



## **Debt Management Schemes – delivering effective and balanced solutions for debtors and creditors**

Response by the Association of Business Recovery Professionals (R3) to the consultation paper issued by The Ministry of Justice, the Department for Business, Innovation and Skills and the Insolvency Service in September 2009.

### **Section 1: Introduction**

The Association of Business Recovery Professionals (“R3”) represents Insolvency Practitioners licensed by all the professional bodies which are authorised under statute to regulate insolvency practitioners in the UK. Over 97% of authorised Insolvency Practitioners are members of R3.

A number of R3 members work in firms that offer debt management schemes (otherwise known as debt management plans or DMPs), but the majority of our members do not provide them. As DMPs are one of several debt and insolvency procedures available to individuals struggling with their debts, it is important to understand the role they play in the landscape, and to approach them from a similar public policy standpoint.

To support our response, we have commissioned two surveys of individuals who are currently in DMPs (the most recent in late 2009/early 2010 and an earlier project in 2008) and we conducted a survey of 298 R3 members who work on personal insolvency in (in November 2009).

### **General observations**

R3’s overall stance is that DMPs have a place in the range of solutions open to debtors, offering a short term solution for individuals whose circumstances may change or who do not qualify for an IVA. We understand that these schemes or plans are for people who ‘can pay’ and we see no reason why people who can pay off their debts should not do so. We also appreciate, though, that individuals in financial difficulty are often the least able to understand the options available to them, which can leave them vulnerable to any inappropriate practices that might occur in the debt management industry (which includes creditors as well as DMP providers).

As a starting point, a significant concern for R3 is the worrying lack of captured data - and therefore adequate information and research - on the nature, scope and operation of the debt management industry. As a result, it is very difficult to determine the extent and nature of problems within it, and to decide on the best approach moving forwards. We urge the Government to keep records of the numbers and characteristics of DMPs, and for the recording of all DMPs to be a condition of obtaining a Consumer Credit Licence.

Occasioned by this worrying lack of information about the debt management industry, R3 has commissioned research among people on DMPs, and we have polled our members who are experts in personal insolvency. The results and our consequent concerns are discussed in question 2 and 3 of this paper. In short, we understand that most DMPs

seem to operate to an acceptable standard. However, we are concerned that there is a potential for 'abuse' in the system, by both providers and creditors. This includes:

- a lack of impartial advice;
- the implementation of unfeasible, unworkable DMPs;
- creditors continuing to contact or threaten debtors despite a DMP being in place;
- a lack of information about fees leading to some people entering plans without realising they would be charged;
- instances of providers not asking for proof of income and expenditure before implementing a plan;
- instances of providers making late payments despite timely payments from debtors;
- and some instances of debtors being 'pushed' by providers / 'strong armed' by certain lenders into DMPs, when the scheme is unsuitable for the debtor.

#### A note on the OFT's findings

Management of excessive debt is understandably a priority for the Government in the current economic climate - and there has been a flurry of activity in this area. Two months after the Ministry of Justice launched this consultation on DMPs, The Office of Fair Trading (OFT) launched its own review of the debt management practices of its Consumer Credit Licence holders.

We fully support the OFT's decision to review debt management practices, but we are concerned that it is very difficult to come to a decision on which of the Government's three options is most appropriate given that Option 1 is heavily reliant on the work of the OFT (which will report after submissions are made). R3 urges the relevant government agencies and departments to work together to ensure that the OFT's findings can be taken into account before a final decision is taken by the Government on the future of this industry.

### **Section 2: R3's responses to the consultation questions**

As far as possible, our comments follow the order of questions posed in the consultation document.

#### **Q.1 Are these objectives reasonable and attainable?**

We believe that the objectives listed are reasonable and attainable. We would point out, though, that the suspicion that some banks 'strong-arm' people into a DMPs could undermine the 'awareness of the range of options' objective.

We suspect that certain banks may be effectively 'pushing' debtors towards a DMP even if a different option would be more suitable for them. We believe they may do this as a result of their accounting procedures – when unsecured debts owed are covered by a statutory insolvency procedure, they are classed as 'bad/doubtful debt' (in effect being written off in the bank's balance sheets); whereas when debts are covered by a DMP, we would expect that they can be classed as 'rescheduled, performing debt', which is preferable for the banks as it would not involve balance sheet write-down. It may, therefore, be in certain banks' interest to persuade or even push debtors into a DMP even though an IVA or bankruptcy might be a better option for the individual (i.e. more realistic and less expensive for the debtor while achieving a greater dividend).

In such cases, an individual can be as aware as possible of the range of options, but unless they want to go bankrupt, there is no option but to go into a DMP approved by their bank (if the bank blocks an IVA, for example).

**Q.2 and Q.3 Is there evidence of problems in the current system and if so, how significant and frequent are these problems?**

R3 has commissioned and conducted considerable research in this area.

1. During December 2009 and January 2010, R3 commissioned polling agency ComRes to conduct a new piece of research into the experiences of 258 people currently in a DMP. The following bullet points highlight some of the most worrying findings. It is worth noting that the majority of DMPs seem to be operating well, but there are serious concerns about a minority of DMPs:

- 35% of people in a DMP say that other options for dealing with their debts, such as an IVA or bankruptcy, were not discussed with them before they started their DMP.
- When asked why they went into a DMP, 5% of people in a DMP say they tried to set up an IVA but their creditors stopped them from doing it; 3% say they were pushed into it by the company that set up the plan and 8% say they were unaware of any other options.
- 22% of people in a DMP say the organisation that set up their DMP did not ask to see proof of income or expenditure before the plan was established.
- 10% of people in a fee charging DMP say they were not told that they would be paying a fee until after they had started their plan.
- Since starting their DMP:
  - 44% say they have been contacted by their creditors for the money and 35% say their creditors have threatened to take action such as sending bailiffs round or threatening court action, even though the plan is in place.
  - 17% of people on a DMP say the length of their plan has increased since it began, 21% say their monthly payments have increased in size, and 9% say the interest rate has increased.
  - 15% say the company arranging their plan has made late payments to the people they owe money to, even though they have made their agreed payment at the right time.

It is again worth reiterating that our research suggests that the majority of DMPs are operating well, but these bullet points highlight some very worrying practices in the industry – on the part of both providers and creditors. The full results are appended.

2. In November 2009, R3 conducted a poll which found that 90% of Insolvency Practitioners who deal with personal insolvency believe that there are problems with the way the debt management industry currently operates. The poll found that:

- 84% of Insolvency Practitioners who deal with personal insolvency have seen debtors who agreed to a DMP without having received impartial advice about the alternative options available to them, like IVAs or bankruptcy.

Verbatim comments suggest that advice given to individuals in financial difficulty is often provided by people who do not offer any other products or who do not have any knowledge of the other procedures available, which can automatically limit the provision of full and impartial advice.

- 52% have seen debtors being 'pushed' into a DMP by their creditors and 53% have seen creditors refusing an IVA even though it was a viable option because they wanted the individual to go into a DMP.

- 78% have seen debtors in a DMP that is patently unsuitable for them;
  - 57% have seen people whose DMP had failed because the amount of debt they were in was too high to make a DMP a feasible option;
  - 46% have seen people whose DMP had failed because the monthly payments were unaffordable; and
  - 40% have seen people whose DMP had failed because the repayment timescale was too unrealistic. Our research suggests that the average DMP lasts 8 years; but 10% of people on a DMP say their plan is due to last more than fifteen years and 16% say it is due to last between ten and fifteen years. 15% say they don't know how long their plan is due to last.
- 29% have seen people whose DMP had failed because their creditors decided to take enforcement action, even though correct payments were being made at the right time. Verbatim comments highlight one example in which an individual was on a DMP under which he was meeting his obligations, but the plan failed because all of his creditors obtained charging orders against him.
- Verbatim comments also suggest that people who take out a DMP can often end up with an IVA or bankruptcy further down the line – i.e. the DMP effectively just prolonged their distress and did not solve the problem.

We appreciate that Insolvency Practitioners are much more likely to see cases of 'bad practice' and failed DMPs than they are to see successful ones. However, these results certainly suggest that there are some very concerning practices occurring in at least part of the industry.

3. Research conducted for R3 by YouGov in 2008 into the experiences of people on DMPs led us to believe that there were problems in the system and prompted us to commission the further research summarised above. The 2008 research showed that:

- 28% of people in a DMP had not heard of an Individual Voluntary Arrangement.
- Almost one in five (18%) people in a DMP said that the plan was due to last over 10 years and one quarter (27%) did not know how long their plan was due to last.
- A quarter (26%) of people in a DMP said they have had the terms of their plan changed since the plan was first agreed, with 66% of these people seeing an increase in their monthly payment amount.

#### **Q.4 Would this approach meet any/all of the objectives in paragraph 43?**

See Section 3

#### **Q.5 Should the Government follow Option 1 and do nothing beyond measures underway?**

Without the results of the OFT's review on the status quo in the debt management industry, it may be premature to determine whether Option 1 will meet the Government's objectives.

Based on what we know so far, only 6% of R3 members believe that the continuation of the status quo should be the way forward. Nonetheless, there is certainly scope in Option 1 to meet most of the Government's objectives and to address some key concerns. We would welcome an update to the OFT's guidelines which includes the following stipulations:

- The fact that fees are charged should be made clear on the website of fee-charging DMP providers;

- Individuals asking for debt advice should be provided with information showing the average fees charged by providers in the industry;
- A comparison table outlining the different debt management and insolvency options available, alongside the implications of each, should be made available to individuals before they make a decision;
- All providers should be required to ensure that customers provide proof of income and expenditure before a plan is implemented;
- Providers should be required to provide regular financial updates to debtors detailing how much has been paid off to date, to which creditors, and how much remains.

Our members would also welcome a number of other proposals, which could be achieved under Option 1, provided the OFT has the resources and appetite to pursue them. These include:

- preventing creditors terminating schemes if debtors are making payments in full at the designated time;
- preventing creditors charging interest on debts under a scheme;
- caps on the monthly fees charged by providers;
- caps on the length of schemes;
- restricting access to schemes to people with certain levels of debt.

Given that the OFT can influence the behaviour of both providers and, crucially, creditors, it is arguably ideally placed to play a greater role in improving the operation of the industry.

If Option 1 is pursued in isolation, the Government should certainly collect data on the number of DMPs in existence and the number of companies that provide these for a fee. We also believe it should capture 'flow' data which would facilitate the production of reliable, timely and insightful information on the industry's operation. This should include:

- the number of DMPs proposed;
- the number rejected;
- the number modified before accepted;
- the intended duration of plans and their actual lifespan;
- the average number of creditors that individuals on a DMP owes money to; and
- what happens when a DMP fails.

This information would provide a firm basis for evidence-based policy.

**Q.6 and Q.7 How well are the existing codes of practice working and how effective is the enforcement of existing codes of practice?**

Without the results of the OFT's review, it is impossible to know how effectively the codes of practice are working. We would reiterate, though, that there is evidence of certain bad practice in the current system by DMP providers and creditors (highlighted by R3's research).

We understand that DMP providers have made strides towards more effective self regulation in recent years and that the members of the two main trade bodies account for the majority of the market. The Money Advice Trust's research suggests that the biggest concerns relate to smaller companies who are new to the market and who do not belong to these trade bodies (operating outside their standards).

**Q.8 Are there any features which you would like to see as part of the existing codes of practice?**

There are several features that R3 members would like to see as part of the existing codes of conduct:

- In order to ensure that individuals can make as much of an informed decision as possible, organisations offering DMPs for a fee should
  - make their fees clear on their websites;

- provide individuals with information outlining the average fees charged by providers in the industry;
  - complete a comparison table outlining the different options for the debtor before they make a decision;
  - ask for proof of income and expenditure before implementing a plan and verify this for accuracy and completeness; and
  - provide regular financial updates to debtors.
- To tackle the worst aspects of the industry, our poll of R3 members highlights several features they would like to see in the industry:
    - Creditors being legally bound into a plan where the debtor is paying back the agreed amount at the right time (74% support);
    - Creditors prevented from charging interest (73% support) and adding interest once a scheme has started (82% support);
    - Restricted access to DMPs to people with certain levels of debt to prevent lengthy DMPs (69% support);
    - Caps on the monthly fees charged by DMP providers (62% support);
    - Caps on the length of DMPs (76% support).
  - The lack of data on DMPs is a key concern for R3. Within the existing environment, the potential exists for data to be voluntarily pooled - we would very much welcome comprehensive collection and sharing of data.
  - There is potential for a debt management company to go into insolvency. To safeguard debtor monies in the event of a company becoming insolvent, monies DMP providers collect should be held in a single client account. Bonding cover should also be mandatory, with the bonder required to have its confirmation on a public website so that consumers can check independently that it is in place, as is commonplace in other professions, such as solicitors and Insolvency Practitioners.

**Q.9 Would this approach meet any/all of the objectives in paragraph 43?**

See Section 3.

**Q.10 Should the Government follow Option 2 and promote a code of practice/non-regulatory approach?**

Option 2 seems to present a better way forward than Option 1. We hold this view because activity under Option 1 will happen regardless, and Option 2 provides additional scope for improvement. We do not believe Option 3 is a credible way forward, which we discuss in detail in Q13.

The features that R3 members would like to see can be achieved through self regulation (either through trade body or a protocol). These features are listed in Q8. We are concerned, though, that it may take a long time and a great deal of hard work from providers and - crucially - creditors to make effective self-regulation a reality.

**Q.11 How should such a code of practice/BPM be monitored and by whom?**

Self regulation could involve the creation of a suitable trade body or the establishment of a protocol (akin to the IVA protocol).

- Trade body: if self regulation by a trade body is to work effectively, a practical way forward would be to have one trade body formed by the merger of DEMSA and the DRF.

Effective self regulation can only work if the trade body/associated 'regulator' is capable of taking enforcement action against members who breach the codes of

conduct. An external audit by a reputable organisation could provide a robust way of assessing how well this is working.

- Protocol: the establishment of a protocol is a viable alternative - a formula that has been proven to work well, though not flawlessly, with IVAs.

**Q.12 Would this approach meet any/all of the objectives in paragraph 43?**

See Section 3.

**Q.13 Should the Government follow Option 3 and introduce a regulated approach?**

Without knowing more about the size and shape of the debt management industry, or the problems within it, we feel that regulation would be an unwise step. This is not an anti-regulation standpoint, rather a reflection that without broadly sourced data, it is impossible to know what needs to be fixed, prevented or improved.

There are clearly concerns about the operation of the current system, as our research highlights. We do not believe that option 3, as it currently stands, is capable of tackling those problems or of meeting the Government's objectives.

We do not believe that statutory DMPs under Option 3 present a credible way forward for the following reasons:

- We are concerned that the Government departments or agencies (the OFT or Insolvency Service) do not have the resources to police a statutory programme. Given that resources are currently stretched, we suspect that even light touch regulation would represent a significant additional strain.
- We understand that the legislation referred to under Option 3, as currently drafted, would exclude profit-making providers of DMPs. While we appreciate that the legislation can be altered, a significant amount of time and resources may be required, and any legislation could give rise to the "law of unintended consequences". We doubt whether sufficient time will be found to produce the necessary legislation before the next Parliament; and if it is, we fear that the resulting legislation will be a knee-jerk reaction to anecdotal problems rather than a considered, evidence-based way forward.
- We understand that statutory DMPs would operate alongside non-statutory DMPs. Bearing this in mind, we suggest that Option 3's introduction would create a parallel universe, adding to the existing maze of options available to individuals struggling with their debts, which is highly undesirable.
- Given that non-statutory DMPs would exist alongside statutory DMPs, we do not believe Option 3 would meet the Government's criteria, or address key concerns about the way the industry operates. Statutory DMPs might be able to meet these objectives and prevent bad practice by providers and creditors bound into them, but Option 3 would be powerless to tackle bad practice in non-statutory DMPs (and only cover, at best, part of the industry).
- We doubt that commercial providers would sign up to provide statutory DMPs when they could offer non-statutory ones without additional constraints – i.e. unless the regulated product would be more attractive than the unregulated product. Given the relatively unconstrained nature of non-statutory DMPs, we see little incentive for commercial providers to offer statutory DMPs instead of, or even in addition to, non-statutory ones.

We assume it is hoped that companies could be encouraged to sign up as a result of sufficient media and political pressure. Even if commercial providers did

sign up to offer statutory DMPs, we are concerned that they could sign up 'in name only', while still channelling individuals towards unregulated schemes or other procedures instead.

- If all of the proposed features of a statutory DMP were pursued, the resulting product would look and feel remarkably similar to an IVA. We see no point in complicating the debt and insolvency landscape by creating another IVA or an 'IVA lite' which would undermine the hard work that has gone into making the IVA such a flexible solution. We suggest that the two procedures are kept distinct (e.g. debt write off) to avoid duplication and confusion.

If a DMP essentially has all of the elements of an IVA, we suggest that they should fall under the remit of a licensed Insolvency Practitioner, to ensure consistency with the current formal insolvency landscape.

- We are unclear as to how creditors would enter into statutory DMPs - i.e. whether they would all have to agree it or whether there would be a vote. We think that DMPs should only be enacted if all of the creditors agree.

As it stands, we do not believe the case for Option 3 has been made – i.e. given the lack of research into (and understanding of) the industry – and we do not believe Option 3 would be capable of meeting the Government's objectives.

**Q.14 If option 2 or 3 is introduced, should advice, including the use of a comparison table, be provided as a requirement?**

R3's research indicates that individuals who are currently in DMPs are often unaware of the alternative solutions available to them:

- 35% of people in a DMP say that other options for dealing with their debts (IVA or bankruptcy) were not discussed with them before they started their DMP;
- 8% of people in a DMP say one of their reasons for entering into a DMP was simply because they were unaware of other options; and
- 84% of Insolvency Practitioners who deal with personal insolvency have seen debtors who agreed to a DMP without having received impartial advice about the alternative options available to them.

We believe that a comparison table would help to make individuals more aware of their options. All organisations offering DMPs should be required to complete a comparison table for each individual they deal with, outlining the pros, cons and implications of each solution. The table should be made available to individuals, and explained to them, before they make any decision on which option to pursue. We believe they should have to sign a form entitled 'is a DMP right for me' before the plan begins, as happens in an IVA.

**Q.15 and Q.16 If option 2 or 3 is introduced, should there be a limit on the total amount of debt included in a plan? If yes, what should the debt limit be?**

69% of Insolvency Practitioners who work on personal insolvency think access to DMPs should be restricted to people with certain levels of debt, to guard against excessively lengthy DMPs.

Our research shows that:

- An individual who enters a DMP has an average of around £100,000 of debt. It suggests that the average DMP lasts 8 years though 10% of people on a DMP say their plan is due to last more than 15 years, 16% say it is due to last ten years or more and 15% say they don't know how long it is due to last.
- 57% of Insolvency Practitioners who work on personal insolvency have seen people who have failed a DMP because the amount of debt they were in was just too high to make a DMP a feasible option; and

- 40% of Insolvency Practitioners have seen people who have failed a DMP because the repayment timescale was just too unrealistic (which could relate to the amount of debt included within it).

DMPs are for those who can pay rather than those who cannot. Too much debt over too much time is simply not a feasible approach to an individual's financial situation - in these cases, an IVA or bankruptcy offers a more appropriate way forward, and is likely to offer a better dividend for creditors as well.

**Q.17, Q.18 and Q.19 If option 2 or 3 is introduced, should plans have an asset cap? If yes what should the asset limit be? If an asset cap is introduced, how should assets be valued?**

We do not see the merit in setting an asset cap.

**Q.20 and Q.21 If introduced, should statutory debt repayment plans be time limited (option 3) or should a time limit be included in a code of practice (option 2)? If yes, what should the maximum limit be?**

76% of Insolvency Practitioners who work on personal insolvency would like to see a limit on the length of plans.

Our research indicates that the average DMP lasts 8 years, but 10% of people on a DMP say their plan is due to last more than 15 years and 16% say it is due to last ten years or more. One example provided in our poll of R3 members highlights the case of a debtor aged 55 with a DMP lasting 45 years. We suggest the length of these DMPs is excessive and out of line with public policy on insolvency procedures.

DMPs are for those who can pay rather than those who cannot – plans of this length indicate that the individual cannot pay and would be better off in a different solution. DMPs have a place in the range of solutions open to debtors, offering a short term solution for individuals whose circumstances may change or who do not qualify for an IVA. To be an effective and useful tool, they should remain a short-term solution.

**Q.22 and Q.23 If option 2 or 3 is introduced, should there be a minimum payment rate? If yes, what should the minimum repayment be?**

We believe this is predominantly an issue for providers to decide.

**Q.24, Q.25 and Q.26 If option 2 or 3 is introduced, should any repayment plan have an element of debt write-off? If yes, how could this be balanced against the needs of creditors? If yes, would requiring creditors to agree to any debt write-off achieve this balance?**

No. There are other adequate insolvency procedures in place which achieve debt write-off. Introducing an element of debt write-off would bring DMPs remarkably close to IVAs, and we see little point in creating another IVA.

The real difference between an IVA and a DMP should be debt write-off. DMPs should be for people who can pay the amount they owe in full, which many individuals want to do. Placing caps on the length of schemes and the total debt included should prevent individuals entering into a scheme when their debt is excessive or another solution, which does include debt write off, is more appropriate. DMPs should be the preserve of people who can pay back what they owe in full (i.e. no debt write-off).

**Q.27 and Q.28 If either option 2 or 3 is introduced, should access be restricted to those with multiple debts? If yes, what should be the criteria for the minimum number of debts?**

We do not see the merit in restricting access to those with multiple debts.

**Q.29, Q.30, Q.31, Q.32 and Q.33** If option 2 or 3 is introduced, should administration charges be capped? If yes, do you agree that the cap on charges should be between 7.5% and 15%? If option 2 or 3 is introduced, should operators be permitted to charge a set-up fee? If yes, should a set-up fee be a fixed amount? If yes, what do you consider to be a reasonable amount?

There is a range of views from R3 members, but the majority (62%) of those who work on personal insolvency would like to see caps on fees.

R3 believes that individuals enquiring about DMPs should be made aware of the fees a provider charges from the outset. This should include putting information about fees on the websites of providers and ensuring that individuals are provided with a 'fee sheet' which details the average fees charged by providers in the industry before they sign up. Our research shows that one in ten people (10%) in a fee-charging DMP were not told they would be charged a fee until the plan had begun.

We see no reason why providers should not be permitted to charge a set-up fee, but we recommend that payments made by debtors should be shared between creditors and scheme providers, rather than the providers taking the first few payments themselves while creditors wait for a few months before receiving any of the money owed to them. This would mirror the IVA-protocol.

**Q.34 Who should meet the fees and charges of scheme operators?**

We believe other respondents are better placed to offer a view on this – we see merit on both sides.

**Q.35 and Q.36 Should a standard formula/fixed percentage be applied when calculating repayment rates? If Yes, what percentage of surplus income should form the repayment rate?**

We believe other respondents are better placed to offer a view on this.

**Q.37 and Q.38 Should the above debts be excluded? Are there any other debts that should be excluded?**

In order to ensure consistency, we suggest that the debts that are excluded in statutory insolvency procedures should be excluded in DMPs.

**Q.39 If either option 2 or 3 were introduced, how regularly do you feel that debtors should be required to update information on their means? Should this apply under a code of practice?**

**a) Six-monthly**

**Yes/No**

**b) Annually**

**Yes/No**

**c) Other (please specify and give reasons)**

97% of Insolvency Practitioners who work on personal insolvency think that providers should be required to send regular financial updates to debtors. To ensure consistency, we suggest that DMPs are subject to the same frequency of updates as IVAs.

**Q.40 Do you think that, if option 2 or 3 is introduced, plans should be terminated if circumstances improve sufficiently to allow normal commitments to be met?**

If the individual is able to pay back the money they owe in a shorter period of time than originally envisaged due to a beneficial change in circumstance (the proverbial lottery win), we believe the plan should be terminated as soon as possible.

**Q.41 Is 12 months an effective barrier against potential misuse?**

We believe other respondents are better placed to offer a view on this.

**Q.42, Q.43, Q.44 and Q.45 Do you have any comments on the powers, sanctions or funding mechanism for the Supervisory Authority? Who should be considered to be authorised by the Lord Chancellor for the role of Supervising Authority? Is there an existing regulatory regime that might be adapted to take on the Supervising Authority role? How should the Supervisory Authority carry out its functions?**

Self regulation would reduce the need for a state supervising authority as it would be 'self funding'. This would leave the OFT better able to direct resources towards newer entrants to the market (thought to be responsible for the most worrying practices).

We are concerned that the OFT and the Insolvency Service may not have the resources needed to carry out the functions required under Option 3. If a Supervisory Authority had to be selected, we would suggest that the Insolvency Service is best placed to fill this role. This would ensure consistency given that the service is currently responsible for insolvency procedures.

### Section 3: Government's objectives

#### **Q4, Q9 and Q12. Would this approach meet any/all of the objectives in paragraph 43?**

The following table summarises our view of each option's capacity to meet the consultation's objectives:

|                 | <b>Helping those who can pay to pay</b>   | <b>Fees are reasonable and consistent</b>  | <b>Stopping creditors adding interest</b>   | <b>Preserving the best features</b>   | <b>Ensuring debtors are aware of the range solutions available</b>   | <b>Correct balance between creditors and debtors</b>  |
|-----------------|---|--|---|---|--|---|
| <b>Option 1</b> | Potentially, though this is highly dependent on the OFT's work. At the moment, evidence indicates that those who <u>can't</u> pay also go into a DMP.                 | Potentially, though this is highly dependent on the OFT's work.  | Potentially, depending on the OFT's work.   | Yes, though worst practices may also continue – this is dependent on the work of the OFT.   | Potentially, though this is highly dependent on the OFT's work. At the moment, evidence suggests worrying numbers of debtors are not aware of their options. | Potentially, though this is highly dependent on the OFT's work. At the moment, we fear certain bad practice by creditors can take advantage of debtors' vulnerability.          |
| <b>Option 2</b> | Yes. It can also decrease the scope for people who <u>can't</u> pay going into a DMP  | Potentially yes.   | Potentially yes.  | Yes, and going some way to address the worst features.  | Potentially yes.   | Potentially yes.  |
| <b>Option 3</b> | Yes. It can also decrease the scope for people who can't pay ending up on a statutory DMP, though those who <u>can't</u> pay could still go into a non-statutory DMP. | As statutory and non-statutory plans will co-exist, this objective can only be partially achieved at best – i.e. fees could still be unreasonable in non-statutory DMPs. | As statutory and non-statutory DMPs will co-exist, this objective can only be partially achieved at best – i.e. adding interest could still happen in non-statutory DMPs. | Broadly yes, though the debt/insolvency landscape could be more confusing for debtors due to statutory and non-statutory plans co-existing. | The situation could become more confusing for debtors due to statutory and non-statutory DMPs co-existing.   | As statutory and non-statutory DMP will co-exist, this objective can only be partially achieved at best – i.e. the 'incorrect' balance could still exist in non-statutory DMPs. |

#### **Section 4: Impact assessment**

**QIA 1. If you are a creditor, can you give details of the estimated cost of adopting a code to your business?**

N/A

**QIA 2. If you are an operator, can you give details of the estimated cost of developing and adopting these proposals to your business?**

N/A – not enough of our members are operators for us to have access to this information.

**QIA 3. If you are an operator, can you give details of the estimated cost of adopting these proposals to your business?**

N/A – not enough of our members are operators for us to have access to this information.

**QIA 4. If you are a creditor, can you give details of the estimated cost involved if changes are needed to debt provisioning caused by debts being included in a regulated scheme?**

N/A

**QIA 5. What level of funding would be necessary to ensure the Supervising Authority is “fit for purpose”?**

Without a reliable notion of how many providers would sign up to offer statutory DMPs, it is impossible to provide a figure.

**QIA 6. If option 2 or 3 are implemented, what are your views on whether the number of current operators will expand or contract?**

N/A

## APPENDIX 1

### Survey of R3 members: Debt Management Plans



#### Results Summary

*Methodology note: R3 conducted an online survey of 298 R3 members who work on personal insolvency between November 30th to 3rd December 2009.*

**Q1. Do you think there are problems with the way the debt management industry operates at the moment?**

|            | Percentage of IPs |
|------------|-------------------|
| Yes        | 89%               |
| No         | 3%                |
| Don't know | 7%                |

**Q2. Have you come across any of the following in the past few years? Please tick all that you have come across.**

|  | Percentage of IPs |
|--|-------------------|
| Debtors who agreed to a DMP without having received <u>impartial</u> advice about the alternative options available to them, like IVAs or bankruptcy   | 84%               |
| Debtors being 'pushed' into DMPs by their creditors  | 52%               |
| Creditors refusing an IVA even though it was a viable option because they wanted the individual concerned to go into a DMP instead                     | 53%               |
| Debtors in a DMP that is patently unsuitable for them  | 78%               |
| People who have failed DMPs because the repayment timescale was too unrealistic  | 40%               |
| People who have failed DMPs because the amount of debt they were in was just too high to make a DMP a feasible option                                  | 57%               |
| People who have failed DMPs because the monthly payments were unaffordable   | 46%               |
| People who have failed DMPs because their creditors decided to take enforcement action, even though correct payments were being made at the right time | 29%               |

**3. The Government consultation lays out three options. Please rank the options from 1 to 3, where 1 is the option you like the most and 3 is the option you like the least.**

|                              | Mean score (where 3 is the least favourable option and 1 is the most favourable option) |
|------------------------------|---|
| Continue with the status quo | 2.73 (i.e. the least favourable option presented)                                       |
| Improve self regulation      | 1.77  |
| Introduce statutory DMPs     | 1.52 (i.e. the most favourable option presented)  |

**4. Do you support or oppose each of the following proposals?**

|   | Support | Oppose | Don't know |
|---|---------|--------|------------|
| Restricting access to DMPs to people who have a certain level of debt (i.e. so that people with excessive debt can not enter into plans that last for many years) | 69%     | 25%    | 6%         |
| Restricting access to DMPs to people by capping assets  | 33%     | 41%    | 26%        |
| Restricting access to DMP to people with multiple debts   | 30%     | 57%    | 13%        |
| Preventing DMP providers charging <u>set up</u> fees  | 36%     | 49%    | 15%        |
| Preventing creditors charging interest on debts covered by a DMP  | 73%     | 18%    | 9%         |
| Preventing creditors adding interest on debts covered by a DMP once a plan has started  | 82%     | 14%    | 4%         |
| Capping the length of DMPs  | 76%     | 20%    | 4%         |
| Capping the monthly fees charged by DMP providers   | 62%     | 27%    | 11%        |
| Requiring that all DMPs include an element of debt write off  | 36%     | 44%    | 20%        |
| Requiring DMP providers to provide regular financial updates to debtors (how much has been paid back to which creditors and how much is left to pay)              | 97%     | 0%     | 3%         |
| Introducing minimum payment rates   | 39%     | 43%    | 18%        |
| Making DMPs legally binding on creditors – so if payments are made in accordance with the plan, they cannot pull out of it or take enforcement action             | 74%     | 18%    | 8%         |