



HM Treasury and Financial Conduct Authority – Financial Advice Market Review

Response by the Association of Business Recovery Professionals ('R3') to the call for input document issued by HM Treasury and the Financial Conduct Authority, October 2015

1. Introduction

R3 is the insolvency trade body for the UK insolvency profession. We represent the UK's insolvency practitioners and are the leading organisation for insolvency, restructuring and turnaround professionals in the UK. R3 represents insolvency practitioners working in firms of all sizes, from the global legal and accountancy firms through to smaller, local firms, as well as insolvency lawyers and other professionals working in the insolvency and restructuring profession. R3 promotes best practice and provides a detailed programme of courses, conferences and technical information.

Insolvency practitioners are highly regulated, licensed professionals and officers of the court and are experts in personal and corporate insolvency. They are the only professionals who are licensed to take formal insolvency appointments across all personal and corporate insolvency procedures under the Insolvency Act 1986. As such, they are able to offer a unique perspective on the UK's insolvency regime.

Insolvency practitioners play a vital role in providing financial advice to those in financial difficulty. In 2013-14, insolvency practitioners assisted more than 60,000 individuals through an insolvency procedure, advised more than 135,000 individuals, and started work on cases that will help individuals repay £5bn of debt to creditors within five years¹. Insolvency is a vital part of the economic cycle and an important tool to help indebted individuals to 'get back on their feet'.

R3's interest in the call for input stems from our members' expertise in personal insolvency procedures and assisting financially indebted individuals. Our members have day-to-day experience of advising individuals facing financial distress, providing them with either pre-insolvency advice or advising them on and through the most appropriate personal insolvency procedure to help them deal with their debts. They are therefore well placed to offer evidence and recommendations based on their expertise and experiences of financial and debt advice.

¹ R3 Value of the Profession to the UK economy report (statistic from R3/Com Res member survey) (May 2015)

2. Executive summary

The financial struggles of people in England and Wales caused by the cost of living, and the high incidence of those living at the edge of their means, are well documented. Household debts have returned to their pre-financial crisis levels and an interest rate rise seemingly looms on the horizon. It is therefore unsurprising that concerns about money, in particular debts, are also rife. R3's most recent Personal Debt Snapshot² found that close to half (41%) of British adults are at least "fairly" worried about their current level of debt, and 38% say that they struggle to get to payday.

The number of statutory personal insolvency procedures in England and Wales rapidly increased during the first decade of the century. In 2001, there were fewer than 30,000 insolvencies; by their peak in 2010, numbers had more than quadrupled to over 130,000; in 2014, nearly 100,000 people in England and Wales entered into a formal insolvency procedure. However, whilst the fall in personal insolvency numbers is positive, there are potentially thousands more people unaccounted for, either in informal repayment plans or continuing to struggle on without addressing their debts. The official insolvency numbers therefore do not tell the full story about financial indebtedness, personal insolvency and the demand for debt advice in the UK.

Against the backdrop of the high levels of debt problems being experienced by the British public, R3 believes that it is vital that the debt advice and personal insolvency systems operate at their optimum – so that comprehensive advice can be given to help financially distressed people enter into the most appropriate debt relief solution for their circumstances (whether informal or statutory), and so that creditors can hope to receive the maximum repayment of debts as far as possible.

However, R3 is concerned that, for a variety of reasons, there are still individuals in financial difficulty who are entering debt relief solutions that are not appropriate for their circumstances. R3 is also concerned about some aspects of the quality and range of financial advice being given to people with debt problems, as well as the current lack of provision of an environment in which indebted individuals are able to make important decisions about how to resolve their financial issues.

Our response to the call for input identifies a number of barriers to debt advice and financial assistance for indebted individuals and makes recommendations to reduce them, including:

- reducing the stigma of insolvency so that individuals consider all debt relief options when dealing with their debts;
- giving individuals 'breathing space' from creditor action to give them time to seek comprehensive debt advice before entering a debt relief solution;

² R3/Com Res Personal Debt Snapshot Wave 17 report 'Attitudes to insolvency and the impact of a potential rise in interest rates' - October 2015
https://www.r3.org.uk/media/documents/policy/research_reports/personal_debt_snap/R3_Personal_Debt_Snapshots_Wave_17.pdf

- reviewing the scope of the Financial Conduct Authority (FCA) authorisation regime to prevent a reduction in the availability of expert debt advice from insolvency practitioners;
- allowing individuals to pay the £705 bankruptcy fee in instalments once they have entered bankruptcy; and
- recording the number and value of Debt Management Plans (DMPs) to understand the true scale of personal insolvency and the demand for debt advice and assistance in the UK.

We have focused our detailed response below on those questions in the call for input where we can provide answers based on our members' expertise, including their experience of the personal insolvency market and in assisting indebted individuals with their financial difficulties. Questions which are unanswered reflect the fact that we have no opinion on the point at issue.

3. Call for input questions

Question 1 – do people with protected characteristics under the Equalities Act 2010, or any consumers in vulnerable circumstances, have particular needs for financial advice or difficulty finding and obtaining that advice?

No view

Question 2 – do you have any thoughts on how different forms of financial advice could be categorised and described?

No view

Question 3 – What comments do you have on consumer demand for professional financial advice?

Seeking professional debt advice is often the best way for indebted individuals to begin to deal with their debt problems. Given the sensitive and emotive nature of personal finance problems, it is perhaps understandable that many people might be reluctant to talk to someone, even a professional, about their problems.

However, R3 is concerned that delays in taking action to address debt problems can mean that debts will continue to mount and will become more difficult to deal with, perhaps even reducing the options available to help an individual deal with their debts. While debt can be difficult to talk about with a stranger, time is often of the essence and seeking advice from someone sooner rather than later is an important step towards dealing with money problems.

R3's Personal Debt Snapshot research in March 2014³ asked British adults (who said that they had debt worries) whom they would approach for help with any personal debt worries: 42% of British adults with

³ R3/Com Res Personal Debt Snapshot Wave 13 report 'Are personal finances taking a turn for the worse?' – March 2014

debt worries indicated that they would most likely approach a family member for help, followed by 24% who said that they would approach a voluntary organisation or charity.

In terms of professional forms of advice, only 16% of those British adults with debt worries who responded to the survey said that they would approach a financial adviser and 16% said that they would approach a friend. Just 3% of British adults would approach an insolvency practitioner for advice and 21% of British adults wouldn't know who to turn to for advice with their debt worries.

R3 is concerned that so relatively few people would seek the free, expert advice that is available and that relatively so many British adults wouldn't know who to turn to at all. The vast majority of insolvency practitioners will offer an hour's worth of professional advice for free, while many debt advice agencies and charities employ qualified advisers who are also able to provide debt advice. R3 believes that more work is required to break down the barriers that deter people from getting the right advice at the right time and therefore finding the right debt solution for their circumstances, including more publicity and positive advertising to educate individuals about their options for seeking debt advice.

Question 4 – do you have any comments or evidence on the level of demand for advice from sources other than professional advisers?

See response to Question 3 above regarding R3 research on where individuals with debt worries may seek debt advice.

In terms of sources of advice other than professional advisers, R3 has serious concerns about the provision of debt and financial advice by unregulated organisations or advisers, who may not be regulated by either the FCA or an insolvency regulatory body.

The marketing literature (both hard copy, telephone-based contact and online) of these unregulated organisations or individuals often targets indebted individuals, company directors and business owners who are already in insolvency procedures, or who are considering entering an insolvency process in order to resolve their financial situation. This marketing is done with a view to encouraging the individual or directors to opt for a different insolvency procedure organised by the unregulated advisers, which ultimately may not be in the company's or the individual's interests.

R3 is also aware that such unregulated organisations or individuals issue literature which seeks to dissuade directors and indebted individuals from taking professional debt and insolvency advice from insolvency practitioners, because an insolvency practitioner owes a duty to all creditors in an insolvency situation, whereas the unregulated organisation or individual claims to only work for (or owe a "duty" to) the director or indebted individual.

Business owners, company directors and individuals with financial difficulties are particularly vulnerable to this type of marketing, as they may not have the financial acumen to understand the risks of taking advice from unregulated organisations. Unlicensed advisers and organisations often claim to be able to

https://www.r3.org.uk/media/documents/policy/research_reports/personal_debt_snap/R3_Personal_Debt_Snaps_hot_Wave_13.pdf

remove all of the worry of a financial situation and to help individuals or company directors avoid legal duties that they may owe. R3 is concerned that by taking financial or debt advice from an unregulated adviser (often at a fee), an individual or director may receive misleading or incorrect advice about how to resolve their financial problems and the duties or responsibilities that they owe to their creditors or their business. This can make their financial situation far worse and may even result in indebted individuals or company directors breaking the law.

The issue of advice given by such unregulated organisations to indebted individuals, company directors and business owners has been a perennial problem which R3 continually raises with regulators, including the Insolvency Service, the FCA and other organisations, such as the Advertising Standards Authority. Whilst R3 is pleased that the Insolvency Service has taken action in recent years to wind up a number of such unregulated organisations in the public interest, R3 would like to see more such actions being taken via a coordinated approach across government regulatory bodies in order to protect indebted individuals and directors from misleading or incorrect debt and financial advice.

Question 5 – do you have any comments or evidence on the types of financial needs for which consumers may seek advice?

We agree with the analysis in the call for input that different consumers have different financial needs according to a range of factors, including their stage in life, financial sophistication, income, debts and wealth. We also agree with the analysis of ‘coping with debts’ and debt advice as forming one of the more complex areas for which people may need advice, particularly given the mix of financial, personal and social factors involved.

Access to full, high quality debt advice can become a necessity for any person at any stage in their life. The feelings of ‘being in debt’ or ‘coping with debts’ are often subjective to each person – one person may have relatively high levels of debt but be able to service them, and therefore ‘cope’ with their debts or at least will not feel anxious about them; another person may have comparatively modest levels of debt and be able to service their debts adequately, but still feel anxious or concerned about ‘being in debt’.

The subjectivity of feeling ‘in debt’ and the drivers leading people to seek debt advice can also vary across different age groups and levels of debt. R3’s research from November 2014⁴ found the following breakdown of debt worries across different age groups and the average level of debt across those age groups – it is noticeable, for example, that whilst individuals within the lowest age category (18-24) had one of the lowest average debt levels, they are one of the age groups where debt worries are the highest, highlighting the subjectivity and personal nature of feeling ‘in debt’ and therefore the unpredictability of the stage in life when an individual may decide that they require debt advice. The

⁴ R3/Com Res Personal Debt Snapshot Wave 15 report ‘Christmas debt’ – November 2014
https://www.r3.org.uk/media/documents/policy/research_reports/personal_debt_snap/R3_Personal_Debt_Snapshots_Wave_15.pdf

heightened level of concerns over debt could also be linked to the fact that people aged 18 to 24 are likely to earn less than those in the 45 to 55 age bracket.

Age range	Worried about debt	Average debt (exc. Mortgages and student debt)
18-24	55%	£ 1,660
25-34	55%	£ 3,801
35-44	58%	£ 4,802
45-54	57%	£ 4,595
55-64	34%	£ 2,813
65+	16%	£ 1,606
All	44%	£ 3,232

Due to the subjective nature of feeling ‘in debt’ and the fact that debt concerns can be made more acute by different life events at different stages of life, it is therefore vitally important that full debt advice and adequate access to it across the paid-for and free advice channels remains a priority for government and those involved in the debt advice and personal insolvency sectors.

Question 6 – is the FCA Spotlight segmentation model useful for exploring consumers’ advice needs?

No view

Question 7 – do you have any observations on the segments and whether any should be the particular focus in the Review?

No view

Question 8 – do you have any comments or evidence on the impact that consumer wealth and income has on demand for advice?

As mentioned previously, the vast majority of insolvency practitioners offer an hour’s advice for free, in addition to advice available from debt advice agencies and charities.

Question 9 – do you have any comments or evidence on why consumers do not seek advice?

R3’s research and the experiences of our members suggest that there are a number of barriers to consumers seeking debt advice or accessing formal personal insolvency procedures. These include perception and understanding of personal insolvency processes; timeliness of advice; the need for a ‘breathing space’ provision in England and Wales; an inability to afford bankruptcy; and the need to understand the full debt advice landscape, as set out in paragraphs a) to e) below.

a) Perception and understanding of personal insolvency processes

The first is the perception of a social stigma associated with entering a formal personal insolvency procedure. Research by R3 in August 2015⁵ asked approximately 2,000 British adults about their views on insolvency. The findings were mixed – whilst it is positive to see that approximately 50% of adults believe that the social stigma of insolvency is less than it was a decade ago, almost half (48%) believe that there is still a stigma associated with insolvency.

Our research from August 2015 also indicates that only three-in-ten Britons (29%) agree that they have a good understanding of what happens when an individual enters into an insolvency procedure. There are also differing opinions on the reasons why an individual might enter insolvency – half of British adults agree that entering an insolvency procedure can be an opportunity for a fresh start, but just over a third of Britons agree that entering an insolvency procedure is an easy way out from having to repay debts (37%) and the same proportion agree that insolvencies are more likely to occur because of an individual's reckless spending than because of a factor outside of their control, such as job loss (37%).

All of these statistics paint a worrying picture given that, where appropriate, one of the three formal personal insolvency processes (bankruptcy, an Individual Voluntary Arrangement or a Debt Relief Order) may be the most appropriate method for an individual to sort out their financial problems and return to financial health.

R3 is concerned that 'mind-set' issues such as fear, shame or even over-optimism, impact the number of individuals who decide to seek advice on personal insolvency, or indeed who choose to enter a personal insolvency procedure, even where it the most appropriate way to deal with their debts. By way of example, in R3's January 2014 member survey, 45% of insolvency practitioners said that they have seen an individual in a Debt Management Plan who should have been in a formal insolvency procedure instead and who, therefore, may not have received appropriate advice about how to resolve their financial situation or, based on their perception of the stigma around formal insolvency, decided to opt for the 'less formal' option of a Debt Management Plan.

Financial education around how to properly deal with debt problems by seeking appropriate debt advice needs to be improved, as does education about the personal insolvency options available and what is involved in each one. It should not be the case that people do not consider the insolvency options available to them because they are not clear about what is involved.

R3 believes that the insolvency profession, debt advice sector and government should work together to find ways to reduce the barriers that deter individuals from seeking advice; to reduce the stigma of insolvency; and to improve individuals' understanding of what an insolvency process entails and might 'mean' for them. A coordinated effort across the sector would help to ensure that individuals have the opportunity to enter the most appropriate debt relief solution for their circumstances.

⁵ R3/Com Res Personal Debt Snapshot report 'Attitudes to insolvency and the impact of a potential rise in interest rates' - August 2015
https://www.r3.org.uk/media/documents/policy/research_reports/personal_debt_snap/R3_Personal_Debt_Snap_hot_Wave_17.pdf

b) Timeliness of seeking debt advice

R3 is also concerned that indebted individuals may not seek debt advice soon enough, thereby making their financial situation worse in the long run.

In January 2014, an R3 member survey asked insolvency practitioners how long it takes an individual to seek debt advice. The research found that:

- 49% of R3 members said that it takes an individual more than a year from first showing signs of financial distress to approach them for advice.
- Just 5% of R3 members said that they are typically approached for advice less than three months from when an individual first shows signs of financial distress.

Delays in individuals seeking debt advice means that debts can mount unnecessarily, reducing that individual's options and in some cases leaving little alternative but a formal insolvency process. A delay in obtaining debt advice can also leave financially struggling individuals open to creditor pressure, which may cause rushed decisions about their options and how to resolve their financial situation. There is currently no provision in England and Wales for an unpressurised environment in which individuals can seek advice on how to deal with their debts free from the worry about creditor action; protection from creditor debt collection and enforcement action is only available once a formal insolvency process has been entered into (see section (c) below for R3's recommendation in this area).

c) The need for 'breathing space' from creditor enforcement

Individuals facing financial difficulties will usually be provided with various notice periods before a creditor can seek to collect or enforce a debt; these vary in length depending on the kind of debt involved – for example, under the Mortgage Repossession Protocol, a mortgage lender must give a debtor six months' notice before they can enforce the security over their house.

In addition, the FCA also enforces a robust regime governing how creditors can collect or enforce debts, with the ultimate aim of treating consumers fairly ('TCF') throughout the debt collection process.

Nevertheless, despite the existence of these notice periods, the FCA's TCF policies and the range of formal and informal debt solutions, R3 is concerned that financially distressed individuals may not always access appropriate debt advice or the debt relief solution that is best suited to their needs. This may be due to a combination of poor or incomplete debt advice, and a sense of panic that pushes them to either accept the first solution offered to them (even where it may not be the most appropriate solution for their needs) or, worse still, to 'bury their head in the sand', not seek advice and therefore do nothing at all.

In June 2015, R3 published a paper⁶ calling on government to introduce a 28 day 'breathing space' moratorium for individuals in debt. In summary, R3's proposals are:

- A person in financial distress should be able to apply to the Insolvency Service through a qualified advisor for a 28 day moratorium, during which no creditor action would be possible and repayments, interest and charges would be frozen. During this period, it would be mandatory for the individual to seek debt advice from an impartial, qualified advisor in order to devise an appropriate plan to deal with their debts, whether via a formal personal insolvency process or an informal repayment arrangement with creditors.
- It should be mandatory that the availability of this moratorium be advised to every financially distressed individual (whether by a solution-provider, a charity, an insolvency practitioner, the Court or the Insolvency Service) before that individual is advised to enter a particular debt relief solution or a bankruptcy order is made. It would not be mandatory for all individuals to make use of the moratorium – this would be a matter of choice for each person.
- Creditors would be notified that a moratorium has been granted, and it also would be registered on a central register. After the 28 day period has expired, the debtor will be subject to creditor action once again (unless he/she has entered a debt solution which prohibits this or makes it redundant), and the individual's name will be removed from the register.
- Only one moratorium should be available per individual per year, to avoid it being used as a tool to avoid repaying their debts (rather than facilitating advice and entry into a debt solution).

This moratorium should be seen as a last resort, usually after the indebted individual has already received numerous notices of debt collection and enforcement, and would be a final opportunity to seek professional debt advice in an unpressurised environment. This would be with a view to entering the most appropriate debt solution for their financial situation, in a considered and informed manner.

R3's 'breathing space' proposal would:

- give individuals time to get full, impartial advice about the range of debt solutions available to them;
- enable people to make non-pressurised decisions about how to resolve their financial problems by providing the right environment, free from creditor pressure, in which they can find and enter the most appropriate solution for their needs; and
- help achieve a balanced and fairer outcome for both individuals and their creditors.

⁶R3 paper - 'Breathing space' from creditor enforcement - https://www.r3.org.uk/media/documents/policy/policy_papers/personal_insolvency/R3%20Breathing%20Space%20from%20Creditor%20Enforcement%20JUNE%202015.pdf

The last Government announced that HM Treasury and the Insolvency Service would carry out a review into the legal framework for debt administration in England and Wales, including the concept of 'breathing space' and we would urge government to proceed with this review as soon as possible.

d) Inability to afford to enter bankruptcy

Bankruptcy is a formal insolvency procedure that is designed to provide a balance between debt repayments, where possible, and debt write-off in order to help indebted individuals deal with their debts and return to good financial health. The number of bankruptcies has fallen in recent years.

However, around 70% of R3 members (R3 membership survey results from January 2014) have seen an individual unable to go bankrupt because they could not afford to pay the £705 fee (which covers a court fee and the government Official Receiver's case administration fee) to enter bankruptcy; 59% of those members said that the individual in question had subsequently not dealt with their debts, which therefore continued to rise.

To reduce this barrier to entering bankruptcy, R3 has recommended that the £705 fee to enter bankruptcy can be paid in instalments after an individual has entered bankruptcy. The individual will not be 'discharged' from bankruptcy until the fee is paid. In this way, the individual would benefit from the protection from creditors under the bankruptcy order, whilst ensuring that they pay the fee required to administer their case.

Whilst the government has agreed that in future an individual could pay the fee in instalments, the fee would still be an 'upfront' payment: the individual would not be able to enter bankruptcy *until* the final instalment has been paid. R3 is concerned that it could take individuals many months, if not years in some cases, to pay those instalments, whilst at the same time their debts will continue to increase and they will have no protection from creditors' debt collection and enforcement procedures. As a consequence, a significant barrier to entry into bankruptcy for those individuals who may need it most would remain.

e) Wider market issues – the need to understand the full debt advice landscape

When considering personal insolvency and debt advice, R3 believes that it is crucial to look at non-statutory Debt Management Plans (DMPs) in addition to formal, statutory personal insolvency procedures.

Although the number of statutory personal insolvency proceedings is falling, they only make up a fraction of the procedures used to deal with personal debt problems: R3's November 2014 R3/ComRes Personal Debt Snapshot⁷ found an equivalent of over two million people who said that they were in

⁷ R3/Com Res Personal Debt Snapshot Wave 15 report 'Christmas debt' – November 2014
https://www.r3.org.uk/media/documents/policy/research_reports/personal_debt_snap/R3_Personal_Debt_Snapshots_Wave_15.pdf

some sort of debt management plan (whether formal or informal); however, at the end of 2013, there were only approximately 250,000 people in a formal insolvency procedure.

DMPs have a role to play within the suite of debt relief options to assist individuals to deal with their debts; in some situations, it might be more appropriate for someone to deal with their debts using a non-statutory DMP than it would be for them to enter a statutory insolvency procedure.

It is worth noting, however, that there are a number of key differences between DMPs and statutory procedures. For example, DMPs carry no statutory protection for individuals from creditor action, nor do they bind creditors who are not party to the plan. As a result, DMPs can be undermined in a way statutory insolvency procedures cannot. In a formal procedure, creditors' claims are dealt with in an order of priority set by statute; in a DMP, there is no such order of priority and creditors can continue to charge interest and charges on the debts owed.

While R3 recognises that a non-statutory procedure might be appropriate in some circumstances (and a formal procedure might be inappropriate), we are concerned about the risk that some individuals enter a non-statutory procedure that is inappropriate because they might not be fully aware of all their debt relief options for the reasons we have previously elaborated, or because of the perceived stigma surrounding formal insolvency solutions (and the perceived 'informality' of DMPs and non-statutory solutions).

Whilst the recent introduction of FCA regulation is a welcome effort to tackle concerns around the quality of DMPs and the standard of advice provided to individuals by DMP providers, R3 remains concerned that the number of DMPs is not officially recorded. This makes it very difficult to establish the true scale of personal insolvency, the scale of DMP use and the number of people in need of debt advice in the UK. Consequently, it is difficult for policymakers to put together appropriate recommendations for improving debt and insolvency advice. The fact that the number of DMPs is not recorded poses a number of questions:

- What is the full nature of the insolvency and debt landscape in the UK?
- Who is using a DMP and why?
- Are individuals using DMPs instead of formal insolvency procedures; and is the falling number of statutory insolvency procedures misleading?

DMPs are very much on the FCA's agenda and R3 welcomes recent regulatory intervention. However, in view of the number of individuals estimated to be repaying debts through a DMP, this is very much an area the government and FCA should continue to monitor closely and R3 calls on the government to work with the FCA to record and publish statistics on the number, value and outcomes of DMPs as soon as possible.

Question 10 – do you have any information about the supply of financial advice that we should take into account in our review?

R3's response to this question relates to the supply of debt advice by insolvency practitioners where such advice crosses over into the FCA authorisation regime.

R3 believes that the introduction of the FCA authorisation regime for regulated consumer credit activities (which includes debt advice related to consumer credit) in April 2014 was a welcome reform to tackle poor debt advice and to raise standards within the debt management market.

Under the new FCA regime, insolvency practitioners do not require FCA authorisation for any debt-related activities when they have been formally appointed as an office holder in a bankruptcy or Individual Voluntary Arrangement. Insolvency practitioners also have the benefit of an exclusion where they are 'acting in reasonable contemplation of appointment as an insolvency practitioner' (i.e. as a trustee in bankruptcy or as a supervisor of a voluntary arrangement). This exclusion was intended to cover cases where an insolvency practitioner provides debt advice to an individual about their debts that fall within the consumer credit regime in order to assist them in understanding and deciding upon the debt relief solution most appropriate for their circumstances.

Unfortunately, the FCA interprets this exclusion as ending the moment that it becomes apparent that the insolvency practitioner can no longer be 'in reasonable contemplation of an appointment as an insolvency practitioner'. As such, having ascertained the facts of the individual's financial situation, if it becomes evident that a debt solution other than an Individual Voluntary Arrangement (and possibly a bankruptcy) is appropriate, the insolvency practitioner must immediately stop giving debt advice unless they are authorised to do so by the FCA.

Insolvency practitioners are members of a heavily regulated profession; it takes several years to train as an insolvency practitioner (the average age for qualification is 33) and once qualified, practitioners are closely monitored by regulatory bodies. Providing comprehensive debt advice and information about possible debt relief solutions (including pre-insolvency advice) are necessary and fundamental parts of their role.

Requiring insolvency practitioners to hold FCA authorisation in order to give consumer credit advice is, in R3's view, an unnecessary additional burden and cost, particularly for smaller insolvency firms, and risks insolvency practitioners being over-regulated and answerable to two separate regimes, one for consumer credit and one for insolvency. Smaller insolvency firms may decide that this burden of regulation is too much and therefore choose not to be FCA-authorised; this will reduce the choice and supply of debt advice from smaller 'High Street' firms available to individuals, creating yet another barrier to individuals seeking debt advice. R3's recent membership survey from October 2015 found that 9% of insolvency practitioners who have provided personal insolvency advice have already stopped giving personal finance advice since FCA authorisation was introduced.

The FCA's interpretation of the exclusion is even more unhelpful from the individual's point of view. It is rarely obvious from the outset that an individual needs to enter a formal insolvency procedure; there will need to be a period of evidence gathering and review by the insolvency practitioner, even in the simplest of cases, before full debt advice can be given. Once the evidence is gathered and assessed, the insolvency practitioner will have a clear idea of the advice that should be given and therefore, whether

the exclusion applies. However, if the practitioner believes that the most appropriate advice is for the individual to enter an informal debt relief procedure or any other procedure other than an Individual Voluntary Arrangement or bankruptcy, but the insolvency practitioner lacks FCA authorisation, the practitioner must not give the advice and the individual will have to go elsewhere for debt advice. At best, this may force individuals to start the process of seeking debt advice all over again, wasting precious time; at worst, they will be dissuaded from seeking any further advice and will not deal with their financial situation.

For the reasons elaborated above, in R3's view, it would be far more sensible for the FCA to interpret the exclusion as applying to cases where, *at the outset*, the insolvency practitioner was in reasonable contemplation of an insolvency appointment. R3 believes that a review of this issue by the FCA and HM Treasury is needed as a matter of urgency – a reinterpretation of the exclusion, or if necessary, an amendment to the Statutory Instrument, would resolve the matter.

Question 11 – do you have any comments or evidence about the recent shift away from sales based on professional advice, and the reasons for this shift?

No view

Question 12 – do you have any comments or evidence about the role of new and emerging technology in delivering advice?

No view

Question 13 – do you have any comments on how we look at the economics of supplying advice?

As noted in the call for input document, the cost of providing advice can vary significantly depending on the complexity of the advice and how personalised it is. Debt advice, by its very nature, is personal to the circumstances of the individual seeking advice and therefore requires specific personalisation by the debt adviser in order to provide comprehensive, meaningful advice to the individual about the debt relief options that are available to them.

However, as noted in our response to Question 10, R3 is very concerned that as a result of the FCA's interpretation of the exclusion for insolvency practitioners from requiring FCA authorisation, smaller insolvency firms may decide that the cost of this additional regulatory burden is too much and may therefore choose not to be FCA-authorised. This would consequently reduce the choice and supply of debt advice available to individuals. It is worth noting that insolvency practitioners based in smaller firms make up nearly 40% of R3's membership and are therefore a vital part of the insolvency profession and debt advice market, offering in most cases debt advice to financially distressed individuals within their local communities across the UK.

In R3's view, the FCA's stance runs counter to government's deregulation agenda; risks restricting access to professional debt advice for those who need it most; and undermines the good work the government is undertaking as part of the Financial Advice Market Review.

Question 14 – do you have any comments on the different ways that firms do or could cover the cost of giving advice (through revenue generation or other means)? Do you have any evidence on the nature and levels of costs and revenues associated with different advice models?

No view

Question 15 – which consumer segments are economic to serve given the cost of supplying advice?

No view

Question 16 – do you have any comments on the barriers faced by firms providing advice?

Yes – please see our responses to Questions 10 and 13 for our concerns about the regulatory cost burden of FCA authorisation on insolvency firms providing debt advice.

Question 17 – what do you understand to be an advice gap?

As identified in the call for input document, in the context of debt advice and personal insolvency, we believe an advice gap to be the situation where individuals cannot obtain the debt advice that they want or need.

We have already elaborated in our response to Question 9 our concerns about the barriers to consumers seeking debt advice or accessing formal personal insolvency procedures. These include perception and understanding of personal insolvency processes; timeliness of advice; the need for a ‘breathing space’ provision in England and Wales; an inability to afford bankruptcy; and the need to understand the full debt advice landscape. In our view, these factors, alone or in combination, are causes of an advice gap in relation to debt and personal insolvency advice.

We are also concerned that, as elaborated in our response to Question 10, the requirement for insolvency firms to be FCA authorised in order to give debt advice as applicable to consumer credit will further exacerbate the debt advice gap, as smaller insolvency firms in particular may decide that the burden of regulation is too much and therefore choose not to be FCA-authorised, thereby reducing the choice and supply of debt advice from smaller ‘High Street’ firms that is available to individuals.

Question 18 – to what extent does a lack of demand for advice reflect an advice gap?

We do not believe that there is a lack of demand in the context of debt advice.

Question 19 – where do you consider there to be advice gaps?

Please refer to our response to Question 17 above.

Question 20 – do you have any evidence to support the existence of these gaps?

Please refer to our response to Question 9 for evidence in relation to debt advice gaps and the barriers to individuals seeking debt advice and accessing personal insolvency procedures.

Question 21 – which advice gaps are most important for the Review to address?

R3 believes that the debt advice gap as elaborated in response to previous questions requires addressing as a priority, in particular the unintended consequence that insolvency firms may decide not to offer debt advice in future, thereby making the advice gap even larger, caused by the requirement for insolvency practitioners to be FCA authorised to give consumer credit debt advice.

Question 22 – do you agree that we should focus our initial work on advice in relation to investing, saving into a pension and taking an income in retirement?

Whilst the areas identified in the question are undoubtedly important, we believe for the reasons set out in our responses to previous questions that focus should also be given to the publicity of available sources of debt advice; assisting individuals in understanding the suite of debt relief options available to them; the provision of, and access to, high quality debt advice to those individuals who need it most; and the reduction in the debt advice gap.

Question 23 – do you agree we should focus our initial work on consumers with some money but without significant wealth? What exact income/wealth thresholds should we use to determine which consumers we will focus on?

No view

Question 24 – are there any aspects of the current regulatory framework that could be simplified so that it is better understood and achieves its objectives in a more proportionate manner?

No view

Question 25 – are there aspects of the EU legislation and its implementation in the UK that could potentially be revised to enable the UK advice market to work better?

No view

Question 26 – what can be learned from previous initiatives to improve consumer engagement with financial services?

No view

Question 27 – are there any approaches to the regulation of advice in other jurisdictions from which we could learn?

No view

Question 28 – what steps can be taken to address behavioural biases that limit consumer engagement without face-to-face advice?

No view

Question 29 – to what extent might the different types of safe harbour described above address the advice gap through the increased incentive to supply advice?

No view

Question 30 – which areas of the regulatory regime would benefit most from a safe harbour, and what liabilities should a safe harbour address?

No view

Question 31 – what steps could be taken to ensure that a safe harbour includes an appropriate level of consumer protection?

No view

Question 32 – do you have any evidence that absence of a longstop is leading to an advice gap?

No view

Question 33 – do you have evidence that the absence of a longstop has led to a competition problem in the advice market e.g. is this leading to barriers to entry and exit for advisory firms?

No view

Question 34 – do you have any comments about the benefits to consumers of the availability of redress for long-term advice?

No view

Question 35 – do you have any comments or suggestions for an alternative approach in order to achieve an appropriate level of protection for consumers?

No view

Question 36 – do you have any comments on the extent to which firms are able to provide consistent automated advice at low cost? Are you aware of any examples of this, either in the UK or other jurisdictions?

No view

Question 37 – what steps could we take to address any barriers to digital innovation and aid the development of automated advice models?

No view

Question 38 – what do you consider to be the main consumer considerations relating to automated advice?

No view

Question 39 – what are the main options to address the advice gaps you have identified?

No view

Question 40 – what steps should we take to ensure that competition in the advice markets and related financial services markets is not distorted and works to deliver good consumer outcomes as a result of any proposed changes?

No view

Question 41 – what steps should we take to ensure that the quality and standard of advice is appropriate as a result of any proposed changes?

No view

We would be happy to discuss any of the points raised in this response in greater detail if it would be of assistance

R3, Association of Business Recovery Professionals
21 December 2015