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Consultation Response:

FCA Improving the Appointed Representatives regime

Response by the Money Advice Trust

Date: March 2022

Contents

- **Page 2** Contents
- **Page 3** Introduction / about the Money Advice Trust
- **Page 4** Introductory comment
- **Page 5** Responses to individual questions
- **Page 13** Contact details

Introduction

About the Money Advice Trust

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

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

In 2021, our National Debtline and Business Debtline advisers provided help to over 170,400 people by phone, webchat and our digital advice tool with 1.63 million visits to our advice websites. In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2021 we delivered this free training to more than 1,000 organisations.

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

Find out more at www.moneyadvicetrust.org.

Public disclosure

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

Introductory comment

We welcome the opportunity to comment on the FCA's proposals for improving the appointed representatives (AR) regime. We believe that the appointed representative model needs urgent reform.

We have concentrated on the area of debt management and debt packaging when formulating our response. We appreciate that the AR regime goes far beyond this, but we are less able to comment on its implications for other regulated activities.

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

We are not yet persuaded that the AR regime is functioning well. Whilst we support the FCA's initiatives to improve accountability, we are concerned that these will not go far enough to counter potential consumer detriment. We believe there needs to be legislative change to the regime, and some sectors - such as debt advice - may need to be removed altogether.

We have responded to the FCA debt packager consultation in December 2021.¹ We expressed our lack of confidence in the proposals relating to debt management firms operating as principals. We do not have confidence that the principal firms will carry out the due diligence required to ensure there are no further referral fees paid to their appointed representatives. We are also concerned that the FCA will not be able to dedicate sufficient resources to oversee the chain of firms involved to ensure compliance either.

We will be responding to the HM Treasury consultation on ARs to suggest that the fundamental principle of a firm being responsible for the supervision and behaviour of other firms, should be reconsidered. Allowing a firm to act as an informal regulatory body on behalf of the actual regulator is not in our view the ideal model. Firms will not have the skills, resources, motivation or incentives to carry out monitoring and supervision in the same way as a genuine regulatory body.

The AR model seems to us to be an inadequate form of regulation which places too much responsibility on principal firms to ensure compliance. The model therefore opens the door to too many opportunities for poor firms to behave badly.

We would much prefer the FCA to adopt a direct authorisation model for AR firms and remove the reliance on arm's length regulation via the principal firms.

¹

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

Responses to individual questions

Question 1: Do you agree with our proposal to require principals to provide more information on the business their ARs conduct?

We agree with the FCA proposals to require principals to provide more information on the businesses their appointed representatives (ARs) conduct. We would hope that the FCA will use the information to strengthen their supervision regime to ensure that only suitable ARs are appointed.

Question 2: Do you agree with the reporting timeframes we propose for reporting?

It appears sensible to require the principal to notify the FCA of a proposed AR appointment at least 60 calendar days before the appointment. It is also sensible to require principals to report on any planned changes to names and categories of regulated activities before they take place. However, if these changes are merely noted on the register, then it makes little difference. We are concerned that the FCA has allowed principals and ARs to register trading names in debt packaging and commercial debt advice that appear to contravene the CONC rules on masquerading as a debt advice charity.² This does not appear to be prevented before registration takes place, nor is the register routinely supervised and such trading names removed. We are concerned that the FCA lacks the capacity or will to carry out such supervision.

In addition, there does not appear to be an ongoing annual comprehensive reporting requirement on principals about their ARs that might service to flag supervision issues to the FCA.

Question 3: Do you have any suggestions on how the potential burden, particularly for firms with many ARs, of providing this information to us could be managed?

As a debt advice charity, we are not in a position to comment on the administrative burden of commercial firms managing their ARs.

² CONC 8.9.4R (9) <https://www.handbook.fca.org.uk/handbook/CONC/8/9.html>

However, we are familiar with the potential for consumer detriment in the area of commercial debt advice and debt packaging. We therefore think that any extra burden on these firms is worthwhile.

Question 4: Do you agree with our proposal to require principals to verify the details of their ARs?

We welcome these proposals. However, as we have said above, we think these annual reporting requirements should go further.

Question 5: Do you agree with our proposal to include details on the regulated activities of each AR that a principal takes responsibility for on the FS Register?

We support the proposals to include details on the regulated activities that each AR is authorised to undertake in the register. We agree that it could be potentially misleading for consumers to know if the firm is allowed to undertake particular activities.

However, we would suggest to the FCA that this will do little to minimise the potential for consumer harm. We realise that there have been efforts made to improve the accessibility of the FCA financial services register in recent years. However, it is really confusing to use, and we suspect that it will be very unlikely that a consumer, even when motivated and financially literate would be able to navigate the register. Even if they locate the principal firm and the AR, how can consumers be expected to understand the various permissions an AR might have and what the implications are of these regulated activities.

We regularly see unauthorised insolvency practitioner firms or lead generator firms erroneously suggesting that complaints can be made to the Financial Ombudsman Service. We see little prospect of an individual consumer being able to work out whether the firm they are dealing with are an AR or a principal and little prospect of establishing whether they can take their case to the ombudsman or not.

Question 6: Do you agree with our proposal to require principals to provide complaints data on their ARs?

Yes, we agree that it is vital that principals should provide complaints data on their ARs. It is not sufficient for complaints data to be reported as an aggregate for both the principal firm and its ARs. We are pleased to see that this will be required on an annual basis.

Question 7: Do you agree with our proposal to require principals to provide revenue information for their ARs?

We agree with the proposal that principals should submit revenue data for each of their ARs. It is crucial that this should cover both regulated and non-regulated activities. This should be submitted annually as suggested.

We agree this will help the FCA to identify potential risks, but clearly this will only work if the FCA closely monitors these firms and takes action as a result.

Question 8: Do you agree with our proposal to require principals to notify us if they provide or intend to provide regulatory hosting services?

Yes, this appears to be a sensible approach whilst the FCA assesses further the potential harm of regulatory hosting services.

Question 9: Do you agree with our proposed guidance for principals to put appropriate safeguards in place where a function or task is delegated to an AR or tied agent?

We agree that it is vital that principals put appropriate safeguards in place for functions delegated to an AR. However, this must be matched by reporting requirements and rigorous monitoring of the principal by the FCA. Otherwise, there will be no incentive on the principal to comply, however comprehensive the guidance might be.

Question 10: Do you agree with our proposals in relation to principals' annual assessment of ARs' fitness and propriety and the proposed considerations they should have to achieve this?

We would support comprehensive guidance to help principal firms assess AR fitness. However, we are concerned that this might have limited effect. There needs to be rigorous reporting requirements and supervision and monitoring by the FCA to ensure this process has been carried out.

However, this should not just be a tick-box exercise. In addition, it is vital that the FCA ensures appropriate action has been taken by the principal firm in relation to their continued relationship with that AR.

Question 11: Do you agree with our proposed guidance on what we expect 'reasonable steps' to be?

We agree that the FCA should include guidance on what the “reasonable steps” that the principal should take to ensure that the AR acts within their approved regulatory activity. However, it is difficult to assess whether the guidance will be sufficient to hold the AR to account.

It is clearly important that government takes action to remedy the lack of redress for consumers where an AR has acted beyond the permissions allowed by their principal firm. We hope this anomaly can be addressed.

Question 12: Do you agree with our proposals to clarify what we mean by adequate resources and controls and how to assess whether these are appropriate?

We are sure that the FCA's proposals to clarify their guidance on what resources and controls the principal firm should have in place will be helpful. We cannot comment on whether these will be sufficient in practice.

Question 13: Do you agree with the proposed circumstances which should trigger a review of principals' oversight appropriateness?

It is clearly vital that the principal firm is adequately sized and resourced to supervise its AR firms. We are not sure that the circumstances set out in the paper cover all the scenarios which might trigger a review of the principal firm's relationship with the AR.

We would expect the guidance to not just look at an increase in volume of the AR business, but also scenarios where an AR is doing very little business. This should also ring alarm bells as to what activities the firm is really undertaking.

Question 14: Do you agree with our other proposals for principals to ensure they can effectively maintain pace with AR growth?

Again, we do not disagree with the proposals made, but cannot comment on whether these will be adequate. Presumably there will be a reporting mechanism to the FCA to ensure that the principal firm conducts the required reviews regularly.

Question 15: Do you agree with our proposed guidance for principals overseeing individuals at their ARs to a comparable standard as if they were directly employed by the principal?

We commend the list of expectations that the FCA has included in the paper under section 4.51. If these activities were to be carried out to a rigorous standard by all principal firms with all their ARs, we would expect the potential for consumer detriment to diminish. Indeed, we would query whether any principal firm would be able to carry this level of supervision out to the required standard without becoming a mini-regulatory body in themselves.

However, again the requirement for rigorous supervision and monitoring by the FCA to ensure that the principal firm has carried out any of this monitoring is lacking.

We would point out that this list includes the potential to review call scripts or “other materials” but does not mention the principal firm being responsible for the content and accuracy of AR websites or the content of their online advertising. We regularly monitor the content of commercial debt advice or debt packager websites and report our findings to the FCA. Some of the content is misleading, inaccurate or plain wrong. However, it is not clear to us who is responsible for the quality of such web content in these cases.

Question 16: Do you agree with our proposals on principals ensuring ARs’ activities do not present an undue risk of harm to consumers or market integrity?

We very much welcome the proposals that principal firms must align with the overall aims of the consumer duty and assess what *“would constitute an undue risk of harm both before they appoint an AR and on an ongoing basis”*.

We welcome the focus on both the consumer duty and the guidance on the fair treatment of vulnerable customers.

We look forward to these proposals being put in place in relation to debt management firms and their ARs, their website content and advertising content. We would urge the FCA to concentrate its monitoring and supervision on this area where authorised debt counselling firms may sometimes have multiple ARs who change their names frequently or have multiple company names. We have concerns that such AR firms are allowed to carry on with providing debt “advice” with inadequate supervision by principal firms. Potentially, a focus on this area could substantially reduce the potential for consumer harm where vulnerable people are looking for debt advice.

Question 17: Do you agree with our proposals in relation to principals conducting an (at least) annual review of their ARs' activities and business?

Again, the proposals for an annual or more frequent review of AR activities should help to minimise potential consumer harm. However, we would reiterate the point that the FCA must require the principal firm to report the outcome of the review to the FCA. These should then be monitored by the FCA, and supervision activity carried out where required. Otherwise, there is no incentive on the principal firm to take the required action.

Question 18: Do you agree with our proposals for the termination or remediation of AR contracts?

Whilst we support the proposals for termination of AR contracts, this should also include a requirement for this to be flagged on the FCA register as the relationship having been terminated. We appreciate that it may not be fair to include the reason for the termination on the register. However, there is already little information for consumers or consumer bodies, which makes it hard to assess when trying to trace firms who often seem to have set up in one name, changed its name, disappeared off the register, and popped up elsewhere.

We are particularly pleased to see that one of the grounds for termination includes misleading communications or financial promotions materials as set out in the list in section 4.69.

“If the AR is found to have intentionally misled its customers in any way. For example, by including a misleading status disclosure on its website, other communications or financial promotion materials.”

Question 19: Do you have any comments on our proposed requirement for principals to create, and maintain, a self-assessment document?

We are concerned that the FCA does not intend for principal firms to annually submit their self-assessment document to the FCA. We think this should be a requirement to ensure there is sufficient incentive on firms to complete the document properly.

We think it is all too possible that firms could treat “*completing the self-assessment as a tick-box exercise*” as warned against in section 4.79 of the paper.

Question 20: What do you consider are the harms and benefits in the regulatory hosting model? It would be helpful to set out your views on whether principals providing regulatory hosting services can exercise adequate oversight over their ARs and be commercially viable, and if so how.

We are not familiar with the regulatory hosting model. However, we would share the concerns the FCA outlines in the paper regarding the potential harms inherent in the model. As the FCA is attempting to strengthen the responsibilities of principal firms for ensuring regulatory compliance amongst their ARs, the regulatory hosting model appears to operate in the exact opposite way.

We fail to see how this model will be able to function in the new regime and operate the required enhanced regulatory responsibilities.

We do not see how it can be defensible to run a model where the principal firm cannot supervise the ARs due to the range of business models and different regulated areas they use. If the principal firm is much smaller than the ARs and do not have sufficient skills and resources to act as the regulatory body as required, then this model seems inherently problematic.

We would suggest the FCA gives serious consideration as to whether this model should be allowed to continue.

Question 21: Do you consider that the regulatory hosting model in the investment management sector (as described), including the secondment model, is appropriate?

We are not familiar with this sector so are not able to provide extra information on the model. However, from the depiction of this model in the paper, it does not sound appropriate to allow this model to continue in its current form.

Question 22: Do you consider that the use of the 'Host AIFM' model, including where staff are seconded from principal to AR, is compatible with ensuring good outcomes for consumers and markets?

Again, from the depiction in the paper of how this model operates, we do not feel that it is likely to produce good outcomes for consumers.

Question 23: How should ARs be allowed to market themselves in relation to activities they cannot lawfully undertake, e.g. acting as investment managers?

It appears to us that allowing ARs to market themselves as able to provide activities that they cannot lawfully undertake should be prevented by the FCA under its rules. Such behaviour cannot be compatible with good consumer outcomes.

Question 24: What do you consider are the harms and benefits in smaller principals with larger ARs? It would be helpful to set out your views on the conflicts of interest from the principal being overly reliant on its ARs for income within these business models and on whether these firms can exercise adequate oversight over their ARs, and if so how.

Again, we are not familiar with this practice, but it would appear very likely that a small principal firm will struggle to oversee a relatively larger AR. We believe that the FCA should give serious consideration to prohibiting such arrangements.

Question 25: Do you consider there are challenges where principals appoint overseas ARs? Are there benefits to appointing overseas ARs?

We cannot see why principals would appoint overseas ARs unless it is for the reason identified in the paper, as a way for overseas companies to access UK markets without the proper permissions. We believe that the FCA should give serious consideration to prohibiting such arrangements.

Question 26: Do you have any comments on the policy options set out above in paragraph 5.34 onwards?

We are not convinced that the AR model of regulation should continue for the reasons set out in this paper. The AR model seems to us to be an inadequate form of regulation which places too much responsibility on principal firms to ensure compliance. The model therefore opens the door to too many opportunities for poor firms to behave badly and operate riskier businesses.

We would much prefer the FCA to adopt a direct authorisation model for AR firms and remove the reliance on arm's length regulation via the principal firms.

In the alternative, we agree that a ban on regulatory hosting services would be helpful although this might not be effective if the definition of what regulatory hosting encompasses is not comprehensive.

We think limiting the size of firms that can become ARs might help to mitigate the harms from the model but would not be sufficient to deal with a flawed regulatory model. There appears to be too much scope for firms to restructure their business model to avoid the impact of any new restrictions.

Question 27: Are there any other options we should consider?

We believe that the government and the FCA should reconsider whether the AR model of regulation should continue in its current form. We suggest that some sectors such as commercial debt advice should be considered as too harmful to be allowed to continue within the AR regime.

Question 28: Do you have any suggestions on how we should define 'regulatory hosting' or what we should consider in doing so?

If this is decided to be a way forward, this should encompass as broad a definition as possible of regulatory hosting to ensure that it captures the correct firms. It should minimise the scope for firms to restructure their business model to avoid the impact of any new restrictions.

Question 29: Do you have any views or comments on where prudential standards should be introduced or enhanced to reflect the harm posed to consumers and markets by firms with business models that include ARs?

We suggest that some sectors such as commercial debt advice should be considered as too harmful to be allowed to continue within the AR regime. It is not always clear what standards FCA authorised debt packagers work to when they provide debt advice or again, how they are qualified to do so or how they are supervised.

Rigorous standards for debt advice and direct supervision by the FCA is required for this sector.

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