Association of Business Recovery Professionals

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David Mendes da Costa
Financial Conduct Authority
Debt packagers: proposals for new rules

Email only – cp21-30@fca.org.uk

20 December 2021

Dear Mr Costa

FINANCIAL CONDUCT AUTHORITY ('FCA') – DEBT PACKAGERS: PROPOSALS FOR NEW RULES

CONSULTATION RESPONSE FROM INSOLVENCY AND RESTRUCTURING TRADE BODY R3

1. INTRODUCTION

1.1 R3 is the trade association for the UK's insolvency, restructuring, advisory, and turnaround professionals. We represent licensed insolvency practitioners, lawyers, turnaround and restructuring experts, students, and others in the profession. Our members work across the spectrum of the profession, from global legal and accountancy firms through to smaller, local practices.

1.2 The insolvency, restructuring and turnaround profession is a vital part of the UK economy. The profession rescues businesses and jobs, creates the confidence to trade and lend by returning money fairly to creditors after insolvencies, investigates and disrupts fraud, and helps indebted individuals get back on their feet. Our members have direct experience of insolvencies and their impact on the UK economy and insolvent companies' stakeholders.

1.3 This response is based on the expertise of our Personal Insolvency Committee members, who are experienced in dealing with individuals in significant financial distress. The Committee is multi-disciplinary and is made up of representatives from across the insolvency and restructuring profession, including practising insolvency practitioners, solicitors, and others.

2. CONSULTATION QUESTIONS

Q1: Do you agree with our assessment that the remuneration model for debt packager firms is driving consumer harm?

2.1 R3 welcomes the intention behind the FCA's proposal of new rules to ban debt packagers from receiving renumeration from debt solution providers, and its aim of reducing the risk that consumers receive non-compliant debt advice that is biased towards debt solutions which generate referral fees for the debt advice firm, but which may not best suit the indebted individuals' needs .

2.2 The proposed new rules will help to better uphold integrity and independence when debt advice is provided to individuals, and to avoid manipulation of an individual's circumstances to suit the 'debt packager' – rather than the individual themselves.

Q2: Do you agree that the only effective remedy is to ban receipt of remuneration for referrals by debt packager firms?

2.3 While we support the aim of the consultation's proposal, some members have raised concerns regarding an outright ban, and the effect it would have on the availability of debt advice if a ban were to lead to the end of the debt packager business model. Currently, the debt packager market is active because there is demand for it. Members have raised concerns about where the numbers of indebted individuals currently consulting this market would be able to go for advice, if debt packager firms no longer existed.

2.4 As the ban may result in more individuals seeking advice from the free advice sector, it is vital that additional measures of support are considered for this sector. We are aware that the sector is already struggling to meet demand due to a lack of resources.

Q3: Do you agree that we should not include debt management firms or not-for-profit debt advice firms in our proposals?

2.5 We are supportive of these proposals not including debt management firms and not-for-profit debt advice firms.

Q4: Do you have any comments on our proposed obligation on debt management firms who act as principals?

2.6 No comments.

Q5: Do you have any comments on the draft rules?

8.3 Pre contract information and advice requirements

8.3.9…

(2) A firm is treated as not itself providing debt solutions for the purposes of CONC 8.3.9R(1)(a) where the firm:

(a) provides debt solutions on a single or occasional basis; and/or

(b) receives only an insignificant amount of its total annual revenue from providing debt solutions.

2.7 We would welcome clarification on the term ‘insignificant amount’ as this is a broad term and subject to interpretation. We suggest a percentage or range is provided in the rule, or in some form of guidance to accompany the rules.

Q6: Do you have any comments on the planned implementation period?

2.8 We have no issues with the new rules taking effect as quickly as possible with a 1 month period for implementation, given the uncertain times and vulnerable circumstances indebted individuals are likely to be facing as a consequence of the ongoing pandemic. .

Q7: Do you have any comments on, or relevant additional data for, our draft cost benefit analysis?

No comments.

3. CONCLUSION

3.1 Generally, the proposed new rules are welcomed and supported by members in order to uphold integrity and independence when debt advice is provided to individuals. However, the ban is not going to be a panacea. The market is likely to 'adapt' and may lead to variant business models, which the FCA needs to be wary of. Furthermore, consideration needs to be given to the free advice sector and additional resources this sector will undoubtedly need if the ban brings an end to ‘debt packagers’.

3.2 With the free advice sector struggling with demand, we would recommend the FCA has considers removing, or revising, the Insolvency Practitioner exclusion from FCA regulation. We would welcome a meeting in this regard to discuss the benefits of removing or amending the exclusion. If you would like to virtually meet or if you have any other queries, please contact R3's Head of Technical, Ben Luxford, at ben.luxford@r3.org.uk or on 020 7566 4218.

Yours sincerely

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R3, the insolvency and restructuring trade body.

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