MONEY
ADVICE TRUST

BUSINESS DEBTLINE NATIONAL DEBTLINE WISER ADVISER

Consultation Response:

FCA Debt packagers further consultation on new rules

Response by the Money Advice Trust

Date: March 2023

Contents

- **Page 2** Contents
- **Page 3** Introduction / about the Money Advice Trust
- **Page 4** Introductory comment
- **Page 5** Responses to individual questions
- **Page 9** 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 2022, our National Debtline and Business Debtline advisers provided help to 140,980 people by phone, webchat and our digital advice tool with 1.87 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 2022 we delivered this free training to 2,780 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 very much support the FCA proposals to ban remuneration for debt packagers.

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

We are disappointed that the FCA has delayed the implementation of these measures for over a year, despite the clear evidence of consumer detriment that meant 12 months ago, the measures were going to be put in place within one month.

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

Responses to individual questions

Question 1: Do you have any comments on our consolidated evidence base (including as it is detailed in the CBA)?

We have no specific comments to make on the consolidated evidence base outlined in the consultation paper. It appears to us that the FCA has gone beyond what could have been reasonably expected to obtain further evidence and be certain that the problems with debt packager firms are very real.

Question 2: Do you think there have been any developments (since 2020, and since our consultation in 2021) which have materially changed the management of the conflict of interest? If so, can you provide evidence of these developments?

We are not aware of any developments since 2020 that have changed the ways in which debt packagers manage the conflict of interest that arises from the current remuneration model.

We would expect such a change would be unlikely unless a market has sprung up in remuneration payments to debt packagers for debt relief order and bankruptcy order referrals.

Question 3: Do you think there are any developments in the market which have changed the factors informing our decision as to the right intervention to tackle the harm or risk of harm we have seen? If so, can you provide evidence of these developments?

We see no positive developments in the market that would suggest that the FCA's intervention to ban remuneration for debt packagers is no longer correct.

Indeed, the review of Statement of Insolvency Practice on individual voluntary arrangements (SIP 3.1)[1] could have taken the opportunity to ban insolvency practitioners from making payments to debt packagers for referrals. However, it has not done so, which means the FCA proposals remain the most effective solution on the table.

In our last consultation response, we called for the Insolvency Service to complement the FCA proposals by implementing a simple ban on IP firms from making payments for referrals in all cases.

There have been developments in the market in relation to paid advertising for insolvency practitioners and lead generators. The ASA/CAP Enforcement Notice on debt management adverts by insolvency practitioners and lead generators was issued in June 2022.[2] This has led to welcome scrutiny and enforcement by ASA/CAP when non-compliant adverts have been reported.[3]

In addition, Google has strengthened its debt service advertising policy and only organisations who are FCA authorised for 'Debt Counselling' and 'Debt Adjusting' will be permitted to advertise debt services.[4]

However, we have noted that there have been cases where insolvency practitioners are ceasing to advertise directly, but are becoming appointed representatives of FCA authorised firms, who then advertise debt services on Google. We have previously shared our concerns with the FCA on this. We would imagine that this new arrangement could result in the FCA authorised debt packager referring all its supposed IVA cases to that specific insolvency practitioner firm.

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

We note that the proposals include an obligation on debt management firms who act as a principal to ensure that none of their appointed representatives receive any remuneration from debt solution providers. However, we believe that it would be safer to include debt management firms in the remuneration ban, as well as their appointed representative firms in the light of the widespread concerns about the monitoring and oversight of appointed representatives by principal firms. We are therefore concerned about the way in which the market will innovate to get round any ban. We note this type of concern as to how firms could try to get round the proposals is highlighted in section 1.19 of the paper.

[1] https://www.icaew.com/-/media/corporate/files/technical/insolvency/regulations-and-standards/sips/england/sip-3-1-e-and-w-individual-voluntary-arrangements-1-march-2023.ashx
[2] https://www.asa.org.uk/resource/enforcement-notice-debt-management-ads.html
[3] https://www.asa.org.uk/rulings/financial-support-systems-ltd-a20-1071998-financial-support-systems-ltd.html
[4] Continued investment in measures to help fight financial fraud in the UK (blog.google)

“In line with the proposal in CP21/30, we are not proposing for the ban to apply to debt management firms (see Chapter 2 for more detail). But we see a risk that debt packager firms could look to become appointed representatives of a debt management firm to seek to avoid the proposed referral fee ban. This would not be an acceptable outcome as it would expose consumers to the same risks from the debt packager business model that we are seeking to address. So, our proposals include an obligation on principal firms (including debt management firms) to take all reasonable steps to ensure that their appointed representatives do not receive any remuneration from debt solution providers unless the appointed representative is genuinely acting as a debt management firm itself (see Chapter 2 for more detail). We would monitor this actively.”

We would suggest that monitoring the appointed representative regime may not be a strong enough solution to these problems. The FCA will need to work closely with the Insolvency Service and the ASA/CAP and take swift action to close gaps if there is a substantial misuse of these loopholes in the protection, resulting in potential consumer harm for vulnerable people in debt.

Question 4: Do you have any further comments on our amended proposals and the draft Handbook text in Appendix 1 including the new PERG guidance?

We do not have any further comments on the handbook text set out in Appendix 1.

We have some concerns regarding the amendments to the Perimeter Guidance manual (PERG). We note that the examples of what is and is not “debt counselling” have been changed and that a new section 13A has been added. We agree with the intention stated in the paper under section 1.12.

“We are also consulting on new perimeter guidance. The routes into debt solutions, in particular those solutions which are most lucrative for the referring firms and those providing the solution, often start with lead generators. Lead generators collect customer data and refer customers to sources of debt advice or debt solutions. They are often not authorised and may not consider themselves to be carrying out regulated activity. Some of these firms may refer consumers to firms or insolvency practitioners who only offer one solution. Our proposed perimeter guidance makes clear that we consider this could be advice (in which case it would be the regulated activity of debt counselling).”

However, the guidance in PERG seems to have an inherent loophole. If the unauthorised lead introducer makes a recommendation to an insolvency practitioner or other firm that only offers a particular debt solution, then the lead introducer could be treated as making an advice recommendation and could be treated as debt counselling. We foresee the insolvency practitioner or debt solutions firm stating that it does in fact offer all available debt options even where it does not. This might help the lead generator to argue that they have made the referral in good faith as the person in debt might get a debt relief order instead.

It seems to us that any such claims would need to be rigorously assessed, to ensure that the lead generator and firm it refers to are not colluding on this. Many firm websites have general information (often inaccurate) on a range of debt options which could be a smokescreen for their actual advice which is just to offer an IVA.

- ✓ Our solution has always been to address the regulatory gap between insolvency practitioner regulation and lead introducer authorisations regulation and supervision that lies between the FCA and the Insolvency Service. The government should give the responsibility to the FCA to regulate the activities of lead generators in relation to debt advice, through the creation of a new regulated activity of *"effecting introductions to debt advice"*. This would help to close the regulatory gap.
- ✓ We would also suggest that the definition of "advice" within PERG 17 be looked at again. We see websites advertising "information only" or a "model of non-advice" whilst maintaining they do not have to be authorised by the FCA. This includes both lead generation firms and IP firms. The definition of advice is too open to misinterpretation and allows some firms to avoid any regulatory scrutiny.
- ✓ Insolvency practitioners (IPs) giving debt advice *"in reasonable contemplation of that person's appointment as an insolvency practitioner"* (PERG 2.9.26 G) are not required to seek FCA authorisation as they were successful in arguing that they are already covered by their professional bodies. HM Treasury should review the exemption for IPs from FCA authorisation.
- ✓ It is generally the case that large IVA firms are operating with staff who provide information and advice, (but presumably not on debt options other than an IVA), whilst staff and IVAs are supervised by a small number of IPs. We would argue that this model is not sustainable given the ratio of IPs to staff. The staff have no requirement to be FCA authorised to give debt advice, and there are no set qualifications they must have, supervision standards to meet or training requirements to follow. These firms should be FCA authorised in our view and staff should work to set standards.
- ✓ We are generally concerned that there is no requirement for free, confidential holistic debt advice to be given to everyone before they take up an IVA. It is arguable that under the rules, the IPs are not required to give full debt advice, and their non-IP staff are not qualified to do so. The lead generation firms are certainly not providing such advice (or if they are, they are not authorised to do so). It is not always clear what standards FCA authorised debt packagers work to when they provide debt advice or again, how they are qualified to do so or how they are supervised.

Question 5: Do you agree with the proposed implementation period of 2 months?

We believe that the shorter implementation period proposed originally of one month should still be adopted. See our response to question 6 below.

Question 6: If you do not agree with the proposed implementation period, what alternative implementation period would you recommend? Please provide evidence for the length of implementation period you believe is required.

We would like to see immediate implementation of this policy, given that the previous proposed implementation period was for one month, and that was over a year ago. Given the length of time that has been allowed to elapse and the acknowledged consumer detriment that these proposals address, we believe the implementation period should remain at one month.

For more information on our response, please contact:

Meg van Rooyen, Policy Lead

meg.vanrooyen@moneyadvicetrust.org

07881 105 045

21 Garlick Hill

London EC4V 2AU

Tel: 020 7489 7796

Fax: 020 7489 7704

Email: info@moneyadvicetrust.org

www.moneyadvicetrust.org