

adviceⁿⁱ Consultation

Financial Services and Markets Act: two year review: Changes to Secondary Legislation

1.0 adviceⁿⁱ

- 1.1 adviceⁿⁱ is an umbrella group that exists to provide leadership, representation and support to its members to facilitate the delivery of high quality, sustainable advice services. We are the sister agency of advice^{uk} and have a membership of almost 80 organisations that provide free independent advice, information, and advocacy services on a wide range of issues to disadvantaged communities.

- 1.2 About one third of adviceni members provide free money advice services at one level or another and there are 5 dedicated money advisers within the membership. With regards to money advice provision there is a very weak infrastructure in Northern Ireland. There are few frontline advisers and a lack of resources to increase the capacity to deliver money advice services. However, adviceⁿⁱ are working the Money Advice Trust (MAT), the Department of Enterprise Trade and Industry, and the Department of Social Development to try and address the knowledge and skills gap within the sector and to develop a money advice infrastructure in NI.

2.0 General

- 2.1 adviceⁿⁱ welcome clarification of the current legislative framework as it relates to the Financial Services and Markets Act.

- 2.2 As a starting point in responding to the document adviceⁿⁱ is of the view that members provide money advice as defined by MAT: ‘Money advice or debt advice, is the process of assisting those who are in difficulty as a result of being unable to meet their financial commitments to stabilise their situation. The process of assisting clients involves identifying their needs; the amount they owe and the available income to pay off the debt. It also involves

negotiating with creditors’.

- 2.3 They do not provide financial advice on investment potential, insurances, non-state pensions, stocks and shares, building or society windfalls and do not promote financial providers. Some of their work does however relate to providing options to maximize income and reduce debts. This often relates to refinancing options and mortgages etc
- 2.4 It is the understanding of adviceⁿⁱ that many of our members were unaware of the implications or requirements placed upon them by financial services regulations before the review consultation and did not perceive themselves as ‘advocating products or services in a way which amounts to a financial promotion’ Providers of free, independent advice do offer options to clients on income maximization to assist with debt problems and this can sometimes take the form of making recommendations in relation to a clients mortgage arrangements. This however does not involve making recommendations as to particular mortgage lenders. The fact that there is some ambiguity and risk of advice centres contravening the financial promotion restriction and therefore committing a criminal offence and/or making an unenforceable agreement which in turn might have a detrimental effect on the client is quite concerning. We therefore welcome clarification of the boundary of regulation as it relates to money advice provision by adviceⁿⁱ members.

3.0 Question 1

- 3.1 adviceⁿⁱ believe the current scope of the financial promotion restriction creates uncertainty of the work of advice centres and is likely to be more uncertain and restrictive since awareness of the consequences has been raised amongst the advice sector. Also, as mortgages fall within the scope of FSMA regulation in October 2004 the scope could become even more binding. We would therefore be keen to have a specific exemption included in the review for the independent advice sector.

4.0 Question 2

- 4.1 adviceⁿⁱ believe that a specific financial promotion exemption for free not for profit advice centres is necessary to enable the voluntary advice sector to continue to deliver high quality money advice services to disadvantaged individuals and communities without their work being compromised.

5.0 Question 3 & 4

- 5.1 In relation to regulated activities whilst adviceⁿⁱ is of the view that advice centres are not carrying out regulated activities (the service is free at the point of delivery and is provided on a not for profit basis) we believe it would be beneficial to have further legislation clarifying ‘the business test.’ Although FSA guidance in relation to mortgage related activities recognizes “that the business test is unlikely to be satisfied ...when a person provides a service without any expectation of reward or payment of any kind, such as advice given or arrangements made by Citizens Advice Bureaux and other voluntary sector agencies” we believe that additional legislation to confirm that advice centres are not carrying out regulated activities would remove any uncertainty.

6.0 Questions 5-9

- 6.1 adviceni agree that any exemption for advice centres should reflect the nature of activities carried out by advice centres. The conditions are acceptable as laid out in 3.16 with the exception of the second bullet point which states a requirement for advice centres ‘to provide debt advice as their principal services activity’. Again we seek greater clarification on this point and perhaps a definition given that there are very few specialist money advisers in Northern Ireland and many of the generalist advisers provide some level of money advice provision.
- 6.2 As a pre-condition to adviceⁿⁱ membership advice centres must have professional indemnity insurance (PII). adviceⁿⁱ members currently have a limit of indemnity of £500,000 which we believe amounts to adequate PII cover. We recommend that as a condition to exemption advice centres should have a minimum of at least £250,000 PII cover .

- 6.3 adviceⁿⁱ do not support the extension of the exemption to financial promotions relating to investments such as shares and gilts as this does not fall within the remit of money advice and is more closely aligned to financial advice which ultimately would involve higher risks for the voluntary advice sector in relation to claims etc.
- 6.4 adviceni supports the suggestion that exemptions should be limited to advice centres that fall within the membership of established networks such as adviceⁿⁱ, advice^{tk} and Citizens Advice. This would ensure that all centres have adequate professional indemnity insurance, are operating to a high quality standard and are trained and competent in the delivery of money advice services.