

BUILDING SOCIETIES ACT 1986

DECISION BY THE FINANCIAL SERVICES AUTHORITY ON THE APPLICATION OF KENT RELIANCE BUILDING SOCIETY FOR CONFIRMATION OF A TRANSFER OF BUSINESS TO ONESAVINGS PLC UNDER SECTIONS 97 AND 98 OF THE BUILDING SOCIETIES ACT 1986 AS MODIFIED BY THE MUTUAL SOCIETIES (TRANSFERS) ORDER 2009 MADE UNDER SECTION 3 OF THE BUILDING SOCIETIES (FUNDING) AND MUTUAL SOCIETIES (TRANSFERS) ACT 2007

The Financial Services Authority appointed Barbara Purkiss, a manager in Retail Firms' Division, to hear and decide the application on its behalf.

1. INTRODUCTION

- 1.1 The **Kent Reliance Building Society** ("the Kent Reliance") applied on 22 November 2010 to the Financial Services Authority ("the Authority") for confirmation of the transfer of business to OneSavings Plc ("OneSavings").
- 1.2 The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 ("the 2007 Act") and the Mutual Societies (Transfers) Order 2009 ("the 2009 Order"), enable the transfer of the business of a mutual society to a subsidiary of a different type of mutual society. The 2009 Order modifies sections 97 to 102D of, and paragraph 30 of Schedule 2 to, the Building Societies Act 1986 ("the Act") and regulations 2 and 3 and Schedules 1 and 2 of the Building Societies (Transfer of Business) Regulations 1998 ("the Transfer Regulations").
- 1.3 References to the Act in this decision are to the Act as modified by the 2009 Order.

Procedure

- 1.4 In accordance with paragraph 7 of Schedule 17 to the Act, between 25 November and 28 November 2010, the Kent Reliance published notices in the London Gazette, the Edinburgh Gazette, the Belfast Gazette and a number of local and national newspapers stating that any interested party had the right to make representations to the Authority with respect to the proposed transfer of its business to OneSavings. The notices specified 15 December 2010 as the closing date for receipt by the Authority of written representations or notice of intention to make oral representations, and 6 January 2011 as the date set aside by the Authority to hear oral representations.
- 1.5 By the closing date of 15 December 2010 the Authority had received no written representations and one notice of intention to make oral representations. The hearing of those oral representations took place at the Authority's offices on 6 January 2011.

The purpose of Confirmation

- 1.6 Section 98 of the Act sets out the procedure for dealing with an application for confirmation of a transfer of business. Subsection (3) provides that the Authority **shall** confirm a transfer of business **unless** it considers that:
- (a) some information material to the members' decision about the transfer was not made available to all the members eligible to vote; or
 - (b) the vote on any resolution approving the transfer does not represent the views of the members eligible to vote; or
 - (c) there is a substantial risk that the successor will not have
 - (i) such permission under Part IV of the Financial Services and Markets Act 2000, or
 - (ii) such permission under paragraph 15 of Schedule 3 to that Act (as a result of qualifying for authorisation under paragraph 12 of that Schedule),as will enable it to carry on the business which it will have as a result of the transfer without being taken (by virtue of section 20 of that Act) to have contravened a requirement imposed on it by the Authority under that Act, or

- (d) some relevant requirement of an applicable enactment or the rules of the society was not fulfilled.

The criteria set out in (a), (b), (c) and (d) above are referred to in this Decision as, respectively, the "First", "Second", "Third" and "Fourth Criterion" and collectively as the "Confirmation Criteria".

- 1.7 Section 98(4) provides that the Authority is not precluded from confirming a transfer of business by virtue only of the non-fulfilment of some relevant requirement of an applicable enactment or the rules of a society if it appears to the Authority that it could not have been material to the members' decision about the transfer and the Authority gives a direction that the failure is to be disregarded for the purposes of that section. An "applicable enactment" means sections 97 to 102 and 102B to 102D of the Act (including sections 100A and 101A), paragraph 30 of Schedule 2 and Schedule 17 to the Act, section 4 of the 2007 Act and article 7 of the 2009 Order. A "relevant requirement" means a requirement of an applicable enactment or of any rules prescribing the procedure to be followed by the Kent Reliance in approving the transfer and its terms.
- 1.8 The material taken into account by the Authority in considering the application of the Confirmation Criteria includes the oral representations referred to in paragraph 1.5 of this Decision, the Kent Reliance's responses to those representations, the Scrutineers' Report of 19 November 2010 prepared by KPMG with respect to the members' vote (and subsequent correspondence on this between the Authority and KPMG), the Transfer Agreement of 12 October 2010 and the booklet ("the Transfer Document") produced by the Kent Reliance for circulation to its members. The Transfer Document contained the Transfer Statement required to be sent to members of the Kent Reliance under paragraphs 2 and 4(1) of Schedule 17 to the Act ("the Transfer Statement"). It also included a letter from the chairman of the Kent Reliance and notice of the Special General Meeting ("SGM") at which the shareholding and borrowing members' resolutions were put. The Authority also had regard to a document entitled "What would you say? Members' guide to Kent Reliance's Special General Meeting 2010" and a booklet containing specific information about the

conversion of Permanent Interest Bearing Shares to Perpetual Subordinated Bonds (“the PIBS document”) which was sent to holders of such shares.

2. THE KENT RELIANCE MEETING AND VOTES

2.1 In its application for confirmation, the Kent Reliance declared under seal that the requisite shareholding and borrowing members’ resolutions were passed at the SGM of the society on 19 November 2010, in accordance with section 97(4)(c) of, and paragraph 30 of Schedule 2 to, the Act. A certified copy of the minutes was furnished to the Authority.

2.2 The scrutineers for the Kent Reliance confirmed that, in their opinion and subject to the matters referred to in paragraph 2.6 below, the arrangements for the conduct of the voting were such as to ensure that notices of the meeting and Transfer Statement were sent to all those entitled to receive them, with the requisite periods of notice being given, in accordance with the Act and the society's rules, and that there were satisfactory procedures to ensure the safe custody and proper counting of the votes.

2.3 The voting figures were:

Shareholdings Members' Resolution regarding the Transfer of Business	At the meeting	By Proxy	Total
In favour	53	23,571	23,624
Against	27	7,516	7,543
Total	80	31,087	31,167
Percentage of eligible shareholding members who voted: 30.86% ^(a)	Votes in favour as percentage of valid votes cast: 75.80%		
Borrowing Members' Resolution regarding the Transfer of Business	At the meeting	By Proxy	Total

^(a) The scrutineers originally reported that 30.92% of eligible shareholders had voted. The revision was made following correspondence between the Authority and the scrutineers who reported that the total number of eligible shareholding members originally used incorrectly excluded 183 eligible “gone away” members (members to whom post from the society was subsequently returned marked “gone away”). The Authority is satisfied – following correspondence with the scrutineers – that these accounts were properly identified as “gone away” and that they were not therefore, in accordance with the society’s rules, sent notice of the SGM and voting papers (but notice of the SGM was, in accordance with the society’s rules, placed in Head Office and each branch and agency).

In favour	3	869	872
Against	2	214	216
Total	5	1,083	1,088
Percentage of eligible borrowing members who voted: 11.88%		Votes in favour as percentages of valid votes cast: 80.15%	

- 2.4 By virtue of paragraph 27A of Schedule 2 to the Act, a shareholding members' resolution must be passed by no less than three-quarters of the number of the shareholding members of the society eligible to vote on the resolution and voting on the resolution either in person or by proxy at the meeting. This was secured: 75.80% of the shareholding members who voted cast their votes in favour of the shareholding members' resolution.
- 2.5 By virtue of paragraph 29 of Schedule 2 to the Act, a borrowing members' resolution must be passed by a simple majority of borrowing members eligible to vote on the resolution and voting on the resolution either in person or by proxy at the meeting. This was secured: 80.15% of the borrowing members who voted cast their votes in favour of the borrowing members' resolution.
- 2.6 The scrutineers reported that 6 replacement SGM voting packs were sent to members who contacted Kent Reliance to report that packs had not been received at the members' current address or had been discarded, lost or damaged. The scrutineers also reported that 13 unsigned proxy voting forms were returned to the member with a letter from the scrutineer requesting the member to sign and return the form: 3 of these had not been returned by the last date for receipt of completed proxy voting forms. 7 unsigned forms were received too late to allow them to be resubmitted and consequently they were not returned to members.
- 2.7 The Kent Reliance's scrutineers also provided an analysis of other invalid votes (in addition to the unsigned proxy voting forms) and of spoilt votes. The vast majority were in respect of members who abstained (vote withheld) or who ceased to be eligible to vote after the dispatch of the notice of the SGM.

3. THE AUTHORITY'S CONCLUSIONS

3.1 The Authority is required to confirm a proposed transfer of business unless it considers that any of the Confirmation Criteria apply. The Authority's conclusions relating to the application of the Confirmation Criteria are set out below.

(i) The First Criterion – Material Information

3.2 The representer implied that certain information, such as the potential adjustments to the shareholdings as between the Kent Reliance Provident Society ("KRPS") and OSB Holdco Limited ^(b), the reasons why Kent Reliance decided to enter into this transaction, and the returns OSB Holdco Limited would be expecting in certain situations, was not fully disclosed to the members of Kent Reliance.

3.3 The Authority notes that the representer took much of the information he used in making these points from the Transfer Document. The Authority considers that the Transfer Document clearly explained (i) the circumstances in which OSB Holdco Limited would be able to increase its shareholding in OneSavings and the implications of this for KRPS, (ii) the reasons why the board of the Kent Reliance decided to enter the proposed transaction and why other potential courses of action were rejected, and (iii) the rate of return OSB Holdco Limited would be entitled to in certain defined circumstances. More generally, the Authority finds that the Transfer Document contained all the information required to be included by the Act and contained sufficient information about the proposed transaction and the implications for members to enable members to make an informed decision on the proposal.

3.4 The representer suggested that the Transfer Document did not contain sufficient information about JC Flowers and OSB Holdco Limited.

^(b) KRPS is the Industrial and Provident Society established by the Kent Reliance and to whom its members – in their capacity as members – will be transferred and will be – at the Effective Date – the majority owner of OneSavings: OSB Holdco is a wholly owned subsidiary of JC Flowers and it will be the other shareholder in OneSavings.

3.5 The Authority finds that sufficient information about JC Flowers was included in the Transfer Document noting that the document included information about the JC Flowers Group, who controls it, its business and those members of its management team that would be responsible (through OSB Holdco Limited) for JC Flowers' holding in OneSavings.

3.6 The Authority finds, therefore, that the First Criterion does not apply.

(ii) The Second Criterion – The Views of Members

3.7 The representer said that in holding the SGM in Tonbridge – rather than in the Medway Towns where, he suggested, the majority of members live – the Kent Reliance made it difficult for members to attend the SGM and considered this to be a significant matter given the small majority by which the shareholding members' resolution was passed.

3.8 The Authority finds that the decision of the Kent Reliance to hold the SGM in Tonbridge was a reasonable one for the board to take and did not mean that the votes on the proposed transaction did not represent the views of the members. Here the Authority notes:

- (i) that the Kent Reliance was advised by the scrutineers to arrange for the SGM to be held at a venue that could accommodate up to 1,000 people and said that no venues in the Medway towns had that capacity. The Kent Reliance explained that it considered a number of venues that would accommodate up to 1,000 people and concluded that the venue that would be easiest for members to access was the one chosen in Tonbridge. This decision had regard to, among other things, car parking availability, good bus links and railway service;
- (ii) that members were able to vote by proxy – either on line or by posting a pre paid proxy voting form (and indeed 99.7% of those voting on the shareholding members' resolution did so by proxy);

- (iii) that no other member, either by representation or in other correspondence with the Authority, asserted that it would be difficult to vote or that it would be difficult to attend a meeting in Tonbridge;
- (iv) that having regard to the scrutineers' report – and to further correspondence with the scrutineers – there is no reason to question the result of the vote (paragraphs 2.2 and 3.13 refer).

3.9 Having regard to the matters set out in paragraphs 2.1 to 2.5, 3.7 and 3.8 above, the scrutineers' report and correspondence with the scrutineers, and the Authority's view of the Transfer Document (last sentence of paragraph 3.3 refers), the Authority does not consider that the vote on either resolution approving the transfer of the Kent Reliance's business does not represent the views of the members eligible to vote. The Second Criterion does not, therefore, apply.

(iii) The Third Criterion - Authorisation

3.10 The Authority does not consider that there is a substantial risk that the successor company (OneSavings plc) will not have such permission under Part IV of the Financial Services and Markets Act 2000 as will enable it to carry on the business which it will have as a result of the transfer without being taken to have contravened a requirement imposed on it by the Authority under that Act.

3.11 On this basis, the Third Criterion does not apply.

(iv) The Fourth Criterion – Requirement of the Act and the Rules

3.12 The representer raised concerns about the loss of mutuality that, in his view, would arise if this transaction went through. The Authority finds that the proposed transaction and its terms are in accordance with the provisions of the Act, the 2007 Act and the 2009 Order.

3.13 The Authority considered the points made by the scrutineers that are referred to in paragraph 2.6 above. As regards these points, the Authority finds that there was no failure to meet some relevant requirement of the Act or of the Kent Reliance's rules.

As regards the replacement packs, in some cases these were sent because the original ones had been discarded, lost or damaged: however, there is no suggestion made, or indication given, by the scrutineers that the original packs had not been received at the member's address. Moreover the scrutineers confirmed to the Authority that where the SGM pack had not been received at the member's correct address, this had not occurred because the Kent Reliance had failed to record a change of address duly notified by the member. As regards the unsigned proxy voting forms, Rule 37(2) of the Kent Reliance's registered rules states "A proxy shall be appointed by an instrument in writing which shall be in such form and include such declarations as the Board may from time to time determine. The instrument shall enable the Person appointing the proxy to direct him how to vote and if the instrument is not in the form specified by the Society or is not signed by the appointor, the appointment of the proxy shall be invalid."

- 3.14 As indicated in section 2.12 of the Transfer Statement, section 100(2)(b) of the Act requires that certain members, who held shares in the Kent Reliance on the qualifying day and were not eligible to vote, are entitled to a "statutory cash bonus" unless the Authority directs otherwise pursuant to its power under section 100(7) of the Act. The Kent Reliance asked the Authority to give a direction that no statutory cash bonus is required to be paid, on the basis that no distribution of funds will be paid to Kent Reliance members eligible to vote on the transfer resolutions and in order to preserve the capital in OneSavings plc following the proposed transaction. Having regard to what is equitable between the members of the society, the Authority considers it is appropriate to direct under section 100(7) of the Act that no cash bonus in pursuance of section 100(2)(b) shall be made.
- 3.15 As indicated in section 4.2 of the Transfer Statement, section 101 of the Act (applied in a transaction of this type by section 101A of the Act) prohibits any person or persons acting in concert (other than, in this case, KRPS) from acquiring more than 15% of the issued share capital in the bank during a period which ends three years after the transfer unless the Authority gives a direction to disapply this restriction. Kent Reliance and OneSavings asked the Authority to give such a direction so as to enable OSB Holdco Limited to take more than a 15% stake in OneSavings when the bank is authorised by the Authority. The Authority considers it desirable to direct

under section 101(4) of the Act that the protective provisions of section 101 of the Act (as applied by section 101A of the Act) shall not apply to the bank, in the interests of the depositors and potential depositors of the bank.

- 3.16 Having considered the matters set out in paragraphs 3.12 to 3.15 above, the Authority finds that there was no failure to comply with a relevant requirement of the applicable provisions of the Act or of the rules of the Kent Reliance. The Third Criterion does not, therefore, apply.

(v) Representations on Other Matters

- 3.17 Representations were made in regard to a number of other issues including: concerns that the proposed new bank would not be interested in small savers; alleged past deficiencies in the management of Kent Reliance and failure to distribute copies of the annual report and accounts of the Kent Reliance at Annual General Meetings of the society.

- 3.18 The Authority does not consider that the issues referred to in these representations are relevant to any of the Confirmation Criteria.

4 DIRECTION

- 4.1 Having regard to what is equitable between the members of the society, the Authority directs under section 100(7) of the Act that no bonus distribution of funds in pursuance of section 100(2)(b) of the Act shall be made.**

5. DECISION

The Authority has considered the application of Kent Reliance Building Society for confirmation of the transfer of business of Kent Reliance Building Society to OneSavings plc. Having had regard to the information available to it the Authority confirms the transfer of business.

For and on behalf of the
FINANCIAL SERVICES AUTHORITY

BARBARA PURKISS

24 January 2011

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