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Consultation Response:

FCA Debt packagers: proposals for new rules

Response by the Money Advice Trust

Date: December 2021

Contents

- **Page 2** Contents
- **Page 3** Introduction / about the Money Advice Trust
- **Page 4** Executive summary
- **Page 5** Responses to individual questions
- **Page 10** Appendix 1
- **Page 12** Contact details

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 2020, our National Debtline and Business Debtline advisers provided help to 161,560 people by phone and webchat, with 1.86 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 2020 we delivered this free training to over 920 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.

Executive summary

We welcome the FCA's proposals for new rules on debt packagers for the reasons we set out in our response below.

We very much agree with the FCA assessment that the remuneration model for debt packager firms is driving consumer harm. We have raised our concerns about debt packager firms and lead generation firms on many occasions.

We agree that the only effective remedy in this context within the FCA's current range of options, is for the FCA is to ban receipt of remuneration for referrals by debt packager firms.

However, we think there are a range of other potential remedies that need to be considered by government, the FCA and the Insolvency Service. We have set out some proposals in our response.

We are very concerned that the market will simply adapt into a new model that continues to provide leads to IPs in return for fees. We would therefore suggest that the Insolvency Service complements the FCA proposals by implementing a simple ban on IP firms from making payments for referrals in all cases.

Responses to individual questions

Question 1: Do you agree with our assessment that the remuneration model for debt packager firms is driving consumer harm?

We very much agree with the FCA assessment that the remuneration model for debt packager firms is driving consumer harm. We have raised our concerns about debt packager firms and lead generation firms on many occasions.¹ Many of our concerns are reflected in the paper.

Question 2: Do you agree that the only effective remedy is to ban receipt of remuneration for referrals by debt packager firms?

We agree that the only effective remedy in this context within the FCA's current range of options, is for the FCA to ban receipt of remuneration for referrals by debt packager firms. However, while these measures are welcome – and much needed, we do not believe that they alone will be adequate to solve the problems identified without further action.

In particular, we think there are a range of other potential remedies that need to be considered. In our answer here, we set out suggestions for consideration by government, the FCA and the Insolvency Service. Alongside such measures, action will also be required from social media companies, in relation to poor advertising practices by firms, and the ASA.

¹ <https://www.moneyadvicetrust.org/blog/follow-money-ivas-and-issue-misleading-online-ads/>

Extending ban on IP firms making payments for referrals

The lead generation and debt packager firms rely on the willingness of the insolvency practitioner (IP) market to pay large fees for access to people who might be easily persuaded to enter into an IVA - or protected trust deed in Scotland – as a way of managing their financial difficulties.

We note the proposals from the FCA would mean debt packagers could no longer accept payment for leads from IP firms or other debt solution providers. We are not convinced that this will remove debt packagers from the lead generation market. Instead, we are very concerned that the market will simply adapt into a new model that continues to provide leads to IP in return for fees. We would therefore suggest that the Insolvency Service complements the FCA proposals by implementing a simple ban on IP firms from making payments for referrals in all cases.

Strengthening the Statements of Insolvency Practice (SIPs)

Such a measure to ban IPs from making payments for referrals would allow the Joint Insolvency Council to strengthen SIP 3.1 in this regard following the recent consultation. Currently, the draft SIP 3.1 tries to differentiate between whether IPs should take leads from FCA debt packagers, debt advice charities, or whether they should accept them from unauthorised lead generation firms or any other parties. This is very confusing. If IPs stop making payments for leads, this must surely reduce the incentives for poor practice from firms who package up leads or make referrals and therefore reduce consumer detriment as a result of a poor-quality lead.

If this does not happen, then the proposals for a revised SIP 3.1² need to be reviewed again to be much clearer. The current revisions imply (but do not state) that IPs can only pay for leads from FCA authorised debt counselling firms, who presumably are mainly the very debt packagers who will potentially no longer be in the market.

Other required measures

- ✓ We would also suggest that the definition of “advice” within PERG 17 be looked at again. We see websites advertising “information only” or a “model of non-advice” whilst maintaining they do not have to be authorised by the FCA. This includes both lead generation firms and IP firms. The definition of advice is too open to misinterpretation and allows some firms to avoid any regulatory scrutiny. We have set out examples of such websites in Appendix 1 below.
- ✓ There is a regulatory gap between insolvency practitioner regulation and lead introducer authorisations regulation and supervision that lies between the FCA and the Insolvency Service. The government should give the responsibility to the FCA to regulate the activities of lead generators in relation to debt advice, through the creation of a new regulated activity of “*effecting introductions to debt advice*”. This would help to close the regulatory gap.

² <https://www.icas.com/professional-resources/insolvency/consultation-and-responses/consultation-on-sip-3.1-individual-voluntary-arrangements>

- ✓ Insolvency practitioners (IPs) giving debt advice “*in reasonable contemplation of that person’s appointment as an insolvency practitioner*” (PERG 2.9.26 G) are not required to seek FCA authorisation as they were successful in arguing that they are already covered by their professional bodies. HM Treasury should review the exemption for IPs from FCA authorisation.
- ✓ It is generally the case that large IVA firms are operating with staff who provide information and advice, (but presumably not on debt options other than an IVA), whilst staff and IVAs are supervised by a small number of IPs. We would argue that this model is not sustainable given the ratio of IPs to staff. The staff have no requirement to be FCA authorised to give debt advice, and there are no set qualifications they must have, supervision standards to meet or training requirements to follow. These firms should be FCA authorised in our view and staff should work to set standards.
- ✓ We are generally concerned that there is no requirement for free, confidential holistic debt advice to be given to everyone before they take up an IVA. It is arguable that under the rules, the IPs are not required to give full debt advice, and their non-IP staff are not qualified to do so. The lead generation firms are certainly not providing such advice (or if they are, they are not authorised to do so). It is not always clear what standards FCA authorised debt packagers work to when they provide debt advice or again, how they are qualified to do so or how they are supervised.
- ✓ This is a further problem with supervision by FCA authorised firms of their appointed reps under the appointed representative regime, which we understand the FCA has undertaken to address through its new consultation on improving the appointed representative regime.³
- ✓ The Insolvency Service should make it the responsibility of IP firms to ensure that the online adverts they commission to advertise their own and lead generation or debt packager firm services are not misleading and do not, under any circumstances, masquerade as debt charities. Under the current regulatory structure, the Insolvency Service should also ensure that the RPBs supervise practices and remove web content that does not comply.

³ [CP21/34: Improving the Appointed Representatives regime | FCA](#)

Question 3: Do you agree that we should not include debt management firms or not-for-profit debt advice firms in our proposals?

We are concerned about the proposal to exempt debt management firms from the proposals. We have seen over time how business models of firms seeking to profit from poor debt advice have shifted. We are concerned by the risk identified in the paper, that debt packager firms could look to become appointed representatives of debt management firms in order to continue with the same business model.

We note that the proposals include an obligation on debt management firms who act as a principal to ensure that none of their appointed representatives receive any remuneration from debt solution providers. However, we believe that it would be safer to include debt management firms in the remuneration ban, as well as their appointed representative firms in the light of the widespread concerns about the monitoring and oversight of appointed representatives by principal firms.

We have regularly raised our concerns about the appointed representative model where we see firms using misleading website names and social media advertising alongside inaccurate content on their websites. Supervision by debt management firms of their appointed representatives does not appear to be rigorous or effective.

We are pleased to see that the FCA has issued a consultation looking again at the appointed representative regime. The review needs to look at the role of the appointed representative regime, in relation to debt advice. We are very pleased to see the FCA turn its attention to this area and particularly its concerns over the *“increased problems from principal firms having poor due diligence and oversight of their Ars”*. We believe there needs to be legislative change to the regime, and some sectors - such as debt advice - may need to be removed altogether.

We agree that not-for-profit debt advice providers should not be included in the FCA proposals. As described in the paper, the business model for debt advice charities and not-for-profit providers does not rely on money for referral fees. We are also not aware of any such not-for-profit firms using the debt packager business model. There would be a severe conflict of interests between such a model and our funding sources and external quality monitoring requirements.

Question 4: Do you have any comments on our proposed obligation on debt management firms who act as principals?

As we have indicated, we do not believe that imposing the obligation on debt management firms who act as a principal to ensure that none of their appointed representatives receive any remuneration from debt solution providers will be sufficient. As we have said, the appointed representative model does not appear to function well. There does not appear to be sufficient oversight and monitoring of appointed representatives by principal firms.

We therefore do not have confidence that the principal firms will carry out the due diligence required to ensure there are no further referral fees paid to their appointed representatives. We are also concerned that the FCA will not be able to dedicate sufficient resources to oversee the chain of firms involved to ensure compliance either.

We believe that the appointed representative model needs urgent reform. Therefore, we do not feel that the proposals presented with regards to debt management firms are sufficient.

Question 5: Do you have any comments on the draft rules?

We do not have any comments on the draft rules, beyond that the rules will need to be changed if it is accepted that debt management firms should also be included in the remuneration ban alongside their appointed representatives.

Question 6: Do you have any comments on the planned implementation period?

We strongly support the planned implementation period that would make the new rules come into effect as quickly as possible, with a one-month period for implementation.

Question 7: Do you have any comments on, or relevant additional data for, our draft cost benefit analysis

We do not have any additional data for or comments on the cost benefit analysis.

Appendix 1

November 2021 Google search

https://forms.debtinsider.co.uk/free-debt-help/?qclid=CjwKCAiAs92MBhAXEiwAXTi252F67qkivH3vZea9d-1ZGzWcGImHB5gh5DoR6shyvwdrlDqs1_FqGxoCIFEQAvD_BwE

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** Average Debt Source : <https://www.tuc.org.uk/news/unsecured-debt-hits-new-peak-ps14540-household-tuc-analysis>.

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To find out more about managing your money and getting free debt advice visit, [Money Advice Service](#), an independent service set up by the Government to help people manage their money.

<https://www.moneyadvice.service.org.uk/en/tools/debt-advice-locator>

* A debt write off amount of between 25% and 75% is realistic, however the debt write off amount for each customer differs depending upon their individual financial circumstances and is subject to the approval of their creditors. The example provided of 85% has been achieved by many customers in the last 12 months.

September 2021 Google search

Government Debt Help Scheme - Find Out If You Qualify

Ad-<https://www.moneyadvice.co.uk/>

Stop Creditor Intimidating Calls, Get One Lower Monthly Payment, Freeze Interest & Charges. **Debts** Over £6,000? We Can **Help** You to Reduce Your **Debt** by 85%. Check Now If You Qualify. Trusted Service Award. Freeze Interest & Charges. Become **Debt Free**.

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Money Advice specialise in Individual Voluntary Arrangements (IVA's) and work on a model of no fee but will go through all your options following an initial fact-finding process.

If you decide an IVA is the best option for you after we've assessed your financial situation, we may put you in touch with one of our trusted IVA providers. This means we will receive a fee from the third party for successfully introducing you for the preparatory work we completed. You would not be responsible for paying this fee. The third party will contact you directly to continue the progression of your IVA application after we have successfully introduced you to them.

Please note that Money Advice Ltd & www.moneyadvice.co.uk is in no way related or approved by The Money Advice Service which is an impartial service set up by the UK Government.

It also states "Debt Advice Service offer expert debt advice and make sure you know every option available".

[Debt Solutions - Find Your Best Options To Get Debt Free | Money Advice](#)

September 2021 Google search

National Debt Advice

<https://national-debt-advice.co.uk>

National Debt Advice offers free and confidential debt advice UK, bankruptcy and alternative Government debt solutions. DMP, IVA, DRO, Trust Deeds, CVA.

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www.national-debt-advice.co.uk is an information only based website offering information relating specifically to UK debt solutions. Your information provided to us is passed to our chosen partners Assistance centre As part of our service, your details will be passed to one of our trusted partners who will review your financial situation, explain the available options and recommend a debt solution which is suitable for you. We will be paid for introducing you or for the preparatory work we do, depending on your debt solution fees may be payable if ongoing services are provided.

About us <https://national-debt-advice.co.uk/#national-debt>

- 7 day a week contact with a debt advisor for any queries on your payment plan.
- Receive honest and independent advice on their financial situation from reputable company.

September 2021 Google search

[You Are Not Alone - Debt Savvy Limited](#)

Ad-<https://www.debtsavvy.co.uk/>

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[IVA - Low](#) - from **£80.00**/mo - Based on affordability · More

- Debt Savvy Ltd registered office Co Hse: 11940638
- Debt Savvy Ltd, Kemp House, 152-160 City Road, London, EC1V 2NX ; ICO ZA518066
- PAUL KEELEY is a qualified and licensed Insolvency Practitioner with the Insolvency Practitioner Association
- Johnson Geddes registered IP (Paul Keeley - reg no: 16530) Address: Landmark House, Station Rd, Cheadle Hulme, Cheadle SK8 7BS
- Debt Savvy specialise in packaging Individual Voluntary Arrangements (IVA's) and work on a model to package cases for Johnson Geddes to assess eligibility and provide any advice
 - Debt Savvy is an IVA introducer, we gather your documentation and determine if you qualify for the debt write off solution called an Individual Voluntary Arrangement (IVA). We do not charge you a fee. Our assessment is free and you are under no obligation to undertake the IVA with our partner firm. We do not manage or supervise your IVA. This is done by a qualified and licensed Insolvency Practitioner (IP) at Johnson Geddes Limited. Once we have assessed your situation we will assist you in collecting the necessary information your IP will need. We will hold your hand through the process, but you can cancel at anytime up to your IVA being approved.

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