



HM Treasury Call for Input: Allowing Registered Social Landlords (RSLs) to refer to sources of affordable credit

FLA Response

The Finance & Leasing Association (FLA) is the leading trade association for the UK consumer credit, motor finance and asset finance sectors. FLA member companies include banks, the finance subsidiaries of major manufacturers and independent finance firms. They offer credit services to customers from all social groups, via credit and store cards, personal loans, point of sale finance, motor finance and a number of other consumer credit products, as well as a wide range of leasing and hire purchase services to businesses of all sizes. In 2018, members of the FLA provided £137 billion of new finance to UK businesses and households.

Introduction

- We welcome the opportunity to comment on HM Treasury's call for input on a proposal to exclude Registered Social Landlords (RSLs) from needing FCA authorisation to effect fee free referrals to Credit Unions (CUs) and Community Development Finance Institutions (CDFIs).
- Ensuring there is access to affordable credit is an important issue for the consumer finance industry. RSLs have the potential to assist in this important work, especially in terms of supporting potentially vulnerable people.
- We agree with the overarching premise of the proposal towards minimising regulatory burdens, where appropriate. Where it benefits the community, industry, and government, simplifying regulation is always supported. What we caution, however, is that a well-intentioned proposal along these lines could generate unintended regulatory duplication or additional complexity that does not achieve what it sets out to do.
- Rather than exclude RSLs from needing FCA authorisation, further work could be done to streamline the authorisation process for these firms. This would maintain the FCA's overarching oversight of credit brokerage, whilst recognising that a more proportionate approach might be appropriate.
- We do not support the suggestion that lenders offering hire purchase/consumer hire with a 'social purpose' be excluded from FCA regulation. This would reduce consumer protection for a cohort of customers who might potentially need it the most.
- The proposal notes that the CU and CDFI sectors are small and struggle to compete at scale. A useful complement to the FCA's statutory role in authorisations would be for HM Treasury to examine possible ways to build capacity for social purpose providers in the market.

At **Section 1**, we set out eight overarching considerations which underpin our views on the proposal. We then respond to the questions posed by HM Treasury at **Section 2**.

Section 1: Overarching Considerations

1. The proposal extends on existing FCA final guidance

- First, we note that this proposal is an extension to the FCA's own final guidance in **FG18/6** (December 2018) on authorisation of RSLs. This involved discussing how the authorisations process could be used/improved for new RSL applicants.
- While we recognise the Government's goal of delivering access to affordable credit, we suggest this proposal tries to balance a social policy need with existing regulation in a way that is likely not to do any dimension justice.
- Finding complementary ways for the FCA and HM Treasury to address this problem would be more effective, we believe, than iterating on final guidance released a few months previously.

2. Creating the evidence base

- Second, a proper evidence base for this proposal needs to be established. Analysis of expected demand for CU or CDFI services under an assumed uptick in RSL referrals will be essential in identifying whether sufficient capacity within the sector exists to manage this business.
- RSLs, generally housing associations, can be enormous.¹ Given that the proposal refers to the 'small and struggl[ing]' CU and CDFI sector, how does HM Treasury suggest a rise in demand in the sector from RSL referrals is managed?
- In addition, we suggest that potential supply problems may inadvertently carry negative impacts for vulnerable people in particular.

3. Clarification of terminology

- Third, we ask for greater clarity in terms of providers identified, and consideration of the flow-on effects of this proposal for further regulation. What, for instance, does 'social purpose' mean? Is this a direct linkage to BEIS guidance on 'social enterprise' from 2011?²
- That a lender apparently possesses a 'social purpose' doesn't mitigate the need for the lender to be regulated.
- We acknowledge that ensuring consistency in terminology is complicated by the diverse agencies and regulators involved in the issue, but we advocate that it is crucial for building confidence in a complex regulatory space.

¹ Clarion Housing Group's [Annual Reporting and Accounts 2017-18](#) reports that it lets 5,000 homes *per year* (p. 11).

² Department for Business, Energy & Industrial Strategy (BEIS), [A Guide to Legal Forms for Social Enterprise](#), (November 2011), p. 2.

4. *The existing regulatory landscape*

- Fourth, further clarity is required on the variety of regulatory regimes that RSLs are currently subject to, and whether these will have any bearing on the operation of the proposal. For instance:
 - For a **registerable charitable organisation** that acts as an RSL, the Charity Commission is a notified party alongside required registration under the Regulator of Social Housing (RSH).
 - In terms of profit-making firms that act as an RSL, a **registered society** may have to be FCA/PRA-regulated as well as registered under the RSH.
 - A **Community Interest Company (CIC)** that acts as an RSL would be regulated by the Office of the Regulator of Community Interest Companies, as well as the RSH.
 - **Local Authorities** who act as RSLs are excluded from the legal requirement to be authorised for most credit-related regulated activities, including credit broking, debt counselling and debt adjusting.

5. *Potential risks with exclusions-led interventions*

- Fifth, given the regulatory complexity outlined above, we also suggest that a policy of exclusions, given the existing regulatory landscape, could further embed a 'patchwork' of regulation that generates strong administrative and coordination costs across Government.
- A flow-on effect of this 'patchwork' of regulation is simply that future regulatory reform efforts will become more complicated, due to the need to manage a multiplicity of different agencies and accountabilities.

6. *Ombudsman referrals*

- Sixth, there is also a possibility that the various regulatory regimes would create a situation where various ombudsmen would have duplicated responsibilities. This would not only be burdensome for government coordination and RSLs, but may carry negative impacts for vulnerable people wishing to seek advice or register a complaint.
- Registered Social Housing Providers are also required to be registered with the Housing Ombudsman (HO). Under the RSH registration guidance, the HO can investigate complaints relating to the housing activities of providers.³
- We need clarity as to whether fee-free referrals may fall under the scope of the complaints function of the HO. If this is the case, we raise concerns that this would cross over with the role of the Financial Ombudsman Service (FOS), obviously generating coordination issues and administrative complexity.
- In addition, in terms of Local Authorities, would complaints handling for potential issues with fee-free referrals would have to be dealt with the Local Government & Social Care Ombudsman?

³ Regulator of Social Housing, [Guidance for new entrants on applying for registration as a provider of social housing](#), (January 2018), paragraph 7.3.

7. Jurisdictional issues

- Seventh, the contemporary RSL regime under the RSH is an England-only jurisdiction. Will there be coordination issues across the wider United Kingdom?

8. Maintaining integrity of the FCA authorisation system

- Finally, the purpose of FCA authorisation of credit broking is to ensure it corresponds to the regulator's requirements. The risk of this intervention is reducing consistency in regulated activities and potentially slowly eroding its effectiveness through a continuing policy of creating exclusions for authorisation.
- Another associated issue is the challenging of maintaining consistent quality in any referrals that an RSL might make to a CU or CDFI. A distinction needs to be drawn between the regulated activity of credit broking and categories of lending agreements, like hire-purchase, which have different characteristics and assume a specialised knowledge of the product.
- As expressed above, **some registered societies or CICs may already be FCA-regulated**. A question to ask is whether it's worth reducing the integrity of FCA authorisations when the problem could be resolved (and the integrity of the authorisation process maintained) via a fast-track authorisation system coordinated from one point. Would the additional costs for the applicant as well as the regulator be so high as to justify the current HM Treasury proposal?
- This is a question that returns back to our earlier concern about the evidence base for the proposal. Our preferred model would also obviously involve consideration of FCA resource requirements and potentially fee waivers for applicants, but would reduce overall uncertainty and complexity within the system, as well as making adjustments to the authorisation system less complicated over time.

Section 2: Responses to specific questions

Q1: Do you agree with the policy approach outlined above?

No. The issues identified above preclude us from agreeing to the proposal as it currently stands.

The issue could be better managed by considering the **regulatory** and **social dimensions**. Ongoing improvements to the FCA's authorisations regime (for example, through streamlined applications for RSLs), could be usefully complemented by an HM Treasury initiative to find ways to build capacity for social purpose providers in the market. This, we suggest, would be the most effective, efficient and sustainable way to broaden access to certain affordable credit.

Q2: Some stakeholders have suggested that referrals to consumer hire/hire purchase providers with a social purpose should benefit from this exclusion. Do you agree? What do you see as the risks and benefits of having this exclusion apply to hire/hire purchase providers with a social purpose?

We don't agree with this proposed exclusion. All lenders, whether or not they have a 'social purpose' should be regulated by the FCA. Further, linking to our consideration

of clear terminology, we seek clarification as to what a hire-purchase (HP) provider with a *social purpose* means in practice.

If these firms are not regulated and their agreements are exempt, important consumer protection measures would be lost.

Q3: Some stakeholders have suggested that this exclusion should apply more broadly, not just to RSLs, so that any individual could effect a fee free referral to CUs/CDFIs. What do you see as the risks and benefits of widening the scope of the exclusion in this way?

The ability for individuals to make a referral to CUs or CDFIs would create an ungovernable problem about maintaining the quality of referrals, as well as undermining the broader purpose of authorisations for financial advice. There are too many risks to consider this worthwhile.

Q4: Having considered a number of options for the definition of a CDFI, we propose that a CDFI be defined according to the definition of a Community Finance Organisation set out in the FCA handbook, on the condition that the firm is also FCA authorised. This definition provides objective criteria for CDFIs, allowing them to be easily identifiable to individuals effecting introductions. Do you agree with this proposed definition?

We have no issues with this proposed definition.

8 March 2019