

## **BUILDING SOCIETIES ACT 1986**

### **DECISION BY THE FINANCIAL SERVICES AUTHORITY ON THE APPLICATIONS OF SKIPTON BUILDING SOCIETY AND CHESHAM BUILDING SOCIETY FOR CONFIRMATION OF A TRANSFER OF ENGAGEMENTS UNDER SECTIONS 94 AND 95 OF THE BUILDING SOCIETIES ACT 1986**

**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 **Skipton Building Society** ("the Skipton") and **Chesham Building Society** ("the Chesham") applied on 6 April 2010 to the Financial Services Authority ("the Authority") for confirmation of the transfer of engagements of the Chesham to the Skipton.

#### **Procedure**

1.2 Paragraph 8 of Schedule 16 to the Building Societies Act 1986 ("the Act") requires that, where a building society applies to the Authority for confirmation of a transfer of engagements, a notice shall be published stating that interested parties have the right to make representations to the Authority with respect to the application. The notice must specify the date, determined by the Authority, before which any written representations, or notice of a person's intention to make oral representations, must be received by the Authority, and the dates(s) on which the Authority intends to hear any oral representations. In the case of this proposed transfer of engagements ("the merger") notice was given:

- (i) in the Edinburgh Gazette and in the Belfast Gazette by the Skipton and by the Chesham on 2 April 2010 and in the London Gazette by the Skipton and the Chesham on 6 April 2010;

- (ii) in the Daily Telegraph, the Times and the Buckinghamshire Examiner and the Buckinghamshire Advertiser by the Skipton and the Chesham on 1 April 2010; and
  - (iii) in the Bucks Herald by the Skipton and the Chesham on 7 April 2010.
- 1.3 The notices specified 26 April 2010 as the closing date for receipt by the Authority of written representations or notice of intention to make oral representations and 10 May 2010 as the date set aside by the Authority to hear oral representations.
- 1.4 By the close of 26 April 2010 the Authority had received no written representations and no notices of intention to make oral representations and therefore an oral hearing was not held. No representations were received out of time.

### **The purpose of Confirmation**

- 1.5 Section 95 of the Act sets out what is required of the Authority when an application is made to it for confirmation of a transfer of engagements. Subsections (3) and (4) provide that the Authority **shall** confirm a transfer of engagements **unless** it considers that:
- (a) some information material to the members' decision about the transfer of engagements was not made available to all the members eligible to vote; or
  - (b) the vote on any resolution approving the transfer of engagements does not represent the views of the member eligible to vote; or
  - (c) some relevant requirement of the Act or the rules of any of the societies participating in the transfer of engagements was not fulfilled as regards that society.

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

- 1.6 Section 95(5) provides that the Authority shall not be precluded from confirming a transfer of engagements by virtue only of the non-fulfilment of some relevant requirement of the Act 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 of engagements and the Authority gives a direction that the failure is to be disregarded for the purposes of this section. Section 95(11) of the Act states that "relevant requirement" in the Third Criterion means a requirement of sections 94 and 95 of the Act, Schedule 16 to the Act or any rules prescribing the procedures to be followed by the society in approving or effecting a transfer of engagements.

- 1.7 In considering the three criteria, referred to in paragraph 1.5 above, the Authority reconsidered the booklet ("the merger booklet") produced by the Chesham for circulation to its members which contained the statutory statement required to be sent to members of the society under paragraph 3 of Schedule 16 to the Act ("the merger statement"). In addition to the merger statement, the merger booklet contained other information including a letter from the chairman of the Chesham and notice of the Annual General Meeting ("the AGM") at which the shareholding and borrowing members' resolutions of the society were to be put. The Authority is entitled to look again at the confirmation stage at issues which it considered in connection with the approval of the merger statement. In doing so, it has a duty to consider any information and arguments put to it by representers and by the societies, which of their nature would not have been available earlier, as well as those arising from its own further consideration of the matter. The Authority, accordingly, cannot properly be bound at the confirmation stage to the view that it took at the time of approval of the merger statements that it did not require further factual information, or to the view which it took of the accuracy of the statement's contents. It is under a duty to re-examine the merger statement and connected issues at the time of confirmation in the light of any new information and arguments available to it. That said, the Authority would clearly only change its view if there were good reason to do so.
- 1.8 It is, however, **not** for the Authority to consider the merits of proposals which the members have approved.

## **2. THE CHESHAM MEETING AND VOTES**

- 2.1 In its application for confirmation, the Chesham declared under seal that the requisite shareholding and borrowing members' resolutions, as required by section 94(2) of the Act, were passed at the AGM of the society on 31 March 2010. A certified copy of the minutes was furnished to the Authority.
- 2.2 The Chesham did not propose to pay compensation for loss of office to any of its directors or officers so no special resolution in accordance with section 96(1) of the Act was required.
- 2.3 The scrutineers for the Chesham reported that the resolutions were passed by the required majorities and confirmed that, in their opinion, the arrangements for the conduct of the voting were such as to ensure that notices of the meeting and merger statements 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.

2.4 The voting figures were:

<b>Shareholdings Members' Resolution</b>	<b>At the meeting</b>	<b>By Proxy</b>	<b>Total</b>
In favour	45	2,062	2,107
Against	42	479	521
<b>Total</b>	87	2,541	2,628
Percentage of eligible shareholding members who voted: 25.2%	Votes in favour as percentage of valid votes cast: 80.2%		

<b>Borrowing Members' Resolution</b>	<b>At the meeting</b>	<b>By Proxy</b>	<b>Total</b>
In favour	2	231	233
Against	4	53	57
<b>Total</b>	6	284	290
Percentage of eligible borrowing members who voted: 17.8%	Votes in favour as percentages of valid votes cast: 80.3%		

2.5 By virtue of section 94(2) and 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: 80.2% of the shareholding members who voted cast their votes in favour of the shareholding members' resolution.

2.6 By virtue of section 94(2) and 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: 80.3% of the borrowing members who voted cast their votes in favour of the borrowing members' resolution.

- 2.7 The Chesham's scrutineers also provided an analysis of spoilt or invalid votes: 80 in respect of the shareholding members' resolution and 9 in respect of the borrowing members' resolution. The majority were in respect of members who abstained (vote withheld) with most of the others being members who ceased to be eligible to vote after the dispatch of the notice of the AGM and voting forms.

### **3. THE SKIPTON'S APPLICATION**

- 3.1 In its application for confirmation the Skipton declared under seal that, pursuant to the consent of the Authority in accordance with section 94(5)(b) of the Act, it had undertaken by a resolution of its Board of Directors to fulfil the engagements of the Chesham.
- 3.2 Section 94(5)(b) of the Act allows a society that proposes to accept a transfer of engagements to resolve to do so by a resolution of the Board of Directors, if the Authority consents to that mode of proceeding, rather than by the passing of a shareholding members' resolution and a borrowing members' resolution at a general meeting. The Authority has indicated, in its guidance on Merger Procedures contained in paragraphs 2.4.41 and 2.4.42 of the Building Societies Regulatory Guide ("BSOG"), the general circumstances in which it may be prepared to give such consent. The two key factors are that (i) the transferee society's assets are substantially - more than 5:1 – larger than those of the transferor society and (ii) the merger will not affect the interests of the members of the transferee society to a significant extent. The Skipton's assets are approximately 67 times those of the Chesham. In addition, the Skipton explained to the Authority how the merger would not significantly affect the interests of its members. Having considered this explanation the Authority gave its consent to the Skipton on 15 February 2010. The Skipton was not required, therefore, to hold a general meeting so as to secure members' approval of its acceptance of the transfer of the Chesham's engagements.
- 3.3 Section 96(4) of the Act does however require that any distribution of funds by a society in consideration of the transfer must, if it exceeds prescribed limits, be approved by the members' resolutions of the other society as well as by the members' resolutions of the society making the distribution. There is no such distribution of funds in this merger.

#### **4. THE AUTHORITY'S CONCLUSIONS**

4.1 The Authority is **required** to confirm a proposed transfer of engagements **unless** it considers that any of the three criteria referred to in paragraph 1.5 above apply.

##### **(i) The First Criterion – Material Information**

4.2 As explained in paragraphs 3.1 to 3.3 above, the Skipton obtained, and relied on, the Authority's consent to proceeding by way of Board Resolution. It was therefore not required to put a shareholding members' resolution and a borrowing members' resolution to a general meeting, or to circulate a statutory statement to its members, and did not do so. The First Criterion cannot therefore apply to the Skipton in relation to the merger.

4.3 The Authority has, as stated above, reconsidered the booklet, sent by the Chesham to its members that contained the statutory statement. It has received no representation alleging any deficiency in the information made available to the Chesham's members. On the basis of its own reconsideration, the Authority finds no such deficiency.

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

##### **(ii) The Second Criterion – the Views of the Members**

4.5 The main mischief to which this criterion appears to be directed is a resolution carried by a small and unrepresentative number of votes. In the case of the Skipton no members' resolutions were put (as previously explained) and so the Second Criterion cannot apply to the Skipton in relation to the merger.

4.6 The Chesham is, as explained in paragraphs 2.5 and 2.6 above, subject to:

(i) the requirements in sections 94(2) and 5(a) and paragraph 27A of Schedule 2 to the Act that a shareholding members' resolution approving the terms of the merger must be passed by not less than three-quarters of the number of the shareholding members of the society qualified to vote on the resolution and voting either in person at the meeting or by proxy on the resolution: and

(ii) the requirements in sections 94(2) and 5(a) and paragraph 29 of Schedule 2 to the Act that a borrowing members' resolution approving the terms of the merger must be passed by a simple majority of borrowing members qualified to vote on the resolution and voting either in person at the meeting or by proxy on the resolution.

The scrutineer's report (paragraphs 2.3 to 2.6 above refer) confirms that both these requirements have been satisfied. Having regard to the voting figures reported by the

scrutineers and the absence of any representations alleging that the result of the votes did not represent the views of the members, the Authority finds that **the Second Criterion does not apply.**

**(ii) The Third Criterion – Requirements of the Act and the Rules**

- 4.7 In proceeding exclusively by way of Board Resolution the Skipton is relying on the Authority's consent under section 94(5)(b) and on there being no distribution to members. These matters were covered in paragraphs 3.1 to 3.3 above.
- 4.8 The Authority has considered the scrutineer's report on the Chesham's arrangements for the despatch of notices and statutory statements and for the conduct of the voting, and the other documents supplied by both societies with their applications for confirmation. It notes in particular the comment of the scrutineers referred to in paragraph 2.3 above. It has received no representations to the effect that either society has failed to fulfil any requirements of the Act or of that society's rules.
- 4.9 The Authority, therefore, having no evidence to suggest nor reason to suppose the contrary, finds that **the Third Criterion does not apply.**

**5. DECISION**

**The Authority has considered the applications by Chesham Building Society and Skipton Building Society for confirmation of the transfer of engagements of Chesham Building Society to Skipton Building Society and, having had regard to the information available to it, confirmed the transfer of engagements on 14 May 2010.**

For and on behalf of the  
Financial Services Authority

**BARBARA PURKISS**

**14 May 2010**

**Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS**