

Group Licensing for Accountants?

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The English ICA Council has decided not to apply for a group licence under the Consumer Credit Act 1974. Mr Bennion, draftsman of the Act and author of the forthcoming book *Consumer Credit Control* (Oyez Publishing Ltd, £40), finds this decision surprising.

In its issue of March 11th, *The Accountant* reported:

'Group licensing of practising members under the Consumer Credit Act, the English ICA Council announced this week, would not be to their advantage. In particular, the Act provides that a group licence cannot cover canvassing off trade premises.

'The term "canvassing" has a special meaning under the Act; it might, for instance, be held to take place when an accountant introduced a client to a source of finance other than in the respective business premises of the persons concerned. For practical purposes, therefore, it would appear that most firms would wish to obtain a licence to include canvassing off trade premises, if only as a precaution to ensure that agreements made in such circumstances were not consequently open to attack.'

If the Council adheres to this decision, it will mean that virtually all firms of chartered accountants will be put to the trouble and expense of applying for standard licences, renewing them every three years, notifying partnership changes, and otherwise complying with the provisions of the Consumer Credit Act 1974 dealing with such licences (*The Accountant*, September nth, 1975). I wonder, with respect, whether this is really necessary; certainly I would not have thought the reason given in the above extract provided justification.

The only effective difference between the cover given by a group licence and that given by a standard licence is that section 23 (3) of the Act prevents a group licence from authorizing the canvassing of regulated credit or hire agreements off trade premises. I would be surprised if any practising accountant, acting in accordance with the ethical principles of his profession, could ever be regarded as canvassing in this way. A group licence would, therefore, cover all activities done in the course of accountancy practice.

What is 'canvassing'?

To test the matter, we need to examine closely the definition of this type of canvassing which is contained in section 48 of the Act. I give it in the form appearing in my forthcoming book, which uses a new system of restatement of the provisions of the Act and regulations as a unified whole (quotation marks indicate terms defined elsewhere in the book):

- (1) to 'canvass a regulated agreement off trade premises' is for an individual (called the canvasser)
- (2) to solicit the entry (as 'debtor' vor 'hirer') of another 'individual' (called the consumer) into a 'regulated agreement'

(3) by making oral 'representations', at a place *other than* a place where a 'business is carried on (whether on a permanent or temporary basis) by any of the following:

- (a) the 'creditor' or 'owner';
- (b) a 'supplier';
- (c) the canvasser, or the 'person' whose employee or agent the canvasser is; or
- (d) the consumer

(4) to the consumer *or any other individual* while the consumer or other individual is present at that place

(5) during a visit by the canvasser to that place *which is*

(6) a visit carried out for the purpose of making such oral representations to individuals who are at that place *but is not*

(7) a visit carried out in response to a request made on a previous occasion.

Clause (1) of this definition indicates that it is concerned only with the activities of individual canvassers, and clause (2), with its use of the word 'solicit', reinforces this. The definition, and the provisions of the Act for which it is relevant, owe their existence to recommendations by the Crowther Committee on Consumer Credit (Cmnd 4596) directed to the control of doorstep canvassing.

After examining the arguments for this, the Committee said: 'We therefore consider that credit grantors wishing to solicit applications for purchase-money loans by personal canvassing, otherwise than in response to a written request[^] should be required to obtain a supplementary licence, additional to their general licence, authorizing them to do so . . .' (paragraph 6.4.20). The Act carries this into effect, and the only reason why the necessary authorization cannot be given in a group licence is that the policy of the Act requires individual scrutiny of the trading methods of the credit grantor where he wishes to use canvassers.

The definition given above owes its complexity to the desire to limit the scope of the canvassing restrictions in the Act to the pestering of the private individual by credit or hire salesmen, either at home or in places where the private individual is not actively seeking to do business. The provision is aimed at deliberate personal approaches to the consumer on his doorstep or elsewhere, where he is not expecting to do business and might find difficulty in ending the conversation should he wish to.

Clauses (5) and (6) make it clear that to fall within the restrictions, the canvasser must be carrying out a *visit* made for the deliberate purpose of soliciting credit or hire business. If, in the course of conversation about some other matter, the consumer himself raised the question of credit, any soliciting which ensued would be outside the definition.

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In other words, canvassing is the *initiation* of a discussion about credit or hire by or on behalf of the trader.

I hope I have said enough to show that it is really unthinkable that an accountant going about his professional work could be regarded as canvassing within the meaning of this definition. The importance of the point is not limited to the question of whether professional bodies should apply for group licences, however.

Criminal sanctions

Section 49 (i) makes it a *criminal offence* to canvass certain types of regulated agreements' off trade premises. This prohibition covers all ordinary money-lending transactions - indeed, any transaction for the provision of credit not allocated to a particular purpose. It follows that to suggest that an accountant who introduces a client to a source of finance other than in the business premises of the persons concerned is canvassing within the meaning of the Act is to

suggest that he is guilty of a serious criminal offence - whatever type of licence he holds. Furthermore, section 49 (2) also renders criminal any soliciting for business which, because it was done in response to a previous request (see clauses (6) and (7) above) is outside the above definition, except where the previous request was *in writing*. Thus, in general, a visit made in response to a telephone call would be criminal if it otherwise conformed to the definition and related to a possible money loan or any other form of credit which would leave the borrower in fact free to use the money as he wished (even though 'certain uses would contravene that or any other agreement' - section 11 (3)).

I stress that this criminal sanction applies even though the canvasser holds a standard licence including a canvassing authorization. Such an authorization can only cover 'purchase-money loans'.

To sum up, the decision quoted at the beginning of this article, if adhered to, means that accountants:

- (a) will be put to unnecessary inconvenience and expense! in obtaining and renewing standard licences; and
- (b) will have been branded by their own professional body as guilty of a criminal offence whenever they carry out perfectly normal professional function, i.e. the introduction of a client to a source of finance.