



Summary of Decision

The following table is a high level summary of the decision of the Legal Services Board (LSB). It is not a formal part of the decision notice.

Purpose of notice
To grant in full the application from the Solicitors Regulation Authority (SRA) for changes to its regulatory arrangements in respect of its regulation of consumer credit activities.
Alterations that are being approved by this decision
Alterations to: <ul style="list-style-type: none">• The SRA Financial Services (Scope) Rules 2001 to list the prohibited activities and separately set out the restrictions on the consumer credit activities that SRA regulated firms may undertake under Part 20 of the Financial Services and Markets Act 2000.• The SRA Financial Services (Conduct of Business) Rules 2001, to ensure appropriate levels of consumer protection as set out in the Financial Conducts Authority's (FCA) Consumer Credit sourcebook, or as a result of requirements prescribed in legislation such as the EU Credit Agreements Directive.• The SRA Code of Conduct 2011 to include "regulated credit agreements" under the requirements set out in Indicative behaviour 6.1 of the SRA Code.• Consequential new defined terms for the SRA Handbook glossary 2012, mostly derived from the FCA Handbook Glossary.
Why the LSB is approving the application
The LSB has considered the application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 and sees no reason to refuse this application.

Decision notice

Issued by the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007 (the “Act”)

The Solicitors Regulation Authority’s application for approval of changes to its regulatory arrangements in respect of its regulation of consumer credit activities

The Legal Services Board (“**LSB**”) has granted in full an application from the Solicitors Regulation Authority (“**SRA**”) approving alterations to the regulatory arrangements in respect of consumer credit activities. The Law Society is an approved regulator and the SRA is the regulatory arm to which The Law Society has delegated its regulatory functions.

This decision notice sets out the decision taken, including a brief description of the alterations. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB’s handling of this application is set out at the end of this decision notice.

Background

1. Regulation of consumer credit activities transferred from the former Office of Fair Trading (OFT) to the Financial Conduct Authority (FCA) on 1 April 2014. The OFT operated a group licensing regime that allowed the SRA (amongst other bodies) to regulate firms undertaking consumer credit activities. Following the transfer of regulation from the OFT to FCA the SRA is required to have in place its own regulatory arrangements determining how SRA firms undertake consumer credit activities, and these arrangements must meet the approval of the FCA as well as the LSB.
2. As an interim arrangement, changes were made to the SRA Financial Services (Scope) Rules 2001 (Scope rules), and a consequential amendment to the SRA Handbook Glossary 2012, to allow SRA authorised firms to continue to carry on consumer credit activities without being regulated by the FCA. These transitional arrangements, which run until 31 March 2016, were approved by the LSB on 19 March 2014. The SRA in the transitional period developed the more permanent regulatory arrangements that are the subject of this application, and the FCA approved these arrangements on 3 November 2015.

Proposed changes

3. The alterations adjust the Scope rules, to list the prohibited activities and separately set out the restrictions on consumer credit activities that SRA regulated firms may undertake under Part 20 of the Financial Services and Markets Act 2000. The prohibitions and restrictions relate to consumer credit activities which are distinct and specialist services that should be regulated by the FCA. They include the prohibition on entering into a

regulated credit agreement as a lender (except where this relates to the payment of disbursements or professional fees), and a restriction on taking any article from the client in pledge or pawn as security for a transaction.

4. Additional changes to the SRA Financial Services (Conduct of Business) Rules 2001 (COB rules), are made to ensure appropriate levels of consumer protection, as set out in the FCA's Consumer Credit sourcebook, or as a result of requirements prescribed in legislation such as the EU Credit Agreements Directive.
5. The combined effect of the changes to the Scope and COB rules are that they:
 - Prohibit certain credit related regulation activities and impose restrictions on other credit related regulated activities
 - Introduce certain requirements in relation to credit-related regulated activities intended to ensure that SRA authorised firms:
 - communicate effectively, in a manner which is fair and transparent
 - appropriately assess clients' creditworthiness, and provide clients with adequate explanations to enable them to make informed decisions
 - are transparent when engaging with third parties and when assigning rights under an agreement
 - provide clients with a degree of flexibility with regards to payments due in respect of two or more credit agreements
 - have regard to the SRA's guidance on credit-related activities.
6. A further alteration is proposed to the SRA Code of Conduct 2011 to include "regulated credit agreements" under the requirements set out in Indicative behaviour (IB) 6.1 on introduction to third parties. IB 6.1 provides that introductions to third parties will only be made where it is in the best interests of the particular client and the agreement is suitable for the needs of that client.
7. There are also consequential new defined terms proposed for the SRA Handbook Glossary 2012, most of which are derived from the FCA Handbook Glossary.

Key issues considered in the assessment of the application

8. The LSB acknowledges the reasons for the SRA adjusting its regulatory arrangements to enable it to continue to regulate firms undertaking consumer credit activities. The LSB notes that the SRA took into account responses from consultees that any new regulatory framework for consumer credit activities should avoid dual regulation with the FCA. The proposed arrangements mean that most firms will not need to be subject to two regulators and the additional costs that this brings, while also making sure that the more specialist consumer credit activities are regulated by the appropriate body.
9. The SRA, in compiling the list of prohibited consumer credit activities considered to be "high risk" (and therefore which should be regulated by the FCA), consulted the FCA. The alterations to the regulatory arrangements also benefited from going through the

FCA's approval process, although the LSB has still considered the alterations strictly against the refusal criteria in the Act.

10. The LSB noted the views expressed about vulnerable consumers in the SRA consultation and it shares the concern raised by the Legal Services Consumer Panel about risks to vulnerable consumers from firms undertaking financial credit activity. While the LSB does not approve guidance that is not defined as a regulatory arrangement under section 21 of the Act, it is nonetheless re-assured that the SRA guidance accompanying the rules will emphasise the need for firms to be able to identify whether the client is vulnerable and to deal with them appropriately. It also noted the SRA's commitment, referred to in its Board paper of 9 September 2015 on the changes, to collecting better data following the implementation of the new arrangements, to review its operation and impacts. Together with the wider piece of work the SRA is intending to undertake that will consider the risks to vulnerable consumers, the LSB is satisfied that the SRA has adequately considered the potential consumer impacts and has put in place a framework to manage those risks. The LSB looks forward to seeing the outcome of the reviews.

Decision

11. The LSB has considered the SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application; accordingly, the application is granted.
12. The Annex to this decision notice contains the specific amendments to the SRA's regulatory arrangements approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the SRA on 16 November 2015.
- The 28 day initial decision period for considering the application ends on 13 December 2015.
- This decision notice is effective from 4 December 2015.
- The decision notice will be published on our website on 7 December 2015.

Richard Moriarty, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
4 December 2015

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that
 - (a) granting the application would be prejudicial to the regulatory objectives
 - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
 - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules¹ about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

¹ Rules for Rule Change Applications – Version 2 (November 2010)

Annex

SRA Amendments to Regulatory Arrangements (Consumer Credit) Rules [2015]

Rules made by the Solicitors Regulation Authority Board on 16 September 2015.

Made under Part I, Part II, sections 31, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985, paragraphs 2 and 3 of Schedule 14 to the Courts and Legal Services Act 1990, section 83 of, and Schedule 11 to, the Legal Services Act 2007 and section 332 of the Financial Services and Markets Act 2000.

Approved by the Financial Conduct Authority under section 332(5) of the Financial Services and Markets Act 2000 on 3 November 2015.

Approved by the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007 on [date].

Rule 1

In IB(6.1) of the SRA Code of Conduct 2011, after "*regulated mortgage contracts*," insert "*regulated credit agreements*" and after "contract" insert "or agreement".

Rule 2

The SRA Financial Services (Scope) Rules 2001 shall be amended as follows:

- (a) in the preamble, delete ", into or from" and insert ", for the purposes of the Financial Services and Markets Act 2000" after "United Kingdom";
- (b) replace rule 2.2(b) with:
 - "(b) any *non-reserved legal activity* except, in relation to an *MDP*, any such activity that is excluded on the terms of the licence;"
- (c) in rule 3.1:
 - (i) after sub-paragraph (n), delete "or";
 - (ii) after sub-paragraph (o), substitute "," for "." and insert:
 - "(p) entering into a *regulated credit agreement* as lender except where the *regulated credit agreement* relates exclusively to the payment of *disbursements* or professional fees due to the *firm*;
 - (q) exercising, or having the right to exercise, the lender's rights and duties under a *regulated credit agreement* except where the *regulated credit agreement* relates exclusively to the payment of *disbursements* or professional fees due to the *firm*;
 - (r) entering into a *regulated consumer hire agreement* as owner;

- (s) exercising, or having the right to exercise, the owner's rights and duties under a *regulated consumer hire agreement*;
 - (t) operating an electronic system in relation to lending within the meaning of article 36H of the *Regulated Activities Order*; or
 - (u) carrying on the activity of providing credit references within the meaning of article 89B of the *Regulated Activities Order*."
- (d) replace rule 5.11(a) with:
- "(a) A *firm* must not enter into any transaction with a *client* in which it:
- (i) provides the *client* with credit card cheques, a credit or store card, *credit tokens*, *running account credit*, a current account or *high-cost short-term credit*;
 - (ii) holds a *continuous payment authority* over the *client's* account; or
 - (iii) takes any article from the *client* in *pledge* or *pawn* as security for the transaction.
- (b) A *firm* must not:
- (i) enter into a *regulated credit agreement* as lender; or
 - (ii) exercise, or have the right to exercise, the lender's rights and duties under a *regulated credit agreement*,
- which is secured on land by a legal or equitable mortgage.*
- (c) A *firm* must not:
- (i) enter into a *regulated credit agreement* as lender; or
 - (ii) exercise, or have the right to exercise, the lender's rights and duties under a *regulated credit agreement*,
- which includes a variable rate of interest.*
- (d) A *firm* must not provide a *debt management plan* to a *client*.
- (e) A *firm* must not charge a separate fee for, or attribute any element of the *firm's* fees to, *credit broking services*."; and
- (e) delete Guidance Note (ii) to rule 5.

Rule 3

The SRA Financial Services (Conduct of Business) Rules 2011 shall be amended as follows:

- (a) in the preamble, delete “, into or from” and insert “, for the purposes of the Financial Services and Markets Act 2000” after “United Kingdom”;

(b) replace rule 2.1(b) with:

"(b) any *non-reserved legal activity* except, in relation to an *MDP*, any such activity that is excluded on the terms of the licence;"

(c) insert after rule 9:

" Rule 9A: Credit-related regulated activities

9A.1 Where a *firm* undertakes *credit-related regulated activities*, it must comply with appendix 2 to these rules."

(d) replace rule 11.1 (a) and (b) with:

"(a) compliance with them would be unduly burdensome having regard to the benefit which compliance would confer on *clients* or third parties;
and

(b) the exercise of the power would not result in any undue risk to *clients* or third parties."

(e) after rule 11.1 insert the following:

"Note

(i) For the avoidance of doubt, the *SRA* will not waive rules that implement any of the requirements of the Directive 2008/48/EC on credit agreements for consumers. See also the *SRA's* Waivers policies"; and

(f) insert after Appendix 1:

" APPENDIX 2: Credit-related Regulated Activities

1 Disclosure of information

(a) Where a *firm* undertakes *credit-related regulated activities* for a *client*, it must ensure that information in connection with such activities and any agreements to which they relate is communicated to the *client* in a way that is clear, fair and not misleading.

(b) Where a *firm* carries on the activity of *credit broking*, it must indicate in any advertising and documentation intended for consumers or *clients* the extent and scope of its *credit broking* activities, in particular whether the *firm* works exclusively with one or more lenders or as an independent broker.

2 Regulated credit agreements

(a) Where a *firm* carries on a *credit-related regulated activity* involving a proposed *regulated credit agreement*, it must;

- (i) provide adequate explanations to the *client* in order to enable the *client* to assess whether the proposed *regulated credit agreement* is suitable to the *client's* needs and financial situation; and
 - (ii) when providing such explanations, comply with the requirements of Article 5(6) of the Directive 2008/48/EC on credit agreements for consumers.
- (b) Before entering into a *regulated credit agreement* as lender, the *firm* must assess the *client's* creditworthiness on the basis of sufficient information to enable the *firm* to make the assessment, where appropriate such information will be obtained from the *client* and, where necessary, from a *credit reference agency*.
 - (c) After entering into a *regulated credit agreement* where a *firm* is the lender, if the parties agree to change the total amount of credit, the *firm* must update the financial information the *firm* holds concerning the *client* and assess the *client's* creditworthiness before any significant increase in the total amount of credit.
 - (d) In the event of a *firm* assigning to a third party its rights as lender in relation to a *regulated credit agreement*, the *firm* must inform the *client* of the assignment.

3 Appropriation of payments

Where a *firm* is entitled to payments from the same *client* in respect of two or more *regulated credit agreements*, the *firm* must allow the *client* to put any payments made, in respect of those agreements, towards the satisfaction of the sum due under any one or more of the agreements in such proportions as the *client* thinks fit.

4 Consumer Credit Guidance

Where a *firm* undertakes *credit-related regulated activities*, it must have regard to any guidance issued by the SRA from time to time relating to such activities."

Rule 4

The SRA Handbook Glossary 2012 shall be amended as follows:

- (a) after the definition of "**connected with**" insert:

"continuous payment authority

means consent given by a *client* for a *firm* to make one or more requests to a payment service provider for one or more payments from the *client's* payment account, but excluding:

- (i) a direct debit to which the direct debit guarantee applies; and
 - (ii) separate consent given by a *client* to a *firm*, following the making of the *regulated credit agreement*, for the *firm* to make a single request to a payment service provider for one payment of a specified amount from the *client's* payment account on the same day as the consent is given or on a specified day.";
- (b) after the definition of "**CPE**" insert:

"credit agreement

has the meaning given by article 60B(3) of the *Regulated Activities Order*.";

credit broking

means an activity of the kind specified in article 36A of the *Regulated Activities Order*.";

- (c) after the definition of "**credit-related regulated activity**" insert:

"credit token

means a card, check, voucher, coupon, stamp, form, booklet or other document or thing given to a *client* by a person carrying on a *credit-related regulated activity* ("the provider"), who undertakes that:

- (i) on production of it (whether or not some other action is also required) the provider will supply cash, goods or services (or any of them) on credit; or
- (ii) where, on the production of it to a third party (whether or not any other action is also required), the third party supplies cash, goods and services (or any of them), the provider will pay the third party for them (whether or not deducting any discount or commission), in return for payment to the provider by the *client* and the provider shall, without prejudice to the definition of credit, be taken to provide credit drawn on whenever a third party supplies the *client* with cash, goods or services; and

the use of an object to operate a machine provided by the person giving the object or a third party shall be treated as the production of the object to that person or third party.";

- (d) after "**date of notification**" insert:

"debt management plan

means a non-statutory agreement between a *client* and one or more of the *client's* lenders the aim of which is to discharge or liquidate the *client's* debts, by making regular payments to a third party which administers the plan and distributes the money to the lenders.";

- (e) after "**general prohibition**" insert:

"high-cost short term credit

means a *regulated credit agreement*:

- (i) which is a borrower-lender agreement or a P2P agreement;
- (ii) in relation to which the APR is equal to or exceeds 100%;
- (iii) either:
 - (A) in relation to which a financial promotion indicates (by express words or otherwise) that the *credit* is to be provided for any period up to a maximum of 12 months or otherwise indicates (by express words or otherwise) that the *credit* is to be provided for a short term; or
 - (B) under which the credit is due to be repaid or substantially repaid within a maximum of 12 months of the date on which the credit is advanced;
- (iv) which is not secured by a mortgage, charge or *pledge*; and
- (v) which is not:
 - (A) a *credit agreement* in relation to which the lender is a community finance organisation; or
 - (B) a home credit loan agreement, a bill of sale loan agreement or a borrower-lender agreement enabling a borrower to overdraw on a current account or arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit.";

- (f) after "**Legal Ombudsman**" insert:

"legal or equitable mortgage

includes a legal or equitable charge and, in Scotland, a heritable security.";

- (g) after "**part-time**" insert:

"pawn

means any article subject to a *pledge*.";

- (h) after "**pawn**" insert:

"pawnee

means a person who takes any article in *pawn* and includes any person to whom the rights and duties of the original *pawnee* have passed by assignment or operation of law.";

(i) after "plan provider" insert:

"pledge

pawnee's rights over an article taken in pawn."

(j) after "**regulated collective investment scheme**" insert:

"regulated consumer hire agreement

has the meaning given by article 60N(3) of the *Regulated Activities Order.*";

(k) after "**regulated consumer hire agreement**" insert:

"regulated credit agreement

has the meaning given by article 60B(3) of the *Regulated Activities Order.*"; and

(l) after "**RFL**" insert:

"running account credit

means a facility under a *credit agreement* under which the borrower or another person is enabled to receive from time to time from the lender, or a third party, cash, goods or services to an amount or value such that, taking into account payments made by or to the credit of the borrower, the credit limit (if any) is not at any time exceeded."

Rule 5

These amendment rules come into force on 1 April 2016.