighted.

Yours sincerely



Martin Barnes

**CEO LawWorks**