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ADVICE TRUST

BUSINESS
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Consultation Response:

Joint Insolvency Committee Changing statements of insolvency practice

Response by the Money Advice Trust

Date: July 2020

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Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2019, our National Debtline and Business Debtline advisers provided help to more than 199,400 people by phone and webchat, with 1.97 million visits to our advice websites.

In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2019 we delivered this free training to over 981 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at www.moneyadvicetrust.org

Public disclosure

Please note that we consent to public disclosure of this response.

Introductory comment

We welcome the invitation to comment on the planned changes to the Statement of Insolvency Practice (SIP) 3.1.

We have set out some queries and comments relating to the proposed changes to SIP 3.1 as set out in the draft that accompanied the consultation.

We have also set out why we believe that a fundamental review of SIP 3.1 should be carried out as soon as possible. Overall, we believe that there should be a single new independent regulatory body in conjunction with a free independent complaints body and we expressed this view in the Insolvency Service call for evidence on the regulation of insolvency practitioners. We are awaiting the outcome of the consultation.

Responses to individual questions

Statement of Insolvency Practice (SIP) 3.1 EWNI

Question 1: Do you agree that the changes to SIP 3.1 are appropriate?

Please explain the reasons for your answer below.

We have examined the proposed changes to SIP 3.1 as set out in the draft document. We wonder if these changes go far enough or provide enough detail in the guidance for IPs to put in place real and meaningful changes in practice.

We have the following comments on the proposed changes (which for clarity we have highlighted in yellow in our response).

Advice to the debtor

8. *The insolvency practitioner should have procedures in place to ensure that the information and explanations provided to the debtor at each stage of the process (that is, assessing the options available, and then preparing and implementing an IVA), are designed to set out clearly:*

c) whether the debtor will require additional specialist assistance which will not be provided by any supervisor appointed;

We are not clear what the intention is behind the addition of clause c). We are not at all clear about the meaning of this clause. Is this intended to be a reference to assistance due to a disability or to a consumer being in particularly vulnerable circumstances? If so, then it needs to be specifically spelt out as such. If the supervisor is not providing such assistance, then it needs to be clear where this is available and who is providing the help.

The proposal

14. Where the insolvency practitioner has been asked to assist the debtor to prepare a proposal, the insolvency practitioner should have procedures in place to ensure that the proposal **is considered objectively, has substance** and contains the following:

iii. any other attempts that have been made to solve the debtor's financial difficulties, if there are any such difficulties and the alternative options considered, both prior to and within formal insolvency by the debtor;

The advice sector has concerns that some IVAs are set up when an alternative debt option would have been more suitable, with no expectation that the IVA will reach its term. The advice sector has seen repeated instances where clients approach us for advice once their IVA has failed, or is about to fail. They will frequently be eligible for an alternative debt option, typically a DRO or bankruptcy.

It is clearly important for a proposal to be considered objectively and for the proposal to have “*substance*”. We would query what procedures could be put in place by an IP to ensure that the proposal “*is considered objectively*”. Is this intended to be a reference to problems that have been identified with some IVAs where an alternative option should have been considered and this was not done? It is not clear what the JIC has in mind here, or what checks and balances should be put in place by firms to ensure this is carried out in practice and evidenced.

In addition, the reference to what “*alternative options*” have been considered should be stronger to ensure that the IP is required to demonstrate that all suitable options have been considered and why these have been disregarded.

14. (j) **an explanation of how debts which it is proposed are compromised will be treated should the IVA fail; and**
k) **the circumstances in which the IVA [may] will conclude or fail, including what may happen to the debtor in such circumstances.**

We believe it would be extremely useful to provide illustrative consumer-friendly pictorial charts and plain English explanations as to how IP fees and disbursements interact with the monthly payments a consumer would make over time. It appears to come as a complete surprise to consumers when their IVA fails, to find how little their monthly instalments have paid back of the outstanding debt in the years they had their IVA.

There should be a requirement on IPs to provide an illustration as to how much of each debt will be paid off if the IVA fails at various stages. This should be illustrated on an annual basis. This illustration should show the impact of the IP fees and charges on how much debt will have been paid at each stage. This should also be clear that, should the IVA fail, the consumer will owe the remaining balance of each debt again and crucially shows the impact on the balance when all the outstanding interest is added back in.

The supervisor

16. When acting as supervisor, the insolvency practitioner should have procedures in place to ensure that:

h) Full disclosure is made of the costs of the IVA and of any other sources of income of the insolvency practitioner, **associates of the insolvency practitioner** or the firm, in relation to the case, in reports.

We would like it to be made clear who this reference to “associates of the insolvency practitioner” covers in practice. It is very important that there is public guidance provided as to who the JIC consider to be associates in this context. We would very much hope that lead generation companies are included in this list and full disclosure required as to their fees and other chargeable activities.

Question 2: Should any other changes be made to SIP 3.1?

Please explain the reasons for your answer below and set out the changes you wish to be made to the SIP.

We believe that it is time for a fundamental review of the contents of SIP 3.1. We have set out some of our reasons below.

In general, we would challenge the use of the term “the debtor” throughout the SIPs. As a debt charity who gives advice to people in very vulnerable circumstances, we would not use this term. Language does have an element of importance in how we treat people. We suggest that it serves to objectify and potentially stigmatise the person in debt and does not reflect a positive attitude in the reader. We do not believe that professional insolvency practitioners should be encouraged to think of their clients as “the debtor”. We suggest that this term be removed throughout.

In addition to the points we have made in our response to question 1 on the proposed changes to SIP 3.1 that have been put forward, we would suggest that the JIC should consider incorporating the following into the SIPs.

- ✓ There should be a requirement to adopt the proposed IVA Protocol covering letter that must be sent out by all IPs before an IVA is entered into. This document should contain prescribed terms that must be sent in its entirety before the consumer signs up for the IVA.

- ✓ We are not aware of any guidance or rules relating to how IP firms should approach vulnerability issued by any of the RPBs, or R3 or the Insolvency Service (although there may be internal guidance that has not been made public). Vulnerability is not referenced in the Statements of Insolvency Practice. From our perspective, as a recognised source of expertise, and provider of training and consultancy on vulnerability issues, the insolvency sector is seriously behind other consumer facing services including the debt advice sector, financial services firms and energy suppliers in their approach to consumers in vulnerable circumstances. We would like to see this addressed. We note that vulnerability is not addressed in any way in SIP 3.1. We believe that there should be separate and binding guidance issued by the IS on how to deal with clients in vulnerable circumstances. In its absence, there should be a SIP that specifically covers vulnerability.
- ✓ We see many examples of misleading adverts on Google and other search engines for IPs and the lead generation companies who pass on leads to IPs. It is possible to present options in such a manner as to persuade someone that a particular option is “better”. The websites for lead generation companies offering to write off 85% of debt are good examples. These websites are often misleading and appear to be an advert for IVAs, with a home page that concentrates on promoting IVAs and minimal information on other debt options. In many cases, DROs are not included as a debt option. If the advice and information provided diminishes the advantages of other available debt options or exacerbates the disadvantages, then it is inevitable that consumers with little knowledge of the subject, and in a highly vulnerable state, are likely to go for what is on offer. The SIP should make it the responsibility of the IP firm to ensure that the online adverts they commission to advertise their own and lead generation firm services are not misleading and in particular do not masquerade as debt charities. The JIC should set out its own rules on this, using the FCA CONC rules as their basis.
- ✓ The Insolvency Service should develop stronger rules for insolvency practitioners who accept referrals from lead generation companies. The Insolvency Service should make it compulsory for all IPs to ensure that the initial debt advice is provided by an FCA regulated debt advice firm rather than by an IP firm or lead generator/marketing company. In the meantime, this should be part of the SIP 3.1.
- ✓ We are concerned that unsuitable IVAs are being sold to people on lower incomes or benefit-level income, which are not sustainable. We believe that the SIP should set out clear guidance that ensures IPs are prevented from setting up IVAs on the basis of benefit income only.
- ✓ In addition, there should be requirement in the SIP for the IP to prepare a detailed financial statement using the Standard Financial Statement. The IP must be able to demonstrate that an adequate financial statement process has been carried out and the resulting budget is sustainable in the long term.

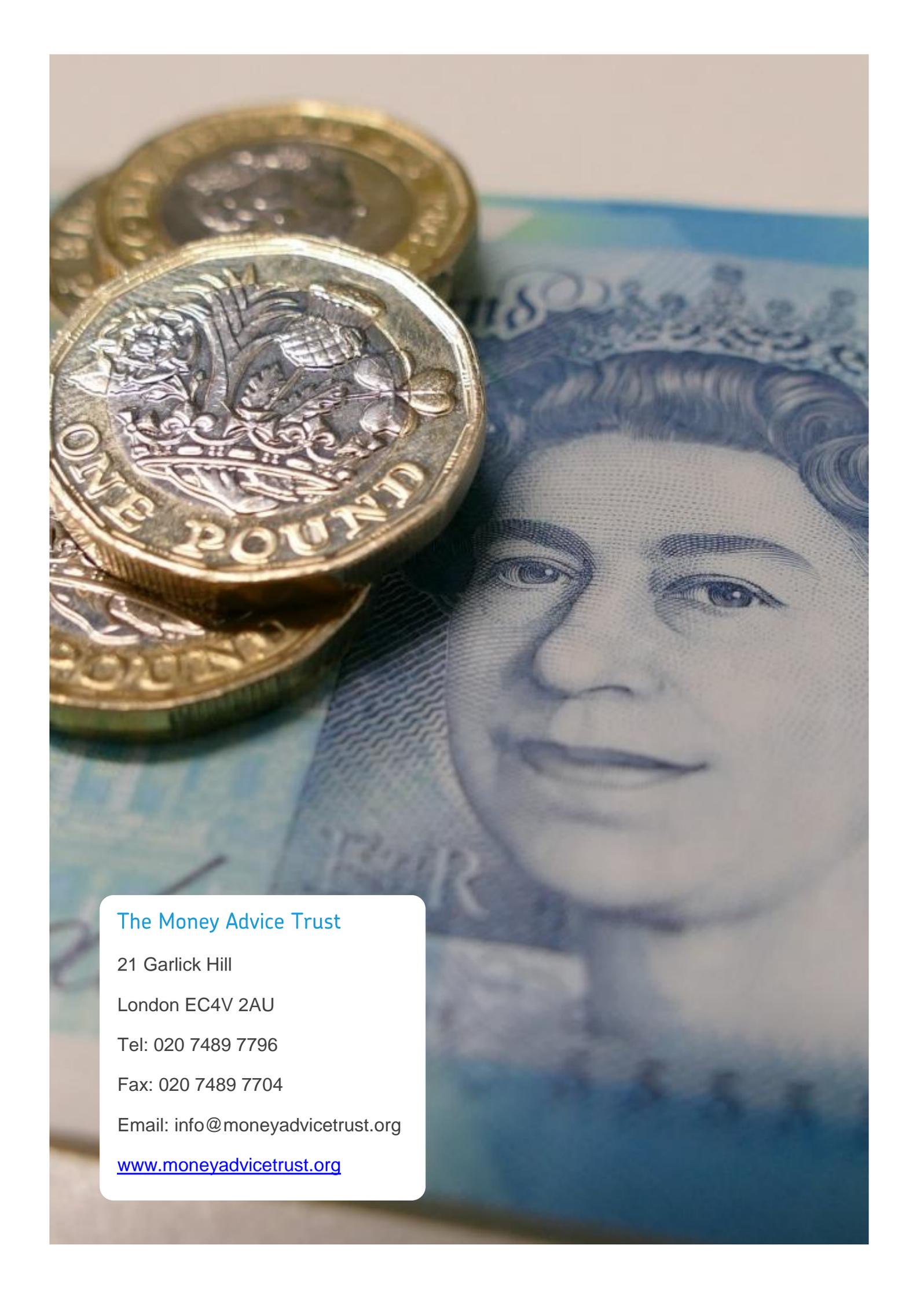
- ✓ It is important that clients consider the stability of their financial situation and the sustainability of their budget. We believe IPs should be required to show that they have been pro-active in getting people to think about the effect of *expected* changes in circumstances they may have during the lifetime of the IVA to ensure that the IVA is going to be a suitable product for them. This could include illustrations of how an expected change of circumstances might affect the budget and the IVA (such as children leaving full-time education, non-dependants leaving the household, retirement and so on).
- ✓ The statement of insolvency practice 3.1 does not mention fees and disbursements. The IVA protocol is also silent on the matter of fees and disbursements. The relevant guidance is to be found in the statement of insolvency practice 9. However, this does not set out what can be charged by way of a standard tariff. We have searched for any standard tariff or chart of allowable fees and disbursements but do not believe there is a standard format available elsewhere. We believe the regulators should set a fees and disbursements tariff that is clear, transparent and publicly available. This could be reviewed annually to ensure that fee levels are accurate and up-to-date. This would serve to end the disputes between firms, creditors and IPs. However, in its absence, the JIC could set such a tariff and publish it.

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