

MONEY
ADVICE TRUST

BUSINESS
DEBTLINE

NATIONAL
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Consultation Response:

HM Treasury

The Appointed Representatives regime: call for evidence

Response by the Money Advice Trust

Date: March 2022

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Introduction

About the Money Advice Trust

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

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

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

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

Find out more at www.moneyadvicetrust.org.

Public disclosure

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

Introductory comment

We have responded in detail to the FCA paper on Improving the Appointed Representatives regime.

We 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 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.

As a debt advice charity, we are mainly familiar with the Appointed Representatives (AR) regime in relation to commercial debt advice, lead generation and debt packager firms. We have therefore substantially limited our responses to this area of concern. We believe that the appointed representative model needs urgent reform in this market. We have included an appendix of recent Google searches that illustrate the confusion over debt firm legitimacy, where firms gain their authorisation and poor advertising practice.

Responses to individual questions

Question 1: For users of the AR regime, whether principals or ARs: do you find the regime effective and beneficial to your business operations? Explaining your answers in the context of your business model would be helpful.

As we are not a principal or an AR, we are not able to comment.

Question 2: Are there any other types of use of the AR regime we have not described above? In this case, please describe the business model and the types of firms (or groups, where relevant) that use the AR regime.

We can only comment on the use of the AR regime for commercial debt advice and debt packager firms. The paper does not identify this type of AR model. We believe it is an important area of potential consumer detriment and a risky business model.

In our experience, FCA authorised debt counselling firms may sometimes have multiple ARs who change their names frequently or have multiple company names. This leads to a complete lack of transparency. It is not easy to tell which firm has regulatory “control” over others in some cases as some firms will be insolvency practitioners as well as ARs for an FCA authorised principal, and some will be lead generation firms that are not authorised by the FCA or anyone else. We frequently come across firm websites with complaints policies set out that result in a complaint to the Financial Ombudsman Service, where this is not possible. It is certainly not easy for consumers to find out the status of the firm they have contacted for debt advice.

We have concerns that such AR firms are allowed to carry on with providing debt “advice” with inadequate supervision by principal firms. These AR firms appear to operate by posting misleading adverts on search engines and social media in contravention of the CONC rules, masquerading as debt charities in their adverts and selling leads about individuals in debt to insolvency practitioner firms and debt management firms. We have included an appendix of recent Google searches that illustrate the confusion over firm legitimacy, where firms gain their authorisation and poor advertising practice.

We have serious concerns about the quality of the information on websites or the advice provided by such firms, as their sole intention appears to be to sign up vulnerable people in debt to an Individual Voluntary Arrangement without holistic debt advice on their full circumstances, or the range of options that might be available to them. We have little confidence that the principal firms are qualified or incentivised to supervise the content of these websites, or the quality of the information or advice provided.

Question 3: For multinational firms that use the regime to access UK financial services markets – how do you access these markets in other countries?

As we are multinational firm, we are not able to comment.

Question 4: Do you think the diverse use of ARs across different sub-sectors and business models has been a beneficial evolution of the regime? Do you have any concerns with any of the ways in which the AR regime is currently used?

We have major concerns about the way in which the AR regime is currently used in relation to commercial debt advice and debt packager firms.

The FCA needs to strengthen its supervision at the authorisation stage for both principals and ARs to ensure that trading names listed in the FCA register are suitable or compliant with CONC rules.¹ We see numerous examples of firms using trading names that masquerade as debt charities or would be misleading as to the nature of the service offered. This does not appear to be prevented before registration takes place, nor is the register routinely supervised and such trading names removed.

The principal is supposed to have the responsibility to ensure that the online adverts they commission to advertise their own and AR lead generation or debt packager firm services are not misleading and do not, under any circumstances, masquerade as debt charities. However, this does not appear to be the case in practice. We have reported many misleading adverts to both the FCA and the Insolvency Service.

There does not appear to be any attempt to supervise the advice content in such websites, to ensure this is accurate and not misleading. Some of the content is misleading, inaccurate or plain wrong. However, it is not always clear to us who is responsible for the quality of such web content in these cases. Under the current regulatory structure, the FCA should also ensure that the principal firms supervise practices and remove web content that does not comply.

We do not have confidence that the principal firms will carry out the due diligence required to ensure that their ARs comply. 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.

¹ CONC 8.9.4R (9) <https://www.handbook.fca.org.uk/handbook/CONC/8/9.html>

Question 5: Do you think the above discussion provides an accurate explanation of the current AR regulatory regime? Are there any other elements to the regulatory regime which are important to consider?

We are not aware of any additional elements of the regulatory regime that should be considered.

Question 6: Do you think these policy aims are the right ones for the AR regime?

The policy aims set out in the paper appear sensible. However, we would like to see greater emphasis given to protecting consumers of financial services as a policy aim. The protection of potentially vulnerable consumers from detriment in relation to the AR regime should have greater priority.

Question 7: How appropriate and effective do you think the current regulatory approach is at ensuring the safe operation of IARs?

We do not agree with the conclusion reached in the paper that the risk to consumers of being introduced to a financial services firm in this way is relatively small. We are concerned that there could be a risk of consumer detriment from a model that allows small independent traders to introduce consumers to their principal via financial promotions.

Could such traders be putting undue pressure on customers to take out unsuitable products with unscrupulous financial services firms? There seems to be a potential for ARs to be promoting the services of principals in an unhealthy way where there are much better products and services available if the consumer was made aware of other options.

Question 8: How appropriate and effective do you think the current regulatory approach is at ensuring the safe operation of smaller ARs?

There seems to be a substantial risk of consumer detriment identified in the paper. If the AR sells financial products that are not covered in the agreement with their principal, then consumers will have less protection than if dealing with the authorised firm directly.

As we have said in our response to question 15 below, 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 very much support the extension of the power of the Financial Ombudsman Service to investigate complaints involving all regulated activity by ARs irrespective of technical issues regarding the agreement with their principal.

Question 9: How appropriate and effective do you think the current regulatory approach is at ensuring the safe operation of larger, more complex ARs?

There seems to be a substantial risk of consumer detriment identified in the paper in relation to large complex ARs such as high street store chains. We would suggest that the government considers the question posed in the paper:

“whether it is appropriate and prudent for large businesses, involved in providing regulated financial services products to large numbers of consumers, to operate without being directly supervised by the FCA”.

It is difficult to conclude that it is sensible for large businesses to provide regulated financial services products without direct regulation by the FCA.

Question 10: How appropriate and effective do you think the current regulatory approach is at ensuring the safe operation of the regulatory host model?

This model raises questions as to its suitability. The principal firm may not have any expertise in the regulated activity carried out by the AR that it is supposed to be supervising.

This model involves the potential for a large number of ARs operating in different areas. This will be challenging for the principal firm to have sufficient resources to ensure effective oversight, particularly if the ARs are larger than the principal firm that is managing them.

Question 11: Do you think the above discussion is an accurate reflection of the challenges to effective operation of the current AR regime? Are there other challenges to fair and effective operation of the regime which have not been identified here? Do you think these challenges are manageable under the current approach? Do you think the range of regulated activities an AR may carry on is appropriate?

As we have said, the discussion in the paper of the current AR regime does not cover the AR regime for commercial debt advice and debt packager firms. The paper does not identify this type of AR model as an area of potential consumer detriment. We have set out our concerns with this sector throughout our response to this paper.

There may well be other challenges and issues relating to other regulated activities that are cause for concern, but we are not familiar with other sectors so cannot comment.

Question 12: Do you think changes to the scope of the section 39 exemption for ARs should be considered? If so, what changes do you think should be made? How might changes to scope affect ARs, principals and their consumers?

We would suggest that there is consideration given to prohibiting ARs from carrying out lead generation for debt advice, debt advice or debt packaging for principal firms. As the paper says in point 4.16:

“If there was strong evidence to suggest that use of the AR regime to carry on a particular regulated activity was generating an unacceptable level of risk for consumers or market integrity, the government could consider prohibiting ARs from carrying on that activity or restricting certain activities to less complex business models or less risky products.”

We have regularly raised our concerns about the AR model where we see debt packagers and lead generators acting as ARs using misleading website names and social media advertising alongside inaccurate content on their websites.

We believe that the risk of consumer detriment in this area is very high and is generating an unacceptable risk considering the market of vulnerable people seeking debt advice who are often in desperate circumstances. There should be a complete ban on ARs operating this activity in our view.

There are widespread concerns about the monitoring and oversight of appointed representatives by principal firms. Supervision by debt management firms of their ARs does not appear to be rigorous or effective. The staff at AR firms have no requirement to be authorised to give debt advice, and there are no set qualifications they must have, supervision standards to meet or training requirements to follow. It is unclear whether even principal firms follow such requirements, so would be poorly placed to supervise the advice quality of their ARs.

The FCA has already signalled its concerns over this market by issuing its consultation on new rules for debt packagers accepting referral fees.² However, removing debt packagers’ ability to accept fees for lead generation will only deal with part of a larger source of consumer detriment.

We do not believe that imposing the obligation on debt management firms who act as a principal to ensure that none of their appointed representatives receive any remuneration from debt solution providers will be sufficient. We are concerned by the risk that debt packager firms could look to become ARs of debt management firms in order to continue with the same business model. As the FCA states in its paper, it has concerns over the *“increased problems from principal firms having poor due diligence and oversight of their ARs”*.

Prohibiting commercial debt management firms from appointing ARs would help to deal with this business model.

² <https://www.fca.org.uk/news/press-releases/fca-proposes-ban-debt-packager-referral-fees>

Question 13: What are your views on the FCA having greater ability to prevent poor oversight of ARs through the introduction of a ‘principal permission’? Do you have views on other ways of enhancing the FCA’s role in the regulation of principals and their ARs? What do you think would be the benefits and risks of enhancing the FCA’s powers to regulate principals or ARs?

We would support any additional powers and tools that the FCA could use to prevent consumer detriment in this area. In addition to certain classes of activity being removed from the AR regime, the requirement for authorised firms to go through a permissions gateway before appointing ARs would seem very sensible.

We would also support enhancing the FCA’s powers to intervene directly with problem ARs by extending the FCA’s information gathering and investigation powers under FSMA to ARs.

Question 14: What do you think would be the benefits and risks of applying more regulatory requirements directly to ARs? Are there particular requirements that you think should be applied directly to ARs?

If, in particular, the SM&CR was to be applied to ARs in some form:

- a) What changes, if any, should be made? It would be helpful to refer to the different elements of the SM&CR (which are set out in SYS23 of the FCA Handbook) in your answer.
- b) Should there be a differential approach, with some ARs subject to more or fewer requirements than others? If so, which business models should be subject to more or fewer requirements? Who should oversee these requirements: the principal or the FCA?
- c) What should the relationship between the principal and AR be when assessing the conduct standards of employees at an AR? For example, should the principal be ultimately responsible for deciding the fitness and propriety of an employee at an AR, or only for reviewing policies and procedures for determining fitness and propriety?

We support the raising of standards as this could help reduce the risk of detriment to consumers.

We would agree with the arguments in favour of applying SM&CR rules of conduct to the staff in ARs. This should help develop a consistent standard of conduct across all employees in financial services firms, whether ARs or principals.

Principals could be obliged to ensure the SM&CR rules are being complied with by ARs, but we do not have confidence that ARs would be effective in this role. We believe that, on balance, it would be infinitely preferable for the FCA to be given the responsibility to enforce compliance with conduct rules in AR firms.

This would enable more direct intervention by the regulator once poor conduct has been identified. This would lead to a swifter resolution of the issues identified, as the principal may be tempted not to intervene as it could disrupt its own business relationships with their AR.

Question 15: Do you think there is a case for extending the ability of the Financial Ombudsman Service to investigate complaints involving the activity of ARs? What do you think the benefits and risks of this approach might be? Would this change affect how ARs are used by their principals?

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 very much support the extension of the power of the Financial Ombudsman Service to investigate complaints involving all regulated activity by ARs irrespective of technical issues regarding the agreement with their principal.

We understand that currently FOS would not be able to investigate a complaint if the AR's regulated activity was not included in their written contract with their principal firm. Consumers will generally not be aware of whether their dealings are with a firm that is operating as an AR or a principal firm directly authorised by the FCA. It is unreasonable to expect people to be able to distinguish between the two. It is extremely unfair in our view for complaints to be dismissed on what is, in effect, a regulatory technicality in this way.

It is unreasonable to expect consumers to understand whether their complaint is within the scope of the AR's agreement with its principal firm. It is also not realistic to expect consumers to take a private court claim against the principal firm for a breach of a duty such as a failure of supervision.

We would like to think that an amendment of the rules so that the principal is responsible for all of the AR regulated activities, including complaints to FOS, would mean that the principal firm would have every reason to supervise the AR closely and avoid any potential consumer detriment, as this would be of direct cost to themselves.

For more information on our response, please contact:

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Appendix 1

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

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

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

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

Write Off Up To 85% Debt

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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National Debt Advice Line - Enter Your Debt Amount

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

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

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

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

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Ad·<https://www.moneyadvice.co.uk/>

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

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

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

If you do decide that an IVA is the best option for you after we've assessed your financial situation, we may put you in touch with one of our trusted IVA providers. This means we will receive a fee from the Third Party for completing the preparatory work – you would not be responsible for paying this fee.

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

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

<https://nationaldebtadvice.org.uk>

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

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

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

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

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

Debt Busters - Debt Advice Options

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

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

referral commission from our regulated partner.

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

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

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

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

Calls may be recorded for compliance and monitoring

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

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purposes. We specializes in providing and administering Individual Voluntary Arrangements (“IVA”) solutions to individuals based in England, Wales and Northern Ireland

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

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



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