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Consultation Response:

Insolvency Service

The future of insolvency regulation

Response by the Money Advice Trust

Date: March 2022

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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 2021, our National Debtline and Business Debtline advisers provided help to over 170,400 people by phone, webchat and our digital advice tool with 1.63 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 2021 we delivered this free training to more than 1,000 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 opportunity to respond to this consultation, and to contribute our expertise as a debt advice charity. As outlined throughout our response, we often see poor practice in the IVA market causing harm to financially vulnerable people and think there is a strong case for strengthened regulation of the insolvency practitioner (IP) sector. We have set out many of these poor practices in our response to the Insolvency Service call for evidence in 2019.

We would support the Insolvency Service taking on the role of single regulator for the insolvency profession. We think that this option would go some way to strengthening the insolvency regime.

- ✓ We have concerns about the proposed model which creates a new independent statutory office of regulator within the Insolvency Service. We are concerned that this office would not have sufficient independence within the Insolvency Service to ensure that there is no perception of a less rigorous regulatory regime for insolvency practitioners.
- ✓ The regulator will need to demonstrate that they can establish a strong regulatory regime that will work for consumers. It will need to take swift and robust action against the business models, and poor practices by firms that are causing consumer detriment in the IVA market.
- ✓ The overall regulatory objectives need to be revised to make it clear that treating people in debt fairly is as important as maximising returns to creditors.
- ✓ We suggest that the statutory objectives and implementation of the regulatory and complaints body needs a stronger consumer lens, focussing on good consumer outcomes, in particular in relation to vulnerability.
- ✓ We very much welcome the proposal that the single regulator should have responsibility for setting standards for the insolvency profession.
- ✓ We believe that the gold standard in complaints handling would require a separate and independent complaints body put in place to deal with complaints, in the same way as the FCA operates with the Financial Ombudsman Service. This ensures that there is a perception of fairness, and impartiality by complainants and a lack of bias in outcome.
- ✓ It is also vital that the complaints body is formed in such a way that it can assess complaints on a general “fair and reasonable” principle of good outcomes for consumers.
- ✓ We support the proposals for a new disciplinary and enforcement process. We hope that this new framework will be effective in taking early robust action against IPs and IP firms as needed.

- ✓ We do not agree that specified regulatory functions should be delegated to other bodies such as RPBs on a contractual basis. These proposals seem to undermine the point of establishing a single regulator and allow the status quo to continue.
- ✓ We very much agree that there should be statutory regulation of insolvency firms as well as of individual IPs. This needs to ensure that the definition of “insolvency services” is broad enough to avoid regulatory loopholes that can be exploited at the perimeter by less scrupulous firms.
- ✓ There are good reasons to apply additional requirements to firms such as volume IPs. We are of the view that such firms need greater regulatory controls and monitoring to ensure good consumer outcomes.
- ✓ We very much support the proposal for a single public register for both IPs and for insolvency firms that replaces the current licensing regime.
- ✓ We very much support the idea that the regulator should have the statutory power to direct an IP or firm to pay compensation where required. This should include redress and compensation for consumers where applicable.

We have identified aspects of the current regime that cannot wait for an independent regulatory body to be legislated for and set up. This could take some years. The areas of consumer detriment in the IVA market set out below should be tackled immediately.

- ✓ The Insolvency Service could 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 unauthorised lead generator.
- ✓ We would like to see the regulator take immediate action to ban the IP use of lead generation firms to generate leads. Payment for leads is a driver for a poor conduct culture where the incentive for the IP to receive the lead may be prioritised over the appropriate debt outcome for the consumer. We have set out some examples in Appendix 1 below.
- ✓ We see many examples of misleading adverts on Google and other search engines for lead generation companies who pass on leads to insolvency practitioners. We have made repeated calls for the regulators to step in to deal with the lack of regulation of lead generation companies and the regulatory gap that allows IPs to accept leads without ensuring these are reputable firms authorised by the FCA to provide full debt advice. We are now witnessing further problems with IP firms themselves using poor advertising practices and masquerading as debt charities. We have set out our concerns in Appendix 2 below.

Please note, we have responded to the questions relevant for our areas of expertise and will not respond to the section of the consultation paper that covers bonding as this is outside of our remit.

Responses to individual questions

Question 1: What are your views on the Government taking on the role of single regulator for the insolvency profession?

On balance, we would support the Insolvency Service taking on the role of single regulator for the insolvency profession. We would strongly support this in preference to allowing any of the existing RPBs to become the single regulator. This would not be suitable due to the conflict of interest between the activities of RPBs as both a membership body and regulator.

We would question whether RPBs can carry out an independent regulation role in the current world of large insolvency firms offering mass market IVA products, with four companies accounting for over 50% of IVAs registered in 2021 and sixteen firms covering 90% of registrations.¹ The current model appears to be better suited to a previous time where a sole IP was in charge of their small practice, and answerable to their professional association.

We believe that this professional association model has ceased to be relevant. Consumers need a robust independent regulator with similar rule-making and investigatory and supervisory powers to the FCA in order to have confidence in the regulatory system.

However, we do have concerns about the proposed model which creates a new independent statutory office of regulator within the Insolvency Service. We are worried that this office would not have sufficient independence within the Insolvency Service. Operational decision making, complaints handling, and enforcement decisions must be independent of the executive leadership of the Insolvency Service and independent of government. Otherwise, there is a risk that there could be a continued perception of a less rigorous regulatory regime for insolvency practitioners.

We are also very concerned about the idea of delegating regulatory functions to other bodies such as the RPBs. See our response to question 10 below.

¹ The Insolvency Service, *Individual Voluntary Arrangements Outcomes and Providers 2021*, March 2021

Question 2: Do you think this would achieve the objective of strengthening the insolvency regime and give those impacted by insolvency proceedings confidence in the regulatory regime?

We think that this option would go some way to strengthening the insolvency regime. However, whether this will in itself be sufficient to give individuals confidence in the regulatory regime is open to question.

The regulator will need to demonstrate that they can establish a strong regulatory regime that will protect consumers from detriment. It will need to take swift and robust action against the business models, and poor practices by firms that are causing consumer detriment in the IVA market. We have set out some examples in Appendix 1 below.

Question 3: Do you consider the proposed objectives would provide a suitable overarching framework for the new government regulator or do you have any other suggestions? Please explain your answer.

We agree that the new regulator should have clear high-level objectives to provide an overall framework for the regulatory regime. We would suggest that the objectives take inspiration from the FCA principles of good regulation² and consider a version of the new consumer duty³ as an overriding objective of the regulatory framework.

We would suggest that the overall regulatory objectives need to be revised to make it clear that treating people in debt fairly and achieving good outcomes for consumers is as important as maximising returns to creditors. There should be an explicit requirement to protect consumers as part of these objectives.

Furthermore, the regulatory objectives should embed as fundamental its approach to the fair treatment of consumers in vulnerable circumstances. The FCA has issued vulnerability guidance⁴ that sits beneath its principles that sets out what firms should do to comply with the principles. We would strongly urge the new insolvency regulator to adopt a similar approach. This will ensure that vulnerable consumers in debt are able to achieve fair outcomes under this regime.

Question 4: Do you consider these to be the correct functions for the regulator in respect of Insolvency Practitioners and in respect of firms offering insolvency services? Please explain your answer.

The paper sets out a range of functions for the new regulator which would appear to be useful.

As we have explained in our response below, we would prefer to see an independent complaints body to investigate complaints against IPs and firms rather than this function being part of the regulatory body.

² <https://www.fca.org.uk/about/principles-good-regulation>

³ <https://www.fca.org.uk/publications/consultation-papers/cp21-13-new-consumer-duty>

⁴ <https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf>

We do not support the power to delegate certain functions to other specified bodies such as RPBs as explained in our response below.

Question 5: Are there any other functions for which you consider the regulator would require powers? Please explain your answer.

We have identified the following further functions for the regulator to undertake which are not listed in the paper.

We believe a single regulator 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.

There is mention in the list of functions that the regulator can “*require the production of information*”, which presumably will be from IPs and firms. We believe that this should go further and place a duty on the regulator to publish a broader range of statistical information about IVAs in the spirit of transparency. This should include the power to pull out vital information such as fees, levels of fee paid to lead generators, and failure rates by firms according to criteria such as by year, income type, amount of available income in the IVA, IVAs set up on benefit income, dividends paid to creditors and reasons for failure. This should be reported by individual firm and be easily identifiable as such, as well as across the sector.

This type of information could help the regulator to identify and investigate poor practices by firms, or creditor voting policies and so on.

We cannot see a requirement for the regulator to form an opinion or take action on policy development in the IVA sphere to ensure good outcomes for consumers and drive out bad practice. For example, we would like to see the Insolvency Service 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. In addition, the Insolvency Service as regulator should issue rules and guidance on primary issues of concern in the market, such as the use of lead generation firms, and payment for such services, as well as regulate fees.

Question 6: Do you agree that the single regulator should have responsibility for setting standards for the insolvency profession? Please explain your answer.

We very much welcome the proposal that the single regulator should have responsibility for setting standards for the insolvency profession. We agree that there are limitations on how the Joint Insolvency Committee (JIC) operates. As the paper states, it is very slow to progress change due to the need to balance all the different interests represented in the committee.

Generally, to a consumer organisation, the work of the JIC is opaque. It may be the case that there is generally public consultation on changes to the Statements of Insolvency Practice, but this process is of very limited scope and reach and is not transparent. For example, we often do not hear about consultations when they happen or may only find out in a roundabout fashion.

We are not convinced that the current framework allows for much innovation in practice. We have repeatedly tried to suggest that binding and comprehensive guidance should be issued in relation to good practice for IPs on dealing with consumers in vulnerable circumstances that emulates the FCA vulnerability guidance. This has still not been addressed.

We think it is very important that the regulator has the power to set standards as part of the statutory process. This will allow professional and ethical standards to be set independently of interested parties. However, we of course would hope that the new regulator will take notice of consumer views and work transparently and collaboratively to consult consumers and consumer bodies when developing standards.

We would like to see the regulator take immediate action to ban the IP use of lead generation firms to generate leads. Payment for leads is a driver for a poor conduct culture where the incentive for the IP to receive the lead may be prioritised over the appropriate debt outcome for the consumer.

We would like to see the regulatory standards brought together in one place as this will help to streamline the existing sources of standards and codes and make the whole system more transparent and coherent.

Question 7: Do you agree that it would help to improve consistency and increase public confidence if the function of investigation of complaints was carried out directly by the single regulator? Please explain your answer.

We agree that the current complaints system cannot be allowed to continue. We agree with the assessment in the paper that the current system whereby RPBs investigate and discipline their own members “*undermines public confidence*”, causes delays and does not lead to a consistency of outcomes.

However, we do not agree with the proposals for complaint investigation that are set out in the paper. It is not good practice for a regulator to also investigate complaints. We believe that the gold standard in complaints handling would require a separate and independent complaints body put in place to deal with complaints, in the same way as the FCA operates with the Financial Ombudsman Service. This ensures that there is a perception of fairness, and impartiality by complainants and a lack of bias in outcome. We would therefore support a separate, independent, free to consumer, complaints ombudsman model funded by the IP firms. This could be a specialist bespoke ombudsman service, or via an existing scheme such as the Financial Ombudsman Scheme.

At the very least the new model should be set up to ensure that complaints investigation is an entirely separate glass-walled operational element of the new regulator and that there is no overlap between the two functions. There should be no opt outs for membership of the scheme. Decisions should be legally enforceable, and IP firms should be required to comply with the outcome.

There must be clear rules for complaints handling by IP firms. It is commonly held that good practice in complaints handling should be the establishment of a two stage complaints process. This means that there should be only one complaint stage within a firm/to an individual IP before a second stage of a formal complaint to the ombudsman or complaints service. This should not involve gatekeeping at the IP firm stage, or at the point of assessment by the Insolvency gateway.

People are often reluctant to make complaints, and it is important to make this as easy for them as possible. Ideally, the establishment of a new complaints body or function allows for best practice to be implemented. For example, a “no wrong door” approach could be adopted which makes it easier for consumers to make a complaint by approaching the service in any way, and by whatever complaints mechanism suits them.

In addition, the rules should ensure that there is not a long period allowed before a complaint is escalated to the complaints body. There has been a call, for example, for the eight weeks allowed under the Financial Ombudsman Service to be reduced to incentivise firms to resolve consumer disputes more quickly.⁵

It is also vital that the complaints body is formed in such a way that it can assess complaints on a general “fair and reasonable” principle of good outcomes for consumers.⁶ We have seen poor practice in relation to tightly drawn rule books for complaints, or an emphasis on maladministration in a process, which results in a complaint failing because a practitioner hasn’t technically broken a rule despite their actions being manifestly unfair.

The Insolvency Service should consider giving the new complaints body “own initiative” powers to allow it to start its own investigations using intelligence trends without having to receive an individual complaint first, if in the wider public interest. In addition, there needs to be a mechanism for consumer bodies to raise general concerns or intelligence about trends in practices, or an individual firm or IP, with the regulator without a requirement to use the complaints gateway on behalf of a specific client.

⁵ https://images6.moneysavingexpert.com/images/documents/MSE-Sharper_teeth_interactive.pdf
<https://www.moneysavingexpert.com/news/2021/07/moneysavingexpert-campaign-win-as-government-to-consult-on-scrap/>

⁶ In debt collection guidance December 2018 https://www.financial-ombudsman.org.uk/publications/technical_notes/debtcollecting-note.html#2

“When we deal with complaints about debt collectors, we take account of the relevant rules and guidance produced by the [regulator](#), as well as any relevant law and industry good practice, where appropriate. We will always consider the overall facts and circumstances of the complaint - so we arrive at a fair outcome for that particular situation.”

Question 8: What are your views of the proposed disciplinary and enforcement process and the scope to challenge the decision of the regulator? Please provide reasons to support your answer.

We support the proposals for a new disciplinary and enforcement process. We hope that this new framework will be effective in taking early robust action against IPs and IP firms as needed.

We also agree with the proposals that the regulator should carry out targeted and intelligence led investigations into potential malpractice. In the past, we have too often felt that concerns raised by the free debt advice sector about IP practices, advertising practices and the activities of lead generators have not been dealt with. There has been a tendency for regulators to suggest that nothing can be done without consumer bodies providing substantial proof of bad practice. However, this can be hugely challenging given constraints on our resources or research capacity to carry out such investigations, nor should it be our role. It is instead reasonable to expect that regulatory bodies should investigate malpractice.

It is vital that the outcomes of intelligence, investigations and enforcement action are used to help inform the regulator of the need for new rules, guidance and further investigation as a result. Learning from individual cases should be used to promote good practice by ensuring all firms adopt the same approach.

Question 9: Are there any other functions which you think should be carried out directly by the single regulator? Please explain your answer.

We note that there are certain creditors who systematically refuse all IVA proposals, regardless of merit. These can range from large government departments to a small FCA regulated credit firm or debt collector. We would like to see the regulator have the power to engage with such creditors to challenge such practices as providing unfair outcomes to consumers. It cannot be right that all IVAs are refused on principle, without regard to their individual merit by particular firms adopting a blanket policy.

In order to carry out this function successfully, the regulator will need to harness statistical information from IP firms and creditor bodies on IVA refusals by sector and creditor.

Question 10: In your view should the specified functions be capable of being delegated to other bodies to carry out on behalf of the single regulator? Please explain your answer.

We are very much opposed to this proposal. We believe that the same concerns about conflict of interest will continue to be a feature of insolvency practitioner regulation if these proposals are put in place.

We do not agree that specified regulatory functions should be delegated to other bodies such as RPBs on a contractual basis. These proposals seem to undermine the point of establishing a single regulator and allow the status quo to continue, despite the fact this is resulting in harm to financially vulnerable consumers. Allowing RPBs to authorise IPs or to routinely monitor IPs would mean that the current regulatory regime would continue in all but name and lose any transparency or clarity of purpose. In order to ensure good, fair consumer outcomes, RPBs should only operate as trade or membership bodies, and not quasi-regulators.

Whilst the regulator may want to allow other bodies to carry out training for the insolvency profession, we do not see why the responsibility for the training regime would be outsourced in its entirety to another body in this way.

Question 11: Are there any other functions that you think should be capable of being delegated to other bodies to carry out on behalf of the single regulator? Please explain your answer.

We do not think that the Insolvency Service should be delegating the regulatory functions of the new regulator to other bodies. This would undermine the purpose of establishing the regulatory body in our view.

Question 12: In your opinion would the introduction of the statutory regulation of firms help to improve professional standards and stamp out abuses by making firms accountable, alongside insolvency practitioners? Please explain your answer.

We very much agree that there should be statutory regulation of insolvency firms as well as of individual IPs for the reasons set out in the paper. We have seen the growth of volume IVA market with a few IPs and many other staff. There is no way that the IPs employed by volume providers can bridge the gap between their own professional requirements and that of the firm's practices and culture. Individual IPs cannot hope to have sufficient influence over their employers in this way.

In addition, a few IPs in a large call centre, are not going to be able to supervise the suitability of the lead, the quality of the debt advice received or the suitability of each individual IVA.

We believe it is imperative for firms to be regulated and held to high standards to improve the outcomes for consumers going into an IVA with such firms.

However, the government will need to think carefully about the definition of "insolvency services" and how the regulatory perimeter will be established for the new regulator. In the paper, the proposal is as follows:

"We propose that "firms offering insolvency services" should be taken as meaning firms which offer Insolvency Practitioners to act as an Insolvency Practitioner within the meaning of section 388 of the Insolvency Act 1986."

As we have found with firms operating at the margin of the regulatory perimeter between the FCA and the Insolvency Service, there can be unexpected regulatory gaps which can be exploited by unscrupulous firms offering “information” and “advice”. We would suggest that the definition of regulated insolvency services should take into account the full spectrum of activities by IP firms to include lead generation firms and those offering “debt advice” before an IP is appointed to put an IVA in place.

The definition in the consultation paper needs to be looked at again to ensure that this definition includes the provision of debt advice by IP firms. The definition quotes acting as an IP under section 388 of the Insolvency Act 1986. This only covers the role of the IP as a nominee and supervisor but not as a provider of debt advice. We would want to see any definition of insolvency services to clearly include advice provision as a regulated activity.

Question 13: The Government believes that all firms offering insolvency services should be authorised and meet certain minimum regulatory requirements, but that additional regulatory requirements should mainly be targeted at firms which have the potential to cause most damage to the insolvency market. What is your view? Please explain your answer.

We agree with the government that all firms offering insolvency services should both be authorised and meet minimum regulatory requirements. This is a gap in the current regulatory framework which puts insolvency regulation out of step with other regulatory regimes.

We also support the proposal to include additional regulatory requirements for firms “*which have the potential to cause most damage to the insolvency market*”. However, whilst it is important that regulation is proportionate for the size of firms, most regulatory requirements and standards should apply equally to all firms.

Question 14: In your view should certain firms be subject to an additional requirements regime before they can offer insolvency services? If so, what sort of firms do you think should be subject to an additional requirements regime? Please explain your answer.

There are good reasons to apply additional requirements to firms such as volume IPs. We are of the view that such firms need greater regulatory controls and monitoring to ensure good consumer outcomes.

There have been many concerns raised in the call for evidence about the structure of volume IP firms and the potential for consumer detriment in the model. Where IPs in volume IVA firms are not able to control company policies and are not in charge of the firm’s practices, there is clearly a problem with holding the firm as a whole to account. One IP is clearly not able to supervise or review each IVA that is set up by many call centre staff.

We have many concerns about the practices of volume IPs, based on the experiences of people in debt who we help through our services. We have set some of these out below.

- ✓ IP firms paying for lead generation firms to supply leads for IVAs;
- ✓ Poor practice in relation to the quality of these leads;
- ✓ Whether consumers are entering into an IVA that is suitable for them;
- ✓ The quality of the debt advice consumers obtain before signing up for an IVA;
- ✓ Poor practice such as setting up IVAs for people on benefit-level incomes;
- ✓ Where an inadequate financial statement process has been carried out and the budget is not sustainable;
- ✓ High levels of IVA failure rates in some firms.
- ✓ Cases where IVAs could reasonably be expected to fail, but only after the IP's fees will have been paid.

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. 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. A suspicion that the IP is more concerned with covering their fees rather than setting up a sustainable payment arrangement is sometimes voiced.

We also see many examples of misleading adverts on Google and other search engines for lead generation companies who pass on leads to insolvency practitioners. We have made repeated calls for the regulators to step in to deal with the lack of regulation of lead generation companies and the regulatory gap that allows IPs to accept leads without ensuring these are reputable firms authorised by the FCA to provide full debt advice. We are now witnessing further problems with IP firms themselves using poor advertising practices and masquerading as debt charities. We have included some recent examples of Google adverts for debt management, debt introducers and debt packagers in Appendix 1. We shared these in our response to the HM Treasury Appointed Representatives regime: call for evidence.⁷

The carving out of IPs from FCA authorisation has muddied the waters when it comes to debt management companies that employ insolvency practitioners as part of their wider offering. It is confusing for all parties to establish whether an IP firm is required to be FCA authorised (as well as reporting to their regulatory body) for giving advice on the full range of debt options. We would argue that it is dangerous to allow volume IVA services to give advice without the same rigorous standards for providing holistic debt advice as do FCA-authorized debt advice providers. Who is ensuring that the members of staff in the call centre of volume IVA providers are trained, and qualified to give holistic debt advice?

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https://moneyadvice Trust.org/media/documents/MAT_response_to_HM_Treasury_The_Appointed_Representatives_regime_call_for_evidence.pdf

Question 15: Do you think that regulation of firms should require a firm subject to an additional requirements regime to nominate a senior responsible person for ensuring that the firm meets the required standards for firm regulation? Please explain your answer.

We would definitely agree that a firm subject to the additional requirement regime should be required to nominate a senior responsible person to ensure that the firm meets the required standards. However, we believe that the FCA Senior Manager and Certification Regime (SM&CR) model for firm regulation could be applied to firms offering insolvency services.

As this regime applies across the FCA to all FSMA authorised firms, this inevitably encompasses both large and small firms.⁸ We therefore do not agree with the assessment in the paper that given the small size of the insolvency profession, and the limited number of firms offering insolvency services that this regime “*may be top-heavy and expensive to apply in the insolvency sector*”.

The Insolvency Service should consider going further in adopting elements of the SM&CR into its regulatory model to ensure that the potential for consumer detriment from practices in volume IP providers is substantially minimised.

Question 16: If so, would you envisage that the senior responsible person would be an Insolvency Practitioner? If not, please specify what requirements there should be for that role?

It would appear sensible that the senior responsible person should be the chief executive of a firm or a member of the senior management team. This person may or may not be an insolvency practitioner, depending upon the form operating model. If the remit of the IP does not extend to looking at the actions of directors, managers or call centre staff, then it would not be appropriate for them to take on that role.

Question 17: Do you think that a single public register for Insolvency Practitioners and firms that offer insolvency services will provide greater transparency and confidence in the regulatory regime? Please explain your answer.

We very much support the proposal for a single public register for both IPs and for insolvency firms that replaces the current licensing regime. This must ensure that only IPs that are approved and appear on the register are authorised to act as an IP. We agree that legislation should set the minimum requirements for registration including qualifications, practical training and experience.

The register must be easily accessible to the public. It will be helpful for consumers to have greater transparency regarding the regulatory status of their IP and allow people to see if their IP or firm has been disciplined or sanctioned. This transparency is essential. The Insolvency Service could also consider factoring in consumer feedback, and customer reviews into the register.

⁸ <https://www.fca.org.uk/firms/senior-managers-certification-regime>

We support the idea that there should be an annual assessment of IPs and firms to make sure they continue to meet the prescribed minimum requirements for registration and can demonstrate their fitness and compliance with regulatory obligations and standards.

There needs to be a robust enforcement regime to ensure that the regulator can remove an IP and an IP firm from the register. There will need to be considerable thought given to how the approval and conduct of an individual IP interacts with the approval of an IP firm itself. For example, would the sanctioning of the IP mean that the firm is unable to operate? If the firm is sanctioned, does this prevent an IP working for that firm, from operating as an IP?

Question 18: What is your view on the regulator having a statutory power to direct an Insolvency Practitioner or firm, to pay compensation or otherwise make good loss or damage due to their acts or omissions? Please explain your answer.

We agree that there should be a formal mechanism for compensation for financial loss due to poor standards of service. There needs to be a consistent approach to complaints and consistent outcomes for consumers. We very much support the idea that the regulator should have the statutory power to direct an IP or firm to pay compensation where required. This should include redress and compensation for consumers where applicable.

Potentially this should include compensation for service level failures as well as to compensate for losses to the estate. This needs to factor in “fair and reasonable redress” for the consumer if their complaint is upheld. There should be clear rules to provide for compensation which should go beyond an apology for service failure. It is clearly not proportionate or fair, if the IP is not required to address monetary or other forms of compensation for the consumer when directly affected by errors or professional incompetence.

We would like to see the regulator put in place compensation for poor behaviour by IP firms for consumers, as well as an enforcement regime such as sanctions, fines and strike off for IP firms. The regulator should consider how redress can be provided to consumers to compensate for IPs providing poor or non-existent debt advice on the range of debt solutions. For example, where it becomes clear that a consumer in an IVA or failed IVA, should, all things considered, be in a different debt option such as a DRO or bankruptcy? We appreciate it will be difficult in some cases to come to a firm conclusion where there are a variety of factors that influence a choice of debt solution.

Question 19: What is your view on the amount of compensation that the regulator could direct an Insolvency Practitioner or firm to pay for financial loss? Please explain your answer.

We believe that there need to be clear standards for the complaints body to measure behaviour against. We believe that the amount of compensation should be linked to actual financial losses with an aim to put consumers back into the position they would have been in if things had not gone wrong.

In addition, there should be an amount in compensation for service, administrative or regulatory failures that cause distress or inconvenience. We would suggest the Financial Ombudsman Service guidance on compensation should be considered when setting up the scheme.⁹

We would suggest that the risk of spurious complaints as identified in the paper is overstated. We see no reason to suppose that *“the introduction of a regulatory mechanism could lead to an influx of unsubstantiated claims”*. In our experience, consumers in debt have many difficult matters to contend with, including both physical and mental health problems and other vulnerability issues. They are therefore unlikely to complain, let alone have the bandwidth for trying their hand at a spurious complaint.

If this concern is to do with the potential for claims management companies (CMCs) to attempt to generate false complaints, then the answer lies in discussions with the FCA who regulates such firms to establish a solution – and who have already taken steps to reduce poor practice by CMCs. We do not believe that the answer should be to make it harder to access the complaints body or to limit compensation.

Question 20: Which option or options do you consider would be most suitable to fund a compensation scheme for the insolvency profession? Alternatively, do you have a suggestion on how a compensation scheme for the insolvency profession might be funded? Please explain your answer.

We do not have firm views as to the most suitable way to fund a compensation scheme for the insolvency profession. We are mainly concerned that any scheme should be set up in such a way that provides adequate compensation to be made available to consumers when required.

Question 21: Are there any further impacts (including social impacts) that you think need inclusion or further consideration in the Impact Assessment?

We have looked at the impact assessment and are surprised that there are very few social impacts identified in the assessment.

For example, there is no section on the potential positive impact on consumers in debt of a robust regulatory regime and an easily accessible complaints process. As a result, the impact assessment fails to account for the potential positive impacts of robust regulation in relation to people’s experiences of dealing with misleading advertisements, navigating lead generator firms, and poor referrals into an unsuitable IVA product which subsequently fails. We would therefore like to see the impact assessment taken a much greater account of the potential impacts on vulnerable people in debt – which is currently missing.

The equalities impacts section states:

“38. The proposed changes will primarily affect Insolvency Practitioners, their existing regulators (and staff who are employed by them) and firms who provide insolvency services.”

⁹ <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation>

Currently, the impact assessment seems lacking in scope. There needs to be a clearer focus in it on improving the experience for people in debt to enhance positive outcomes and reduce consumer detriment from poor practices in the IVA market. While we appreciate these can be harder to quantify, these should be the driving force and purpose behind any reforms, so it's vital they are captured in the impact assessment.

Question 22: What are your views on the above proposals for funding of insolvency regulation? Do you have any other suggestions for self-funding of regulation?

We recognise that there will need to be a separate fee structure due to the introduction of the regulation of firms as well as individual IPs. It appears to us to be entirely proper that firms should pay an additional fee to cover the costs of enhanced regulation. As the paper says:

“We believe this would be proportionate since it would be targeted at those firms where there is the greatest risk of damage to the public and the reputation of the insolvency profession.”

We would agree that there needs to be a fee to cover the wider costs of regulation for IPs and firms. In addition, it seems reasonable that there should be an additional fee to cover the cost of additional complaint investigations and monitoring visits.

Appendix 1

Our case record analysis key trends

We carried out an in-depth analysis of client contacts for National Debtline in England and Wales in 2020 where a failed IVA could be tracked in the case notes for each client. This constituted a snapshot of clients with failed IVAs and the true figure of clients with failed IVAs will be higher.

We have identified the following key trends from the cases we analysed.

- ✓ All the clients who contacted us were in rented accommodation and therefore had no property to preserve.
- ✓ Few clients, if any, had any assets, beyond an interest in a hire purchase vehicle.
- ✓ Most of the clients in our case studies had an insecure or low income and were in receipt of a variety of different elements of benefit income to support them.
- ✓ Most of these cases do not seem to have been suitable for an IVA in the first place and should have been considered for a DRO or bankruptcy.
- ✓ Following the failure of the IVA, in most cases, the clients are being recommended a DRO or bankruptcy (mainly depending upon their level of debt).
- ✓ The clients in the sample continued to have high levels of debt despite the IVA having been put in place to resolve their debt situations.

Appendix 2

Recent Google adverts for debt management, debt introducers, and debt packagers

National Debt Help (UK) - Write Off Up To 85% Of Debt

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

Worried About Money? UK Approved **Debt Help** For Clearing **Debts** Such As Credit Cards & Bills. Check Now To Find Out How Much **Debt** You Could Clear With UK Legislated **Debt Help** Solutions. UK Qualified **Debt Team**. Freeze Interest & Charges. No Obligation Support.

Write Off Up To 85% Debt

Clear Up To 85% Of Your Debt With Legislation Approved Debt Solution

Debtexperthelp.co.uk is a trading style of Debt Movement UK Ltd.

Debt Movement UK Ltd is registered in England & Wales, registered address 3rd Floor, Marsland House, Marsland Road, Sale M33 3AQ. Telephone: 0333 987 0000. Company Registered in England and Wales Number 12326828 – Data Protection ZA566227.

Debt Movement UK Ltd proposes and administers Individual Voluntary Arrangements (IVAs).

Mrs Laura Jayne Prescott is authorised to act as an Insolvency Practitioner in the UK by the Insolvency Practitioners Association – No. 15010.

<https://debtmovement.co.uk/>

“Free and impartial advice is available at Money Helper (formerly Money Advice Service). Debt Movement proposes and administers Individual Voluntary Arrangements (IVAs).

Debt Movement UK Ltd is registered in England and Wales. Registered number: 11947348. Registered office: 3rd Floor, Marsland House, Marsland Road, Sale, Cheshire M33 3AQ. Data Protection Number: ZA528025.

Debt Movement UK Ltd are an appointed representative of Superior Insolvency Solutions Ltd, who are authorised and regulated by the Financial Conduct Authority. Debt Movement UK Ltd FCA reg no: 940843.

National Debt Help (UK) - (UK) Debt Help & Advice

Ad-<https://www.personaldebtadvisor.co.uk/debt/help>

Personal Debt Advisor is a trading style of Adams Pickard Limited also trading as Bennett Jones, company number 06783589, registered office 22 Lloyd Street Manchester M2

Debt Management Advice (UK) Request a Callback Today. Reduce Monthly Repayments. Stop Interest & Charges. Help With Bailiffs. Consolidate Your Payments. We Can Help Today. Consolidate Your Debt. UK Based Debt Help. Help With Debt Collectors.

[IVA](#) · [DMP](#) · [Debt Advice](#) · [Debt Help](#) · [Debt Consolidation](#)

5WA, Data Protection Act Registration Number ZA109145. Our company specialises in the preparation and supervision of Individual Voluntary Arrangements created by the Government in the Insolvency Act 1986. IVAs were created to help people to become free of unmanageable debt in a fixed period of time.

Gregory John Mullarkey is authorised to act as an Insolvency Practitioner in England, Wales and Northern Ireland by the Insolvency Practitioners Association.

Money Simply Matters Limited (company number 06927674) of Suite 215, 2nd Floor Warth Business Centre Warth Road Bury Lancs BL9 9TB are agents of Adams Pickard Limited and Gregory Mullarkey, authorised by Adams Pickard Limited and Gregory Mullarkey to provide advice and information to visitors to this web site in contemplation of an IVA.

Money Simply Matters Limited is authorised by the Financial Conduct Authority (reference 662080) to provide debt counselling services. The provision of these services by Money Simply Matters Limited to visitors to this web site is undertaken by Money Simply Matters Limited as principal and not as the agent of Adams Pickard Limited or Gregory Mullarkey.

National Debt Advice Line - Enter Your Debt Amount

Ad·<https://www.debtfreegroup.uk/debt-management/plan>

National Debt Advice Line. Find Out How To Write Off **Debt**. Find Out If You're Eligible To Write Off **Debt** With Our Free Consultation. IVA **Debt Help**. **Debt Management** Plan UK.

*The amount of debt write off is based on your own personal circumstances. As of 28th September 2021, 37% of customers are estimated to write off 81% or more of unsecured debts included in the IVA.

John Neil Harrison is authorised in the UK to act as Insolvency Practitioner by the Insolvency Practitioners Association No. 5474

Debt Free Group is a trading style of DFG Solutions Ltd Registered Number 12493404, Registered Address: Stanhope House, 113-117 Stanhope Road South, Darlington, England DL38PD. Tel: 01325 775210. Data Protection Act Registration Number – ZA703013

Free Debt Help & Advice - Check If You Qualify in 30s - Debt Help

Ad·<https://www.moneyadvice.co.uk/>

0333 678 5500

We Specialise In IVA's, A UK **Debt** Solution To **Help** Write Off Unaffordable **Debt. Debts...**

[Freeze Interest/Charges](#) · [Debt Solutions](#) · [Check If You Qualify](#)

Michael Howorth is a licensed Insolvency Practitioner, authorised by the Insolvency Practitioners Association. He is bound by the Insolvency Code of Ethics in carrying out all professional work relating to Insolvency Appointments. His IPA Membership number is: 9135

Registered Address: Money Advice Ltd, Metropolitan House, Station Road, Cheadle Hulme, Stockport, SK8 7AZ. Company Number: 11796746

Money Advice specialises in **Individual Voluntary Arrangements** (IVA's) and works on a model of guidance, not advice. We will talk individuals through their options, based on facts they provide regarding their personal circumstances.

If an individual meets the required criteria for an IVA, advice tailored to this can then be provided. If the individual does not meet the criteria for an IVA, details will be provided for other third-party organisations that offer advice on other available debt solutions. For full details, view our **Privacy Policy**.

To qualify for debt being written off via an IVA, you must have a minimum of £6000 of qualifying unsecured debt owed to two or more creditors. Realistically, around 25% – 75% of debt may be written off, however, the amount this amount will be dependant entirely on individual financial circumstances and so will differ from person to person. This amount is also subject to creditors approval before any IVA can commence.

If you do decide that 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 completing the preparatory work – you would not be responsible for paying this fee.

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.

National Debt Advice - Get debt help, write off up to 75%

<https://nationaldebtadvice.org.uk>

The Money **Advice** Service is an important service set up by the **Government**. They provide free **debt counseling**, **debt** adjustment and credit information.

Your information will be passed to a third party organisation working on a model of none advice. These advisors will be able to talk through all your debt options including IVA (Individual Voluntary Arrangement) opportunities with people within England, Wales and Northern Ireland. Help can only be offered following a thorough fact-finding process. When an individual meets the required criteria for an IVA, advice can then be provided. You can view our [privacy policy](#) and also [terms and conditions](#).

One of our partners will take you through all the solutions available in the industry enabling you to make an informed decision on what solutions best fits your needs. They offer free tailored budget plans and also advise on industry solutions free and paid.

The service that National Debt Advice provides is a free service, we will not charge you for putting you in touch with an advisor. Our partners will not charge you for providing you best advice or for sign-posting you to the best source of support.

If you decide to take an IVA or a Debt Management Plan with one of our recommended and regulated partners, National Debt Advice will receive a referral commission from our regulated partner.

Debt Busters - Debt Advice Options

Ad • https://www.thedebtbusters.co.uk/debt_help

We Can **Help** You Take Back Control and Get a Fresh Start with Your Finances. We Can **Help** You Take Back Control.

thedebtbusters.co.uk is a trading style of Anactive Consultancy Ltd. 21 St. Mary Street, CHIPPENHAM, Wiltshire, SN15 3JW Registered in England and Wales Registration number 08843026.

Nigel Trevor Paul is authorised to act as an Insolvency Practitioner in the UK by The Insolvency Practitioners Association (IP Number 10810)

Debt Busters specialise in providing debt advice tailored to the needs of each customer, based on their individual financial circumstances.

We do not charge for our advice or directly provide debt solution products; we offer our customers no-obligation referrals to trusted providers of appropriate solutions and (as a commercial firm) receive a referral fee from debt solution providers for any successful customer referrals.

Our professional and personal debt consultants will identify the most appropriate solution to help you re-establish your financial security.

Calls may be recorded for compliance and monitoring purposes. We specialises in providing and administering Individual Voluntary Arrangements

National Debt Consolidation UK - Write Off 90% Of Your Debts

Ad-<https://www.moneyadvicehelp.co.uk/debt/consolidation>

0330 024 0986

Government Approved Solutions. Consolidate Your **Debts** Today. Budgeting Plan. Voluntary Arrangement. **Government** Plan. **Debt Management** Plan. Types: IVA, **Debt Management**, **Debt** Relief.

[Debt Helpline](#) · [Debt Management](#) · [IVA Solutions](#) · [Get a Fresh Start](#) · [Apply Now](#)

(“IVA”) solutions to individuals based in England, Wales and Northern Ireland

Centurion House,
129 Deansgate,
Manchester M3 3WR,
United Kingdom

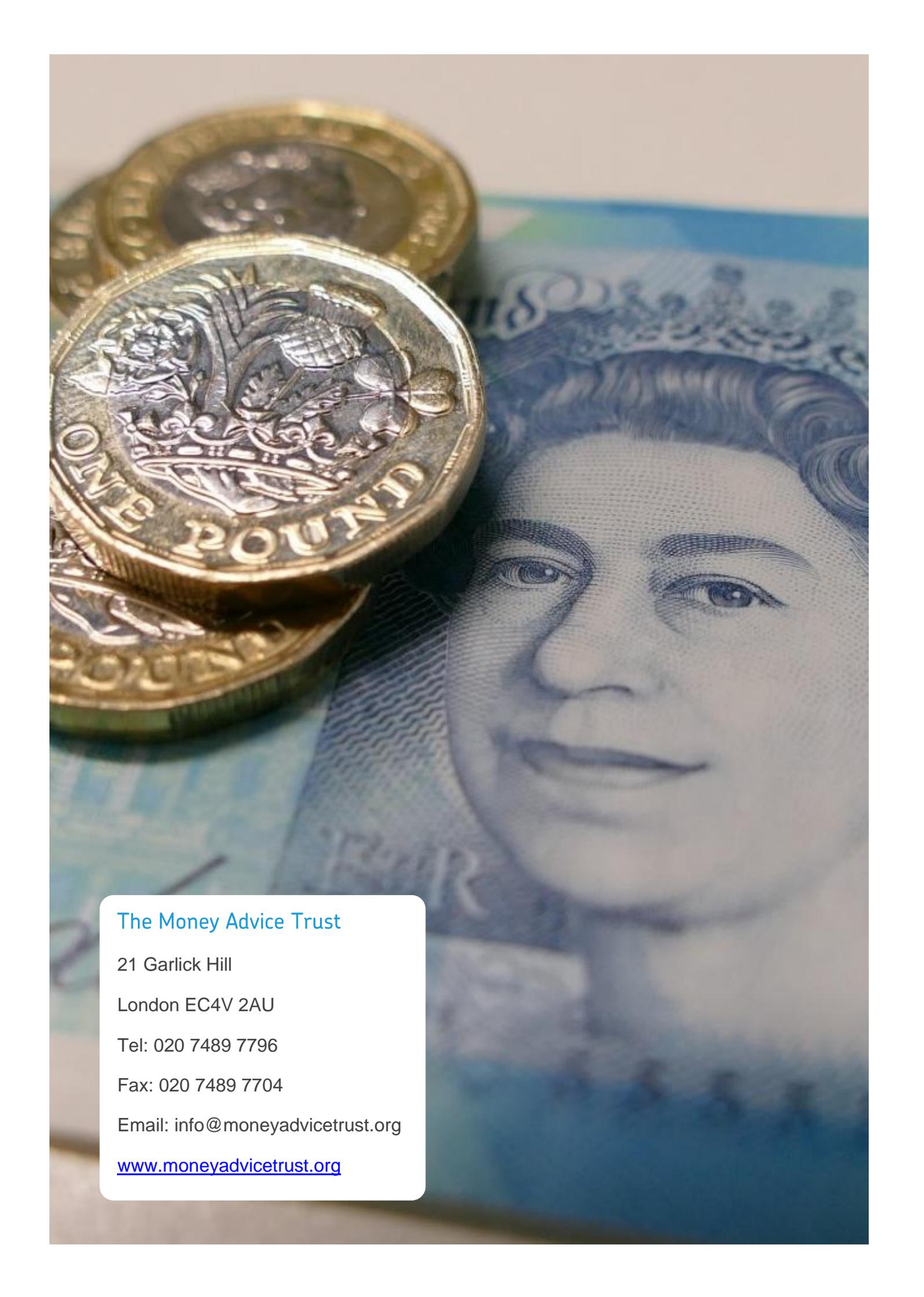
There are other formal solutions that might be better in certain circumstances. When you call National Debt Centre we will advise you of all the available options so you can see whether there is an alternative option that will get you out of debt quicker. Call an adviser on **0333 259 6847** for free support.

For more information on our response, please contact:

Meg van Rooyen, Policy Lead

meg.vanrooyen@moneyadvicetrust.org

07881 105 045



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