



9 May 2013

Our ref: ICAEW Rep 72/13

Your ref: CP13/7

To: Financial Regulation Strategy, HM Treasury
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Dear Strategy and Policy Divisions

Consumer Credit Regulation and the Financial Conduct Authority

1. ICAEW welcomes the opportunity to comment on the consultation papers *A new approach to financial regulation: Transferring consumer credit regulation to the Financial Conduct Authority* published by HM Treasury and the Department for Business Innovation and Skills available from this [link](#) and *High-level proposals for an FCA regime for consumer credit published by the Financial Services Authority* in March 2013 available from this [link](#).
2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 140,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
4. This response reflects consultation with the ICAEW Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.
5. ICAEW's regulation of its members and affiliates in insolvency is overseen by the Insolvency Service, and ICAEW is the largest of the Recognised Professional Bodies under the Insolvency Act, currently licensing around 700 practitioners. ICAEW's Insolvency Committee is a technical committee made up of Insolvency Practitioners working within large, medium and small practices. The Committee represents the views of ICAEW licence holders.

Main Points

6. We agree that transferring responsibility for the regulation of consumer credit to the Financial Conduct Authority (FCA) is a logical development. Consolidating regulatory responsibility for financial service matters in a single authority is likely to improve regulatory consistency, decrease citizens' confusion over who to approach when they are the subject of detriment and will hopefully attract economies of scale.
7. However, some parts of the current OFT regime, and in particular Group Licenses, have operated flexibly and cost effectively, without any discernible consumer detriment or other regulatory failure. The proposals for their replacement with a regime for professional accountants under Section XX of the Financial Services and Markets Act and a limited permission regime for lower risk firms, and particularly for advice giving charities, are likely to reduce the flexibility, cost effectiveness and availability of debt advisory services. Unless the increased regulatory burden is compensated for by a measurable increase in protections for consumers – not just overall, but in the specific areas of low-risk charitable or professional services – then the proposals risk damaging both vulnerable individuals and economic development for no good purpose.
8. The new regime will require individual entities to register individually for consumer credit regulation, either to the FCA or to their own professional body, and to undergo specific regulatory supervision where previously supervision by the group licence holder has been sufficient. This increase in burdens comes in an area which has not, to our knowledge, produced any significant detriment to consumers nor any political or social concern. We fear that the increased regulatory burdens will result in a decrease in the availability of advice to:
 - vulnerable individuals needing help in dealing with over indebtedness;
 - small and medium sized entities, where consumer debt may be one of the elements in the overall mix of personal and business financial arrangements of owner-managed businesses.
9. For charities and members of professional accountancy practices this increase, not just in burdens but in regulatory complexity, is unjustified. Regulation by the Charities Commission or a reputable professional body has not been shown to be inadequate.
10. We suggest that a better solution to ensuring that consumer credit advisory services are not unnecessarily constrained by poorly targeted regulation would be to remove very low risk activities from the scope of consumer credit regulation in their entirety. We would welcome further discussion, to explore which activities currently covered by group licenses where low risks to consumers, and coverage by other regulatory regimes, make consumer credit regulation redundant.
11. It is ironic that these proposals are being finalised even while the Queen's speech has announced the intention of the introduction of a Deregulation Bill to repeal unnecessary legislation and remove regulatory burdens on businesses, civil society and public bodies, to facilitate growth.

Charities

12. Legal advice charities and their clients are under particular pressure at this time:
 - Funding is supported by local authority contracts and by legal aid, both of which are currently undergoing cut-backs and restructuring, as a result of public spending reductions.

- Charities law is undergoing a fundamental review, following which regulation by the Charities Commission is also likely to be reviewed. Simultaneously the Legal Services Board is proposing to remove the current transitional relief (Section 23 of the Legal Services Act) for charities conducting litigation or providing a right of audience for their clients. This will bring them within the scope of legal services regulation – currently scheduled for April 2015.
- Vulnerable citizens may be at particular risk of over-indebtedness with the proposed reforms to the social security system. Though clearly proposals to simplify social security has many benefits, a single monthly payment direct into the hands of people without the capacity or willingness to plan their financial needs, or stick to those plans, may increase their likelihood of resorting to costly and uneconomic short term debt. The following hardship could only be increased by an inability to access free advice.

13. In these circumstances, everything possible should be done to reduce additional costs and complexity for the legal advice charities – not increase them further.

Chartered Accountants

14. Members and member firms of ICAEW are bound by our practice assurance regime for all their practice activities – a regime which is more rigorous than most others, including as it does visits to every one of them on a rotational basis. Consumer credit advisory services have come within the scope of this regime, enabling all practising members and member firms to provide these services in a regulated environment as part of their practice. Under these proposals such firms could only give the most generic of advice, unless they sign up to a new licence under an extended Designated Professional Body (DPB) regime. Before finalising this policy, it should be noted that:

- The current regime is exceptionally low risk – it has not generated a single complaint from either clients or third parties that has reached our complaints or disciplinary system;
- ICAEW has recently launched a Business Advisory Service (BAS – see <http://www.icaew.com/en/about-icaew/find-a-chartered-accountant/business-advice-service/about-bas>) with the encouragement of BIS. This service provides free advice on overcoming challenges facing SMEs including how to grow a business and securing loans, capital and finance. Since this is a free service, it is not limited to new or existing clients – it follows that it will not necessarily be provided as an incidental service to clients, and will therefore not come within the scope of the DPB Regime. For this reason, our firms, whether or not licensed under the DPB regime, will have to limit their BAS advice to wholly generic consumer credit advice, unless they have a full consumer credit licence from the FCA. Since owner-managed businesses frequently integrate their business and personal finances, this is an inappropriate limitation.

15. Some of the activities currently included within ICAEW's group licence are not habitually supplied by chartered accountants in practice such as some elements of debt-adjusting. For example, it is not usual to take over an obligation to discharge a debt, in return for payments by the debtor. This is a higher risk activity than advising a debtor or negotiating on his behalf. The fact that the current licence includes some higher risk activities should not form a barrier to deregulation of the lower risk activities.

16. An alternative to removal of low risk activities carried out by chartered accountants from the regime altogether would be to include these services within the scope of the 'limited permissions' regime, though as noted even this seems to us an appropriate area for complete deregulation.

Other Matters

17. Some lawyers, as well as chartered accountants, provide pro bono advice to vulnerable debtors, who may not be within reach of one of the legal advice charities. Though other activities of lawyers represent higher risk activities which should validly be included within the DPB Regime or alternative forms of regulation, we doubt whether free advice and other assistance to debtors should be subject to additional regulatory costs or controls. As noted above, some very vulnerable individuals may be in urgent need of debt advice, but be outside the reach of legal advice charities. Its availability from other sources should only be restricted at urgent need.
18. We have set out a number of more detailed points in the appendix to this letter, including ones relating to the regime as it will impact insolvency practitioners licensed by ICAEW and more detail on the current regime as it applies to our members and member firms.

Yours sincerely

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APPENDIX

- i. ICAEW currently holds a group consumer credit licence and is also a designated professional body. As many of the questions in the consultation papers are not relevant to our members, we have focussed on specific areas of the consultation.

High and low risk

- ii. We have consistently argued that even an activity which is considered high risk in terms of possible consumer detriment can be carried out in a low risk way if there are sufficient safeguards in place. We believe that the emphasis should look beyond the risk to the consumer and to the qualification and skills of those providing a service.
- iii. We are unaware of any regulatory failure associated with the current group licensing regime and it is worth noting that under the current arrangements, ICAEW has never received a single complaint about consumer credit activities. In carrying out these activities, our practising members are held to our rigorous ethical, disciplinary and competence requirements, including the requirement to continually keep themselves updated in any area where they provide professional services.

Proposals for professional firms

- iv. We do not believe that the proposals for professional firms achieve the aim set out in the foreword of the consultation document to apply proportionate burdens on firms.
- v. Based on the current scope of our group licence there are some 12,000 firms eligible to use our group licence as members of our practice assurance scheme, 3,865 audit registered firms and 2,548 DPB licensed firms although the audit registered firms and DPB licensed firms may also be part of the practice assurance scheme. We also license 701 insolvency practitioners who are eligible to use the group licence. At a conservative estimate, there are some 13,000 firms or individuals which are eligible to use ICAEW's group licence.
- vi. The categories of credit activity included in our group licence are:
 - A Consumer credit
 - C Credit brokerage
 - D Debt-adjusting
 - E Debt-counselling
 - G Debt administration
 - H1 Provision of credit information services (including credit repair)
- vii. We have the categories of credit activity we consider most likely to be used by an accountancy or insolvency practice.
- viii. Although using the Part XX exemption initially seems a straightforward mechanism for transferring credit activities from the group licensing to FCA, this will cause difficulties at a practical level and could restrict consumers' access to consumer credit more generally.

Practicalities

- ix. As noted above there are some 13,000 firms and individuals eligible to use ICAEW's group licence. They are eligible to use our group licence if their regulatory arrangements or ownership structure meet the criteria set out in the group licence – there is no requirement to register separately with ICAEW to use the group licence and users pay no fee for its use.
- x. Whilst all these firms are recorded in ICAEW's databases, only 2,548 are licensed under the DPB arrangements. We will therefore have to create a process by which to re-register these other 9,000 or so firms and individuals for consumer credit purposes. Depending on how we chose to structure the new rules for consumer credit we may even need to re-register all those firms and individuals which currently use the group licence. The consultation document refers to the need for the DPBs to make new rules for consumer credit by April 2014. We do not think that it would be appropriate to incorporate these new consumer credit rules into our existing *DPB Handbook* as it would be

disproportionate if firms only wishing to undertake only consumer credit activities to come within the scope of the entire Handbook. This leads us to believe that we would need to re-register all our firms even those which are currently DPB licensed – so some 13,000 new entrants.

- xi. Such a process will be onerous for ICAEW and those wishing to use the replacement for the group licence. Even a very light touch process will incur a cost and this cost will have to be passed on to the applicants. The lead in time to enable us to be ready for an April 2014 will be lengthy and without more detail about what our new rules should look like it is very difficult to estimate what this process will entail. If current OFT guidance can be a useful pointer as to what the FCA's rules will look like, these new rules are likely to be lengthy – OFT's debt management guidance is some 96 pages long – if DPBs are expected to replicate such rules this will be an incredibly time consuming process. And if the FCA's own conduct rules will not be available until Autumn/Winter 2013¹ that will leave the DPBs very little time to develop their own rules, to have those rules approved by the FCA and be ready with all eligible applicants registered by 1 April 2014.
- xii. We will also have to take steps to alert firms and others to these changes and make sure that they are aware of the necessity to register with ICAEW or make an informed choice as to whether they would wish to apply to direct authorisation. As there is little detail in the consultation documents as to the shape of the proposed new rules for both direct authorisation and for the Part 20 arrangements, we will be able to alert firms to the changes but will be able to do little to help inform their decision making.
- xiii. Based on current information we do not think it will be feasible for ICAEW to have replacement arrangements in place and have all those eligible registered in time for a 1 April 2014 commencement. At the very least, we would ask that you consider some sort of automatic coverage based on a set of agreed criteria so that we do not have to re-register all of those currently in practice.

Incidental activities

- xiv. For the majority of credit activities that a firm of accountants or an insolvency practitioner will undertake the move from 'arising in the course of the practice of accountancy' (the wording of our group licence) to incidentality will not be an issue.
- xv. The exception to this is be debt advice. We see debt advice as an accountancy service in the same way that we consider tax advice to be an accountancy service². So we would consider this activity to be a professional service in itself and not an activity which is incidental to a professional service. Chartered accountants and insolvency practitioners will currently be giving debt advice to those who are not existing clients – they may (or may not) become clients as a result of that advice – but many who receive such advice will not be clients at the time they are advised.
- xvi. The generic advice exemption would not be appropriate for these kind of 'walk in' clients as all but the most basic of debt advice will involve recommending a solution or the need for further specialist advice.
- xvii. If you are seeking to apply an incidental test to debt advice there is a real possibility that the supply of good quality and often free debt advice will be restricted under the new regime. We do not believe that it is your intention to so restrict access to debt advice.

Liquidators and receivers licence

- xviii. We have noted that there is a proposal that there will be an exemption in certain circumstances for insolvency practitioners when formally appointed. We have noted however, that this exemption appears to be more restrictive than the current liquidators and receivers licence. The current liquidators and receivers licence³ covers categories A to I whereas the proposals appear to scope out certain activities of a trustee in bankruptcy and other activities carried out by the insolvency

¹ Table 14.1 CP13/7

² Council Statement on Public Practice - <http://www.icaew.com/en/members/regulations-standards-and-guidance/practice-management/council-statement-on-public-practice>

³ http://www.of.gov.uk/shared_of/business_leaflets/credit_licences/Liquidators_and_Receivers.pdf

practitioner. We would welcome clarification of the exact scope of this exemption as this is a matter we will have to communicate to those insolvency practitioners we license. We have also noted that there appears to no equivalent exemption for the other types of receiver currently covered by the liquidators and receivers licence such as those appointed under the Mental Capacity Act 2005.

Authorised v exempt

- xix. A number of our firms will be affected as the Part XX will not be available for those which are already authorised. Our annual return data suggests that the majority of ICAEW's population of authorised professional firms currently use the group consumer credit licence. This is another change which we will have to communicate to firms.
- xx. Similarly, annual return data shows that some 500 DPB licensed, despite being eligible to use the group licence, choose not to do so. Again we will have to communicate the impact of these changes to the firms affected so they can decide how they wish to approach their investment business and consumer credit regulation.
- xxi. A minor point, maybe, but as noted above, the consultation paper refers to an exemption for insolvency practitioners when formally appointed. We have assumed from the wording of the consultation paper that this exemption would not prevent an insolvency practitioner seeking authorisation from the FCA for credit related activities when not formally appointed. We would welcome clarification of this point.

Alternatives

- xxii. We note from the consultation paper that there is to be bespoke regime for group licence holders within the not for profit sector. We believe that such a regime may also be suitable to replace the group licensing regime. As noted above, to implement a scheme under Part 20 will be extremely onerous on both ICAEW as the regulator and on our firms and individual insolvency practitioners. We also have concerns that the proposals to use Part 20 may restrict the availability of quality debt advice.

“Limited permission” regime

- xxiii. There is no reference to professional firms in relation to the limited permissions regime, but we take the view that many of accountancy practices which currently hold their own consumer credit licence would be suitable for the limited permissions regime. We would welcome the opportunity to explore this with you further.

Impact on debt management firms

- xxiv. The FCA consultation paper in particular contains a great many proposals for debt management firms, but there doesn't appear to be a definition of a debt management firm in either consultation paper. This causes us some concern as we are uncertain as to which firms will be affected by these proposals. As an example, the Treasury consultation paper refers at paragraph 3.35 to 'an accountancy firm primarily engaged in the provision of debt management services'. Under our interpretation of debt management, it is not an accountancy service, so an accountancy firm could not be primarily engaged in the provision of debt management services. You will note from our Council Statement on Public Practice, that we consider accepting insolvency appointments is an accountancy service as is debt counselling, but not debt management.
- xxv. The OFT currently applies its debt management guidance to insolvency practices which provide IVAs but only insofar as there is no statutory equivalent or professional standard in place. The Insolvency Act and statements of insolvency practice take precedence over the guidance. We would therefore welcome clarification as the scope of the proposals for debt management firms as we would wish to avoid any possible conflict with insolvency law.