



Prudential Regulation Authority

BUILDING SOCIETIES ACT 1986

DECISION BY THE PRUDENTIAL REGULATION AUTHORITY ON THE APPLICATIONS OF NOTTINGHAM BUILDING SOCIETY AND SHEPshed BUILDING SOCIETY FOR CONFIRMATION OF A TRANSFER OF ENGAGEMENTS UNDER SECTIONS 94 AND 95 OF THE BUILDING SOCIETIES ACT 1986

The Prudential Regulation Authority appointed Eric Engstrom, a technical specialist in UK Banks and Mutuels Department, to hear and decide the application on its behalf.

1. INTRODUCTION

1.1 The **Nottingham Building Society** ("the Nottingham") and **Shepshed Building Society** ("the Shepshed") applied on 25 April 2013 to the Prudential Regulation Authority ("the Authority") for confirmation of the transfer of engagements of the Shepshed to the Nottingham.

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 date 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 Belfast Gazette, the Edinburgh Gazette, and the London Gazette by the Nottingham and by the Shepshed on 26 April 2013;
 - (ii) in the Daily Telegraph, the Nottingham Evening Post, the Leicester Mercury, the Shepshed Echo and the Loughborough Echo by the Nottingham and the Shepshed on 26 April 2013.
- 1.3 The notices specified 20 May 2013 as the closing date for receipt by the Authority of written representations or notice of intention to make oral representations and 3 June 2013 as the date set aside by the Authority to hear oral representations.
- 1.4 By the close of 20 May 2013 the Authority had received no written representations and no notices of intention to make oral representations. No representations were received out of time. The Authority decided that, in the absence of any notice of intention to make oral representations, there were no matters which it wished to put to either society at an oral hearing, and that an oral hearing was not therefore necessary.

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 considered the booklet ("the merger booklet") produced by the Shepshed 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 Shepshed 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 at the confirmation stage at issues which, in this case, the Financial Services Authority considered in connection with its approval of the merger statement¹. 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 the Financial Services Authority took at the time of its approval of the merger statement 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 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 the view taken by the Financial Services Authority 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 SHEPSHED MEETING AND VOTES

2.1 In its application for confirmation, the Shepshed declared under seal that the requisite shareholding and borrowing members' resolutions, as required by section 94(2) of the

¹ *The merger statement of the Shepshed was approved by the Financial Services Authority which had responsibility until 31 March 2013 for carrying out certain functions under the Act in regard to mergers. On 1 April 2013 these responsibilities were transferred to the Authority.*

Act, were passed at the AGM of the society on 23 April 2013. A copy of the minutes was furnished to the Authority.

2.2 The Shepshed 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 Shepshed 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:

Shareholdings Members' Resolution	At the meeting	By Proxy	Total
In favour	21	1,684	1,705
Against	4	225	229
Total	25	1,909	1,934
Percentage of eligible shareholding members who voted: 34.5%	Votes in favour as percentage of valid votes cast: 88.2%		

Borrowing Members' Resolution	At the meeting	By Proxy	Total
In favour	1	105	106
Against	-	8	8
Total	1	113	114
Percentage of eligible borrowing members who voted: 17.6%	Votes in favour as percentage of valid votes cast: 93.0%		

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: 88.2% 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: 93.0% of the borrowing members who voted cast their votes in favour of the borrowing members' resolution.
- 2.7 The Shepshed's scrutineers also provided an analysis of spoilt or invalid votes: 32 in respect of the shareholding members' resolution and 3 in respect of the borrowing members' resolution. The majority were in respect of members who abstained (vote withheld) with most of the others being in respect of members who ceased to be eligible to vote after the dispatch of the notice of the AGM and voting forms.

3. THE NOTTINGHAM'S APPLICATION

- 3.1 In its application for confirmation the Nottingham declared under seal that, pursuant to the consent of the Financial Services Authority² 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 Shepshed.
- 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 – as was the position in this case - the Financial Services 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 Financial Services Authority had indicated, in its guidance on Merger Procedures contained in paragraphs 2.4.41 and 2.4.42 of the Building Societies Regulatory Guide, the general circumstances in which it may be prepared to give such consent. The two key factors were 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 Nottingham's assets are approximately 27 times those of the Shepshed. In addition, the Nottingham explained to the Financial Services Authority how the merger would not significantly

² See footnote on page 3 above

affect the interests of its members. Having considered this explanation the Financial Services Authority gave its consent to the Nottingham on 2 January 2013. The Nottingham was not required, therefore, to hold a general meeting so as to secure members' approval of its acceptance of the transfer of the Shepshed'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 Nottingham obtained, and relied on, the Financial Services 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 Nottingham in relation to the merger.

4.3 The Authority has, as explained above, considered the merger booklet sent by the Shepshed to its members and that contained the merger statement. It has received no representation alleging any deficiency in the information made available to the Shepshed's members and on the basis of its own consideration, it 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 Nottingham no members' resolutions were put (as previously explained) and so the Second Criterion cannot apply to the Nottingham in relation to the merger.

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

(i) the requirements, in sections 94(2) 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 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.

4.7 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 in 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.**

(iii) The Third Criterion – Relevant requirements of the Act and the rules

4.8 Paragraph 1.6 above explains what the relevant requirements of the Act and the rules are.

4.9 In proceeding exclusively by way of Board Resolution the Nottingham is relying on the Authority's consent under section 94(5)(b) and on there being no distribution to members. These matters are covered in paragraphs 3.1 to 3.3 above.

4.10 The Authority has considered the scrutineer's report on the Shepshed'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 comments 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 their rules.

4.11 The Authority, therefore, having no evidence to suggest, nor reason to suppose, to the contrary, finds that **the Third Criterion does not apply.**

5. DECISION

5.1 The Authority has considered the applications by Shepshed Building Society and Nottingham Building Society for confirmation of the transfer of engagements of Shepshed Building Society to Nottingham Building Society and, having had regard to the information available to it, confirmed the transfer of engagements on 11 June 2013.

5.2 Before confirming this transfer of engagements, the Authority consulted the Financial Conduct Authority, as required by Section 95(6A) of the Act.

ERIC ENGSTROM

For and on behalf of the
Prudential Regulation Authority

**11 June 2013
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