

WRIGLEYS

— SOLICITORS —

Your ref

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1 June 2004

Eve Engledow
FSMA Secondary Legislation Consultation Responses
Financial Stability and Regulatory Policy Team
Room 4/23
HM Treasury
1 Horseguards Road
London
SW1A 2HQ

Dear Ms Engledow

The Impact of FSMA on Advice Centres Foundation for Credit Counselling

The Foundation for Credit Counselling is the umbrella organisation for the Consumer Credit Counselling Service. It is a registered charity and provides free debt advice to individuals who are over indebted.

The Foundation was established in 1989 and advises several thousand persons each year through telephone counselling and face to face counselling.

For some of its clients a debt management programme is required and the Charity distributes monthly to creditors the sum of £6.3 million from over indebted persons.

As part of its provision of debt advice, the Charity recognises that there may be some persons who would benefit from independent mortgage advice which might permit a mortgage adviser to arrange the re-mortgage which will be beneficial to the client.

The Charity does not have the expertise to give mortgage advice and recognises that rearranging a mortgage is not necessarily appropriate for all its clients.

The Foundation for Credit Counselling has, therefore, entered into an agreement with Charcol which will enable Charcol to provide financial planning advice for the primary purpose of permitting clients to reduce their outgoings on secured borrowings and better manage their finances.

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Continuation 2

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The Foundation for Credit Counselling entered into an arrangement with Charcol in December 2002 to provide this advice.

The Charity incurs a cost in advising each client and preparing a debt management plan for those clients for whom it is the most suitable method for relieving their poverty. The debt management plan information is useful for Charcol in giving its financial planning advice in respect of secured lending.

It is normal for Charcol to pay commission to any introducer and it has agreed with the Foundation for Credit Counselling to pay a fee which is applied to the charitable purposes of the Foundation for Credit Counselling.

We have considered the Consultation Document on the Impact of FSMA on Advice Centres contained in the Financial Services and Markets Act two year review “Changes to Secondary Legislation Proposals for Change”.

Question 1

We believe that the scope of the financial promotion restriction will create uncertainty and will be unduly restrictive of the work of the Foundation for Credit Counselling once mortgage regulation is introduced.

However, it is not simply the financial promotion restrictions which is of concern but also the general prohibition under section 19 FSMA 2000 and Article 25(a) of FSMA 2000 (Regulated Activities) Order 2001. It is not believed that the exclusion in Article 29 will apply because of the provisions of Article 29(2)(b). It is also a concern that the exclusion in Article 33 of FSMA 2000 (Regulated Activities) Order 2001 might not apply where the independent adviser might also advise on rearranging an insurance policy for the beneficiary of the charity.

Question 2

We agree that there should be a specific financial promotion exemption for advice centres to remove this risk. We believe that there should be additional legislation to confirm that advice centres are not carrying out regulated activities, even if they receive some payment from the authorised provider.

Question 3

We believe there is a case for widening the scope of the (Carrying on Regulated Activities by Way of Business) Order. We set out a proposal which is similar to the Enterprise Scheme wording below.

HM Treasury’s Proposal for an Exemption for Advice Centres

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Continuation 3

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I think a distinction needs to be made between an advice centre which provides independent advice and an advice centre which makes an arrangement or introduction to an authorised person who provides that advice.

In this letter I shall only deal with the question of the advice centre which arranges or introduces a person to an authorised person.

The Consultation Document

Suggests three qualifications which we will review in turn:

1. Provide independent advice which is free at the point of access

It is important to recognise that if the provision of debt advice to a client is in the interest of a client and that mortgage advice was required, which cannot be provided by the debt advice centre, that the centre can introduce the client to an authorised person. The authorised person would normally make payment for any introduction and the debt advice centre needs to receive income to cover its debt advice costs. It seems that if any commission or equivalent payment is made by the authorised person to the debt advice centre. The debt advice centre would require authorisation. This is wholly unfair and could prevent income coming to the charity. Of course, the authorised person could make a donation to the charity but there will always be concern that the FSA might still view that donation as a payment for services of the introduction. This would be unsatisfactory. The FSMA 2000 (Exemption) Order 2001 at Article 40 recognises, in the case of enterprise schemes, that the Enterprise Agency may charge such sums as may reasonably be regarded as necessary to meet the costs of carrying on the activity, that this does not constitute a pecuniary gain. It would be important to ensure that similar wording is incorporated in any advice centre exemption.

2. Providing debt advice is the principal financial services activity

It is acceptable that debt advice would be the principal financial services activity.

3. Professional Indemnity Insurance

If the advice centre is clearly acting as an introducer for a client and the person providing the advice is the authorised person, it should not be necessary for the advice centre to hold adequate professional indemnity insurance since it is not giving the advice. If an advice centre is simply engaged in arranging or introducing then professional indemnity insurance is an inappropriate requirement.

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Continuation 4

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Question 4

We agree that it is not appropriate to limit exemptions to advice centres among certain established networks. It is restrictive and inflexible.

Question 5

We do not agree with the proposed conditions for exemptions relating to advice centres since we believe that they are unduly restrictive. We think the financial promotions exemption needs to be distinguished between financial promotions where persons are arranging or introducing and one where they are providing direct advice.

Question 6

The limit should also cover insurance products as these are commonly arranged with mortgages.

Question 7

The exemption should not be limited to members of certain established networks of advice centres since this prevents new advice centres which are not members of a network provide such service.

Question 8

It should be available for organisations which are charities, societies for the benefit of the community under the Industrial and Provident Societies Act and community interest companies and other not for profit organisations as engaged in disinterested objects.

Yours sincerely

MALCOLM LYNCH
Partner