



Prudential Regulation Authority

BUILDING SOCIETIES ACT 1986

DECISION BY THE PRUDENTIAL REGULATION AUTHORITY ON THE APPLICATIONS OF PROGRESSIVE BUILDING SOCIETY AND CITY OF DERRY 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 the Banks, Building Societies and Credit Unions Directorate, to hear and decide the application on its behalf.

1. INTRODUCTION

1.1 The **Progressive Building Society** ("the Progressive") and **City of Derry Building Society** ("the City of Derry") applied on 29 April 2014 to the Prudential Regulation Authority ("the Authority") for confirmation of the transfer of engagements of the City of Derry to the Progressive.

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 London Gazette, the Edinburgh Gazette, the Daily Telegraph, the Belfast Telegraph and the Derry Journal by the Progressive and by the City of Derry on 29 April 2014;
 - (ii) in the Londonderry Sentinel by the Progressive and the City of Derry on 30 April 2014.
- 1.3 The notices specified 19 May 2014 as the closing date for receipt by the Authority of written representations or notice of intention to make oral representations and 3 June 2014 as the date set aside by the Authority to hear oral representations.
- 1.4 By the close of 19 May 2014 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 members 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 City of Derry 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 City of Derry 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 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 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.
- 1.9 Before approving the merger statement, the Authority consulted the Financial Conduct Authority, as required by paragraph 1(4A) of Schedule 16 to the Act.

2. THE CITY OF DERRY MEETING AND VOTES

- 2.1 In its application for confirmation, the City of Derry 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 28 April 2014. A copy of the minutes was furnished to the Authority.

2.2 The City of Derry 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 City of Derry 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	13	438	451
Against	2	32	34
Total	15	470	485
Percentage of eligible shareholding members who voted: 31.2%	Votes in favour as percentage of valid votes cast: 93.0%		

Borrowing Members' Resolution	At the meeting	By Proxy	Total
In favour	3	37	40
Against	1	2	3
Total	4	39	43
Percentage of eligible borrowing members who voted: 9.6%	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:

93.0% 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 City of Derry's scrutineers also provided an analysis of spoilt or invalid votes: 14 in respect of the shareholding members' resolution (none in respect of the borrowing members' resolution). The majority were in respect of members who abstained (vote withheld) with 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, or in respect of invalidly signed proxy voting forms.

3. THE PROGRESSIVE'S APPLICATION

- 3.1 In its application for confirmation the Progressive 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 City of Derry.
- 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 Progressive's assets are approximately 35 times those of the City of Derry. In addition, the Progressive 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 Progressive on 31 January 2014. The Progressive was not required, therefore, to hold a general meeting so as to secure

members' approval of its acceptance of the transfer of the City of Derry'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 Progressive 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 Progressive in relation to the merger.

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

- 4.6 The City of Derry 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 to vote on the resolution and voting either in person at the meeting or by proxy on the resolution.

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 the other comments made by the scrutineers as referred to in paragraph 2.3 above, 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 – Requirements of the Act and the Rules

- 4.8 In proceeding exclusively by way of Board Resolution the Progressive 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.
- 4.9 The Authority has considered the scrutineer's report on the City of Derry'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 their rules.
- 4.10 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 City of Derry Building Society and Progressive Building Society for confirmation of the transfer of engagements of City of Derry Building Society to Progressive Building Society and, having had regard to the information available to it, confirmed the transfer of engagements on 10 June 2014.

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

For and on behalf of the
Prudential Regulation Authority

ERIC ENGSTROM

**10 June 2014
Prudential Regulation Authority
20 Moorgate
London EC2R 4DA**