



5 December 2013

Our ref: ICAEW Rep 170/13

Charlotte Matthews
Consumer Credit
Financial Conduct Authority
25, The North Colonnade
Canary Wharf
London E14 5HS

By email: cp13-10@fca.org.uk

Dear Charlotte

FCA Consumer Credit Licensing

1. ICAEW welcomes the opportunity to comment on consultation paper CP13/10 *Detailed Proposals for the FCA Regime for Consumer Credit* published by the Financial Conduct Authority in October 2013, a copy of which is 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.

Main Points

5. We have brought attention on a number of occasions to our concern that the reform of the consumer credit regulatory regime has been carried out in a way which will impose unnecessary burdens on chartered accountants and their clients. We understand the need for a speedy and efficient reform to the regime, and in particular the need to strengthen it in relation to high-cost short term credit. However, this should have been carried out in a way that did not, as a side effect, damage the freedom with which chartered accountants in practice could advise their clients on arranging finance in the most efficient way to enable them to grow their businesses and support the

UK economy. Nor should it affect the giving of advice to personal clients on managing their financial affairs, where these include consumer debts as well as investments.

6. We understand, and have no problem in principle, with the proposal to replace the OFT's Group Consumer Credit Licences with a regime under Part XX of the Financial Services and Markets Act (FSMA) as a Designated Professional Body (DPB). We are content that that this regime on the face of it could represent an appropriate way to deal with the regulation of non-mainstream consumer credit activities which arise in the context of professional services. However, the DPB regime has statutory restrictions which will mean that in some circumstances, chartered accountants will be obliged to restrict their advice, even in low risk circumstances. Chartered accountants will be obliged to be constantly aware of the extent and nature of the advice they give to clients, to ensure that they stay within the necessary restrictions. Without a relaxation of these restrictions, many are likely to take out precautionary full authorisation, to avoid damaging their ability to act as a full-scope professional adviser in every appropriate circumstance. This was the outcome which the DPB regime was originally introduced to avoid – rightly, since that outcome represents an inappropriately heavy regulatory response to a low risk situation.
7. The restrictions to the DPB regime about which we are particularly concerned are:
 - The 'incidental' requirement in Section 327(4) of FSMA. This requires that the manner of the provision of any service in the course of carrying on the activities must be incidental to the provision of professional services. and
 - The 'arising out of, or are complementary to' requirement in section 332(4) of FSMA. This requires that, in providing a particular professional service to a particular client, the member carries on only regulated activities which arise out of, or are complementary to, the provision by him of that service to that client.
8. The second of these restrictions is particularly problematic, especially in the case of small and medium sized business clients. With the rise of electronic tax and accounting products, and the increased availability of book-keeping services as a less skilled activity, advisory services represent a steadily growing percentage of the practice activities of chartered accountants. The ability to provide quality professional advice from a familiar and reputable professional on a wide range of business issues, without restrictions, underlies the business model of most of the accountancy profession, and supports both the proper and orderly conduct of business and its success and growth, as well as keeping both personal financial matters and businesses within the law.
9. One of the elements of that advisory service is concerned with balancing sources of credit and liquid funds, for the purposes of managing the financing of a business or personal activities. For some clients, this will be the key reason why they consult a chartered accountant, with their other needs supplied through other means. Since sole traders and small partnerships as well as individuals come within the scope of the definition of 'consumer' and most of them include consumer debts in their current suite of assets and liabilities, this inevitably includes consumer credit advisory services. Under these circumstances, it will be difficult for the chartered accountant to ensure that his advice is limited to other professional advisory services, with the financing issues on which the client wishes to consult him relegated to matters which are complementary to other professional activities.
10. 'Consumer credit debt counselling' is our members' most important consumer credit service. The additions to PERG set out in pages 371 to 384 of the Annex to CP13/10 containing Draft Handbook Text focusses its examples on advisory situations where a client is going to have trouble in settling their debts on time and in full. In general, our members' advisory situations are rather matters of advising on managing financial and financing situations for clients who are not in distress, but merely wish for advice on maximising income and minimising burdens (including both interest payments and administration). Where this ceases to be the case, our members are more likely to

suggest that their client seeks advice from an IP or turnaround specialist – who would be unlikely to comply with either requirement but may have other exemptions or where necessary a full authorisation.

11. If, during an initial meeting, potential clients are unable to obtain the (low risk) advice that they seek, all the subsequent advantages of such a relationship are likely to be lost. This cannot be consistent with the Government's commitment to reducing the burdens on business, and their support and encouragement to our Business Advisory Service to small business clients, which provides free advice without commitment to many small businesses.
12. For these reasons we strongly recommend that an amendment is made to Section 332(4) of FSMA, in relation to consumer credit activities to change or remove this restriction. This is particularly important in ensuring that SMEs can easily obtain advice on the best way to grow their business, and better contribute to the economic success of the UK. If this cannot be achieved before the implementation of the new regime on 1 April, this should be done as soon as possible after that. Further amendments should also be considered, where necessary to ensure that low risk advisory services can continue to be supplied to clients, at low risk and to the benefit of those clients.

Other Points

13. We look forward to discussing the terms of our consumer credit DPB licence with the FCA, to ensure that our DPB Rules are written in a way which minimises adverse effects on the ability of solvent clients to discuss with their professional adviser matters of consumer credit as part of a suite of financial or financing issues.
14. We also welcome the confirmation, set out in paragraph 4.19 of CP13/10 that authorised professional firms carrying out consumer credit activities as a non-mainstream activity will not have any consumer credit reporting requirements.
15. We believe that it should be clarified in the FCA Handbook, that advice to a fully solvent client, on managing their affairs (which includes consumer credit debt counselling) will be considered a low risk activity.

Yours sincerely

Felicity Banks
Head of Business Law

T +44 (0) 7920 8413

E felicity.banks@icaew.com