MONEY ADVICE TRUST

BUSINESS DEBTLINE | NATIONAL DEBTLINE | WISER ADVISER

Consultation Response:

# Insolvency Service Review of the personal insolvency framework-call for evidence

Response by the Money Advice Trust

Date: October 20222

# Contents

# 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](http://www.moneyadvicetrust.org).

## Public disclosure

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

## About the evidence used in this response

Throughout this response, we draw on a wide range of insight and evidence. This includes data from our services about the types of people we help and their circumstances and debts. This is typically drawn from client records or client surveys, and is referenced throughout.

We also draw throughout this response on findings from a **joint survey of debt advisers across the free debt advice sector**, conducted specifically to inform this call for evidence.

The survey was conducted jointly by the Money Advice Trust, StepChange Debt Charity, Citizens Advice, Christians Against Poverty, the Institute of Money Advisers, Advice UK and Community Money Advice. It asked advisers' views on the current insolvency framework and insolvency options, to understand their experiences and views.

The survey was conducted online, between 11 July - 31 August 2022. In total, there were **565 responses** to the survey from advisers across the debt advice sector. Findings from this survey are used throughout this response and (unless otherwise stated) all quotes are taken from adviser responses to this.

# Executive summary

We welcome the opportunity to respond to the Insolvency Service's call for evidence on the insolvency framework. The concept of insolvency and debt relief is an important one: when this works well, it can provide significant benefits to individuals and wider society by reducing the harmful impacts of problem debt and helping people to recover their financial situation.

Given the changes in the nature of problem debt in recent years, with more people struggling with "priority debts" such as rent, council tax and energy arrears and with people's budgets becoming tighter, now is a welcome time to review how well the current insolvency regime is working.

Unfortunately, our evidence shows the current regime is not working as well as it should. To inform our response to this call for evidence, we conducted a survey of advisers across the debt advice sector in conjunction with six other debt advice organisations. This revealed some clear areas of focus for improving the current regime.

- ✓ **Less than half (47%)** think the **current insolvency framework works well for people in debt.**
- ✓ **Only a third (35%)** think client **journeys to insolvency solutions are consistent and accessible.**
- ✓ **Only a third (35%) think current regulations safeguard against bad advice**, and ensure people end up in the most suitable solution.

This reflects what we hear from our clients too about their experiences – including people who have difficulty accessing any appropriate insolvency solution at all.

We believe that the goal of the insolvency regime should be a more consumer-focused insolvency framework aligned to consumer needs.  This sentiment was echoed in our adviser survey, where **three quarters (73%) said the Insolvency Service should have a stronger consumer protection objective.**  A more consumer-focused framework should include an emphasis on a fresh-start ethos, social inclusion, and the ability to function in society through financial wellbeing and emotional wellbeing.  We believe the fundamental aim of a modern, fair insolvency framework should be to provide a safe route out of debt that supports people to rebuild a stable financial situation.  This might require a shift in the culture at the Insolvency Service and possibly a change to its statutory remit.

In our response, we set out our evidence on the current issues and our full recommendations for how to achieve this fundamental aim and address current challenges. These include the following key recommendations, which we hope the Insolvency Service will prioritise as they take forward their policy thinking in response to this review.

## 1. Introduce a compulsory advice requirement to ensure people end up in the most appropriate solution

We would like to see access to free, FCA authorised, independent debt advice embedded into the insolvency regime as a prerequisite to entering into any solution. This would help guard against issues we have seen around people ending up in inappropriate or unsuitable IVAs (which 52% of advisers say they see often or very often), as well as issues where people may enter bankruptcy when they are eligible for a DRO.

This should be built into the application process for a solution, as it is for DROs, breathing space and the forthcoming Statutory Debt Repayment Plan (SDRPs). A potential model for this would be via a single gateway into insolvency options where debt advice would be required before entry into a debt solution. As we explore further in our response (particularly to question 27), this could be accompanied by changes to individual solutions that make it easier to direct people into the best solution for their circumstances. For example, DROs could be reformed to become the normal debt option for anyone with minimal assets and minimal available income.

## 2. Reform current fee levels to ensure these are never a barrier to people accessing an appropriate solution

Our evidence shows that current fee levels are a significant barrier to people accessing insolvency solutions.

- ✓ **94%** of advisers surveyed said the **£680 fee was one of the top three barriers to people accessing bankruptcy** – the most common barrier cited.
- ✓ **Almost half (45%)** of advisers said the **£90 fee was one of the top three barriers to people accessing a DRO.**

45% of callers to National Debtline have a deficit budget, making it almost impossible for them to find the fee for a DRO application, let alone for bankruptcy. We would like to see DRO and bankruptcy fees waived for people on income-related benefits, and significantly reduced for everyone else. People should also be able to pay the fee in instalments after their application, while still receiving the protections of the DRO or bankruptcy procedure. IVA fees also need to be reviewed to remove incentives for poor practice and to reduce the risk of consumer harm where an IVA fails before it completes.

*"Many clients are on a low income with no savings and so simply cannot afford the fee which is a huge barrier to fair and consistent debt solutions."*

*"Clients who have no available income and are looking at a bankruptcy (who owe too much for a DRO) are unable to afford the bankruptcy fee and therefore left with no solution and no 'fresh start'."*

*"For many, even £90 for a DRO is unrealistic, particularly in the current financial climate."*

**Quotes taken from responses to survey of debt advisers**

## 3. Fundamentally reform IVAs and regulation of providers to tackle poor practice and better protect consumers

Over half of advisers surveyed (52%) said they often or very often speak to people who have either a failed or unsuitable IVA, with a further 32% saying they sometimes do. As we explore further in our response to question 16, there are a number of factors which lead to this poor practice of people being put into unsustainable or unsuitable IVAs when they should have been on a different solution – including misleading advertisements, fees, lack of regulation and poor or misleading advice.

Our research with advisers found that the most common reason for people ending up on a failed or unsuitable IVA was that **the client hadn't been given advice about alternative debt options,** with almost three quarters (72%) of advisers saying they saw this often or very often. 64% of advisers surveyed said they often saw people in unsuitable or failed IVAs whose **income and expenditure exaggerated their real surplus income;** and 68% of advisers said they often saw people choosing an IVA **based on claims made in advertisements.**

*"IVAs are mis-sold to most people. Most people will never complete a full term as on very low income. I believe that of the cases of IVAs I have dealt with, 98% were not the correct debt solution for the client."*

**Quote taken from responses to survey of debt advisers**

Given the widespread poor practice we are seeing, we think the IVA market is in fundamental need of reform. This should include looking again at whether the IP regulatory exemption under FSMA should continue. We strongly support the Insolvency Service's decision to move to a single regulator for IPs and to introduce regulation of firms as a whole. This needs to be put in place as soon as possible alongside an effective, independent complaints process.

The introduction of a compulsory, FCA-authorised advice stage (as set out in point 1 above) would also help address the issues we see around poor and misleading advice driving people to IVAs over other, more suitable solutions. This should be accompanied by changes to IVAs to reduce the risk of consumer harm including a new requirement to consider early settlement (rather than failure); reviewing the fee structure and preventing interest and charges being retrospectively added.

## 4. Improve the bankruptcy and DRO processes to increase access and ensure these work well for people in debt

While **DROs** can provide valuable debt relief for people, too many people who could benefit from one are unable to access them due to current eligibility restrictions.

While recent changes have been welcome, we would like to see DROs that are flexible and are not revoked when circumstances change during the moratorium period. We think there is a strong case for further changes, including the following.

- ✓ **Increasing the asset level of £2,000 for a vehicle** (having a car worth more than this was the top barrier selected by advisers to people accessing a DRO).
- ✓ **Increasing the debt limit** so that people do not have to go bankrupt when they have little available income and minimal assets.
- ✓ Creating a framework for **more regular updates to eligibility criteria** to ensure DROs keep up with the wider economic and societal context.
- ✓ **Enabling debts to be retrospectively added** if they were forgotten about, or not apparent at the time of the application.
- ✓ **Reviewing the DRO eligibility criteria to make it more accessible to people with fluctuating incomes** – including removing the automatic revocation of a DRO if income goes above a certain level. Instead, an increase in income or assets might require some contribution to be made.
- ✓ Amending the rules so **people can access a DRO more frequently** than once every six years.

> *“With the value of used cars increasing significantly over the last few years, the £2,000 allowable limit should also be increased in line with this. We have had many clients start working with us towards a DRO, and when we have come to submit the value of their car has increased so [they] are no longer eligible for the DRO.”*
>
> *“It would be helpful if a debt is missed off a DRO it could easily be included at a later date providing it was incurred prior to the DRO being submitted.”*

*“In the current economic climate 6 years is probably too long to wait after a DRO to access it again. With the rate at which people can get into debt increasing, a shorter period would help those that get stuck without a realistic solution. The increase in debt that I am seeing is not consumer credit debt but priority debts of rent, council tax, gas/electricity.”*

**Quotes taken from responses to survey of debt advisers**

On **bankruptcy,** as well as **reform of fees** and the **introduction of a compulsory debt advice stage,** we would like to see **reform of how assets are treated**, with half (52%) of advisers surveyed saying the prospect of losing assets such as their home or a valuable vehicle was one of the top three barriers to bankruptcy; and 43% saying the uncertainty of how these will be treated was also a top three barrier.

This reform could include looking at how to provide more certainty on the potential outcome for people before an application is made and consider setting higher fixed levels of exempt equity. The Insolvency Service should also look at how to reform current insolvency options to give better access for people who are asset rich and cash poor - for example who own a home with equity but are on pension or benefit-level income – with many advisers highlighting this group as one who struggle to access any solution.

Finally, we would like to see **the public insolvency register made private** – to bring it in line with breathing space and SDRPs.

## 5. Make insolvency options more flexible to changes in circumstances, including making it easier to transfer between solutions

**Less than 3 in 10 (27%) advisers surveyed think it is easy for someone to transfer to another debt solution** where their initial solution fails. This can be a particular issue for people whose IVA fails, but who cannot move onto a DRO without a termination certificate. Clients and advisers report lengthy delays to get hold of these – during which time an individual is left without protection from their creditors.

*“If someone has had a failed IVA it's not always easy to move to another debt solution, some IPs don't provide certificates etc.”*

**Quote taken from responses to survey of debt advisers**

As well as strengthening requirements for IPs to provide termination certificates in a timely manner, we would like to see current **DRO rules and processes amended to enable a smooth transfer from an IVA.** More broadly, the Insolvency Service should consider how to achieve easier transfers across different insolvency procedures – something we think the common access portal set out in point one above would also support with.

Secondly, our evidence shows that people who have unstable and fluctuating incomes can find it particularly difficult to access an insolvency solution. This includes people who are self-employed, or are on zero hours contracts, who may struggle to predict their incomes over 12 months or may see high fluctuations month-to-month. We would like to see the Insolvency Service considering how they can make the insolvency framework – and individual solutions – more accessible and effective for this group. This includes reforming DRO rules, so that a DRO is not automatically revoked if income goes above a certain level, as well as enabling self-employed people to use an average income figure across 12 months.

# Responses to individual questions

## Chapter 5.1 – The underlying purpose of the framework

## Question 1: What should be the fundamental purpose of the personal insolvency framework? Does the current framework meet that purpose?

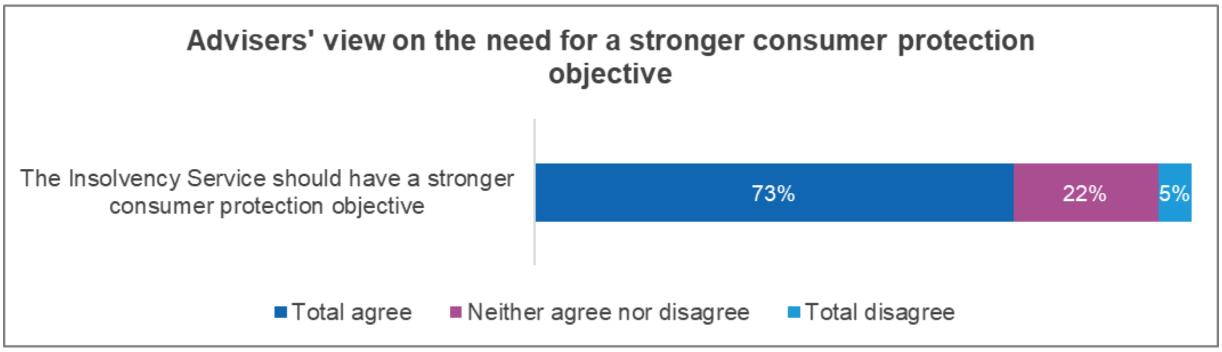
Most people subject to insolvency these days are consumers and not businesses. However, the history of the insolvency regime has been very much influenced by what would work with trading businesses rather than individual consumers. We note that the Insolvency Act 1986 which introduced the Individual Voluntary Arrangement (IVA) was aimed at trading business. The structure and framework of bankruptcy and IVAs have therefore struggled to adapt to the needs of consumers as a result.

Reforms over the years, including the introduction of Debt Relief Orders (DROs) and the new breathing space scheme have marked a shift in focus to people in debt with minimal surplus income and assets. As the paper recognises:

*“There has been a fundamental shift in the circumstances of those seeking formal insolvency solutions, changes in the options available to them and the way those options are marketed and accessed.”*

However, the reforms do not always align across the insolvency landscape to ensure consistent outcomes for consumers.

We believe that the goal of the insolvency regime should be a more consumer-focused insolvency framework aligned to consumer needs. This sentiment was echoed in our adviser survey, where **three quarters (73%) said the Insolvency Service should have a stronger consumer protection objective.** A more consumer-focused framework should include an emphasis on a fresh-start ethos, social inclusion, and the ability to function in society through financial wellbeing and emotional wellbeing. We believe the fundamental aim of a modern, fair insolvency framework should be to provide a safe route out of debt that supports people to rebuild a stable financial situation. This might require a shift in the culture at the Insolvency Service and possibly a change to its statutory remit.




## Question 2: If 'fresh start' and 'can pay, will pay' are the right objectives for the personal insolvency regime, does the current framework get the balance right?

We do not think the current framework works to enable people to get a "fresh start" when they need it. The concept of a fresh start is undermined by social realities affecting our clients. Where 45% of our clients now have deficit budgets, a DRO or bankruptcy will only provide temporary respite as debts for household bills and credit will inevitably start to grow again month by month until people are back in the same position they were in when they went into their insolvency solution.

*"Whilst it may provide a fresh start most people end up not being able to maintain their living costs and fall back into debt."*

*"Insolvency is no longer providing a fresh start for clients as the majority have broken budgets and cannot afford living costs after they have gone through insolvency, effectively leaving them accruing debt from the first day of their moratorium."*

**Quotes taken from responses to survey of debt advisers**

The current insolvency framework cannot solve wider social problems such as the need for increased benefit levels to support incomes, and the effects of the cost-of-living crisis, but could help to mitigate some of the problems. It may be that the Insolvency Service and creditors may need to accept the need for multiple insolvencies over a lifetime in some situations. For example, the limits on how often you can go into a DRO needs to be drastically reduced from once every six years to potentially once every twelve months.

It should be made easier to access remedies. If people cannot afford to go insolvent, then they are excluded from the possibility of a fresh start altogether.

- ✓ **94% of advisers surveyed said the £680 fee was one of the top three barriers to people accessing bankruptcy – the most common barrier cited.**
- ✓ **Almost half (45%) of advisers said the £90 fee was one of the top three barriers to people accessing a DRO.**

> *"Clients who have no available income are looking at a bankruptcy (who owe too much for a DRO) are unable to afford the bankruptcy fee and therefore left with no solution and no 'fresh start'."*
>
> *"The cost of bankruptcy still prohibits many clients from using this as a solution to provide them with a 'fresh start'."*
>
> *"Many clients are on a low income with no savings and so simply cannot afford the fee which is a huge barrier to fair and consistent debt solutions."*
>
> **Quotes taken from responses to survey of debt advisers**

The fees for going bankrupt and applying for a DRO could be substantially reduced, with remission for people on qualifying benefits. The fees could be paid after gaining the protection of the DRO or bankruptcy.

As we argue later in our response, we think that the DRO could be much more flexible. A fresh start approach is undermined by the inability of people who have unstable and fluctuating incomes, are self-employed or are on zero hours contracts to predict their incomes over 12 months. Concerns about their continuing eligibility for a DRO if their incomes rise and fall during that period, prevent people from applying for a DRO: almost half of advisers (46%) said that people having fluctuating income meant they cannot be sure they will be eligible for the full 12 months was one of the top three barriers to people accessing a DRO. We would like to see DROs that are flexible and are not revoked when circumstances change during the moratorium period. This is entirely counter-productive and means that the client goes back to square one in dealing with their debts all over again.

There are particular problems in the way in which IVAs work in relation to the "can pay, will pay" and "fresh start" concepts. We set out the problems with IVAs later in the paper, but would highlight the high failure rates for IVAs in the early years of the IVA,[1] and concerns that there are high failure rates in some firms (which is why we have called for the Insolvency Service to publish failure rate tables *by firm* to aid transparency in this area.

**Over half (52%) of advisers surveyed said they often or very often speak to people who have either a failed or unsuitable IVA, with a further third (32%) saying they sometimes do – reflecting the scale of the problem.**

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[1] Individual Voluntary Arrangements Outcomes and Providers 2021 - GOV.UK (www.gov.uk)

The structure of the IVA means that the consumer may have made substantial payments into their IVA at the point it fails, which they then find has gone mainly on IP fees and charges rather than their creditors. They are again, back to square one owing a high proportion of their original debt, plus all the interest and charges are added back in by creditors. This is the very opposite of a fresh start.

*"Mis-selling of IVAs without regulation is appalling, and in some cases we see leaving clients paying installments for years with no reduction in amounts owed. Given the diligence and expectations placed on the charity sector for impartial debt advice, there should be regulation on IVAs and a prevention of sponsored ads misleading people searching for help."*

*"Most of the IVA I see fail and whilst the IP gets their fee, the creditors get very little despite the client having paid large amounts into the IVA."*

**Quotes taken from responses to survey of debt advisers**

As we set out later in the paper (particularly in our response to question 16), fundamental IVA reform is urgently needed if the Insolvency Service want to deliver against their objective to offer people a 'fresh start'. Many more IVAs should be settled rather than failed where there is a change in circumstances. The charging structure for fees needs radical reform. The ability to move from one debt solution to another seamlessly without crashing back to the start needs to be addressed.
In addition, we would see the punishment element of a public insolvency register as undermining the concept of a fresh start. If people feel unable to enter into an insolvency solution because of the associated stigma and fear of public shaming, then they are again unable to avail themselves of their fresh start, however desperately needed. This is associated with the concept of rehabilitation through the impact on credit referencing and how long a mark remains on both the register and the credit file.

*"Although insolvency does allow debtors relief from their debts the attendant difficulties accessing credit prevent a true fresh start from being possible."*

*"It is increasingly difficult for people to have a fresh start with the increased use of Credit Scores as a method of determining someone's financial security. Having Insolvency options registered on credit reports without any further reference makes it difficult for someone to move on for up to six years after the event."*

*"Result of Insolvency options on credit score can cause major problems for those in the rented sector being refused tenancy without guarantor which many do not have access to."*

**Quotes taken from responses to survey of debt advisers**

## Question 3: Please provide any evidence to show how well the objectives of 'fresh start' and 'can pay, will pay' are being met.

Please see our response to question 2 above where we have provided our thoughts on the objectives and our evidence.

## Question 4: Please explain whether there should be different objectives for different personal insolvency procedures.

We would argue in favour of a consumer-focused insolvency framework which reflects a fresh-start ethos across all personal insolvency procedures. The overriding objective should be that insolvency options should provide a safe and affordable route out of debt for individuals. Current insolvency policy runs the risk of conflating debt relief with creditor enforcement. This diminishes the possibility of a fresh start and should be treated as separate functions.

We do not see a need for different objectives for different personal insolvency procedures. There needs to be a rethinking of each insolvency solution to remove the element of punishment from the regime and to embrace the fresh-start objective. This would enable the Insolvency Service to ensure that each debt solution operates in a way that reflects this ethos and does not entail unnecessary penalties and restrictions, public stigma and flexibility is built in to avoid ejection from a solution due to a change in circumstances.

## Question 5: Please consider whether there should be different options for trading and consumer debtors. If so, how would the features differ?

The Money Advice Trust runs Business Debtline, which specialises in giving debt advice to self-employed people, including sole traders and owners of small, limited companies. It is important to consider small businesses in the context of consumer insolvency. For many of our clients there is little separation between their businesses and their personal finances and will have a mixture of business and personal debts.

Our Business Debtline clients have higher debt levels generally than clients with just personal debt. They are more likely to have complicated personal and business situations with a variety of business assets, own their own homes and have given personal guarantees for business debts and unresolved contingent debts. For small trading businesses, people can also be in the position where they are both in debt to their suppliers and be owed money by suppliers themselves.

Not all sole traders will have set up businesses in a planned and intentional way. Some people will "fall" into being self-employed. Some people are persuaded to become self-employed as a result of seeking work through the benefits system. Others may be treated as self-employed by their employer and the nature of their occupation, despite having no wish to run a trading business, with all that this entails.

However, there are many complexities that can ensue through the intertwining of personal and business credit. Our research with clients shows that people may use consumer credit and personal bank accounts to run their businesses. They will not always separate out business and personal income and find it hard to assess their financial situation, even if they have set up a limited company. Running a limited company is a complex process and people may struggle to understand their role as directors, what they have signed up to, or their ongoing obligations and the potential personal consequences for not following the requirements. People may find themselves having given personal guarantees for all or some of their business credit without understanding the implications.

> *"Self-employed often have varying income there can be issues around tax rebates or payments especially for those new to self-employment and also there can be the complexity of if their debts are business or personal."*
>
> **Quote taken from responses to survey of debt advisers**

We would suggest that sole traders and the self-employed should be treated more like consumers in insolvency. It should not be assumed that all small business owners and self-employed people have substantial business knowledge, or a more sophisticated grasp of their financial situation, and that they are therefore less potentially vulnerable than consumers with personal debts. In our experience, our business clients do not have greater levels of assets or higher incomes than those with personal debts. Indeed, many small business incomes are substantially lower. Many of our clients have significant vulnerabilities and struggles with their mental health. For example, 15% of callers to Business Debtline in September 2022 cited mental illness or disability as the main reason for their financial difficulty.[2] Indeed, due to their often more precarious and unstable financial situation, many self-employed people we help at Business Debtline are in particularly vulnerable circumstances owing to their self-employed status and could be seen as more susceptible to the impact of financial shocks due to the often overlapping nature of their personal and business finances.

There is a particular stigma for a small trading business in going bankrupt, from the publicity and reputational risk of perceived failure. There is also the likelihood that their trading partners and suppliers within the business community will become aware of their status and be less willing to trade or provide trade credit terms.

[2] Business Debtline client data, September 2022

For many small businesses, there will be a further factor of the knowledge that their own insolvency could make an associate or partner's business fail too.

However, the self-employed face very particular barriers in dealing with insolvency. Our clients will be very worried that not being able to trade on when insolvent may have the effect of ending all the income coming into the home and place the client in a comparatively worse position post insolvency than many employees. There are some occupations that can be affected by insolvency, but in our experience, relatively few of our clients are affected by this.

The sanctions and consequences on small business failure in insolvency, is not proportionate in our view, to the risks posed by a small business owner. As such, they should not be treated in the same way as a large firm with assets, as many do not have access to the same professional advice and support.

*"If [they are] a Ltd company sole director and has insufficient surplus for an IVA - they must choose between continuing to trade their business and accessing an insolvency solution."*

*"[Someone who is a] limited company sole director with deficit budget- no insolvency solution if wants to keep viable business."*

*"Limited Company directors with little surplus [struggle to access any solution]; IVA is off the table as they don't have the money for it, and bankruptcy/DRO is out of course, so all this leaves them with is self-negotiation. Not a long-term solution if you have tens of thousands of pounds of debt & no money to offer to creditors."*

**Quotes taken from responses to survey of debt advisers**

## Question 6: How effective are the current safeguards (public records, public registers, restrictions and sanctions on debtors) at protecting the integrity of the personal insolvency framework?

We suspect that the risk of moral hazard is largely theoretical and that there are plenty of safeguards in place against reckless borrowing and seeing insolvency as an easy "get out of gaol free" card option. We are concerned that the current safeguards put in place to protect the personal insolvency framework from "moral hazard" have gone too far and are prohibiting access to suitable solutions. People who might be eligible for bankruptcy may decide against it because of their perceptions of the restrictions that will follow, and in particular the public shame that may attach to them if they go bankrupt. **Nearly 2 in 5 (37%) of advisers surveyed said people being worried about the stigma of going bankrupt was one of the top three barriers to people accessing this.**

We would question whether there is any evidence that the availability of debt relief leads to “excessive or reckless borrowing by individuals”? In addition, far from people making an *“early application for debt relief, rather than attempting to repay debt”*, the opposite appears to happen where people will struggle on, juggling payments and bills, for an excessive amount of time rather than seek debt advice. A survey of National Debtline clients revealed that nearly two in five (39%) had waited more than a year to seek debt advice, after first having issues with their debts.[3] We also find that even when they seek debt advice, people are particularly reluctant to go bankrupt.

This suggests that protections in place for creditors against the potential of “moral hazard” are out of balance. In particular, we would suggest that the Insolvency Service considers reforming the public register provisions for insolvency and DROs. These now seem unnecessary given the development of new private registers for the debt respite scheme and Statutory Debt Repayment Plans.

## Question 7: To what extent does the current enforcement regime (BROs/DRROs and criminal sanctions) adequately achieve the aims of deterring future misconduct (both individual and general) and protecting the public?

We are not in a position to comment on whether the current enforcement regime achieves its aims of deterring future misconduct. We note that the paper states “*misconduct in insolvency is rare”*. We also note that the evidence quoted in the paper shows a BRO has only occurred in around 3% of bankruptcies.

In our experience the enforcement regime may well catch out behaviour that is due to desperate circumstances rather than an intention to deceive. The most common order in 2021/22 was apparently “*incurring debt without reasonable expectation of payment*”. This could result from a number of scenarios where people in debt are increasingly caught up in a debt spiral, taking out further credit to pay back other debts, with the expectation that something will turn up or their circumstances will change. This optimism bias[4] has been identified as one of the reasons people do not seek debt advice as soon as they should, or go for a “drastic” debt solution when it might appear to be the logical option.

We have set out the length of time our callers waited before contacting National Debtline for advice below.

[3] National Debtline client survey 2022, Base: 299
[4] https://debtcamel.co.uk/optimism-bias-planning-fallacy-debt/

**National Debtline 2022 Client survey**

| How long did you have an issue with your debts before you contacted us? | |
|---|---|
| I contacted you straight away | 23% |
| Within 3 months | 12% |
| 3 - 6 months | 12% |
| 6 - 12 months | 12% |
| 1-2 years | 11% |
| 2 years or longer | 28% |
| Not applicable | 3% |
| **Base: 299 National Debtline clients** | |

In our experience delays in seeking help, are often down to people experiencing an overwhelming sense of shame about their circumstances, fear of being judged if they did turn for help, poor experiences with creditors and a sense of hopelessness, where there is no point getting help as there is nothing anyone can do. We conduct interviews with our clients where we find that mental health issues are also a significant factor. MaPS commissioned research from the Money & Mental Health Institute exploring how debt advice could better support customers with mental health problems.[5] This showed:

- ✓ Nearly half of those in problem debt have a mental health problem. But symptoms of common mental health problems, such as difficulties communicating, impaired clarity of thought and reduced concentration or problem-solving skills, can make it difficult to engage with debt advice.
- ✓ Making a start can be the most difficult part of debt advice for some clients. Providers differ in how they deliver advice and the level of assistance offered but participants in our research told us that information is not always clear or obvious at the beginning of their journey.

We suspect that the enforcement regime serves to reinforce the myths and stigma around bankruptcy with the effect of deterring people who need debt relief from seeking help.

[5] Help_Along_the_Way.pdf (moneyandmentalhealth.org)

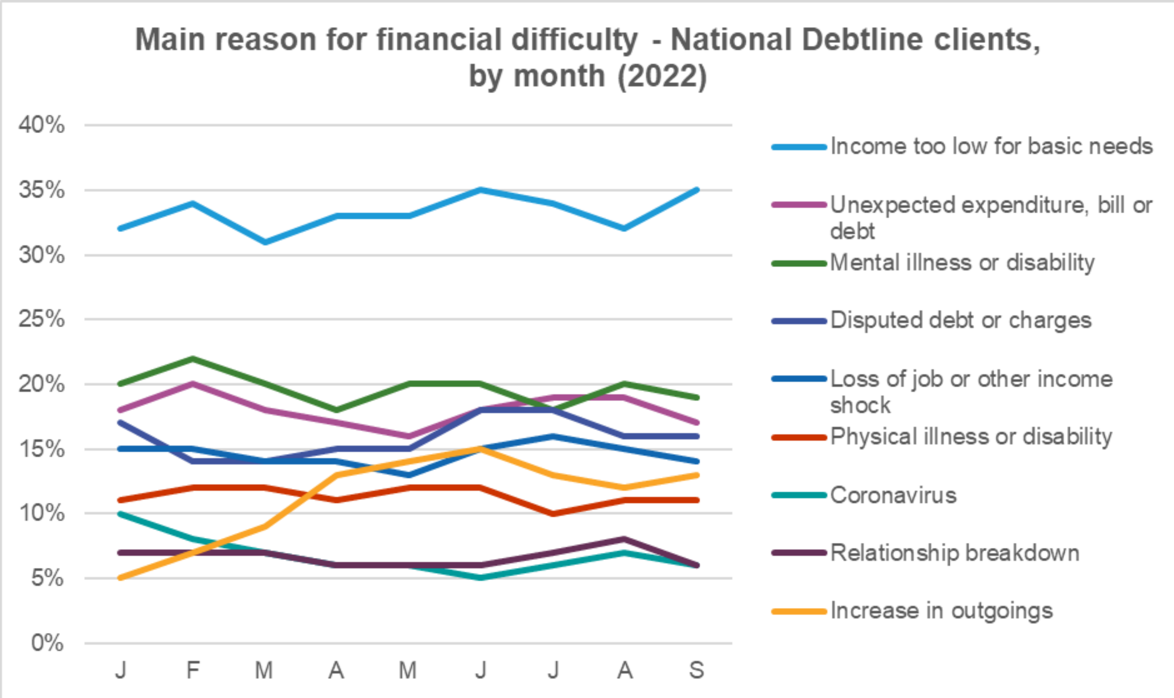
The punishments for taking out credit or failure to disclose property reflect a society view of a scheming bad actor rather than someone whose behaviour may be affected by stress, mental and physical health issues, who is trying to replace the boiler or feed their children.

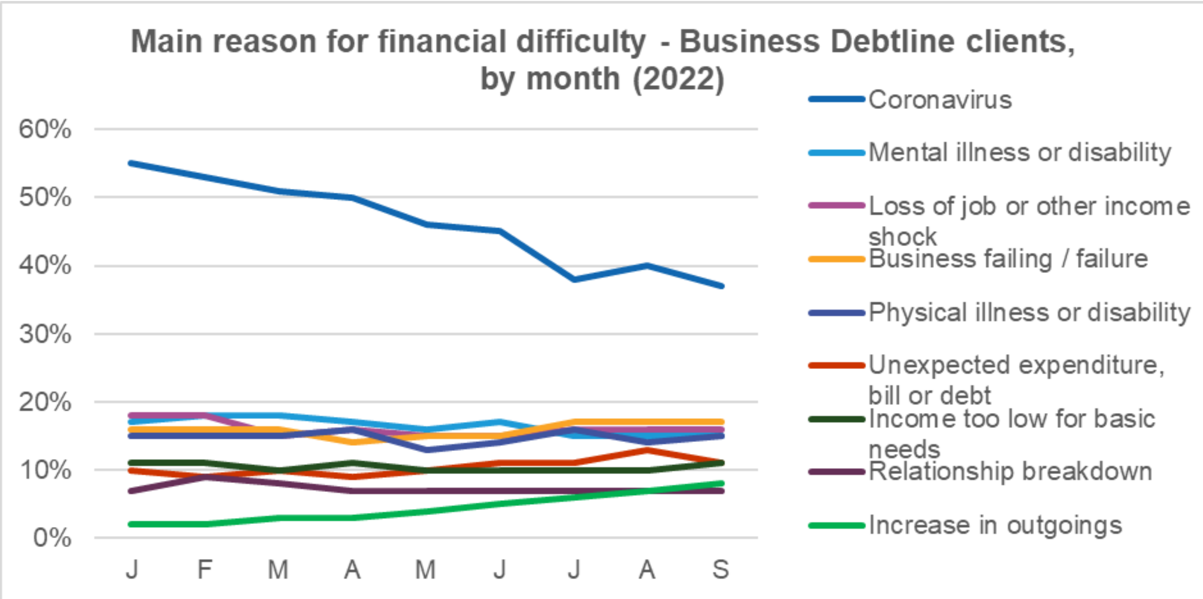
We would like to see serious consideration as to whether criminal penalties should be revoked or revised to reflect the reality that people are generally trying to get by under desperate circumstances, rather than commit intentionally fraudulent acts.

## Question 8: How, if at all, should the personal insolvency framework distinguish between honest/unfortunate and dishonest/reckless debtors?

Debt advice charities do not generally deal with people who the question labels as “dishonest/reckless debtors”. Our approach as debt advice professionals is to build a comprehensive picture of a client’s current financial situation and help the client make informed decisions as to how to deal with their debts. This applies to our clients irrespective of how they got into debt. It is of course important to understand how the client’s debt situation has developed, without casting any blame or judgment on that individual person. We would also suggest that a judgment that someone has been “reckless” or “dishonest” is very much open to question, when people are in desperate situations, where they cannot see a way out of their debt problems, they may not act in completely rational ways.

The most common reason for financial difficulty among people contacting our National Debtline service is that their income is too low for their basic needs (35% of callers in September 2022). At Business Debtline, the most common reason is coronavirus (37% in September 2022), followed by business failure, and loss of job or other income shock.




Whilst we appreciate that there will be a need for some protections to be built into an insolvency regime for serious misconduct, particularly in relation to limited company failures and director phoenix schemes, we think this requirement should be limited to certain scenarios. In many cases, the threat or perception of shame and perceived threat of punishment helps to form the stigma around insolvency and bankruptcy in particular. We would suggest that this is counterproductive. People should not be put off from accessing to good, free debt advice, and be able to find a solution to their debts that works with them.

## Question 9: Are there any features of other regimes that would be beneficial to consider for England and Wales and how effective are these features? For example, debt counselling and rehabilitation programmes.

We are not sufficiently familiar with features of other regimes that might be beneficial to consider, so it's difficult to comment on this question in detail. It might be beneficial for the Insolvency Service to commission some comparative research into other regimes to assess the effectiveness of different approaches.

We do have some experience of the regime in Scotland, however. Under the DAS scheme in Scotland there is a requirement for creditors to provide people with a Debt Advice and Information Package (DAIP) before taking enforcement action. However, in the recent working group review of the Scottish statutory debt solutions and diligence regime, there have been concerns raised about the clarify and transparency of the information, which is now to be reviewed.[6]

The working group recommended compulsory debt advice before entering a protected trust deed. Due to advice sector capacity, the Scottish government is only proposing a new requirement to provide a "clear and succinct" information leaflet on trust deeds before someone can proceed.

We have serious concerns about the power of information to act as a substitute for free, holistic debt advice. In Scotland people must get advice from a debt adviser before they can go bankrupt or enter into a DAS. In England and Wales, a DRO can only be entered into via an approved intermediary, a debt adviser must apply for breathing space, but there is no requirement to seek debt advice before going bankrupt using the online bankruptcy portal.

We would like to see consideration given to a requirement for compulsory debt advice before someone can enter into an insolvency option and bankruptcy stands out in particular as having no such requirement. We note the paper highlights this is already the case in some other jurisdictions. We also believe that before entering into an IVA, there should be a requirement for an assessment that this is the correct option carried out by an independent FCA authorised debt advice provider.

[6] https://consult.gov.scot/accountant-in-bankruptcy/debt-solutions-and-diligence/

## Chapter 5.2 - Fees, funding and costs

## Question 10: Who should bear the costs of entering and administering personal insolvency procedures?

### **Issues with current arrangements for recovering costs of entering and administering procedures**

***Fees***

Currently, people in debt are expected to bear the costs of entering into personal insolvency procedures, via the fees they have to pay. However, as we set out in response to question 2, these fees present a significant barrier to people entering into an appropriate insolvency solution.

- **94% of advisers surveyed said the £680 fee was one of the top three barriers to people accessing bankruptcy – the most common barrier cited.**
- **Almost half (45%) of advisers said the £90 fee was one of the top three barriers to people accessing a DRO.**

High up-front fees to enter into bankruptcy and other debt options, only serve to deter desperate people from achieving debt relief. It is prohibitively expensive for people to make themselves bankrupt and even the smaller £90 fees for DROs can be impossible for people living with deficit budgets or very small surpluses.
Our data shows that the level of contributions that people can afford to pay whilst in a debt solution have fallen substantially. The proportion of callers to National Debtline with a surplus budget has fallen from 63% in 2021 to 55% in 2022. In addition, the average personal surplus amount has dropped by a fifth in the past year meaning even among people who have some money to put towards debts, the amount they have is much less.

All this means it is not realistic for people with multiple debts, low incomes and potentially few assets to fund insolvency services. This is not a sustainable source of funding.

There is not even a level playing field for access to insolvency options for our clients, as some people may get help with fees from charitable trusts, whilst others in the same position cannot access help or are unaware of the help available. In many cases, we see charitable trusts restricting their charitable funding services as they are unable to deal with the demand for assistance with bankruptcy fees in particular.

When it comes to IVAs, the charges also fall disproportionately on people in debt. The way in which IVA fees are structured, means that nominee and supervisor fees can be charged either upfront or are usually taken as part of the initial ongoing monthly payments. As the paper itself says:

*"Early termination of an IVA may occur because an individual can no longer meet the agreed terms of the IVA either due to a change in circumstance or because the IVA was unaffordable. Where early termination of an IVA occurs in the first or second year of the IVA, a significant part of a debtor's payments will usually have gone towards paying for the fees of the IVA rather than their creditors."*

For our clients with a failed IVA, they are often left back at square one, owing most, if not all, of their debts to their creditors, plus extra interest and charges. They are often very surprised to find that the money they have paid in has all gone towards IP fees and that their time and efforts have been wasted. We therefore think the entire structure of IVA fees and charges needs a radical overhaul to make the system fairer and more sustainable. We believe at the very least there should be a transparent published common fee structure which does not incentivise bad practice by IPs. The frontloading of fees removes incentives for IPs to ensure that the IVA has been set up to be sustainable over the lifetime of the IVA. Frontloading of fees also disincentivises IPs from being proactive and working with their IVA clients to prevent the IVA failing early.

***Costs borne by debt advice agencies***

We also see instances in the current arrangements where costs fall on debt advice agencies – such as in the case of DROs. We absolutely agree that DRO advice is best provided by the charitable debt advice sector, but that adequate funding should be provided for this service.
Currently, processing a DRO costs the advice provider considerably more than the £10 compensation from fee payments. The solution is not to increase the DRO fee, but rather ensure that renumeration for the debt advice sector reflects the actual costs of submitting a DRO. The Insolvency Service also needs to review the time involved for debt charities in setting up DROs and find ways of minimising the administrative burden on advisers of protracted checks on income and expenditure, and delays in obtaining credit reports.

This trend for the costs of administering government debt schemes falling on the debt advice sector is continuing with the advent of the debt respite scheme. There is no bespoke funding for this scheme whilst the costs burden of administering a complex and time-consuming scheme has fallen upon the advice sector. SDRPs are envisaged to include a fair share model for ongoing debt advice and payment distribution, but again there is no funding for the initial preliminary debt advice, dealing with emergencies and priority debts, income maximisation, preparing an SFS and assessing and recommending a suitable debt option.

Throughout this response, we highlight the importance of FCA authorised debt advice before entering an insolvency solution and recommend this is made a requirement for people to have before they can enter bankruptcy or an IVA. If, as we hope, this is introduced then consideration would also need to be given to funding mechanisms to ensure adequate resource in the free-to-client debt advice sector to deliver this.

***Costs on creditors and the Insolvency Service***

Some of the costs of insolvency are already borne by lenders who will see few returns for an IVA and often none for a DRO or bankruptcy. We note that the costs of bankruptcy, for example, fall upon the Insolvency Service, creditors and individual bankrupts with assets. However, we would wonder whether the extra costs of bankruptcy are entirely necessary costs or are these legacy costs from unnecessary processes and procedures developed over time?

We think that the Insolvency Service should seriously consider reforming DROs and bankruptcies so that the processes work much better together. If someone has minimal assets and low available income, then they should be eligible for a DRO rather than bankruptcy *irrespective of the amount of debt.* We would expect this approach would save on bankruptcy costs and administration for the Insolvency Service in the long run and not submit people to disproportionately complex processes for no benefit to them or their creditors.

## How costs could be met – recognising the social value of insolvency

It is not realistic to expect solutions to fund themselves. Instead, we believe that administering personal insolvency services should be seen as a public good, with the cost of insolvency spread across society through general public spending. Problem debt can lead to significant societal costs – particularly in relation to health services, housing and employment. On the flip side, debt relief through insolvency brings significant benefits.

We asked advisers to tell us about the impact they see on clients who access an appropriate solution. **Overwhelmingly the most common benefit (mentioned by 85% of adviser respondents) was an improvement in mental and physical health.** Advisers also frequently mentioned the improvement in people's financial situation, enabling them to maintain essential bill payments going forward, as well as improved relationships and a positive impact on people's ability to work. Given the value of insolvency as a public good, and as an important safety net for people experiencing financial difficulty, we think the costs should be spread across society as a whole.

## Question 11: How should the costs of entering and administering personal insolvency procedures be paid and structured between the different parties?

As we have said, we believe that administering personal insolvency services should be seen as a public good. It is not realistic to expect solutions to fund themselves and the social cost of insolvency should be spread across society, so that the burden does not fall upon people in debt, and to ensure that fees are never a barrier to people accessing the appropriate insolvency solution. We would like to see the Insolvency Service and Government fundamentally reviewing current funding arrangements for the insolvency regime.

We also think there are other changes that would help support a more sustainable cost and funding arrangement for the insolvency framework. We have covered some of these in our answer to question 10 but would reiterate the following points.

- ✓ If someone has minimal assets and low available income, then they should be eligible for a DRO rather than bankruptcy irrespective of the amount of debt. We would expect this approach would save on bankruptcy costs and administration for the Insolvency Service, subject to adequate and enhanced advice sector funding.

- ✓ This leaves the Insolvency Service to concentrate their resources on charging official receiver fees for complex cases, where there are substantial business-related assets, or where there is evidence of wrongdoing.
- ✓ The fees for bankruptcy and DROs could be reformed to alleviate the requirement to pay the fees in advance. Protections from bankruptcy and DROs could be put in place and some, or all, of the fees could be paid in instalments after approval.

- ✓ Fee levels should be substantially reduced for insolvency options, as bankruptcy, in particular, is prohibitively costly. For people with deficit budgets, they will be unable to save up to pay even the DRO fee. For people on qualifying benefits, fees should be remitted altogether, and the costs borne by general taxation. Reform of DRO debt limits would reduce the numbers of individual insolvencies where there are limited assets and little available income.

- ✓ IVA fee structures lack transparency and are unwarrantedly expensive. There should be a standard published fee structure put in place. Fees for debt packaging and client acquisitions should be banned to reduce costs.

- ✓ It is vital that the ability of IP firms to frontload fees is prevented as this appears to result in IVAs that are not sustainable. If IP firms are not concerned about an IVA lasting the entire period it has been set up for, they will have less incentive to make sure that the IVA is sustainable and the budget and monthly payments are affordable. They can calculate that it is less important to stop an IVA failing after a certain point, as they will have been paid a substantial amount of their fee already.

## Question 12: What options are available to debtors and creditors who are unable to afford the cost of bankruptcy, IVA or a DRO?

There are very few options available to people in debt who cannot afford to make themselves bankrupt or afford a DRO.

### Debt Relief Orders

Almost half (45%) of advisers surveyed said the £90 fee was one of the top three barriers to people accessing a DRO. It is helpful that the Insolvency Service allows the DRO application fee of £90 to be paid in instalments through Payzone and so on. However, once the approved intermediary has started the DRO application, the full £90 must be paid within six months. While this might initially sound like a reasonable timeframe, given the very limited (or non-existent) surplus people on DROs can have, often this is not practical. Saving up for the fee can take someone a very long time to do so, especially if they have a deficit budget or a very small amount of available income. 45% of callers to National Debtline have a deficit budget, up from 37% in 2021.

> *"For many, even £90 for a DRO is unrealistic, particularly in the current financial climate."*
>
> *"For [people who are] ill or long-term sick in receipt of benefits with zero surplus income or deficit budget – the prospect of saving even £90 for fee can take a long time. If debts exceed £30,000 - absolutely no chance whatsoever of bankruptcy being a realistic prospect given amount of fee. Near non-existent charities/trust funds nowadays who will help towards insolvency fees. Clients then are stuck in 'debt purgatory' with no way out."*
>
> **Quotes taken from responses to survey of debt advisers**

As part of our survey of advisers across the sector, we asked them to tell us what happens to people who cannot access a DRO. This covered all barriers to access / eligibility so was not limited to fees specifically. However, it does reveal important insight about the poor outcomes that can be experienced by people in this situation.

Advisers told us the most common outcome for people was that they didn't go into any solution at all[7] - prolonging their debt problems, failing to offer them any sort of fresh start and likely leading to worse outcomes for creditors too.

**What happens to people who ideally need a DRO but cannot access this – responses from debt advisers**

*"If people can't do a DRO then I most often try to get their debts written off in the first instance as so many have mental health issues. Failing that it's pleading for a long-term moratorium until circumstances improve, or token offers."*

*"[They are] unlikely to be able to afford monthly payment to repay in a reasonable time frame, unable to afford bankruptcy [and] so often continue to muddle on with no relief, often impacting mental health."*

*"Normally there are no other alternatives as they do not have the money to pay the debts even at £1.00 per month."*

*"Many clients will give up and will live with the fear and anxiety of unmanaged debt. Others are convinced by fee charging companies to enter into an IVA by completing a financial statement which is neither accurate or reliable and is usually unaffordable."*

*"My experience is that most of my clients have a deficit budget and/or mainly income from benefits. Therefore an IVA or DMP is not suitable. If they cannot access a DRO (or are unable to get together the necessary documentation, account numbers, bank statements etc) they generally do not adopt another debt option at all."*

There is also the issue that people may have urgent priority debts to deal with while also trying to save up for the DRO fee, and no protection from creditor action in the meantime. This may mean they need to put any available surplus towards this – further affecting their ability to save up or afford the fee. People can potentially apply for breathing space under the Debt Respite Scheme, but this will only last for 60 days. In the alternative, they can ask creditors for extended voluntary breathing space whilst they save up the fee. In our experience, credit debts where lenders or debt collection agencies are authorized under the FCA are more likely to be helpful in such circumstances. It is very unlikely that without formal breathing space in place, that priority creditors such as landlords, local authorities collecting council tax, or utility providers, will hold action for any length of time.

[7] 47% of advisers surveyed said this was the most common outcome for individuals who could not access a DRO. 33% of advisers said the most common thing was for them to go onto a DMP or other negotiated payment plan, followed by 21% who said bankruptcy and 7% said going into an IVA.

We have consistently suggested that the 60-day breathing space period is not long enough and should be extended. In our recent response to the HM Treasury consultation on SDRPs,[8] we suggested that this period could be extended as a response to the cost-of-living crisis, subject to regular review.

## Bankruptcy

If we turn to a debtor petition bankruptcy application, this is entirely unaffordable for many people. 94% of advisers surveyed said the £680 fee was one of the top three barriers to people accessing bankruptcy – the most common barrier cited.

Many people have an impossible barrier to climb to find the total fee and deposit of £680 to make themselves bankrupt. The requirement to pay a total fee of £680 to go bankrupt makes this debt solution out of reach for many potential applicants. We recognise that the Insolvency Service allows payments online by instalments, but the full fee must be paid before someone can complete their application. Where someone is unable to afford to make themselves bankrupt, they must hope that one of their creditors issues a creditor petition against them. It is unlikely that a creditor will do so, if the person has large debts and few if any assets. This action would have no advantage for the creditor that we can see. This means again, that the person in debt would need to ask for formal breathing space, or informal breathing space with creditors.

In practice, we see a mixed approach, depending upon their circumstances where some of our clients will make token payment arrangements with individual creditors, some creditors will potentially take court action or other forms of enforcement, and some creditors will write the debt off or pass it on to debt purchase companies. The client is left in a position of limbo where they are unable to clear their debts through an insolvency option. If they have a reasonable level of available income, they may be able to go into a DMP, but this might be for an extended period and not be sustainable.

8 https://moneyadvicetrust.org/media/documents/MAT_response_to_the_HM_Treasury_Statutory_Debt_Repayment_Plans_consultation.pdf

*"Most [people] cannot find the means to pay the fee of £680, meaning a lot of work and effort is placed on attempting to get creditors to agree to write off debts so [they] can fit the criteria for a DRO where the fee is only £90. This can take months if not years of repeatedly writing to creditors with letters and medical evidence. And there is no guarantee creditors will agree to write off the debt, mark credit history records as partially settled and placing '0' against the balance on the entry or amending entry on Registry Trust to mark judgments as satisfied."*

*"Clients on low incomes particularly struggle due to being unable to raise the bankruptcy fee. Recently had a client who we were able to find a grant for to cover the £680 bankruptcy fee. Prior to this, the client had about 10 years of being unable to pay this due to being on a low benefit income and being ineligible for other options. The client had struggling with mental health as a result and felt that there were no options for him. It was only with luck that we were able to secure the grant for him."*

**Quotes taken from responses to survey of debt advisers**

## Recommendations- DRO and Bankruptcy fees

We believe that the £90 DRO fee should be waived for people on income-related benefits. This waiver could be put in place on a permanent basis. The current fee – which many applicants struggle to find as it stands – will present a barrier for growing numbers of people for whom a DRO is the best solution.

The Insolvency Service could waive the bankruptcy application fee for those on income-related benefits permanently. For all other applicants, the bankruptcy application fee could be significantly reduced, perhaps on a sliding scale based on income. There is a precedent in Scotland where the fee for full administration bankruptcies in Scotland has been reduced from £200 to £150 with the fee for the Minimal Asset Process route set at £50. These fees will be waived for those in receipt of qualifying benefits.[9]

We would like to see the ability for a client to go into a DRO or bankruptcy immediately in order for protections to be put in place immediately. If there is a contribution required towards the application fee, then this should be paid in affordable instalments during the DRO or bankruptcy period. Fees should not have to be paid in full in advance.

[9] How to Apply | Accountant in Bankruptcy (aib.gov.uk)

## IVAs

We do not see a similar issue with clients in relation to taking out an IVA, because there is not an up-front fee for the applicant to find before entering into the IVA. However, there are many issues to do with affordability in practice and the transparency of the fee arrangements under the IVA. We are more concerned that clients enter into unsuitable IVAs where they would have been better off with a DRO or bankruptcy, for the very reason that they do not have to find the money for the fee upfront.

In practice, IVAs are very problematic for a number of reasons set out throughout this response. The IVA may be easy to take out with payments only required in monthly instalments, but if the IVA payment arrangement is not sustainable, given the fee model, where the IVA fails, the client will be likely to find that all they have paid in towards their debts has gone on insolvency practitioner fees. Three quarters (74%) of advisers surveyed said they often or very often saw people losing money paid in fees, due to their IVA failing. In these instances, people will be back to where they started, but worse off than before, with the full debts and interest and charges backdated to the date of the IVA. In this common scenario, you could easily argue that these clients could not afford the costs of the IVA, and neither could the creditors, as no one is better off apart from the IP and the lead introducer.

## Question 13: What are the main consequential costs of the different insolvency procedures?

The main consequential costs of the different insolvency procedures have been set out in the paper. We have not identified further consequential costs at this point.

The consequential costs identified in the paper include the following.

- ✓ For bankruptcy, an IVA or a DRO, personal details are recorded on the public Individual Insolvency Register, which can be searched online.
- ✓ Credit reference agencies use the data from the public register in their credit reports and the record will stay on file for six years.
- ✓ There are legal restrictions and sanctions for individuals who are bankrupt or in a DRO.
- ✓ An IVA might require the person to seek permission from the IP to obtain credit or include other restrictions.

- ✓ People can lose access to products and services in a number of ways due to insolvency clauses in the contracts, or the impact insolvency has on their credit rating.
    - Vehicles on hire purchase or conditional sale agreements may have termination clauses.
    - Private tenancy agreements may include an insolvency clause that could be used to terminate the tenancy.
    - It may be extremely difficult to take out a new tenancy agreement whilst insolvency is recorded on a credit report.
    - Bank account closures are very common, with banks closing accounts even where there is no debt owed to that bank.
    - It may be more difficult to pay insurance in monthly instalments or access cheaper utility tariffs.
    - It may be more difficult to obtain a mobile phone contract.
    - Any new credit or mortgage will be very difficult to obtain. This restriction can last beyond six years, as a potential lender can include checks on whether someone has ever been insolvent and only provide loans at a higher interest rate or refuse applications altogether.

We are interested in the point made in the paper about the Standard Financial Statement (SFS) failing to provide a sufficient savings buffer within its assessment of income and outgoings. It is certainly the case that the savings allowance under an SFS will take a very long time to build up a sufficient savings buffer to deal with emergency household repairs or a car to get to work.

The SFS savings cap was increased from £20 to £25 in April 2022. However, it is not correct to say that the SFS makes allowance for a "modest savings allowance of £25 a month". The actual level of savings allowed is worked out as a maximum of 10% of a client's available income for creditors. This means that clients would need to have an available income of £250 (previously £200) a month in order to maximise their utilisation of the savings buffer. 45% of our National Debtline clients have deficit budgets, so their income does not cover their essential outgoings, let alone allow for savings. Recent analysis of budgets of callers to National Debtline found that, among those who had surplus income, the median monthly surplus is £126.[10] This would mean saving allowance of £12.60 a month and would take a considerable time to build up savings in such scenarios.

We would support moderating the SFS so that there is an increased savings allowance of more than 10% of the available income that can be put aside for people with smaller amounts of available income, and removing the cap on savings.

[10] 2022 National Debtline client survey

However, it would make sense to build in a savings buffer to bankruptcy IPO and IPA assessments and IVAs before creditor contributions are assessed. This could be higher than the £25 cap in the SFS, to allow people to build up a sufficient savings buffer faster.

The paper rightly draws attention to the stigma of bankruptcy as a consequential cost. The R3 research[11] from 2015 points to the main causes of such stigma being the public insolvency register, problems in obtaining a bank account and effects on credit rating. In theory, these are all problems that could be addressed. For example, the Insolvency Service could consider:

- ✓ turning the insolvency register into a private register to match breathing space and SDRPs;
- ✓ taking action with government and regulators to prevent banks from refusing to open basic bank accounts where someone is insolvent;
- ✓ reforming the way in which credit data is recorded on credit reference agency files, and the length of time insolvencies remain on file.

## Question 14: How can we reduce the stigma of insolvency to both encourage early action by those in financial difficulty and to support a 'fresh start' from debt relief?

The paper discusses the wider economic costs of debt and sets out the context well.

*"The damage of debt for individual households extends beyond mere financial hardship to include negative impact on economic opportunities, family relationships, health, and children's well-being and development. It is widely recognised that over-indebtedness results in significant social costs, which are borne by wider society."*

On the flip-side, where someone can access an effective (and affordable) insolvency option, this has significant benefits for individuals and wider society. We asked advisers to tell us about the impact they see on clients who access an appropriate solution. **Overwhelmingly the most common benefit (mentioned by 85% of adviser respondents) was an improvement in mental and physical health.** Advisers also frequently mentioned the improvement in people's financial situation, enabling them to maintain essential bill payments going forward, as well as improved relationships and a positive impact on people's ability to work. Ensuring people can, and do, access suitable insolvency options (and making sure these solutions work well for people) is therefore crucial.

[11] R3 | Press, Policy & Research | Policy & Research | R3 Research into Personal Finances

**Benefits of insolvency**

*"The difference for people experiencing debt relief cannot be understated. From the very first conversation highlighting that such an option exists, clients' demeanour visibly changes. They talk about being able to sleep for the first time in months. People feel that they have control of their lives again."*

*"Better level of living. Ability to pay their essential living costs first, rather than living on what's left after debts have been paid. Positive effect on their wellbeing - in particular their mental health."*

*"Having a suitable solution for debt, can definitely help with stress and anxiety, people's ability to continue to attend the workplace and earn money through work."*

*"Knowing that they have a plan and are back in control and that creditors no longer hassle them allows them the space to recover. Most of all we see improvements in the mental health of our clients. For some, being back in control allows them to address other areas of their lives, such as employment, and believe in themselves again."*

*"Can often be their only way out of debt resulting in better mental health, saving relationships and better family life for children removing the stress and anxiety of indebtedness and the many other issues this can cause. Can be a lifesaver for some people."*

**Quotes taken from responses to survey of debt advisers**

## Destigmatising language

To encourage early action and to reduce the stigma around insolvency we would start by recommending that insolvency terminology needs to be looked at to ensure it is consumer-friendly and does not reinforce the stigma around debt.

We have made this point many times, but using the term "debtor" to refer to people in debt is unhelpful and reinforces stigma. The insolvency profession should revisit both their use of language and the use of such terminology throughout legislation, guidance, and the statements of insolvency practice. For example, the IVA consumer protocol now refers to "consumers" rather than "debtors" throughout.

We raised this with the Insolvency Service in relation to this review but note that the term has been used throughout the paper. We believe that this term should be discontinued.

**The role of independent debt advice**

The role of accurate and comprehensive expert debt advice in dispelling the myths and stigma about bankruptcy in particular, should not be underestimated. A further measure to tackle the myths is to ensure that free, impartial debt advice is funded and therefore easily available. There should be a requirement for people to have debt advice before accessing an insolvency option to ensure that people are able to choose an option that is suitable for them. However, it should of course always be a decision to be taken by the consumer ultimately as to what they decide to do, and what option they take.

We do not think that the plethora of misleading websites and social media sites out there churning out their myths and inaccurate information about "little known government debt solutions" and how to "write off 85% of your debts" are at all helpful in this endeavour to dispel stigma and encourage early action. Skewed advice on such websites often suggest that the consequences of a particular debt option are worse than they are, to attempt to point people in the direction of the commercial firm's favoured option, usually an IVA.

**Public register**

As we have said elsewhere in this response, the use of a public register for insolvency needs to be looked at again. It fits very much into the narrative of stigma to be publicly shamed on an open insolvency register. Turning the insolvency register into a private register to match breathing space and SDRPs is worthy of serious consideration.

**Fees**

The costs of accessing insolvency procedures and of going bankrupt in particular, need to be looked at again. The fees and charges actively undermine the likelihood of a person in debt accessing debt relief early. Even when advice is sought, it can take so long to save or find the bankruptcy fee, that the opportunity to resolve debts is lost at that point.

**Credit referencing**

As we have said in our response to question 13, reforming the way in which credit data is recorded on credit reference agency files, and the length of time insolvencies remain on file would assist with encouraging people to take action to deal with their debt problems. It would also reduce the long-term impact of insolvency on people's lives. However, there needs to be attention given to the way in which credit reference agencies promote credit scores, which feeds into myths about the need to preserve a credit score at all costs, encouraging unhelpful behaviour such as taking out even more credit, when the best thing to do would be to seek debt advice and a debt solution.

We very much support the idea that "rehabilitation" should be built into the experience of people going through the debt advice process. However, we have been discussing how credit files could reward good payment behaviour for a considerable time now.

It would be very useful to see a plan of action in this area involving the credit industry trade bodies and credit reference agencies which sets out clearly what practical steps can be taken and measures the outcomes of these measures.

### Question 15: Please provide any evidence to show whether consequential costs serve a useful purpose or whether they produce unintended consequences for different stakeholder groups.

We have reviewed the list of consequential costs set out in the paper and those we have highlighted above. It is difficult to demonstrate that these consequential costs serve any useful purpose beyond making life extremely difficult for people suffering those costs, and adding to the financial burden for people struggling to rehabilitate themselves post-insolvency. Most of the examples make everyday life more expensive and difficult, reinforcing what could appear to be an element of punishment for those in the system.

It is not clear why it is useful for society to make it difficult for people to rent a home or open a basic bank account. It does not help people to participate in society if they cannot take out a mobile phone contract, or to keep their vehicle on hire purchase that they need to get to work. We also do not think this is in keeping with what the aim of a modern, fair insolvency regime should be in terms of providing people with a safe route out of debt and helping rehabilitate their financial situation.

People subject to insolvency procedures will find it a struggle to save for essential household maintenance costs because of the way the system is designed to work, but will be unable to take out credit to help with emergencies. Refusing access to cheaper energy tariffs or paying bills on monthly direct debits just contributes to an extra element of the poverty premium.

The Insolvency Service needs to decide whether rehabilitation is more valuable than punishment in the insolvency regime. We would definitely support the aim of rehabilitation.

## Chapter 5.3 – The current insolvency procedures and how they are working

### Question 16: Do you believe the current insolvency procedures are working as intended? Please provide any evidence you have.

We do not believe that the current insolvency procedures are working as intended and see a number of areas where they could be improved to ensure that insolvency procedures – and the wider regime – deliver good outcomes for people in debt. In this answer we examine each procedure in turn, with recommendations for change.

## IVAs – current issues

There have been a number of problems with IVAs for many years, and this is reflected in the evidence we see from clients and advisers, as well as the high early failure rates seen across the IVA market.

**Over half of advisers surveyed (52%) said they often or very often speak to people who have either a failed or unsuitable IVA, with a further 32% saying they sometimes do.**

> *"IVAs are mis-sold to most people. Most people will never complete a full term as on very low income. I believe that of the cases of IVAs I have dealt with, 98% were not the correct debt solution for the client."*
>
> **Quote taken from responses to survey of debt advisers**

There are a number of factors which lead to this poor practice of people being put into unsustainable or unsuitable IVAs when they should have arguably been on a different solution – including misleading advertisements, fees, lack of regulation and poor advice. We frequently see people who were encouraged to enter an IVA based on misleading claims in advertisements or during 'advice' given by lead generators or IVA providers.

***Misleading advertisements***

Googling debt advice" reveals a barrage of adverts about "government-backed" advice or promises to "write off 85% of your debt". These adverts, on search engines and social media platforms – often by lead generation or debt packager firms – can lead people away from genuine, free, independent debt advice and put them at risk of being pushed towards a certain type of debt solution, regardless of whether this is the best option for them.

These adverts also often pose as genuine debt advice charities, including impersonating our services. A recent decision from the ASA[12] found that online adverts from Financial Support Systems, trading as National Debt Service, misled consumers by suggesting that they were affiliated with National Debtline – our free debt advice service - and that they were endorsed by the UK Government.

**Clients choosing an IVA based on claims made in advertisements was the second most common reason advisers we surveyed saw for why people had ended up in an unsuitable or failed IVA, with 68% of advisers saying they saw this often or very often.**

[12] https://www.asa.org.uk/rulings/financial-support-systems-ltd-a20-1071998-financial-support-systems-ltd.html

*"IVAs are advertised as the perfect solution to anybody with debt. Most clients don't believe in a DRO because they have never heard of it, but most have heard of IVAs."*

**Quote taken from responses to survey of debt advisers**

We welcome the new enforcement notice[13] from the UK Committee of Advertising Practice (CAP), for debt management adverts by insolvency practitioners and lead generation firms. However, we do not feel this will be sufficient to tackle the problem alone and stronger reform is needed to stamp out this poor practice (as set out in recommendations section below).

***Poor or inaccurate advice***

When people then speak to a lead generator or IVA provider, there can be significant issues about the advice they then receive. 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. However, our evidence suggests this is allowing poor practice to go un-checked. We often hear from clients who have been given false information about bankruptcy or other debt solutions to make an IVA sound like a better solution (for example, being told you cannot have a bank account if you go bankrupt). People are frequently not told about other debt solutions, and are often unaware of DROs even being an option for them.

**Our research with advisers found that the most common reason for people ending up on a failed or unsuitable IVA was that the client hadn't been given advice about alternative debt options, with almost three quarters (72%) of advisers saying they saw this often or very often.**

Furthermore, **42% of advisers reporting often seeing situations where the client had rejected an alternative debt option to an IVA based on misleading advice about their consequences or eligibility.**

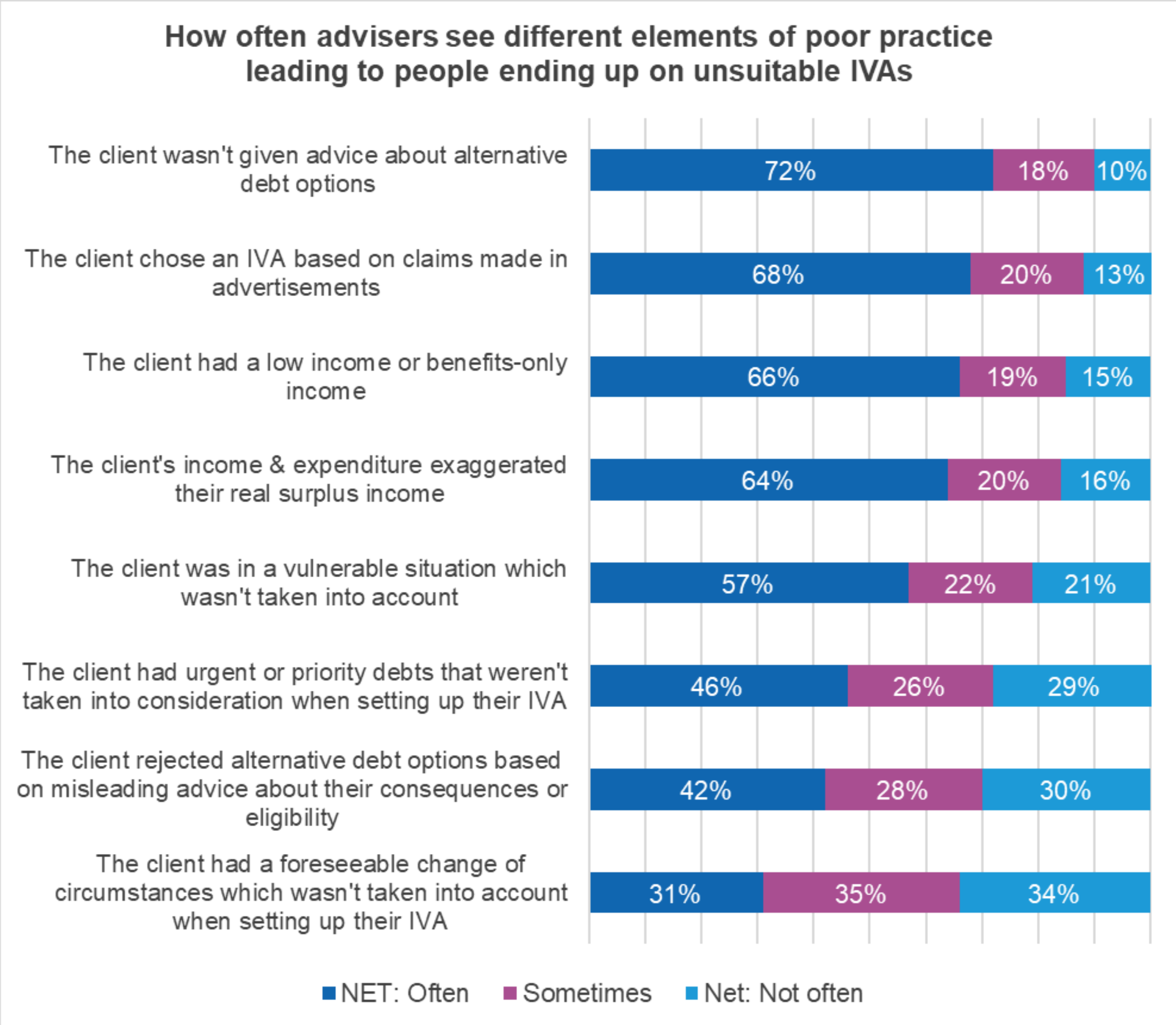
Similarly, we often speak with clients where there have been inappropriate income and expenditure assessments completed that suggest available income is higher than it is to fit into an IVA, rather than another solution – such as a DRO. Budgets may not be realistic or sustainable and often do not take account of possible changes in circumstances and how this could impact a client's ability to maintain payments in the IVA.

[13] Enforcement Notice - Debt management ads by insolvency practitioners and lead generators - ASA | CAP

**64% of advisers surveyed said they often saw people in unsuitable or failed IVAs whose income and expenditure exaggerated their real surplus income; and two-thirds (66%) of advisers surveyed said they often saw clients with a low or benefits-only income who had been put into unsuitable IVAs.**

**Three in ten (31%) advisers surveyed said they often saw foreseeable changes of circumstances not being taken into account as a reason why people ended up with an unsuitable or failed IVA.**

We also asked advisers to tell us about which solution people with failed or unsuitable IVAs should have been on instead: Overwhelmingly they said a Debt Relief Order (DRO) – with 72% selecting this.




There are no safeguards built into the process to avoid clearly inappropriate IVAs being set up. The creditor voting process does not appear to do this, or act as enough of a deterrent to poor/unsuitable IVAs being voted through. This means people on benefit income or who meet DRO criteria are still persuaded into signing up for an IVA. We have seen frequent cases where clients seek advice from the free debt advice sector following the failure of their IVA.

We carried out detailed analysis of a snapshot of our case records at National Debtline in 2021 in response to a request for information by the FCA. We 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.

***Fee structure and incentives***

We believe that the current fee structure for IVAs is inherently risky. It drives poor practice (such as that outlined above) and leads to poor consumer outcomes. IVA fees – and particularly the frontloading of these - incentivise firms to put people into IVAs even if these are not the most appropriate solution or sustainable over the long-term. It also creates a market for lead generation firms, with IVA providers willing to pay large fees for access to people who might be persuaded to enter into an IVA.

This structure also means that the consumer may have made substantial payments into their IVA at the point it fails, which they then find has gone mainly on IP fees and charges rather than their creditors. Many people find that they owe most or all of their outstanding debts in full again. They can find that they are no better off than when they began the IVA, despite efforts to repay. This is compounded by the fact that creditors can retrospectively add interest and charges, meaning people may owe more than when the IVA started. This approach conflicts with what happens in breathing space and (proposals for) SDRPs, where creditors cannot retrospectively add interest, fees or charges.

We asked advisers how frequently they saw different impacts among people with a failed or unsuitable IVA. **Three quarters (74%) of advisers surveyed said they often saw people losing money paid in fees, following IVA failure.**

> *"Mis-selling of IVAs without regulation is appalling, and in some cases we see leaving clients paying instalments for years with no reduction in amounts owed."*
>
> *"Most of the IVA I see fail and whilst the IP gets their fee, the creditors get very little despite the client having paid large amounts into the IVA."*
>
> **Quotes taken from responses to survey of debt advisers**

***Poor response to change of circumstances***

This fee structure and lack of effective regulation also leads to issues where people experience a change of circumstance during their IVA – a common occurrence.

We asked advisers to tell us about their experiences of how IPs and IVA providers respond to clients who experience a change of circumstance during their IVA (via a free-text question which was then coded to identify common themes).

- ✓ **Overall, three quarters (74%) of advisers said the typical response from IPs/ IVA providers to change of circumstances was poor.** This included: providers being difficult to contact, not responding to contact, refusing to offer any support – such as reduced payments - and delays in issuing termination certificates when IVAs failed.

- ✓ **Just 14% of advisers said they typically saw good practice** in responding to changes of circumstances, such as providers offering reduced payments or payment holidays. Even here, some advisers flagged that these were not always helpful for individuals as they simply extended the term of the IVA; or were offered when it was clear the IVA was not sustainable longer-term.

- ✓ **8% of advisers mentioned that the response varied significantly between providers** – with some (typically those who were FCA-regulated to give debt advice) responding well to change of circumstances, compared to other providers.

> *"They are often dismissive of changes in circumstances and delay dealing with reported changes and/or are reluctant to deal with them.  They do not advise on alternative debt solutions that may now suit a client better due to the change in circumstances."*
>
> *"They are very reluctant to take into account a change in circumstances, even though an IVA should have a degree of flexibility built in."*
>
> **Quotes taken from responses to survey of debt advisers**

An issue mentioned frequently by advisers in response to this element of the survey – and something we see commonly in our work – is clients having lengthy waits for a certificate of termination from their IP, which would enable them to go into a DRO. There are sometimes lengthy delays where IPs appear not to be acting in accordance with the 28-day rule and are delaying issuing the certificate and preventing people applying for a DRO. This adds unnecessary friction into the process which should be made as seamless as possible.

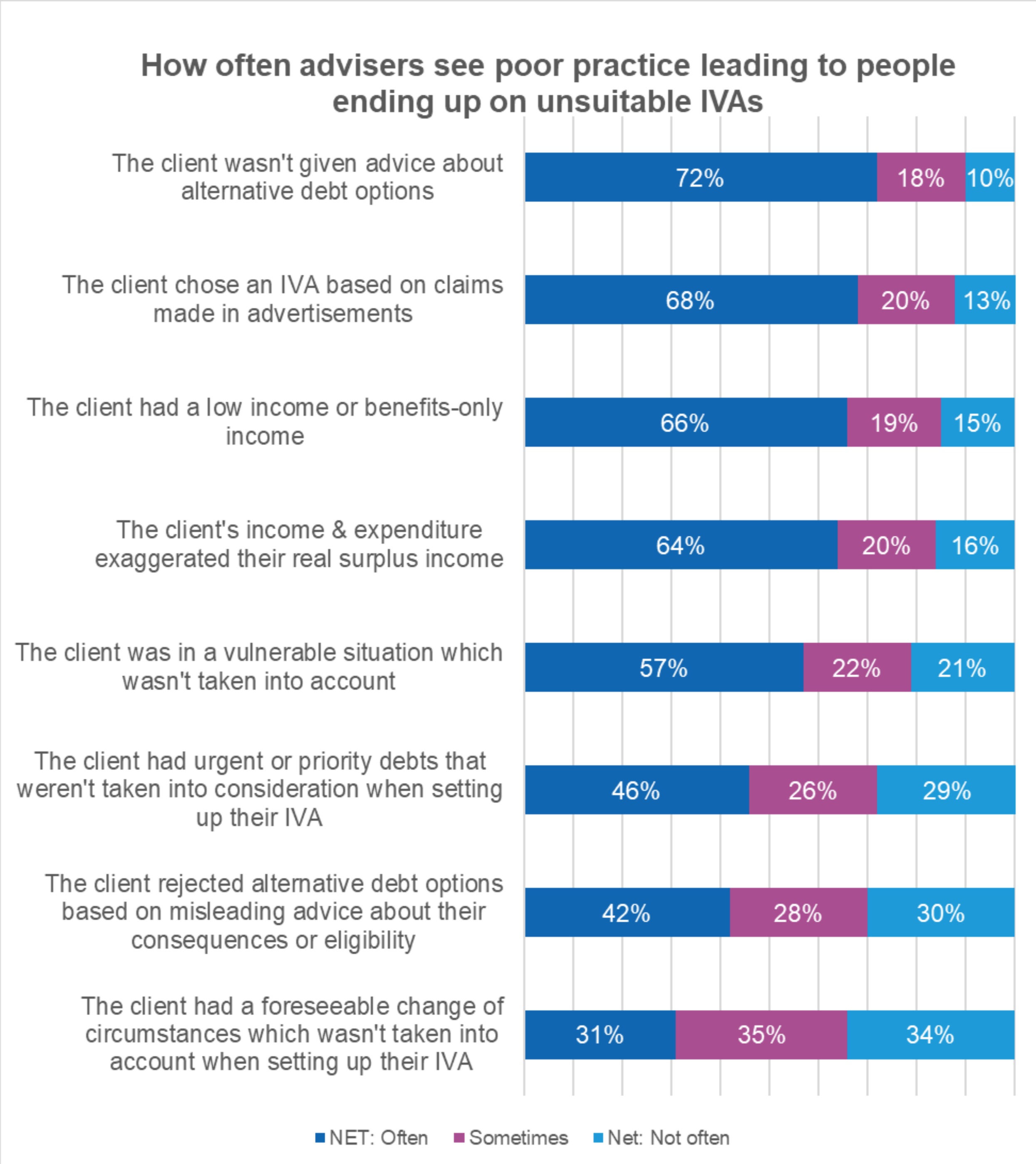
*“It can take several months to get a termination for a client waiting to do a DRO. Their does not seemed to be anything in the protocol that requires them to give this any priority.”*

*“Find it very frustrating and difficult to get the IVA companies to send the certificate of termination and this stops the process of applying for Bankruptcy & DROs, have seen clients wait up to 6 months or more in some circumstances for this to happen.”*

*“If someone has had a failed IVA it's not always easy to move to another debt solution, some IPs don't provide certificates etc.”*

**Quotes taken from responses to survey of debt advisers**

When people end up in unsuitable or failed IVAs, this can have a significant negative impact on their mental and physical health, and their financial situation. The graph on the following page highlights the range and frequency with which advisers see different impacts on people with unsuitable IVAs.




## IVAs- Recommendations for change

Given the significance of the issues seen across the IVA sector, we think this needs to be dealt with through overarching reform, specifically:

- ✓ The introduction of a compulsory FCA-regulated debt advice stage before an IVA can be recommended / set-up.
- ✓ Stronger, independent regulation of the IVA market.

Based on the evidence, we think there is a strong case for **a requirement for people to have accessed free, FCA regulated debt advice before an IVA can be recommended**. This would mean a compulsory advice stage before an IVA can be put in place. New applicants would be able to take out an IVA if it is appropriate for them, but this would help protect against people taking out an unsuitable IVA. Introducing compulsory FCA regulated debt advice, alongside strengthened regulation, should lead to significantly improved practice in the IVA market and better outcomes for consumers and creditors – meaning IVAs are only used when they are genuinely the best option for an individual.

With regards to regulation of IVA providers, we support the Insolvency Service's decision to move to a single regulator for IPs and to replace the current regulatory structure, including regulating IVA firms, rather than just individual IPs, and developing an effective, independent and accessible complaints process for consumers. These functions need to be put in place as soon as possible alongside an effective, independent complaints process. This needs to be put in place alongside other regulatory changes and enforcement, particularly to address outstanding issues around poor advice, lead generation and misleading adverts, including:

- ✓ **The FCA, with the Insolvency Service, should review the definition of "advice" within PERG 17:** We regularly 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 open to misinterpretation, allowing some firms to avoid any regulatory scrutiny.

- ✓ **The Government should give 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".**

- ✓ **The Insolvency Service should take swift and effective action against firms that mis-sell IVAs and the lead generation firms** that supply leads to those firms.

- ✓ **The Insolvency Service should** complement the FCA's intervention of debt packagers, by **changing the rules to ban IP firms from making payments for referrals in all cases.**

There are also changes that should be made to IVAs as a product / procedure in themselves to reduce the risk of harm to consumers and provide better protection when an IVA is no longer suitable for an individual. The Insolvency Service should:

- ✓ **Create a clear expectation / rule as part of regulation that more IVAs should be settled rather than failed, where a change in circumstance occurs.** It should be possible for an IVA to be classed as 'completed' if it fails after a certain point, due to a change of circumstances.

- ✓ **Make it easier for people to transfer to new debt solutions – such as a DRO – where an IVA fails**, and ensure people receive protection during this time. This should include strengthening and enforcing requirements on providers to give certificates of termination in a timely manner.

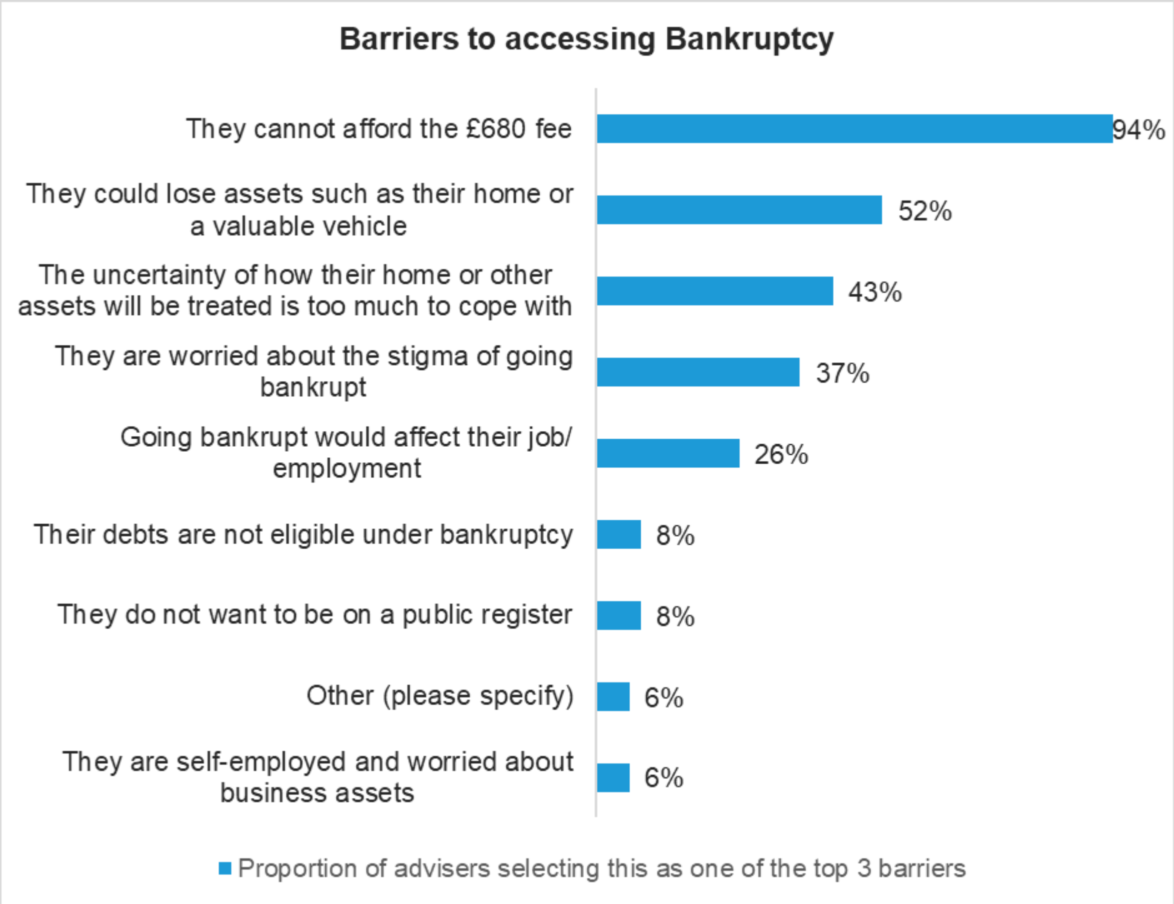
- ✓ **Review the fee structure for IVAs** to ensure it does not incentivise poor practice and to provide more protection against people's IVAs failing only to find they have paid off little of their actual debt.

- ✓ **Amend rules so that creditors cannot retrospectively add interest and charges** when an IVA fails.

- ✓ **Consider whether a new simple model of IVAs could be put in place**, which allows for that allows for very small initial payments with a realistic plan to increase the payments after a set period – an idea known as a 'low and grow' IVA. IP fees would need to be adjusted accordingly, and this simple model could be set up without a requirement for creditor voting in straightforward cases.

## Bankruptcy

There are a number of areas of personal bankruptcy where reform is urgently needed. This would improve access bankruptcy, and therefore outcomes, for people who do not qualify for other debt options such as a DRO.




### *Fees*

As set out earlier in this response (see question 12), the current fee level for bankruptcy acts as a significant barrier to access. 94% of advisers surveyed said the £680 fee was one of the top three barriers to people accessing bankruptcy – the most common barrier cited.

Many people have an impossible barrier to overcome to find the total fee and deposit of £680 to make themselves bankrupt. Although applicants can pay the fee in instalments, this is a very high amount to find when people are struggling with a reduced income and increased indebtedness due to Covid followed by the cost-of-living crisis. In addition, the full fee must be paid before someone can complete their application. Removal of the previous court fee element and the corresponding ability to apply to HMCTS for a fee exemption, has unfortunately not helped and the £680 fee is still a major barrier.  We have set this out in more detail in our response to question 12.

We are also seeing that sources of help that might traditionally have been available for advice agencies to seek support for clients struggling to afford the fee - such as trust funds - are under pressure, and many exclude help with bankruptcy fees. Access to help from trust funds is by its nature inconsistent and does not create a level playing field for applicants.

> *"Bankruptcy has always been hard to access for some people as the fee is simply too high without a grant."*
>
> *"Most clients I support with bankruptcy are serious about their financial situation and indicate that if they had such a sum available, would have already pledged it towards their debts. Not being able to meet the fee is the absolute number one reason clients disengage from our service."*
>
> *"For those who are ineligible for DROs most times the bankruptcy fees are simply unachievable and only few can access charitable funds for the fees."*
>
> *"Bankruptcy is harder for the majority of our clients to get the fees, and charity funds in this area seems to be getting harder to access so clients looking for bankruptcy tend to get stuck in the system."*
>
> **Quotes taken from responses to survey of debt advisers**

**<u>Recommendation:</u> Reform bankruptcy (and DRO) fees to ensure fees are never a barrier to access to insolvency.**

As set out in response to questions 11 and 12, we believe fees should be waived for people on qualifying benefits, and significantly reduced for everyone else – with the costs of insolvency met through general taxation/ public spending.

For those still required to pay some fee under such a system, the process could also be reformed to alleviate the requirement to pay the fees in advance.  Protections from bankruptcy and DROs could be put in place and some or all of the fees could be paid in instalments after approval.

***Advice before bankruptcy***

The Insolvency Service has made it easier for people to apply to go bankrupt by the introduction of a straightforward online bankruptcy application process. However, this application process has no requirement to seek debt advice before an application, and there is no adviser intermediary role equivalent to the DRO application.

This can lead to some people going bankrupt when they may have been eligible for another solution such as a DRO. Given bankruptcy can have serious implications for people too, and is costly to access, we think it is vital that people have opportunity to discuss with an FCA-regulated debt adviser that it is the best solution for them, and to have any questions on the solution answered before entering it.

**Recommendation: As with IVAs, introduce a compulsory FCA regulated advice stage before someone can enter bankruptcy.**

As we have set out elsewhere in this response, overall, we would like to see a compulsory advice gateway that leads into a common access point for insolvency solutions. Access to free, regulated debt advice should be embedded into the insolvency regime to create a level playing field for consumers before they access any insolvency solution. Consumers should have access to consistent, quality advice to help them select the most appropriate insolvency or non-insolvency option.

***Public register***

We would strongly suggest that the use of a public register and a published record in the Gazette for insolvency needs to be looked at again. This contributes to the sense of stigma to be publicly shamed on an open insolvency register, and can act as a barrier to people accessing bankruptcy.

Nearly two in five (37%) advisers surveyed said people being worried about the stigma of going bankrupt was one of the top three barriers to people accessing bankruptcy. One in ten (8%) of advisers said people not wanting to be on a public register was one of the top three barriers.

**Recommendation: The Insolvency Service should turn the insolvency register into a private register** to match breathing space and SDRPs, and publication should no longer be made in the Gazette.

We acknowledge that the lack of access to a public register might be problematic for small businesses trying to recover monies owed but would suggest there should be a way of a small business as creditor being able to view the register once they have proved their creditor status.

***Treatment of assets***

The current bankruptcy rules enhance consumer uncertainty about the likely outcomes after their bankruptcy, as decisions about what payments from income will be required and how assets will be treated are made post-application with a degree of Official Receiver (OR) discretion.

In our experience, and as reiterated by the findings of our adviser survey, this can create a barrier to people pursuing bankruptcy. Half (52%) of advisers surveyed said the prospect of losing assets such as their home or a valuable vehicle was one of the top three barriers to bankruptcy.

What's more, two in five (43%) said the uncertainty of how someone's home or other assets would be treated being too much for someone to cope with was a top three barrier – suggesting that, even where this might be protected, the uncertainty of this is simply too much for some people.

**Recommendation:** **The Insolvency Service should look at how to provide more certainty to people, before an application is made**. This would mean people would know in advance the likely treatment of their home, which could inform them as to whether bankruptcy is a suitable option for them.

**Setting higher fixed levels of exempt equity could also be considered**. We note that there have been previous amendments to the way in which the family home is treated, and that the rule is now for this to be dealt with within three years. However, the £5,000 threshold from which a bankrupt's interest in a family home can no longer re-vest in them is set too low, and the rules for establishing a beneficial interest are too complex. The uncertainty for people for three years as to whether they must sell their home lasts too long.

***Other recommended changes***

There are a number of other areas of bankruptcy we would recommend the Insolvency Service make changes to, to improve how the procedure works. This includes:

- ✓ **Increasing the debt limit for creditors issuing a statutory demand application for bankruptcy** – from the current amount of £5,000, in order to avoid creditors taking rapid bankruptcy action against people in dire circumstances. We note that the deposit amount for a creditor petition has been substantially increased from September 2022,[14] with the Insolvency Service stating. *"Fees have not changed since April 2016. Insolvency case numbers have fallen to a historically low level, and the majority of the remaining cases have insufficient asset values to recover the administration costs."* This suggests that the creditor petition system is not functioning well, due to the administration costs of a case. It also suggests that creditors are making people bankrupt possibly as a matter of principle without the likelihood of recovering the debt. Increasing the debt limit may help address some of these issues.

- ✓ **Reviewing and improving the flexibility of payments for people on Income Payment Orders,** introducing an easy mechanism to suspend or reduce people's payments for a set period on request.

[14] https://www.gov.uk/government/news/creditor-bankruptcy-and-liquidation-petition-deposits-to-rise

- ✓ **Amending the rules on IPAs**, which are inconsistent with the current DRO disposable income threshold of £75 a month. IPAs should not be put in place for less than the £75 limit and these thresholds should be increased in conjunction in future.

- ✓ Given rising rent and mortgage arrears due to the cost-of-living crisis, the **technical guidance for Official Receivers could be changed to give greater flexibility and allow people to prioritise paying back their mortgage or rent arrears** above payments to other creditors under their income payment arrangement.

- ✓ Government could also act to protect tenants and mortgage holders so that **mortgage lenders and landlords cannot repossess a bankrupt's main home whilst bankrupt for mortgage or rent arrears already included in the bankruptcy.**

- ✓ **Working with the Home Office to amend their guidance regarding "good character"** which can deter people with uncertain immigration status from going bankrupt, even when they are eligible. Potentially only more culpable behaviour in bankruptcy, resulting in a bankruptcy restrictions order, should affect immigration applications, if at all.

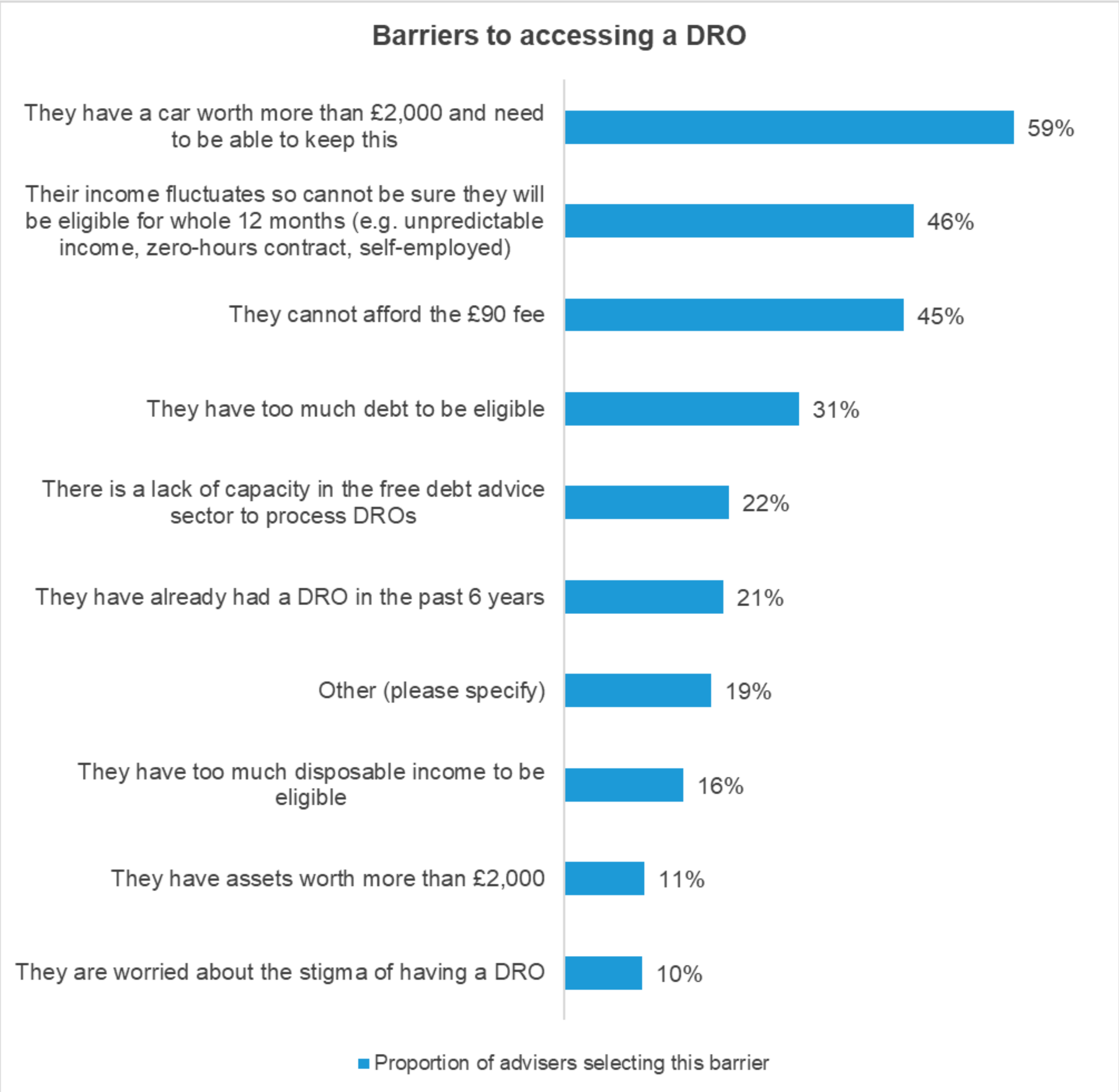
## Debt Relief Orders

We are extremely supportive of the DRO and were involved in its development as a policy concept and the Trust acts as a competent authority for DROs.

There are various areas where reform and improvement of the system could be extremely beneficial and drive better outcomes for clients, as well as improving access to DROs for those who need them.

**Barriers to access**

The graph below shows the results from our adviser survey on the barriers to accessing a DRO. Advisers were asked to select the top three most common barriers. The graph gives an insight into key issues, which we explore and make recommendations on, here.



*Fees*

In a similar vein to bankruptcy (and as explored in more detail in our response to question 12), the fee to enter a DRO can be a significant barrier – with almost half of advisers surveyed (45%) selecting this as one of the top three barriers to access.

The requirement to pay a fee of £90 is an insurmountable barrier for many of our clients, particularly if they are already living with a deficit budget. This means that they are unable to save up towards the fee using the instalment facility and therefore cannot benefit from the debt relief offered by a DRO.

**Recommendation:** As we have set out in response to question 12, **the DRO fee should be remitted for people on benefit-level incomes and substantially reduced for other applicants. It should also be possible to pay any fee after the DRO protections kick in.**

*Debt limits*

We warmly welcomed the Insolvency Service's decision to increase the debt limit for a DRO to £30,000. However, this limit is still a barrier to some applicants: even following the increase almost a third (31%) of advisers said the debt limit was one of the top three barriers to accessing a DRO. Through the adviser survey, we heard of advisers seeing clients with no (or very limited) surplus income and no assets who could not access a DRO, but could neither afford the fee for bankruptcy – meaning they were left in limbo because of the debt limit rule.

*"Clients who have no available income and are looking at a bankruptcy (who owe too much for a DRO) are unable to afford the bankruptcy fee and therefore left with no solution and no 'fresh start'."*

*"There are too many restrictive covenants for DROs, meaning bankruptcy may be only suitable option but the price of bankruptcy is also prohibitive."*

**Quotes taken from responses to survey of debt advisers**

Even where someone is able to scrape together the fee or apply for charitable assistance with this, bankruptcy applications in these instances are an ineffective us of the OR's time and resources.

**Recommendation:** **The DRO debt limit should be significantly increased so that people do not have to go bankrupt where they have little available income and minimal assets.**

***Vehicle value limits***

In a similar vein, we also see issues with the current limits on assets, particularly vehicles. People having a car worth more than £2,000 that they need to keep was the most common barrier to accessing DROs selected by advisers we surveyed (59% chose this as a top three barrier). This can also have a particular impact on self-employed people and small business owners who need reliable trading vehicles.

> *"With the value of used cars increasing significantly over the last few years, he £2,000 allowable limit should also be increased in line with this. We have had many clients start working with us towards a DRO, and when we have come to submit the value of their car has increased so [they] are no longer eligible for the DRO."*
>
> *"The ' car over £2000' [rule] is particularly pertinent to clients in rural areas where a reliable car is essential for work/life."*
>
> *"Many jobs are shift patterns, no public transport available to suit shift. [Clients] need reliable car which is going to be in excess of the limit allowed."*
>
> *"Clients often could be eligible for a DRO but the window is very limited, for example large family vehicles where 4+ children are unlikely to be valued under £2,000 in current market."*
>
> **Quotes taken from responses to survey of debt advisers**

**Recommendation:** **Given the significant rise in the cost of cars and the importance of a vehicle for accessing work, education and healthcare, we would like to see the asset level of £2,000 for a vehicle increased as a matter of urgency.**

The debt and vehicle limits point to a wider issue that there is no clear or frequent mechanism for updating the DRO eligibility criteria. Currently the criteria are updated relatively infrequently, following consultation. This creates a scenario where the criteria become increasingly out of line with consumers' circumstances.

**Recommendation:** We think it would be much more efficient to **create a framework that allows for more regular, smoother updates to the criteria.** The Insolvency Service should create a clear methodology to set these criteria and regular updates so that this is consistent and predictable.

***Fluctuating incomes***

There has been a significant growth in clients with insecure and fluctuating income from employment or self-employment, and from zero-hour contracts. This can result in uncertainty for clients who feel unable to go into a DRO in case their incomes change within the 12-month period. Indeed, almost half of advisers (46%) selected fluctuating incomes as one of the top three barriers to people being able to access a DRO, and this group was also highlighted when we asked about people unable to access any solution. (We have also set out our thinking further on the range of issues for self-employed people in our responses to questions 19, 20 and 21).

**Recommendation: Review the DRO eligibility criteria to make it more accessible to people with fluctuating incomes.** We believe one option would be to remove the potential for DROs to fail if there is a change in circumstances within the 12-month period in a similar way to the system in Ireland. As we say in our response to question 28 below, rather than the DRO being revoked, an increase in income or assets might require some contribution to be made instead. This sounds like an element of flexibility that would enhance the DRO, and prevent revocations, the resulting distress and uncertainty for the applicant, and the need for further debt advice and a different debt solution to be found.

***Moving from an IVA to a DRO***

If somebody's IVA has failed but it still shows on the Individual Insolvency Register, they will only be able to get a DRO if they provide documentary evidence to show that their IVA has ended. As we set out in the IVA section above, this process is time consuming and there are often significant delays in people getting an IVA termination certificate. This causes real client detriment when people cannot access a DRO immediately due to the DRO regulations.

**Recommendation**: In addition to changes on termination certificates outlined in the IVA section above, **the Insolvency Service should review current DRO rules and processes to enable a smooth transfer from an IVA which is no longer suitable for someone, into a DRO.**

As highlighted in the IVA section above, we also need to see reform of the rules that allow creditors to retrospectively add back interest and charges once an IVA has failed, as this practice can inflate existing debt balances to the extent that a DRO is no longer possible.

**Improving the way DROs work for people who can access them**

To ensure that DROs work well for people who can access them and that, wherever possible, they help provide a safe route out of debt for people, we would recommend the following changes.

- ✓ **Amend the rules so that debts can be added retrospectively if they were forgotten about, or not apparent at the time.** Without this, we see people left having to pay for other debts – particularly benefit overpayments - that did not come to light until after their DRO. This undermines the point of a DRO as a source of debt relief.

- ✓ **Amend the rules on receipt of lump sums during the 12-month moratorium.** This should ensure that, as far as possible, DROs are not revoked but more flexibility built in: for example, there could be a ceiling where a lump sum could be treated as exempt. In cases where there is a larger sum, such as a large inheritance, then potentially some of this could go into the DRO to pay creditors.

- ✓ We would also like to see a specific exemption for back-dated benefit lump sum payments, with no power to revoke the DRO in such circumstances, given that these payments are compensating for missed income and household spending for the individual.

- ✓ As we propose for bankruptcy, **DROs should only be included on a private, not public, register** – in line with breathing space and SDRPs.

- ✓ **Amend the rules so that people can access a DRO more frequently than once every six years** – ideally to once every 12 months, or another shorter time period. As set out earlier in this response, the nature of many people's finances, particularly the rise of deficit budgets, means unfortunately some people will need to access debt relief more often. Limiting DROs to one application every six years is a barrier for consumers who experience financial difficulties more frequently, and for people who have deficit budgets.

*"I believe it would be in the debtor's best interest if debts could be added to DROs during a limited period after the moratorium has begun."*

*"It would be helpful if a debt is missed off a DRO it could easily be included at a later date providing it was incurred prior to the DRO being submitted."*

*"In the current economic climate 6 years is probably too long to wait after a DRO to access it again. With the rate at which people can get into debt increasing, a shorter period would help those that get stuck without a realistic solution. The increase in debt that I am seeing is not consumer credit debt but priority debts of rent, council tax, gas/electricity."*

*"Given the cost-of-living crisis and the real-terms cuts in benefits/wages, more people are likely to return with debt issues before the 6-year limit. Difficult to help this category of people."*

**Quotes taken from responses to survey of debt advisers**

***Contingent debts***

Contingent debts, and in particular personal guarantees, cause an issue for DROs as the solution potentially leaves a business client with future liabilities that they are unsure they can meet if required to do so. If the purpose of a DRO is to allow a fresh start so that a client can become financially stable without the weight of their debt, then this issue can create a barrier to that aim.

We acknowledge that this is complicated area. Valuing a contingent debt creates issues, in particular with regard to future interest and penalties. Some clients may also not want to include a personal guarantee that they have been given and has not been called in. This may be for several reasons - for example, a client may be relatively confident that the debt will be paid in full and will not be called in, a client may be aware that this debt would take them over the DRO threshold and bar them from applying for a DRO or a client may fear that inclusion of the debt may cause the creditor to call the debt in and create ramifications for the borrower. As well as being a family member or friend, for business client's the borrower could be the client's limited company. Ramifications could affect whether their business can continue and in turn their income from it.

**Recommendation:** Individuals should be given the choice of whether to include a contingent debt, such as a personal guarantee, in a DRO.

***Funding and administration***

Currently access to DROs is also impacted by the ability of the advice sector to administer these. The number of DROs that are applied for will therefore vary according to capacity within the advice sector. A lack of appropriate funding means that it is not possible to measure demand for DROs in any meaningful way, as the demand is limited by how many eligible client applications can be processed by the advice sector. Insolvency Service DRO figures do not accurately reflect the demand there would be for a DRO if all other considerations were equal.

The free debt advice sector does not profit from offering a DRO, and processing a DRO costs the advice provider considerably more than the £10 compensation from fee payments.

To help address this, we would encourage the Insolvency Service to address this lack of funding, as well as reviewing the time involved for debt charities in setting up DROs and find ways of minimising the administrative burden on advisers. This includes the impact of protracted checks on income and expenditure, and delays in obtaining credit reports. For example, the requirement for a full financial statement to be completed when a client is receiving benefit income only could be removed. This would not only reduce the cost and burden on debt advice agencies but also help to increase client engagement.

## Question 17: How well do those in financial distress navigate the current regime and could this be improved? Please provide evidence to support your answer.

In our experience, vulnerable people in debt do not navigate the current debt options regime easily. There are many barriers. We have explored these in more depth elsewhere in our response, but to summarise, these include the following.

- ✓ It is not easy to move from one debt solution to another if circumstances change. There needs to be a seamless transfer process in place.
- ✓ There is no flexibility in the qualifying criteria for debt options. With IVAs and DROs in particular, once you do not meet rigid ongoing criteria, your protections end, and you have to start again navigating the system for a new debt option.
- ✓ The fee regime prevents people from accessing the debt relief they need in a timely fashion. They are simply unable to afford the fees to go bankrupt or enter a DRO.
- ✓ There is no requirement to seek free, impartial debt advice before entering into a debt solution such as bankruptcy or an IVA.
- ✓ There is no source of authoritative trusted information available to people that is easily accessible.
- ✓ There is a shortage of free debt advice for those who need it due to capacity and funding in the debt advice sector.
- ✓ Misleading advertising for debt solutions and misinformation on commercial websites mean that people cannot access impartial advice about their debt options.
- ✓ There are many people who cannot access a debt option at all due to their circumstances. These include people who are asset rich and cash poor, people on deficit budget, and those on fluctuating incomes.

We asked advisers in our recent adviser survey about this issue.

- ✓ **Only a third (35%) of advisers surveyed said client journeys to insolvency solutions are consistent and accessible.**
- ✓ **Less than 3 in 10 (27%) advisers surveyed think it is easy to transfer someone to another debt solution where their initial solution fails.**

We have set out our thoughts elsewhere in the paper about the problems that people have navigating the current regime. The ability to move from one debt solution to another seamlessly without crashing back to the start needs to be addressed. We need to seriously improve short-term protections and support consumers to transition to new debt options such as a DRO. We have highlighted, in particular, that where an IVA fails, there is a requirement to be issued a certificate of failure before a client can apply for a DRO. This can create unnecessary delays and barriers for people, leaving them without vital protections at a critical time.

We would also suggest that greater flexibility within debt options could work to ensure that people are not ejected from the protections provided because of a change in circumstances, fluctuating incomes, and so on. Instead, the debt solution should accommodate such changes, which are common for people to experience.

We have set out our ideas in relation to debt advice leading into a portal or gateway into debt options in our response to question 27. Such a portal might help to provide a common and consistent platform to ensure protection for people in debt and an easier system to navigate when seeking debt relief and moving between one debt solution to another.

## Question 18: Are the current personal insolvency procedures the right products to service the needs of both debtors and creditors today or are new procedure(s) needed to serve debtors and creditors better?

We have set out examples of the categories of people whose needs are not met by the current insolvency products in our answer to question 27 on the overall insolvency landscape. These include people who are asset rich and cash poor, people on deficit budgets, and those on fluctuating incomes.

It is difficult to rise above the complex landscape of personal insolvency procedures and to assess whether a new simplified landscape would be more suitable instead. It would appear from the limited evidence available that there are poor creditor returns in IVAs and bankruptcy, and of course none in DROs. Perhaps it is time to move away from the idea that insolvency should be about returns for creditors and instead to move towards rehabilitation for consumers and debt relief in general.

We are interested in the concept of a debt advice portal. We have set this proposal out in detail in our answer to question 27 below. A potential model for this would be via a single gateway into insolvency options where debt advice would be required before entry into a debt solution.

A simpler proposal would be to have one streamlined procedure following entry into the portal.  Instead of a set of different debt options all with their own complex regulations and application procedures, the portal could "hold" the client in breathing space whilst an assessment of household circumstances, income, outgoings and assets were carried out.  The result could be recommendation for immediate debt write off, a limited payment period and/or realisation of set assets. Assets such as the residential home could be protected, alongside vehicles and so on. We understand that there are proposals in the USA proposing a simplification of bankruptcy rules and procedures into one streamlined process.[15]

The advantages of this approach would include protections for the asset rich and cash poor as they would no longer lose their home or have to make payments they could not afford.

People on deficit budgets where their income is less than their essential outgoings, would receive protection under the portal and their debts would be written off.

The streamlined portal would also remove the constant problem of people being rejected from one scheme due to ineligibility or a change in circumstances and going back to square one and having to apply for another debt option. If circumstances change under the portal concept, the scheme would adjust to hold action, write of debts, or put someone on a payment plan where their income improves.  This approach could also be flexible for people on fluctuating incomes, the self-employed and seasonal workers.

This new approach would mean intractable problems to do with the operation of IVAs, and how each debt option behaves differently in relation to assets, payment requirements and eligibility would be solved.

We have set out the choices for the Insolvency Service for fundamentally restructuring the way in which insolvency options could work below, depending upon the appetite for reform.

[15] https://www.johnstonclem.com/news-insights/bankruptcy-reform-legislation/

**Insolvency regime restructuring options**

**Portal and new single track**
Debt advice requirement before entry into common portal leading to one new track dealing with assets, payments from income, debt write off. Existing debt options abolished.

OR

**Portal to existing insolvency options**
Debt advice requirement before entry into common portal leading to reformed existing debt options.

OR

**No portal but reformed options**
Debt advice requirement before entry into substantially reformed existing debt options with no common portal.

## Question 19: How well do the existing insolvency procedures work for sole traders and partnerships? Please provide any evidence you may have.

We would suggest that the existing insolvency procedures do not always work well for sole traders and partnerships.

We asked Business Debtline advisers to tell us about any particular issues or challenges that self-employed people face in accessing personal insolvency solutions/ debt options.

- ✓ Common themes included that many self-employed people have **highly fluctuating income** month from month, and that even though they may be on an overall low income, some months they will receive a much higher payment coming in.
- ✓ The **impact on the ability to trade** was also mentioned, for example the need to keep access to credit, to continue as a director or to keep important assets such as a vehicle needed for trade. These issues could be exacerbated by the **overlap between personal and business finances**, which can complicate the picture.

- ✓ The table below shows the different issues highlighted by advisers, and the proportion who mentioned each one (based on a free-text question which was then coded to identify common themes).

| **Challenge for self-employed people in accessing personal insolvency solutions** | **Proportion of respondents mentioning this challenge in their free-text response** |
|---|---|
| Fluctuating incomes | 45% |
| Overlap between personal and business finances | 20% |
| Impact on ability to trade (e.g. Inability to be a director while pursuing certain insolvency options, need for credit, risk of losing vehicle/tools needed for trade) | 20% |
| Access to debt advice | 13% |
| Other | 16% |

We would like to see the following factors that affect small businesses and sole traders taken into account in the review.

- ✓ There is a lack of certainty for sole traders on the likelihood of them not being able to continue to trade in bankruptcy. Our Business Debtline advisers report that they are limited to saying "you should be able to continue to trade" but need greater clarity on the type of circumstances which might mean this will not be allowed. As this decision is made by the official receiver once the bankruptcy order is made, this is at too late a stage. With no feedback from the Insolvency Service, we do not have any clarity as to whether different official receivers are taking a consistent approach. The client will need more reassurance upfront that they can continue to trade, and retain business assets required for work, and so on.

*"Clients often worry that their business will be impacted by bankruptcy and they won't be able to continue trading. When they have contacted the Insolvency Service directly to ask questions and explain about profit and business assets they're told "The OR will decide" - so the client won't find out whether they have a business until after they're made bankrupt. This makes clients reluctant to explore this option - even if it is the only logical solution, they want more of a guarantee."*

**Quote taken from responses to survey of debt advisers**

- ✓ For small businesses in particular, the asset limit of £2,000 for vehicles is problematic for both a DRO and for how the official receiver will treat a vehicle in bankruptcy. Currently second-hand vehicle prices are very high compared to a few years ago. Where a vehicle such as a van is required for a trading business, it can be a false economy to be limited to running an old and unreliable vehicle. In addition, where a vehicle is ULEZ compliant, and worth a higher amount, this vehicle might be taken in bankruptcy. However, a replacement ULEZ compliant vehicle would be difficult to obtain for around £2,000. This means that anyone living or trading in that zone would have to pay a daily charge which could make their business unviable.

*"[It is a challenge] for sole traders owning tools, equipment or vehicles essential for carrying out their business above the asset level."*

*"DROs can be problematic due to wide fluctuations in income when being self-employed. Certain tools may mean a client is over the asset threshold."*

**Quotes taken from responses to survey of debt advisers**

- ✓ There needs to be more flexibility within a DRO built in for the self-employed in particular. Trading fluctuations could mean that profits vary over the twelve-month moratorium period. It is difficult to be sure that the DRO will not be revoked where profits go over the £75 a month available income limit on a seasonal basis. An example of this would be an ice cream van business generating its profits in the summer only. Using a twelve-month average for trading income might be a better option.

*"The lack of flexibility with the £75 per month surplus criterion in DROs can pose an issue with the fluctuating income of self-employed people, e.g. seasonal work. A self-employed person could have no money spare most of the year, but a single good month could mean that they are no longer meeting the DRO criteria."*

**Quote taken from responses to survey of debt advisers**

- ✓ It is hard to maintain payments under an IVA with a fluctuating or seasonal income from self-employment. Although there is some flexibility on payments built into an IVA, it is a challenge to stay the course for an extended period of time.

- ✓ We are also concerned that small business IVAs may need specialist business-related insolvency advice which is not easily available through a bulk IVA supplier.

- ✓ The complexity of a business IVA can mean the fees and charges for the IVA are substantially higher than a consumer IVA. As we have said elsewhere, the fee structure under IVAs needs reform.

- ✓ We have stated throughout our response that we believe there should be a requirement to receive free, impartial debt advice before entering into bankruptcy. For small business clients this advice is even more vital. We come across cases where it has been too easy to declare bankruptcy without clients knowing the full ramifications, for example, not being aware of the impact on business assets such as stock , whether they can continue to trade, the various credit restrictions, and how an income payments order would be worked out.

- ✓ The consequences of bankruptcy can effectively put clients out of business, even if the official receiver says they can continue to trade, for example if your key supplier will no longer offer you a trade account.

- ✓ We deal with far fewer partnerships, but the impact on the partnership, which is likely to end in personal bankruptcy can be a major barrier.

- ✓ Small traders find it hard to quantify shares in any business or partnership as assets for a DRO or value business assets to assess whether they qualify for a DRO.

- ✓ Clients frequently provide a personal guarantee for debts from their limited company which are complicated to disentangle and to include in a DRO, without affecting the business.

- ✓ Contingent debts, and in particular personal guarantees, cause an issue for DROs as the solution potentially leaves a business client with future liabilities that they are unsure they can meet if required to do so. If the purpose of a DRO is to allow a fresh start so that a client can become financially stable without the weight of their debt, then this issue can create a barrier to that aim.

## Question 20: How could the personal insolvency framework be improved for sole traders and partnerships?

We have covered our proposals on how to improve the personal insolvency framework throughout in the paper. Many of the restructuring or individual insolvency option improvements we have suggested would benefit small businesses as well as consumers in insolvency. However, there should be a specific emphasis on reforms for sole traders and small business owners, as we have set out in question 19 above. The system should ensure that there is an option available for small business owners who wish to keep their business going (if viable) whilst being able to obtain debt relief via an insolvency procedure.

In particular, building in an advice requirement before bankruptcy or an IVA would enhance protections for the self-employed considering insolvency options as would reforming the bankruptcy fee provisions.

A specific improvement for small businesses would be reform of the requirement to let a creditor know that you are in a DRO or bankruptcy where you borrow £500 or more. This does not seem to be a realistic restriction nowadays. For trading needs (such as rolling trade credit) this can be a major issue This requirement should be either removed or the limit substantially increased, to allow viable businesses to continue.

There should also be systems in place to ensure that self-employed people and small business owners are recognised and supported as a particularly vulnerable group, recognising the often-fluctuating nature of their finances and income, for example, and the overlap many self-employed people experience between their personal and business finances.

In our experience, often small business owners do not have a sophisticated knowledge of business finance, how to set up a business properly or how the tax system works for the self-employed. This needs to be recognised within the way they are treated in the insolvency system. It should also be recognised that there is a lack of specific business skills education, and measures put in place to address this gap.

## Question 21: What evidence do you have of the number of IVAs/Partnership Voluntary Arrangements which relate to sole traders and partnerships?

It is likely that small businesses that wish to continue to trade may opt for an IVA, even if this is unsuitable for them due to the restrictions built into the IVA as a product. We are concerned that there is a view that small businesses have an extra set of business skills that makes them less vulnerable than consumers. The effects on clients of pressure from individual creditors is not necessarily helpful. We would suggest that most sole traders are just as desperate to stop creditor contact, relieve the pressure on their mental health and sign up to the first IVA product they spot on the internet, even if this is not suitable or appropriate. Clients that have not taken free, independent debt advice before entering into an IVA are less likely to understand the risks. It is certainly not made clear in the adverts promoting 'government-approved 85% debt write off'.

Many small business clients will have debts with government, and with HMRC in particular. Since HMRC is now a preferential creditor for certain debts, an IVA may not even be a possible for many small business clients. This is because other creditors could effectively veto an IVA proposal which sees them getting very little return and/or having to wait for HMRC debts to be paid first. In general terms, the creditor voting system for an IVA means there is never certainty for clients on whether an IVA is a viable solution for them.

*"HMRC being a preferential creditor in IVAs may now mean they are less suitable due to the amount clients may owe HMRC being paid in full and also if other creditors refuse due to their share being smaller."*

**Quote taken from responses to survey of debt advisers**

We have extensive experience of giving advice to sole traders and partnerships on their debt options through Business Debtline and can refer clients for an IVA if this is in their best interests. However, in our experience, it is rare that an IVA is deemed a good solution for a small business client. Many of our clients will have either large deficit budgets and therefore are unsuitable for an IVA, or they have equity in their homes, or both.

We have concerns that the fluctuations in trading income that many small businesses experience, will make it hard to maintain set payments for the full IVA period. Even where there is surplus income, self-employed clients don't have the stability in income that employed clients do. Not knowing how flexible insolvency practitioners and creditors will be when circumstances change makes IVAs less appealing for clients whose income fluctuates. It makes IVAs a gamble and a high risk. Clients have to hope that trade provides them with enough income to see out the whole term, otherwise they risk the IVA failing with little or no dent in original debt levels.

The restrictions on taking out further credit may affect the ability to gain trade credit or keep a business bank account.

We do not have evidence that we can share regarding the typical outcome of a business IVA, as this relationship is with the IP rather than our service as the original advice provider. We would suggest that the Insolvency Service could commission further research into this area with specialist small business IVA providers.

## Question 22: What are the main factors which influence an individual's decision to enter a particular procedure?

We would suggest that there are various factors that influence an individual's decision to enter a particular debt solution. From our experience talking to clients at National Debtline and Business Debtline, they will seek advice when they have reached a breaking point in their finances and can no longer keep on borrowing or juggling payments. They are frequently in a vulnerable position where their debts are affecting their mental health to the point where they cannot cope with their debts anymore.

In our view, this vulnerability and the resulting stress of trying to find a solution can lead people to make poor decisions. They may be more likely to seize on the first option that they see on an internet search engine. People in a stressful situation will not be well placed to shop around and weigh up their options carefully, but to grab any lifeline they are presented with. They may not have the time needed to weigh up options or have the "bandwidth" in busy stressful lives to do so. This makes the false advertising and misrepresentative websites found on search engines and social media all the more egregious. Advertising that persuades people to take out an inappropriate debt solution, typically an IVA seems to be aimed very much at solving problems fast and offering simple solutions to complex problems. "Take a 30 second debt test" and "write off 80% of your debts" combined with misinformation about the different debt options, can lead people down a particular path.

This misleading information can help build up and confirm misconceptions that people already hold about insolvency solutions and feed the stigma people feel about bankruptcy and insolvency options more generally. Firms using these misconceptions help to steer people into a particular solution, typically a mis sold IVA.

**Clients choosing an IVA based on claims made in advertisements was the second most common reason advisers we surveyed saw for why people had ended up in an unsuitable or failed IVA, with 68% of advisers saying they saw this often or very often.**

*"IVAs are advertised as the perfect solution to anybody with debt. Most clients don't believe in a DRO because they have never heard of it, but most have heard of IVAs."*

**Quote taken from responses to survey of debt advisers**

We have explored the stigma relating to bankruptcy throughout this response. People may have a view that is based on historical myths rather than reality. They may quite reasonably be worried about appearing on a public insolvency register. They may fear the impact of insolvency on their credit reference file and be told mis information about how the various different debt options affect their credit rating.

The key point is that when people get proper, independent and impartial debt advice, debt advisers talk through their options and help people to come to a clear view on what the best option is for their situation, helping them to overcome the stigma associated with debt and insolvency options, by provision of clear and accurate information.

This is why it is so problematic when people do not receive good debt advice, and they end up in an unsuitable IVA, or choosing bankruptcy instead of a DRO. Good debt advice ensures people choose the best debt option for their circumstances and does not lead them towards the most profitable option for the supplier. Until this conflict of interest for commercial firms is overcome, we cannot see the situation improving.

We asked advisers to tell us about the reasons they saw for people ending up on failed or unsuitable IVAs. The results reveal a range of poor practice which led to people choosing an IVA, when this wasn't suitable for their circumstances.

- **7 in 10 (72%) of advisers surveyed said they often saw people ending up in unsuitable IVAs as a result of them not being given advice about alternative debt options.**
- **68% said they often saw people in this situation because they had chosen an IVA based on claims made in advertisements.**
- **42% said they often saw people ending up in an unsuitable IVA as a result of them rejecting alternative debt options based on misleading advice about their consequences or eligibility.**

We also asked advisers what solution the clients they see with a failed or unsuitable IVA should be on instead. Overwhelmingly, advisers said a DRO, with 72% saying this was most commonly the option people should have been on instead.

We would also suggest that the level of fees for each insolvency option will be a factor in decision making. As we have said, we see clients who cannot afford the bankruptcy fee, and clients in deficit budgets who cannot even afford the DRO fee. This skews their choices away from what might have been the most appropriate option. Making small payments into an IVA may be preferrable for some people as there is no upfront fee to be paid. People are typically unaware of the full costs of the IVA until the IVA fails and they see how much has gone in fees and costs and not to their creditors.

We are aware that the Insolvency Service has found that some people have chosen bankruptcy when they could have been eligible for a DRO. This may be down to various factors to do with the uncertainty of whether they will quality for a DRO for the full 12 months. However, we would suggest this is also due to there being no requirement to seek independent debt advice before going bankrupt.

A final factor for consideration is the lack of resources and capacity in the free debt advice sector. This needs to be explored as a reason people do not receive advice before making decisions on debt options such as bankruptcy and IVAs. Any reforms to debt options need to be matched by an increase in resources within the sector.

## Question 23: How could an individual's decision to enter a particular procedure could be better informed?

As we have suggested throughout our response to this paper, we believe that there should be a requirement to seek free, impartial debt advice from an FCA authorised debt advice provider before an individual is recommended to enter into either an IVA or bankruptcy.  This is already a requirement for breathing space, a DRO and for the forthcoming SDRPs.  This approach would ensure that an individual's decision to enter a particular procedure would be based on holistic and impartial debt advice.

This requirement should lessen the influence of misleading advertisements and lead generation firms as an IVA could not be put in place without independent debt advice.  It would not be adequate for the IP firm to provide this advice, given the conflict of interest that arises from a direct financial benefit in an IVA as the outcome.

The role of promotion and marketing in steering consumers towards particular remedies should not be underestimated.  We commend the work of CAP and the ASA in relation to misleading adverts, but more should be done by search engines to adopt a comprehensive code to disqualify certain types of debt advertising and this should extend across social media platforms. We would recommend a ban on IPs making payments for leads to lead generation firms.  This should accompany a ban on lead generation firms or authorised FCA debt advice providers making payments for leads.

As providers of quality information resources on debt for people to use on a self-help basis for 30 years,[16] we do not underestimate the benefits of clear simple plain English information in combating misconceptions and myths.  We would urge the Insolvency Service to look again at the information provided via the government website on debt options, and revise the bankruptcy online information in particular to strengthen messages on seeking debt advice.  The Insolvency Service guide on debt options needs reviewing and modernising but is often linked to by IP websites as a source of information.

## Question 24: What evidence do you have of the impact that a public register has on an individual's decision to choose a particular insolvency route?

We do not have access to direct evidence of the impact that a public register has on an individual's decision to choose a particular insolvency route.  However, the Financial Wellness Group conducted research in 2021[17] that indicated that one in six of their customers would not take up an insolvency solution because of their concerns about the public insolvency register.

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[16] https://www.nationaldebtline.org/fact-sheet-library/ways-clear-your-debt-ew/
[17] https://www.financialwellnessgroup.co.uk/blog/insolvency-solution-public-register/

Among advisers we surveyed, almost one in ten (8%) said people not wanting to be on a public register was one of the top three barriers to people accessing insolvency. More generally, two in five (37%) named worries about the stigma of bankruptcy as a top three barrier; 10% selected people worrying about the stigma of a DRO as a top three barrier to people accessing these.

We believe that the decision to make the breathing space and proposed SDRP registers private, to be the correct outcome and this policy decision has been taken from an enlightened position to avoid further blame and stigma attaching to these debt options.

We would see any measures to reduce the potential stigma on entering insolvency options would be beneficial in encouraging people to seek debt advice early and without shame.  We recognise the progress that has been made in ceasing to publish bankruptcies in the local press, but this is still published in the London Gazette and open to public inspection.  We suspect that many people still believe that they will appear in the local paper, and this contributes to the ongoing myths of bankruptcy.

As a consequence, we believe the Insolvency Service should move towards private registers for individual insolvencies, DROs and IVAs.

## Question 25: What impact does professional debt advice have on debtors when choosing a personal insolvency solution? Please provide evidence to support your answer.

Free, impartial and independent debt advice is really important in helping people choose the right debt solution for them and to avoid solutions that would not be in their best interests.  Holistic debt advice begins with a full exploration of the individual's circumstances, this will include finding out about income sources, all their priority and non-priority debts, and identifying any emergencies.  The next stage encompasses helping people with budgeting advice and the drawing up of a budget of financial statement and giving advice on income maximisation.

Only when this background exploration and advice has been completed will the adviser in the free to client sector have sufficient insight to offer accurate and safe advice about dealing with identified emergencies such as court action, housing arrears, or bailiff threats and on available debt solutions including those that involve insolvency. Given the seriousness of insolvency solutions, it is crucial that the stage prior to the identification of an insolvency solution is carried out professionally and impartially.

When the impartial free to client sector advises around debt solutions, they will also ensure that the consumer understands the potential negative consequences of each available solution. Due to the serious nature of insolvency, this can be particularly important.  For example, the possible loss of assets, including the home, the types of job or profession that can be impacted, the limitations on the ability to take out credit and so on. When preparing the client to identify their debt solution of choice, the free to client adviser will set out the pros and cons of all available debt solutions. This can be particularly important when the individual has already been on the receiving end of a "hard sell" by commercial firms who have only one profitable outcome in mind; and given the difficulties people can have in accessing reliable, accurate debt advice if they are navigating social media advertising and the range of misleading advertisements that we have documented elsewhere.

Advice agencies in the free to client sector have a regime of controls and assurance to support the delivery of high-quality regulated debt advice and good customer outcomes.

These include:

- ✓ accredited training for advisers;
- ✓ a regime of technical supervision;
- ✓ rigorous quality monitoring for consumer interactions; and
- ✓ utilisation of an array of tools to assess outcomes for consumers including customer insight and complaints data, MI, analysis of quality monitoring, auditing of customer journeys, focus groups.

As we set out in question 16, with regards to IVAs, it can be of enormous detriment to some of the most vulnerable consumers when so called "advice" providers who are not authorised to give full debt advice (and who do not have a rigorous, externally-verified quality monitoring regime as part of their service) provide inaccurate or misleading information to consumers.

We have set out some of the outcomes of our debt advice services below.

**Impact of receiving FCA-regulated debt advice (National Debtline and Business Debtline services)**

At the Money Advice Trust, we have been helping people in financial difficulty for over 30 years. We do this through our two helplines National Debtline and Business Debtline and our webchat services. Our advice model involves an 'assisted self-help' approach, using our expertise, to help people to help themselves and building financial resilience in the process.

Our National Debtline outcomes report for 2021[18] shows some of the positive impacts of debt advice.

- 95% of callers followed all or some of our advice.
- 3 in 4 are now more likely to open their post.
- 4 in 5 callers saw their debts reduce or stabilise.
- 7 in 10 saw a positive impact on their emotional and mental wellbeing.

Business Debtline clients reported the following.

- 98% of callers followed all or some of our advice.
- 86% if callers made contact with their creditors.
- 9 in 10 callers saw their business debts reduce or stabilise.
- 4 in 5 callers felt better at business budgeting.

**National Debtline 2022 Client survey**

| | **Proportion of National Debtline clients surveyed agreeing with the statement** |
|---|---|
| I am more knowledgeable about financial matters | 75% |
| I now feel more in control of my financial situation | 67% |
| I feel less likely to find myself in a similar situation again | 66% |
| I feel that I am managing my money more confidently now | 64% |
| I think it is more likely I will repay my debt | 57% |
| **Base: 230 National Debtline clients** | |

[18] https://moneyadvicetrust.org/media/documents/Outcomes_Report_2021.pdf

**National Debtline client quotes – Impact of advice**

*"I am so grateful for your service. When I reached out to you, I was in such a dark space I could not think and see clearly - I have experienced panic attacks, severe anxiety and depression – powerlessness. I did not know where to start. I felt so ashamed because I have never been in this position, and I would never have thought I would ever be in this position."*

*"You genuinely helped me out of such an overwhelming hole. My mental health and just life in general has improved from all of your help. Baby steps at the moment but I can finally see the light again."*

*"The adviser helped me massively and now I am becoming debt free slowly. I highly recommend anyone who is in debt to get advice from yourselves. I can now sleep at night and manage to live on a better budget."*

*"When I first called, I had no idea what I was going to do and worried about my finances and now I have no problems at all because I was advised a DRO would be best suited to me and they were right I am now on top of my finances and no debt."*

*"I am so grateful for breathing space, you gave me the confidence and time to sort out my arrears and have prevented me and my disabled son from becoming homeless."*

**Quotes taken from National Debtline client survey, 2022**

## Inconsistencies in advice requirements across solutions

Currently, there are inconsistent requirements in terms of accessing advice to find an appropriate debt solution.

- ✓ A DRO is accessed via an Insolvency Service approved intermediary (usually from the free debt advice sector).
- ✓ Breathing space and the forthcoming SDRP must be applied for via an FCA authorised debt advice provider.
- ✓ Unlike the insolvency scheme in Scotland, there is no requirement to seek advice before making yourself bankrupt.
- ✓ An IVA proposal is made via an IP but there is no independent advice requirement before an IVA proposal is made.

This variation in advice requirements before applications for different debt solutions across the wider debt landscape reflect a lack of consumer protection for people making very important and complex choices about their debts. There is no duty on commercial firms to put people into the most appropriate solution, or to ensure they receive impartial and independent advice, and the financial incentives on some commercial firms and IPs lead to poor outcomes for clients. If it is financially advantageous for firms to ensure their clients qualify for an IVA, even where this is not the best solution, then firms are not operating in the best interests of their clients.

We would question whether there are sufficient protections in place, particularly in the commercial sector to ensure holistic advice is given, and that the quality of advice and the independence of that advice are currently adequate in ensuring the right outcomes for clients.

To address the issues set out here, we would like to see:

- ✓ **Reform of IVA firm regulation implemented as a matter of urgency** (see our answer to question 16)**.**
- ✓ **The introduction of a single gateway with free, independent, FCA-authorised debt advice as a requirement before entering into any insolvency solution** (see our answer to question 27).

## Question 26: Please explain any other barriers to entry to personal insolvency which are not included in this call for evidence, highlighting any particular groups that are affected.

The paper sets out a number of barriers to entry to personal insolvency and sets out some of the groups that are affected. These include the following groups.

- ✓ People who are asset rich and cash poor, for example who own a home with equity but are on pension or benefit-level income. They are inevitably excluded from an IVA as they have no available income and cannot get a DRO as they are automatically excluded due to being homeowners. The risks of going bankrupt and their home being sold by the official receiver are too high to consider, and they in any case cannot afford the bankruptcy fee. We have considered this question, particularly in the Money Advice Service discussion paper on Debt Solutions in the UK.[19] This discussed the potential for equity release to assist people who are asset rich and cash poor.

[19] https://www.maps.org.uk/wp-content/uploads/2021/03/mas-debt-solutions-report.pdf

We think it is worth looking at the potential for debts to be frozen and no further action taken in exchange for an equitable charge on property to be redeemed on sale or death. This is still a potential option to be explored. In the alternative, if the family home was to become exempt in insolvency, or the asset level greatly increased, this could mean more people in this category could obtain debt relief.

*"Definitely people with a house but low income. Even if they don't have equity they often worry about the impact of bankruptcy; they are ineligible for a DRO and don't have the available income for an IVA."*

*"Our older clients, who have assets such as a house but have found themselves in financial difficulty in their retirement struggle to access a proper debt solution. They do not necessarily have the income to enter debt management plans, and don't have a lot of options for increasing their income. They also want to access the equity they have in their assets, but routes such as equity release can be really difficult to access thoroughly, and any clients with mobility issues may struggle to sell their homes and move due to the way their current homes have been adapted to meet their needs."*

*"Clients with equity but very low income, particularly where the equity would not be enough to move/downsize - these clients are trapped in a position whereby they can make minimal offers or risk losing their home and then needing to rent (often at a higher monthly cost than their mortgage)."*

**Debt adviser responses to question on groups unable to access any insolvency option**

- ✓ There are limits on entering debt options again within certain time periods. For example, someone may not be eligible for a DRO if they have had a DRO approved in the last six years. If somebody's IVA has failed but it still shows on the Individual Insolvency Register, they will only be able to get a DRO if they provide documentary evidence to show that their IVA has ended. This process is time consuming and causes real client detriment when people cannot access a DRO immediately. A smooth transfer should be possible. This process is in need of immediate reform.

- ✓ You cannot enter into standard breathing space if you have had breathing space in the last 12 months. It is envisaged that unlike the Scottish DAS, people will be unable to access an SDRP again in most circumstances within 12 months of an SDRP. We think there is definite scope for reform in this area, particularly to make it possible to take out another DRO in a shorter timescale. Ideally this would be a consistent approach across debt options, e.g. immediate access or a 12 month limit before someone can reapply.

- ✓ People who are in negative or deficit budgets where their outgoings exceed their income. We see that the problem of clients seeking debt advice with deficit budgets is growing and that traditional debt advice processes have limited answers at present.  Our research shows 45% of National Debtline clients have deficit budgets, an increase of 8% compared to last year.[20]  We remain extremely concerned that the relief from financial pressures that is afforded by entering into a DRO or bankruptcy will be very temporary when someone is in a deficit budget. New arrears on bills will inevitably arise within months unless circumstances change, and there is no further debt relief to be obtained in the short to medium term.

*"[Clients with] deficit budgets - we can assist with DROs and the like but this won't provide the fresh start they need as they will be back in debt again within a month. Clients in this position are increasingly common."*

**Quote taken from responses to survey of debt advisers**

In addition, we would point out there is a huge growth in clients with insecure and fluctuating income from employment or self-employment and from zero-hour contracts. This can result in uncertainty for clients who feel unable to go into a DRO in case their incomes change within the 12-month period.  It will be very hard to commit to monthly payments for consistent amounts under an IVA or in an IPA/IPO in bankruptcy.

We believe one option would be to remove the potential for DROs to fail if there is a change in circumstances within the 12-month period in a similar way to the system in Ireland. As we say in our response to question 28 below, rather than the DRO being revoked, an increase in income or assets might require some contribution to be made instead.  This sounds like an element of flexibility that would enhance the DRO, and prevent revocations, the resulting distress and uncertainty for the applicant, and the need for further debt advice and a different debt solution to be found.

For IVAs, SDRPs and bankruptcy payments, greater flexibility may need to be built into accommodate fluctuating incomes to ensure that these options do not fail as a result.

*"Another reason [why some people cannot access any solution] is they can't guarantee that their circumstances won't change during moratorium period – i.e. [they are] not working at time of seeking help but may get employment during DRO period, with threat of having over £75 per month available income."*

[20] 2022 National Debtline client survey

*"People with fluctuating incomes, especially those who are self-employed, as there is a good chance that a DRO will be revoked if their earnings increase, or a risk that they will have to make an unaffordable IPA if their income reduces."*

**Debt adviser responses to question on groups unable to access any insolvency option**

As part of the adviser survey, we asked advisers to tell us about particular groups of people who struggle to access any debt solution. The table below shows the different groups mentioned, and the proportion of respondents who mentioned each group.

| Description | Proportion of respondents mentioning this group in their free-text response |
|---|---|
| People with a deficit budget | 33% |
| People who are asset-rich but cash-poor | 24% |
| People unable to afford fees | 16% |
| Homeowners | 15% |
| Other | 15% |
| People experiencing mental health problems | 15% |
| People with vehicles they need to keep (and which are above limit) | 6% |
| Self-employed people | 4% |
| People with fluctuating incomes | 4% |
| People with uncertain immigration status | 3% |
| People on low incomes / benefits | 3% |
| Directors of limited company | 1% |
| Low income but high amount of debt | 1% |

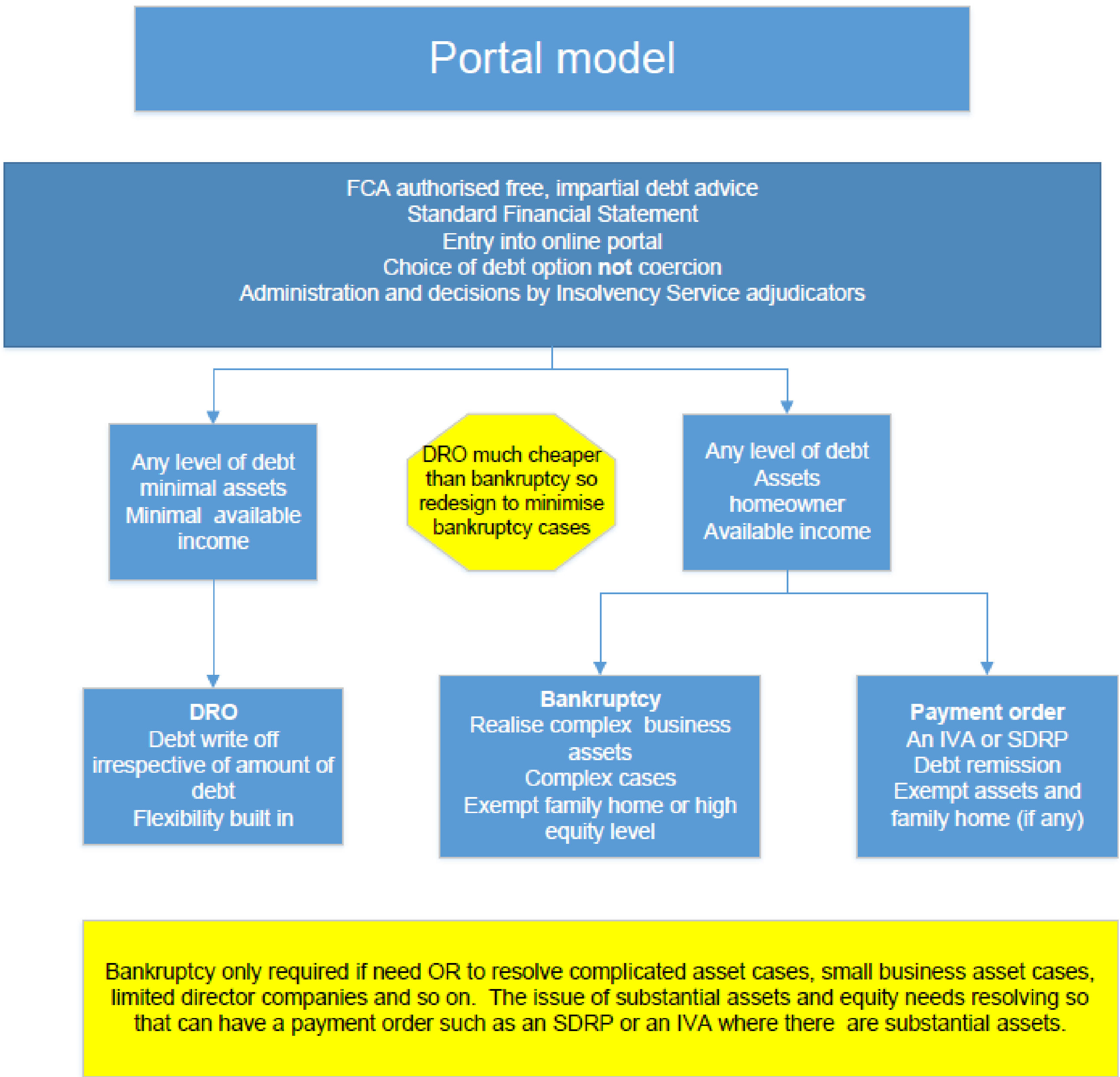
## Question 27: How could the personal insolvency framework be improved, for example, to make access easier or movement between procedures easier? Please provide evidence to support your answer.

We have set out some ideas on how the personal insolvency framework could be improved below.  These range from relatively straightforward ideas to a more fundamental reimagining of the personal insolvency framework.  We have set out a concept of a simplified debt options landscape in our response to question 18.

## Overall personal insolvency framework

We think the overarching framework needs to be redesigned to work better for people in debt.  The debt solutions as they stand do not work well together and have inconsistent rules and consequences, which can lead to people being unable to access the right solution or lead to harm and undermine the ability of insolvency solutions to offer safe routes out of debt.

We have set out how we envisage a single gateway with free, independent debt advice as a requirement before entering into a debt solution would work below.



- ✓ **We would like to see the DRO reformed to become the normal debt option for anyone with minimal assets and minimal available income as a DRO is much simpler and cheaper than full bankruptcy.** This would involve removing, or substantially increasing the level of debt that can be included as well as reforms to the DRO process that we have outlined in answers above (for example, see question 16). This would include being able to apply for a DRO every twelve months, allowing overlooked and contingent debts to be added and moving to the default position that once a DRO is in place, this would remain even if circumstances change, to deal with fluctuating incomes.

- ✓ **Bankruptcy would be reserved for those with substantial assets, homeowners with substantial equity, and people with complex business assets**. Those with available income could pay under an IPA as is currently the case.

- ✓ **Homeowners with equity should have certainty in how they will be treated under bankruptcy.** There must be a trade-off between the social consequences of losing a home under bankruptcy whilst preserving creditor protections. We would argue for a substantial increase in the amount of equity protected under bankruptcy to provide certainty for people who are contemplating bankruptcy. It should be possible to calculate what would happen to your home before a decision is taken to go bankrupt.

- ✓ **We believe that the Insolvency Service should also consider an equitable charge as the default position rather than a requirement to sell the home.** This could work if interest and charges were frozen, and the amount of debt crystallized at the point the charge was made. This could stay in place until the house was sold voluntarily or on death. This would again need to be considered for the trade-off between the social consequences of losing a home under bankruptcy whilst preserving creditor protections.

- ✓ **For those with substantial assets or a property with equity, an IVA or SDRP should be an alternative**. However, the IVA needs substantial reform in a number of ways, that we have set out in question 16 and elsewhere. In addition, an SDRP could be a viable alternative if remission was built into the solution. A more fundamental change would be to consider a similar idea to a reformed DRO. Once in the IVA or SDRP it should not be possible for the solution to fail where someone cannot pay, unless they can seamlessly transfer to another debt option that is more suitable. The time period for the scheme is set at the outset, and not extended when someone is unable to pay for particular reasons within that timescale. The IVA or SDRP ends at the original time proposed, and the debts outstanding written off.

- ✓ **The equitable charge could also be the solution for the asset rich and cash poor, for example who own a home with equity but are on pension or benefit-level income.** They are inevitably excluded from an IVA as they have no available income and cannot get a DRO as they are automatically excluded due to being homeowners. The risks of going bankrupt and their home being sold by the official receiver are too high to consider, and they in any case cannot afford the bankruptcy fee. We think it is worth looking at the potential for debts to be frozen and no further action taken in exchange for an equitable charge on property to be redeemed on sale or death.

## Single gateway or portal

**We would like to see access to free, FCA authorised, independent debt advice embedded into the insolvency solutions as a prerequisite.** This would ensure consumers have access to consistent, quality debt advice to help them select the most appropriate insolvency or non-insolvency option.

We believe that this should be built into the advice process and become a requirement for both IVAs and bankruptcy (both creditor and individual petitions) as it is for a DRO. **A potential model for this would be via a single gateway into insolvency options where debt advice would be required before entry into a debt solution.** This could include entry into breathing space or an equivalent, and the creation of an SFS in the portal that would help to demonstrate what debt option would be suitable for that client. The actual debt solution would be administered by an Insolvency Service adjudicator as with DROs or bankruptcy.

This model could help to promote awareness of debt advice and facilitate access into debt options. This would provide for consistency of approach via a single accurate SFS. Such a portal would enable referrals between agencies/providers and facilitate entry into a debt solution. Crucially this could include the movement from one solution to another which would generally lower administration costs and potentially lower both fees and administration costs.

Crucially any such model would require clients to make the ultimate decision as to what route they wish to go down. We are very much against any model what would calculate the optimal debt solution via the portal and coerce clients to go into that solution, or to be forced to move between debt solutions once in the portal. Debt advisers work with clients to help them make informed choices and would be extremely unlikely to consent to be part of any system that included an element of coercion.

We would very much value the development of the common online portal to hold SFS budget information centrally. This could have a transformative effect to avoid repeated requests for budget information by different creditors or for different debt solutions. It would allow easy updating when there is a change in circumstances. It would mean that one budget for that household could be used for the different debt solutions, and this would not need to be replicated. It would increase the efficiency and smooth running of the process.

We are concerned that the Insolvency Service is carrying on developing a separate online solution for every new type of debt solution. These need to be properly integrated. Whatever portal solution was to be envisaged, it would be crucial to build in a common platform so that the breathing space online application portal, the bankruptcy portal and the DRO application portal would all work together as one entity. This could also incorporate the SDRP online application portal and include IVAs that have no similar common application system.

## Portability between options

**Less than three in ten (27%) advisers surveyed said it was easy for someone to transfer to another debt solution where their initial solution fails.**

A common access point through a portal could be used as a mechanism to solve problems such as the lack of portability between debt options. This could potentially also solve the problem with failed IVAs. Our understanding is that this is a particular problem where someone wants a DRO instead. It is a condition that an applicant should not be subject to an IVA on the date the OR decides whether to approve the DRO.[21]

However, it is not clear what evidence is required to be supplied as proof that the IVA has failed. As we set out in question 16, the advice sector sees cases where clients are waiting for a certificate of termination from their IP before they can go into a DRO. There are sometimes lengthy delays where IPs appear not to be acting in accordance with the 28-day rule[22] and are delaying issuing the certificate and preventing people applying for a DRO. This process should be made as seamless as possible, and someone should be able to transfer into a DRO without waiting for a termination certificate.

In contrast, having an existing IVA does not appear to prevent a bankruptcy order being made after an application from the client, but we might not be aware of how this works in practice. It appears that an adjudicator must make the bankruptcy order if the conditions in 263K(1) Insolvency Act are met – none of the conditions relate to the client being in an IVA.

[21] Paragraph 2(b) of Schedule 4ZA to Insolvency Act 1986).

[22] When an IVA has been terminated or completed, the supervisor must send a notice to the client and creditors within 28 days (8.31 of Insolvency Rules 2016).

It is also worth considering the difficulties that will ensue for anyone who has gone bankrupt when they would have been better off in an alternative debt solution. Hopefully this would reduce if it was made a requirement to receive debt advice before going bankrupt. However, it this is not the case, then once bankrupt the OR does not have the power to transfer the individual into a DRO or an IVA or SDRP instead. The costs and legal difficulty in applying for an annulment instead, are prohibitive. It should therefore also be possible to move from bankruptcy to other options when appropriate.

Transfer might also be helpful on the rare occasions someone should be in bankruptcy rather than a DRO, although this is less likely, particularly if the Insolvency Service was to adopt the proposal to keep people in their DRO rather than revoke it where there are fluctuating incomes or an unexpected windfall during the 12-month moratorium.

A facility to retain sums paid into a failed IVA, or other debt solution, could form part of the portal. This could potentially allow such sums to be sued to fund an alternative debt solution such as bankruptcy or a DRO.

## Chapters 5.1 – 5.3 – The international perspective

### Question 28: Which elements of other national regimes could improve the personal insolvency framework in England and Wales?

We are unable to comment on whether other insolvency regimes could improve the personal insolvency framework in England and Wales more broadly as we are not familiar with other regimes apart from Scotland. We would suggest that this should form a distinct research area for the Insolvency Service to commission.

From the examples quoted in the paper, we would not support the approach taken by Australia in calculating surplus income. We think a flat rate of contribution over a net income level is too blunt an instrument and does not take into account variable household expenses and the size of household. Large rent or mortgage payments would completely undermine this approach and allow some people to live relatively comfortably whilst other families would experience very hard times. This is why the sector has adopted a flexible budget in the Standard Financial Statement where available income is based upon that individual household's expenses.

The example given relating to how the DRO equivalent works in Ireland may have more merit for consideration. We are keen on the idea that someone could stay in a DRO or other insolvency option, even where they no longer meet the eligibility criteria. Rather than the DRO being revoked, an increase in income or assets might require some contribution to be made instead.

This sounds like an element of flexibility that would enhance the DRO, and prevent revocations, the resulting distress and uncertainty for the applicant, and the need for further debt advice and a different debt solution to be found.

There are lessons that can be learnt from Scotland where a creditor could only issue a bankruptcy petition if someone owes over £10,000 during the coronavirus pandemic, (up from £3,000). We understand this has now been reduced to a £5,000 level which matches the limit in England and Wales. The minimal assets process (MAP) rules allow people to be discharged after six months where they have minimal assets, and their debts are no more than £25,000.

The Scottish Government has already acted to increase the amount of debt an individual can have and still be eligible for a Minimal Assets Process bankruptcy from £17,000 to £25,000 – meaning more people will be able to use this route to deal with their debts, rather than having to go for full bankruptcy.

Crucially the bankruptcy fees in Scotland are entirely more reasonable and where a fee is payable this can still be paid in instalments.

- ✓ If you go bankrupt under the MAP bankruptcy rules, you do not have to pay a fee if you receive certain benefits, and the fee is £50 for anyone else.

- ✓ If you go bankrupt under the full administration process, the fee is £150 unless you receive certain benefits.

In addition, in order to access a protected trust deed, the minimum debt level is set at £5,000. We understand this was put in place to protect people with lower levels of debt being put into a trust deed and primarily pay back fees and charges to the IP rather than pay their creditors. In some cases, people could have cleared their debts in full within the same timescale as the trust deed.

The DAS scheme in Scotland has obvious parallels with the new SDRPs in England and Wales. We realise that this is not directly part of this consultation, but we have raised the advantages of the limited composition powers in DAS, in our response to the HM Treasury SDRP consultation.[23] We feel that these powers should be built into the SDRP rules.

We also note that the moratorium that has been put in place to protect people against creditor action whilst an application under DAS is put together, has an equivalent in the Debt Respite (breathing space) scheme.

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23 https://moneyadvicetrust.org/media/documents/MAT_response_to_the_HM_Treasury_Statutory_Debt_Repayment_Plans_consultation.pdf

However, the moratorium period was increased to six months during the pandemic, instead of the original six weeks. This extended period of breathing space has been made permanent under the Coronavirus (Recovery and Reform) (Scotland) Bill.

Again, we would suggest that the breathing space scheme needs to be extended in scope so that its protections are in place for an equivalent six-month period.

Further consultation by the Scottish government is currently taking place on reforms to Scottish debt solutions, including asset levels for bankruptcy and the vehicle threshold in particular.[24]

## For more information on our response, please contact:


Meg van Rooyen, Policy Lead

meg.vanrooyen@moneyadvicetrust.org

07881 105 045


[24] Scotland's statutory debt solutions and diligence - policy review response: consultation - gov.scot (www.gov.scot)


The Money Advice Trust

21 Garlick Hill

London EC4V 2AU

Tel: 020 7489 7796

Fax: 020 7489 7704

Email: info@moneyadvicetrust.org

www.moneyadvicetrust.org