MONEY ADVICE TRUST

BUSINESS DEBTLINE | NATIONAL DEBTLINE | WISER ADVISER

Consultation Response:

Joint Insolvency Committee SIP 3.1 Individual voluntary arrangements

Response by the Money Advice Trust

Date: November 2021

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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 2020, our National Debtline and Business Debtline advisers provided help to 161,560 people by phone and webchat, with 1.86 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 2020 we delivered this free training to over 920 organisations.

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

Find out more at www.moneyadvicetrust.org

Public disclosure

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

Executive summary

We welcome the intention to strengthen SIP 3.1 to better protect people in debt and reduce failed IVAs, and the harm this can cause. However, we believe there are a number of further changes that are needed to ensure the SIP is as effective as possible in doing so.

We do not believe that, as it stands, the revised SIP 3.1 identifies all of the appropriate principles and we do not think the revisions to the compliance standards are sufficient. In our view, the revisions to SIP 3.3 do not go far enough. The Insolvency Service could make it compulsory for all IPs to ensure that the initial debt advice is provided by an FCA authorised independent debt advice provider rather than by an IP firm or lead generator. As we set out in this response, to achieve increased protection for people in debt and to ensure higher success rates and better outcomes for consumers in IVAs, we think there are a number of other changes that should be made to SIP 3.1.

- ✓ There is no principle that sets out that the IP should ensure that their potential client receives impartial and holistic debt advice that sets out the client's debt options. There should be a requirement to provide holistic debt advice, that helps people to deal with priority debt, maximise their income, work out a detailed and comprehensive budget, and to identify their best option, not just provide an explanation of options.

- ✓ In our opinion, holistic debt advice should be given by FCA authorised debt advisers who are subject to an independent quality monitoring system, not by a third-party appointed representative, who is supervised by a firm authorised to carry out debt counselling activities but not directly monitored by the FCA to ensure their credentials.

- ✓ We believe that the principles need strengthening to include a requirement to prepare a holistic, accurate, realistic and sustainable budget with the client, listing their income, outgoings and assets. This should be done using the Money and Pensions Service Standard Financial Statement (SFS).[1]

- ✓ We believe that building this requirement into the principles would acknowledge the key role that preparing a budget should have before any decisions are made regarding an IVA.

- ✓ We do not believe that the revised version of SIP 3.1 sets out the key compliance standards that should be required where there are lead generation firms and debt-packager firms involved.

[1] https://sfs.moneyadviceservice.org.uk/en/

- We have also stated our concerns about some commercial firms who act as what is referred to as debt-packaging firms or who act as appointed representatives. We see no evidence that these firms are qualified or competent to provide holistic debt advice, nor that there is a robust supervision regime assessing the quality of the advice they say they provide.

- We would call into question the whole practice of using lead generation firms or debt-packaging firms and paying high fees for the referrals. We cannot see how lead generators can be properly FCA authorised to give debt advice, but we also do not think it right that IPs take referrals from unauthorised sources. While we appreciate the scope of this consultation is limited to SIP 3.1, we would highlight here the wider points we have made around the suitability of the current arrangements for making referrals for IVAs.

- The use of terminology referring to people as "the debtor" is not helpful. We would consistently argue that this stigmatises people with debt problems who are already dealing with shame and stress of dealing with their debt problems. The insolvency profession should revisit both their use of language and the use of such terminology throughout the SIPs. For example, the IVA consumer protocol now refers to “consumers” rather than “debtors” throughout.

Responses to individual questions

Question 1: Do you believe that the revised version of SIP 3.1 identifies all appropriate principles?

We do not believe that the revised SIP 3.1 identifies all of the appropriate principles. We have set out our reasons in our response to the questions below.

Question 2: If no, what additions do you believe should be made to the principles contained in the SIP?

In our view, the principles do not go far enough. There is no principle that sets out that the IP should ensure that their potential client receives impartial and holistic debt advice that sets out the client's debt options. This should be delivered in a clear and understandable way that covers full debt advice that is tailored to the client. The advice should be documented. Ideally, we would like to see a requirement for the debt advice to be both free and independent of the IP.

Principle 2 talks about "*the provision of initial advice*" without stating what this should entail. Principle 4 talks about the IP ensuring that "*information and explanations about all potential debt relief solutions available are provided*". The provision of "information and explanations" are not the same as holistic debt advice. These principles need strengthening in order to provide effective protections for people in debt and to reduce the risk of IVAs failing.

Principle 5 suggests that the "*explanation of all potential debt relief solutions is tailored to the circumstances of the debtor*".

Again, there should be a requirement to provide holistic debt advice, that helps people to deal with priority debt, maximise their income, work out a detailed and comprehensive budget, and to identify their best option, not just provide an explanation of options.

If people are asked to read generic information about debt options, they are not always going to do so. They will not be in a position to make an informed decision without proper debt advice. This should go beyond the provision of information on the pros and cons of debt options that is not tailored to their personal situation.

If the information provided diminishes the advantages of other available debt options or exacerbates the disadvantages, then it is inevitable that consumers with little knowledge of the subject, and in a highly vulnerable state, are likely to go for what is on offer.

Principle 6 suggests that the IP should be "satisfied" that information or advice provided by lead generation firms and debt-packagers are accurate, and that "*the debtor has not in any way been misled by any person involved in the process*". However, there is nothing substantial in this principle that says how the IP will satisfy themselves that this information is accurate or how it is possible to know if their client has been misled. It seems to us that the IP needs to ensure that the client's full financial circumstances have been taken into account. This check should be comprehensive and thorough and not rely on the information provided by the lead generation firm.

We suggest that this requirement would call into question whether IP firms should rely on the information that has been provided. If IPs have to do their own due diligence on each case that has been referred to them, then the current system of paying lead generators for this "work" is undermined. In our opinion, holistic debt advice should be given by FCA authorised debt advisers who are subject to an independent quality monitoring system, not by a third-party appointed representative, who is supervised by a firm authorised to carry out debt counselling activities but not monitored by the FCA to ensure their credentials.

Principle 7 states "*communications with the debtor should be in a manner that is clear and understandable to the debtor, as far as reasonably practicable".*

This principle should be stronger in its requirements on IPs to ensure that their clients understand their communications. They should be required to be in plain English and use a variety of mediums. The IP should be required to ensure that their client does understand them. We see no reason for adding the caveat "*as far as reasonably practicable*" here. It is surely the IP's duty to recognise and identify clients with specific vulnerable circumstances, and adapt their services accordingly.

We believe that the principles need strengthening to include a requirement to prepare a holistic, accurate, realistic and sustainable budget with the client, listing their income, outgoings and assets. This should be done using the Money and Pensions Service Standard Financial Statement (SFS).[2]

In our experience, a full and comprehensive budget is the fundamental building block for providing holistic debt advice, and identifying relevant debt options. At no point in SIP 3.1 is a financial statement referred to specifically. We believe that building this requirement into the principles would acknowledge the key role that preparing a budget should have before any decisions are made regarding an IVA. It also should act as an alarm bell for the IP where it is clear that the client is on an income made up of benefits, or appears to be suggesting there is available income on the use of their or a member of their household's disability benefits.

[2] https://sfs.moneyadviceservice.org.uk/en/

A comprehensive budget using the SFS guidelines on housekeeping and other expenditure categories, makes it easier to spot where common household expenditure is missing, or expenditure has been tweaked to make it look as if someone has more available income than they do in reality. It might also highlight cases where IVAs could reasonably be expected to fail, but only after the IP's fees will have been paid. We would suggest that such a requirement would help prevent at least some of the potential harms to clients and avert some future failed IVAs.

If a less than rigorous advice process is coupled with a poorly put-together financial statement, then it is easily possible that eligibility for a particular product can be demonstrated where such eligibility is not really the case. The resulting IVA will not be sustainable or take into account a consumer's full circumstances.

Question 3: Do you believe that the revised version of SIP 3.1 identifies the key compliance standards?

We do not agree that the revised version of SIP 3.1 identifies the key compliance standards.

Question 4: If no, what additions do you believe should be made to the key compliance standards contained in the SIP?

We have set out our suggestions under the headings used in SIP 3.1 under "standards of general application".

Advice to the debtor

Point 11 requires the IP to "*have procedures in place to ensure that the information and explanations provided to the debtor at each stage of the process*". However, as we have stated in our response to question 2 above, the provision of "*information and explanations*" are not the same as holistic debt advice. These principles need strengthening.

Point 11c sets out a requirement to include the costs of "*additional specialist assistance*". However, it does not state what this might mean, and why the supervisor will not provide this assistance. We would like to see this point clarified.

Point 11g requires the IP to provide "*explanations of any areas of concern about what the debtor has reported and of the consequences if the debtor fails to comply with their obligations*". We would strongly suggest that this section needs amending. This point does not seem to make sense to us. Is the IP explaining areas of concern to their client or to creditors? Does it mean giving advice, or reassurance? The word "*explanations*" does not help here. In addition, it seems unusual to tie this into the second part of the sentence warning the client "*of the consequences*" of failure to comply. We do not see how these two sections work together. Also, there is no requirement to explain the consequences if the IP fails to comply with their obligations.

Point 13 states "*In some instances, at least part of the initial assessment of a debtor's personal and financial circumstances or the provision of advice might be carried out by a lead-generator or debt-packager*". As lead generator firms are not authorised by the FCA to give debt advice, we are unconvinced that initial debt advice can be given by such a firm. We have also stated our concerns about firms who are authorised to provide some form of advice by the FCA (presumably these are debt packaging firms). We see no evidence that these firms are qualified or competent to provide holistic debt advice, nor that there is a robust supervision regime assessing the quality of the advice they say they provide.

In addition, the IP should be required to assess in each case that the advice given is correct. Point 13 emphasises that the IP should be able to "*demonstrate*" that the lead generator firm "*acted professionally and objectively*". This suggests, a trail of evidence to be shown by the IP if audited. It does not put enough emphasis on ensuring that **the advice is correct in every single case** as a requirement on the IP.

At no point under the "*advice to the debtor*" section, is it stated that there is a requirement to complete a full and accurate budget using the Money and Pensions Service Standard Financial Statement (SFS). This should be a separate point, as we have explained in our response to question 2 above.

Again, point 14 requires "due diligence" to be carried out to ensure that the firm is "*appropriately authorised or regulated*". Again, how can a lead generator firm be authorised or regulated, when they are not required to be?

Assessment

Point 16 requires the IP to ensure that at each stage "*there are procedures in place to ensure that a full assessment is made of the debtors personal and financial circumstances*".

Again, this falls short of a requirement to complete a full and accurate budget using the Money and Pensions Service Standard Financial Statement (SFS) and to document this.

Point 16(c) sets out the responsibility on the IP to assess vulnerability. The IP should also be required to assess and have regard to vulnerability when acting as a nominee and supervisor. This needs to be set out in the relevant sections for the nominee and supervisor responsibilities.

Point 16 (d) requires the IP to assess "*whether the debtor is likely to be able to fulfil their obligations under the terms of the arrangement for its duration*". This should be caveated by additional requirements for the IP to state and document the assessment as to whether the client would be better off with another debt solution, or could pay their debts back in full without an IVA over the same period, will pay more in fees than back to their creditors, are on benefit level income, or are using disability benefits to make the offer.

Documentation

The section on documentation is silent on any requirement to document fees paid to lead generation firms, and other third parties and to disclose these to the client.

Point 17 (a) refers to maintaining records of "*discussions with the debtor, including the information and explanations provided, the options outlined, and the advantages and disadvantages of each*". Again, we would point out that the provision of *"information and explanations*" is not the same as holistic debt advice. This point should be strengthened.

Initial advice

Point 18 states "*Initial advice to the debtor could be provided by a lead generator or debt packager*". As we have said, as lead generator firms are not authorised by the FCA to give debt advice, we are unconvinced that initial debt advice can be given by such a firm.

Whilst point 18 requires any advice given is recorded "*in a complete and accurate manner*" there is no requirement to keep a copy of the budget or SFS on file, or to document that this has been agreed with the client as accurate and complete. This should be specifically stated as a requirement.

Point 19 (e) states that the client should be provided with "*an explanation of all the options available, the advantages and disadvantages of each, and the likely costs of each so that the solution best suited to the debtor's circumstances can be identified*". There should be a requirement to provide holistic debt advice, that helps people to identify their best option, not just an explanation of options. If people are asked to read generic information about debt options, they are not always going to do so.

It is helpful that this point goes on say:

"Insolvency practitioners should avoid using generic advantages and disadvantages and should use the details provided by the debtor to provide relevant information tailored to the circumstances of the debtor."

There should be a requirement on IPs to ensure this is the case. People will not be in a position to make an informed decision without proper debt advice. This should go beyond the provision of information on the pros and cons of debt options that is not tailored to their personal situation.

Preparing for an IVA

The section is silent on the nominee's responsibility to prepare a report that includes a full and comprehensive budget that has been documented and agreed with the client.

This should be included in point 20 (d) in addition to a requirement to ensure "*proportionate enquiries are undertaken into the debtor's assets and liabilities and evidenced on file*".

The proposal

Point 23 states that the proposal should contain information including:

"(i) the identity of the source of any referral of the debtor, and, if they are a lead-generator or debt-packager, whether regulated activity was undertaken and whether the lead-generator or debt-packager is FCA authorised, and any prior relationship to the debtor or insolvency practitioner;"

We do not think this is strong enough as a protection for people referred by lead-generation or debt-packager firms. The principles should require the referral to come from an FCA authorised provider of holistic debt advice, not that the IP should merely have to note whether the sources was authorised or not. What are the consequences if the IP uses an unauthorised source of referral? This section is extremely problematic as we cannot see how lead generators can be authorised to give debt advice, but we also do not think it right that IPs take referrals from unauthorised sources. Again, this calls into question the entire practice.

It is also not adequate to merely note "*whether regulated activity was undertaken*". This point in itself fails to clarify what it means by "*regulated activity*" in this context. It does not seem to be reassuring either way. Merely noting whether there was regulated activity without defining this or being clear whether the principles expect or approve this activity, is not helpful from a consumer protection perspective.

Point 23 (j) states that the proposal should contain information including:

"where any payment has been made or is proposed to be made to a lead-generator or debt-packager, the amount and reason for that payment; (including how it represents value for the work/services provided to the insolvency practitioner);"

Essentially, this charge is being passed on to people in debt and their creditors by IP firms. We do not support the practice of payment to lead generation firms for introductions to IVAs. Whilst it is clearly better to include this information for reasons of transparency, where such payments have been made, we believe the sector practices should be subject to wider reforms.

The nominee and supervisor

SIP 3.1 is silent on the nominee's duty of care to clients, and their ongoing responsibility to assist, particularly where the client is in vulnerable circumstances. There is nothing set out regarding their obligations to the client at this point.

Point 24 only requires the nominee to ensure that their client has had "*the appropriate advice in relation to an IVA*". They should be required to ensure the client has had appropriate holistic, and independent debt advice in relation to all the relevant debt options.

The nominee is also required to report whether the IVA is "*manifestly unfair*". This concept is given no definition. We suggest there should be clarification given as to the definition of unfairness here. This could comprise of examples such as this list of suggested scenarios where the client:

- ✓ has debts below a certain level and could clear them in full without an IVA;
- ✓ will pay more in fees than back to their creditors;
- ✓ has no substantial assets and does not own their home;
- ✓ may fit the criteria for another debt option, in particular a DRO or bankruptcy;
- ✓ is on benefit level income;
- ✓ has an incomplete or inadequate financial statement;
- ✓ has a financial statement that shows their available income come from disability benefits.

We would make the same point regarding the supervisor's duty of care to clients, and their ongoing responsibility to assist, particularly where the client is in vulnerable circumstances. There is nothing set out regarding their obligations to the client at this point.

Point 26 says that a completion certificate should be issued "*as soon as reasonably practicable*" and no later than "*six months after the final payment*". However, this is stated as applying on completion or termination of the IVA. It is not right that a potentially vulnerable person whose IVA has failed, is left to wait for six months before they can apply for a DRO if that is a suitable option for them.[3] We would suggest that 28 days would be a more reasonable time period in these circumstances.

[3] It is a condition that a client should not be subject to an IVA on the date the OR decides whether to approve the DRO (it's in paragraph 2(b) of Schedule 4ZA to Insolvency Act 1986). When an IVA has been terminated or completed, the supervisor must send a notice to the client within 28 days (8.31 of Insolvency Rules 2016).

Question 5: Do you believe that the revised version of SIP 3.1 sets out adequately the key compliance standards required in relation to an IVA where there is involvement of the services of introducers, and in particular, lead generators and debt-packagers?

We do not believe that the revised version of SIP 3.1 sets out the key compliance standards that should be required where there are lead generation firms and debt-packager firms involved. We have set out our concerns about the approach adopted in the SIP throughout our response to the questions above.

Question 6: if no, what additions do you believe should be made to the key compliance standards contained in the SIP?

The Insolvency Service could make it compulsory for all IPs to ensure that the initial debt advice is provided by an FCA authorised independent debt advice provider rather than by an IP firm or lead generator.

We have set out again below, the points we have raised regarding introducers throughout our response.

- ✓ Principle 6 suggests that the IP should be "*satisfied*" that information or advice provided by lead generation firms and debt-packagers are accurate, and that "*the debtor has not in any way been misled by any person involved in the process*". However, there is nothing substantial in this principle that says how the IP will satisfy themselves that this information is accurate or how it is possible to know if their client has been misled. It seems to us that the IP needs to ensure that the client's full financial circumstances have been taken into account. This check should be comprehensive and thorough and not rely on the information provided by the lead generation firm.

- We suggest that this requirement would call into question whether IP firms should rely on the information that has been provided. If IPs have to do their own due diligence on each case that has been referred to them, then the current system of paying lead generators for this "work" is undermined. In our opinion, holistic debt advice should be given by FCA authorised debt advisers who are subject to an independent quality monitoring system, not by a third-party appointed representative, potentially supervised by a firm authorised to carry out debt counselling activities but not monitored by the FCA to ensure their credentials.

- Point 13 states "*In some instances, at least part of the initial assessment of a debtor's personal and financial circumstances or the provision of advice might be carried out by a lead-generator or debt-packager*". As lead generator firms are not authorised by the FCA to give debt advice, we are unconvinced that initial debt advice can be given by such a firm. We have also stated our concerns about firms who are authorised to provide some form of advice by the FCA (presumably these are what is referred to as debt- packaging firms). We see no evidence that these firms are qualified or competent to provide holistic debt advice, nor that there is a robust supervision regime assessing the quality of the advice they say they provide.

- In addition, the IP should be required to assess in each case that the advice given is correct. Point 13 emphasises that the IP should be able to "*demonstrate*" that the lead generator firm "*acted professionally and objectively*". This suggests, a trail of evidence to be shown by the IP if audited. It does not put enough emphasis on ensuring that **the advice is correct in every single case** as a requirement on the IP.

- The section on documentation is silent on any requirement to document fees paid to lead generation firms, and other third parties and to disclose these to the client.

- Point 23 states that the proposal should contain information including:

  "(i) the identity of the source of any referral of the debtor, and, if they are a lead-generator or debt-packager, whether regulated activity was undertaken and whether the lead-generator or debt-packager is FCA authorised, and any prior relationship to the debtor or insolvency practitioner;"

  We do not think this is strong enough as a protection for people referred by lead-generation or debt-packager firms. The principles should require the referral to come from an FCA authorised provider of holistic debt advice, not that the IP should merely have to note whether the sources was authorised or not. What are the consequences if the IP uses an unauthorised source of referral? This section is extremely problematic as we cannot see how lead generators can be authorised to give debt advice, but we also do not think it right that IPs take referrals from unauthorised sources. Again, this calls into question the entire practice.

- ✓ It is also not adequate to merely note "*whether regulated activity was undertaken*". This point in itself fails to clarify what it means by "*regulated activity*" in this context. It does not seem to be reassuring either way. Merely noting whether there was regulated activity without defining this or being clear whether the principles expect or approve this activity, is not helpful from a consumer protection perspective.

- ✓ Point 23 (j) states that the proposal should contain information including:

  "where any payment has been made or is proposed to be made to a lead-generator or debt-packager, the amount and reason for that payment; (including how it represents value for the work/services provided to the insolvency practitioner);"

  Essentially, this charge is being passed on to people in debt and their creditors by IP firms. We do not support the practice of payment to lead generation firms for introductions to IVAs. Whilst it is clearly better to include this information for reasons of transparency, where such payments have been made, we believe the sector practices should be subject to wider reforms.

If you have any other comments on the revised version of SIP 3.1 please provide further information below and set out the changes you would suggest be made to the SIP.

We have made this point many times before in various arenas, but the use of terminology referring to people as "the debtor" is not helpful. We would consistently argue that this stigmatises people with debt problems who are already dealing with shame and stress of dealing with their debt problems. The insolvency profession should revisit both their use of language and the use of such terminology throughout the SIPs.

We would point out that the IVA consumer protocol now refers to "consumers" rather than "debtors" throughout.

For more information on our response, please contact:

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