



**Call for evidence: Review of the personal insolvency framework
R3 response
October 2022**

About R3

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.
2. Our members work across the spectrum of the profession, from global legal and accountancy firms through to smaller, local practices. Our members have direct experience of insolvencies and their impact on individuals and businesses across the UK.
3. The insolvency, restructuring and turnaround profession is a vital part of the UK economy. The profession promotes economic regeneration, resolves financial distress for businesses and individuals, saves jobs, and creates the confidence and public trust which underpin trading, lending and investment.
4. We have focused this response on those questions and themes in the consultation where we can provide answers based on our members' expertise, including their experience of dealing with individuals in significant financial distress. This response is based on feedback received from across our membership over recent weeks, including through a survey of all R3 members and input and expertise from our Personal Insolvency Committee. 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.
5. We would be delighted to attend further meetings with officials to discuss any points raised below in greater detail. If you would like to meet us or if you have any other queries, please contact R3's Public Affairs Manager, Pim Ungphakorn, at pim.ungphakorn@r3.org.uk or on 020 7566 4202.

Overview

6. R3 welcomes the opportunity to respond to this consultation, having called for an overarching review of the personal insolvency framework for some time. In our response to the consultation on changes to the monetary eligibility criteria of Debt Relief Orders (DROs) in February 2021, we noted that while we welcomed the proposed changes to DROs and the introduction of the breathing space scheme, *"a review of the personal insolvency framework as a whole is overdue"* to *"allow the Government to assess how well the various options currently align with each other within the framework, as well as establish where changes are needed for each of the existing options."*
7. While we understand this call for evidence is limited to the three formal personal insolvency options – Individual Voluntary Arrangements (IVAs), DROs and bankruptcies – we would urge the Insolvency Service to include all formal and informal personal insolvency solutions in its review – including looking at how Debt Management Plans (DMPs), the recently-introduced Debt Respite Scheme (also known as "breathing space") and the soon-to-be-introduced Statutory Debt Repayment Plan (SDRP) align effectively with the existing personal insolvency processes.

8. A successful personal insolvency framework must strike the right balance: on the one hand, it should allow people to get back on their own two feet by relieving them of their indebtedness, while on the other hand, it should seek to return to creditors what is owed to them.
9. The impact of the COVID-19 pandemic on personal finances, record-breaking energy price increases and higher mortgage and rent payments have seen inflation rising to its highest level in 40 years. This means that an effective personal insolvency framework is now more important than ever. Indeed, a number of the debt charities and organisations offering free advice to indebted individuals we spoke to in recent weeks told us that they have an increasing number of clients in negative budgets,¹ with one organisation noting that the growing number of these clients was “the most pressing issue for them”. Many of these individuals have fallen into financial distress due to unavoidable external circumstances – having been adversely affected by the recent drastic rise in energy prices and other costs – rather than because they were careless with their finances. It is therefore crucial to ensure our personal insolvency framework is best placed to help indebted individuals deal with their financial issues.
10. Unfortunately, our members, who have extensive experience of helping people facing financial problems and have first-hand experience of what works and what doesn’t for indebted people, report that the current framework does not always effectively support the interests of creditors *or* debtors – for the following reasons:
 - a. The purpose of the current personal insolvency framework is unclear. Individual changes to the various formal and informal solutions over the years, without an overall review of how these options work together, have meant that there is a lack of synthesis between the more rehabilitative and more punitive measures within the framework. Moreover, the framework does not effectively account for the individual circumstances of those in debt. Individuals in genuine need of help are sometimes disproportionately penalised. At the same time, the framework allows for abuses of the system, negatively impacting creditors.
 - b. The framework does not account for the fact that an individual’s circumstances can quickly change, meaning that the solution they initially entered may no longer be suitable for them a few months later. Currently, there are substantial barriers preventing individuals moving between the various solutions.
 - c. Barriers to entry – primarily related to the cost of the different solutions – currently prevent many individuals from accessing the help that they need, and lead to individuals entering the wrong solutions. Furthermore, individuals tend to lack sufficient knowledge and understanding about the various personal insolvency solutions when they enter one, because they have not been able to access debt advice or because, in certain scenarios, they have received limited and/or unhelpful advice. This results in many people entering the wrong solutions, or making unhelpful decisions for their circumstances when in a solution.
 - d. There is currently a lack of emphasis on, and attention given to, prevention – so that individuals can be helped to avoid entering formal debt solutions in the first place. Better financial education for individuals before, during and after they enter a solution is needed. Alongside this, a more effective synthesis of the informal and formal debt solutions would be helpful, so that informal debt solutions can better help to prevent and/or support individuals entering formal solutions.
 - e. The current framework does not sufficiently encourage individuals to engage with the process of their debt solution.
11. Any changes made to the framework as a whole must address the above issues, in order to ensure that the framework is fit for purpose – so that indebted individuals can better resolve their debts, and creditors can improve their chances of seeing their money repaid in some form (either in full or partly).

¹A negative budget is where a debt adviser uses a Standard Financial Statement (SFS) to assess that a client cannot meet their living costs.

R3's key recommendations

12. In order to tackle the issues with the current framework, R3 suggests the following five recommendations. These are elaborated on in more detail throughout the rest of our response:

- a. To mitigate cost continuing to present a major barrier to entry to some of the formal solutions, the fee for entering bankruptcy or a DRO should be removed for debtors that meet the criteria for these solutions and are on income-related benefits. This would ensure that those on low incomes are able to access an insolvency solution, with those with few assets able to enter a DRO and those with assets able to enter bankruptcy. An additional potential change which would remove cost as being a deciding factor for any individual entering a formal solution, would be to have a single, equal-value, cost of entry for each of the three formal solutions – for example, of £60 or £70 – to be paid to the Insolvency Service when the debtor enters the solution. In order to identify whether individuals are able to afford the bankruptcy entry fee, or make regular IVA repayments, a process – similar to Scotland's Common Financial Tool (CFT) – by which an individual's income, assets and expenditure can be assessed to identify what disposable income is available to put towards repayment of debts should be introduced and used consistently across all regulated and qualified sources of debt advice.
- b. All individuals should be required to obtain guidance about a statutory solution before they enter it. They should also be encouraged to obtain regulated and qualified advice prior to entering such a procedure. We would support the introduction of a single online gateway, to be overseen by the Insolvency Service, if it were to act as a sign-posting guidance hub where individuals could enter information about their finances and subsequently be guided through an automated process to a suggested solution that would suit their circumstances. We would envisage such a gateway working in the following ways:
 - i. All individuals entering a statutory solution should be required to enter the single gateway. This would ensure that all individuals entering such a solution obtain consistent guidance. It would also ensure that individuals receive guidance before entering bankruptcy. While those entering IVAs and DROs receive advice from the nominee/intermediary before entering these solutions, there is currently no mechanism requiring individuals to obtain guidance prior to entering bankruptcy.
 - ii. However, the information provided – and solution recommended – by the gateway should act as *guidance only*. The debtor should not be required to enter the procedure that the single gateway suggests – they should ultimately retain the right to choose the solution they enter, as well as the right to choose not to enter a solution at all. This should be made clear on the gateway.
 - iii. To begin the process of using the gateway, the individual should be asked to enter financial information about their circumstances, such as the value of their debts, their income, the value of their assets, whether they are on income-related benefits, etc.
 - iv. The gateway should also ask whether the individual has received debt advice. The individual should be asked to specify the name of the advisor or organisation from whom they have sought or are seeking this advice. They should also then be asked to specify which solution – if any – they have been advised to enter by their advisor. This would allow the Government to maintain a record of which advisor has advised debtors to enter which solutions. If an advisor advises a different solution to the gateway, they should have to explain why this was the case.

- v. The gateway should make clear that its guidance is *not* a substitute for regulated and qualified individualised debt advice. If an individual indicates that they have not received debt advice, the gateway should provide them with a list of the different types of sources of advice they could go to in order to receive this. An example of such a list can be found on pages 24 and 25 of R3's 'Dealing with Money Worries' resource.² The gateway should explain that an individual can apply for breathing space while obtaining advice, and should link to the application for this process.
 - vi. Based on the information entered by the individual, the gateway should suggest a statutory or non-statutory solution appropriate for the individual's circumstances, using an automated process. It should provide the debtor with concise information about the solution, explain to the individual why the solution would be appropriate for their circumstances and also make them prepared for and aware of what is likely to happen during the procedure, as well as of the likely length of the procedure, of the conditions for any payments they are required to make during the process, of what is required for discharge, and of the consequences of not engaging with the procedure or the trustee or supervisor overseeing it. This would bring the personal insolvency framework in England and Wales more closely in line with the framework in Scotland, where creditors are required to provide a Debt Advice and Information Package to the indebted individual from whom they are taking steps to recover money through diligence, or when they intend to make the individual bankrupt.³
 - vii. The individual should then have the option to apply for a solution at the end of the gateway process. They should be able to choose which solution to apply to – or have the option not to apply to any solution – regardless of the guidance provided by the gateway. The gateway should make clear that the solution it has recommended to the debtor should be treated as guidance only, and that it may be useful for the debtor to obtain regulated and qualified advice.
- c. The Financial Conduct Authority (FCA) should expand the debt advice exemption so that licensed insolvency practitioners are able to provide debt advice even where they do not contemplate an appointment in a subsequent procedure (which effectively limits an insolvency practitioner to providing advice about IVAs). The current cost of living challenges are likely to put additional pressure on the debt advice sector's resources as more individuals fall into financial distress, and a simple way of both spreading this burden and improving the accessibility of debt advice in the UK would be to revise the existing exemption from FCA authorisation for licensed insolvency practitioners. Insolvency practitioners are heavily regulated and monitored when it comes to providing debt advice: they are subject to regular oversight from the UK's Recognised Professional Bodies (RPBs), which are in turn regulated by the Insolvency Service. Insolvency practitioners are the only professionals able to act as a supervisor in an IVA and trustee in a Protected Trust Deed (PTD) and may be appointed to act as trustee in bankruptcy in place of the Government's Official Receiver. An expansion of the exemption could increase the availability of regulated advice to debtors and take some pressure off oversubscribed debt charities.
 - d. A simple mechanism for transferring between the different statutory and non-statutory processes should be introduced. Currently, the lack of such a mechanism acts as another barrier to entry: indebted individuals can, for example, be dissuaded from entering a DRO

² R3 (2021). ['Dealing with money worries – A guide to your options'](#), p.24-25

³ Accountant in Bankruptcy (2016). ['Debt and the consequences: Important information to help you deal with your creditors and debt'](#), p.16

when they would qualify for the solution, but the value of their debt is close to the £30,000 limit – opting instead for the greater certainty that bankruptcy or an IVA would offer them. Furthermore, the framework does not account for the reality that the circumstances of indebted individuals can change very quickly, particularly in the currently challenging economic landscape. Where criteria determining an individual’s eligibility for a specific solution are changed – for example through the recent changes to the DRO monetary eligibility criteria – thought should be given as to the approach to be taken for individuals already entered into a different option, who would now qualify for the recently altered solution.

- e. The current 12-month term of bankruptcy makes no distinction between those who have accrued their debts recklessly and/or have sought to hide their assets and those who have merely been the unfortunate victims of circumstance. A return to a three-year bankruptcy term would restore the balance between debtors and creditors to the situation before 2003. However, there should be an option for the debtor to apply for this to be reduced to a two-year term, which the trustee could agree to if they feel that the debtor is shown to be engaging with the process, and the debtor is able to show that they are attending financial education courses. Financial education becoming a condition for early discharge from bankruptcy would help to prevent individuals from entering a “cycle” of debt as well as to help identify individuals who abuse the system. The trustee being able to take into account the bankrupt individual’s level of progression with financial education and engagement with the process when making this decision to discharge early would again bring the framework in England and Wales closer in line with the Scottish framework – in which the trustee in bankruptcy must decide whether an indebted individual should undertake a course of targeted financial education within six months of the date of award of bankruptcy.⁴

13. As noted above, as well as looking at solutions for individuals in debt, an all-encompassing review of the framework should place greater emphasis on *preventing* individuals from entering formal debt solutions in the first place. As well as improving financial education for individuals, this should include looking at how the informal personal insolvency solutions – including breathing space, DMPs, and the SDRP – can help to prevent individuals from entering a formal solution, or help to provide individuals with better support ahead of them entering the formal procedure.

Question 1: What should be the fundamental purpose of the personal insolvency framework? Does the current framework meet that purpose?

14. The fundamental purpose of the framework should be to strike the right balance between the following aims:
- a. Preventing individuals from entering formal personal insolvency solutions where possible;
 - b. Rehabilitating indebted individuals who genuinely need financial help;
 - c. Penalising debtors who abuse the system; and
 - d. Protecting creditors’ interests and maintaining the confidence of lenders and other economic actors, through supporting the principle that debts should be repaid where possible.
15. The current framework is not nearly as effective as it could be in supporting individuals in genuine need of help, in policing those who abuse the system *or* in upholding creditors’ interests, for the reasons cited in paragraph 10 in the overview. Therefore, it does not meet its fundamental purpose.

⁴ Scottish Government (2019). [Reforms introduced by the Bankruptcy and Debt Advice \(Scotland\) Act 2014 – Overview](#)

16. Our members believe that the three formal solutions – IVAs, DROs and bankruptcies – are the correct range of solutions: with DROs providing a fresh start for individuals on low incomes with very few assets; bankruptcy allowing for debt write-off for those with more assets and returns to be made to creditors in certain cases and an investigation into the affairs and actions of the bankrupt; and IVAs intended to provide better returns for creditors than bankruptcy while providing a fresh start for debtors who are able to make regular repayments or have realisable assets. The three solutions were therefore designed to account for the needs of individuals in varying circumstances.
17. However, many indebted individuals do *not* enter the correct solution for their circumstances due to two overarching reasons: lack of access to qualified and helpful debt advice; and barriers around cost of entry or financial eligibility preventing them from entering the solution that would have been most suitable for them.
18. Indeed, many individuals are currently prevented from being able to access *any* of the three formal solutions. This is particularly true of debtors who have assets of too high a value to qualify for a DRO but no disposable income, and are therefore unable to afford the bankruptcy fee or IVA repayments. These individuals are effectively left in limbo, with their only available option to seek an informal arrangement with their creditors.
19. Furthermore, lack of engagement with the personal insolvency process and the lack of financial education available to individuals in need of financial help mean that individuals can end up stuck in a cycle of debt. One debt charity disclosed to R3 that of their clients who had recently entered bankruptcy, 1 in 10 had previously entered into a DRO.
20. For these reasons, the framework is not able to fulfil its fundamental purpose, as outlined in paragraph 14. It is neither able to effectively rehabilitate individuals who genuinely need financial help; nor is it effective in protecting creditors' interests.

Key barrier to entering the correct solution: cost

21. Our members and other personal insolvency stakeholders, including organisations and charities providing free debt advice, have noted that one of the key barriers to preventing individuals from accessing the right solution for their circumstances is the cost of entering the procedure.
22. It is particularly difficult for people who are hugely indebted to pay the £680 application fee for bankruptcy, unless they enter further into debt and/or avoid paying other creditors. 53% of R3 members surveyed in September 2022 said that the cost of entering bankruptcy was too high.
23. When they cannot afford to go bankrupt, indebted individuals often have to seek alternative debt relief solutions when bankruptcy would have been most appropriate – or they may have to delay going bankrupt. This risks individuals accruing more debt, avoiding paying their creditors and being pursued by those they owe money to. The initial cost of entering bankruptcy in England and Wales is high when compared to countries such as Scotland, where the cost is £200 and can be paid in instalments under certain circumstances;⁵ Ireland, where the cost is €200;⁶ or Australia, where there is no fee to apply for bankruptcy.⁷
24. Meanwhile, many individuals on low incomes and with low assets are unable to afford the £90 fee for a DRO, which can result in them remaining in financial penury. In March 2021, Scotland permanently

⁵ MyGov.Scot, '[Applying for bankruptcy](#)'

⁶ Citizens Information Ireland, '[What is bankruptcy?](#)'

⁷ Australian Financial Security Authority, '[Am I eligible for bankruptcy?](#)'

reduced the cost of entering its DRO equivalent – the Minimal Asset Process (MAP) – from £90 to £50,⁸ while Ireland has currently waived the entry fee to its DRO equivalent – the Debt Relief Notice (DRN).⁹

25. According to statistics from the Debt Advice Foundation’s helpline in August 2022, 11% of those who phoned the charity’s helpline were recommended to enter bankruptcy but *none* ended up choosing this as a solution, while 42% were recommended to enter a DRO and only 26% opted to enter one.¹⁰ Meanwhile, although only 16% of clients were recommended to enter an informal arrangement, 58% ended up choosing this as a solution.¹¹
26. This suggests that many clients were put-off entering these two formal solutions, despite being advised that they were the best solutions for them, and instead opted for an informal solution, potentially simply delaying their entry into a formal solution and resulting in them accruing more debt. Reducing the upfront cost of the solutions may help to discourage fewer individuals from entering the procedure, and therefore help them to deal with their debt at an earlier stage.
27. Organisations providing free advice to indebted individuals, including Money Advice Trust, Christians Against Poverty and Citizens Advice disclosed to R3 that they frequently see their clients unable to enter any of the three formal debt solutions because of their inability to afford the DRO fee, let alone pay the bankruptcy fee or make the regular IVA repayments usually required.
28. The number of individuals affected may increase over the next few months, as households struggle to pay their winter heating bills. Research by Resolution Foundation, published in August this year, found that: *“The bottom five income deciles (50 per cent of households) will spend more than 10 per cent of their budgets on energy bills; this has increased from just the lowest two deciles spending just 7 per cent of their budgets on energy in 2019-20 (and with no decile group spending more than 10 per cent of their budget on energy bills in 2019-20, on average). This will put much more pressure on low-income households: in previous work, we showed that households in the bottom two deciles will, on average, need to reduce their spending on clothes, furniture, leisure, restaurants, holidays and other plausibly non-essential items by one-quarter (24 per cent) to be able to afford the higher energy bills this winter compared to what they were expected to be back in May (although this figure will now be higher on the most recent forecast of the price cap).”*¹²
29. In particular, a growing number of individuals who own assets, including homes, but have very little disposable income, are falling into financial distress, due to the current cost of living challenges, which now extends to increased mortgage repayments as a result of interest rate rises. As mentioned in paragraph 9, debt charities are reporting that an increasing number of their clients are in negative budgets. Research by Citizens Advice in 2020 showed that, due to low incomes, those in negative budgets spend an average of 90% of their income on fixed outgoings.¹³ This suggests that they would likely have little surplus disposable income to be able to afford to enter bankruptcy, or, in some cases, even a DRO.
30. One possible solution, supported by 44% of R3 members surveyed in September 2022, would be for the cost of entering bankruptcy or a DRO to be removed for debtors that meet the criteria for these solutions and are on income-related benefits. This would ensure that those on low incomes are able to access an insolvency solution, with those with few assets able to enter a DRO and those with assets able to enter bankruptcy.
31. With an increasing number of people, including many homeowners, struggling to make the regular repayments needed for their utility bills and other fixed costs, we would suggest that, in conjunction with

⁸ Accountant In Bankruptcy, [‘Scottish Statutory Debt Solutions Statistics, April to June 2022 \(2022-23 Quarter 1\)’](#)

⁹ Insolvency Service of Ireland, [‘Debt Relief Notice \(DRN\)’](#), p.5

¹⁰ Debt Advice Foundation (2022). [‘Debt Helpline Statistics: August 2022’](#), p.13

¹¹ *Ibid.*

¹² Resolution Foundation (2022). [‘A chilling crisis: Policy options to deal with soaring energy prices’](#), p.15-16

¹³ Citizens Advice (2020). [‘Negative Budgets: A new perspective on poverty and household finances’](#)

our recommendation in paragraph 30, when assessing disposable income consideration for entering an IVA, consideration should be given to the individual's financial ability to withstand an increase in living costs and still be able to meet monthly IVA contributions of a certain value. Where individuals are only able to afford a low-value monthly contribution (of, for example, £70), they should instead be advised to enter – or should be allowed to move to – one of the other solutions.

32. In order to identify whether individuals are able to afford the bankruptcy entry fee, or make regular IVA repayments, an effective process by which an individual's income, assets and expenditure can be assessed to identify what disposable income is available to put towards repayment of debts should be introduced. The outcome of this process should be consistent regardless of which debt solution (formal or informal) is chosen. It should also be consistent across all regulated and qualified sources of debt advice. This would bring the framework in England and Wales closer in line with the Scottish framework, which introduced the Common Financial Tool (CFT) in 2015, with the aim of achieving "consistency and transparency in relation to any determination of the level of contribution that a debtor might pay in respect of Scottish statutory debt solutions."¹⁴ Money advisers, who advise debtors on Scottish statutory debt relief and management options, are obliged to use the CFT when assessing a debtor's financial situation and their ability to pay a contribution. A trustee must use the CFT to determine the amount of contribution payable in a PTD and bankruptcy and a money adviser must use the CFT to determine the expected contribution payable under the Scottish Government's Debt Arrangement Scheme and on submission of a debtor's application for bankruptcy.¹⁵
33. An additional potential change, which would remove cost as being a deciding factor for any individual entering a formal solution, would be to have a single, equal-value, cost of entry for each of the three formal solutions of between £50 and £70. In 2021, there were 8,688 bankruptcies and 20,135 DROs in England and Wales, which together would have generated total fees paid to the Insolvency Service of £7,719,990. If bankruptcies, DROs and IVAs (of which there were 81,199 in 2021) all required a £70 fee payable to the Insolvency Service to enter, the total fees paid from these processes to the Government would have been relatively similar, at £7,701,540.

Obtaining regulated debt advice prior to entering a statutory solution

34. Another key issue with the current framework, resulting in people entering solutions that are not suitable for their circumstances or waiting too long to obtain the help that they need, is the lack of sufficient knowledge and understanding from indebted individuals of the various personal insolvency options available to them.
35. 47% of R3 members surveyed said that they disagreed or strongly disagreed with the statement that "debtors have a good understanding of the personal insolvency framework when entering a formal procedure", with only 24% agreeing or strongly agreeing with the statement. Meanwhile, only 30% of members surveyed agreed or strongly agreed with the statement that "debtors are effectively able to access qualified and regulated debt advice", with 49% saying they disagreed or strongly disagreed. It is concerning that debtors are currently able to file for bankruptcy with no requirement to obtain debt advice prior to entering this solution.
36. Furthermore, concerns from some stakeholders have been raised with the way in which the framework allows individuals to enter an IVA when it may not be the most appropriate solution for their circumstances.
37. Internet searches for debt advice can lead individuals to debt introducers – companies that only seek to obtain information from individuals to sell on as leads – rather than charities or organisations offering

¹⁴ Accountant in Bankruptcy (2022). '[Common Financial Tool Notes for Guidance \(Revised September 2022\)](#)', p.2

¹⁵ *Ibid*

qualified and impartial advice. This can result in individuals believing that they have received impartial debt advice when in reality they have just been passed to an IVA provider.

38. We welcomed the Advertising Standards Agency's (ASA) announcement¹⁶ earlier this year that it would be taking targeted enforcement action to ensure that IVA and PTD advertisements met with advertising rules.
39. Given the nature of the regular repayments required for IVAs, we have recommended in paragraph 30 that those on income-related benefits – and therefore likely to struggle with regular IVA repayments – should not pay an entry fee to access a DRO or bankruptcy, and should not be advised to enter an IVA. This should help to prevent this group of indebted individuals from entering an IVA as the result of receiving poor advice.
40. Furthermore, as outlined in more detail in paragraph 12 point b, to ensure that individuals receive guidance about a statutory solution before they enter it, we would support the introduction of a single gateway if it were to act as a sign-posting guidance hub where individuals could enter information about their circumstances and subsequently be guided through an automated process to a solution that would suit their circumstances.
41. The requirement for individuals to enter details about the advice they are obtaining on the portal, as outlined in paragraph 12 point b iv, would also help the Government to maintain a record of which advisor has advised debtors to enter which solutions. This, alongside our recommendation in the same point that if an advisor advises a different solution to the gateway they should have to explain and record why this was the case, should also help to mitigate the problem of some debtors being advised to enter solutions that are not suitable for their circumstances.
42. Individuals identified by creditors as being in financial distress could also be sign-posted to the gateway by these creditors. Similarly, individuals could be sign-posted to the gateway when they are sent reminders to pay their utility bills or settle other accounts. This would bring the personal insolvency framework in England and Wales more closely in line with the framework in Scotland, where creditors are required to provide a Debt Advice and Information Package to the indebted individual from whom they are taking steps to recover money through diligence, or when they intend to make the individual bankrupt.¹⁷ Sign-posting individuals to the gateway at the first signs that they are struggling to pay their bills could help some individuals to receive guidance about debt advice and appropriate non-statutory solutions before they reach the levels of financial distress requiring them to enter into a statutory solution.
43. Given the potential rise in individuals in financial distress due to the current cost of living challenges, it is vital that adequate numbers of qualified and regulated debt advice sources are available to individuals. We would therefore urge the FCA to expand its debt advice exemption so that licensed insolvency practitioners are able to provide debt advice even where they do not contemplate an appointment in a subsequent procedure.
44. Insolvency practitioners are licensed and regulated to provide advice about problem debts. The constraints imposed by the FCA authorisation regime for regulated consumer credit activities cause problems for people in financial difficulty and the insolvency profession.
45. Insolvency practitioners are heavily regulated and monitored when it comes to providing debt advice: they are subject to regular oversight from the UK's RPBs, which are in turn regulated by the government Insolvency Service.

¹⁶ Advertising Standards Agency (2022). ['Enforcement Update – Debt Management Ads'](#)

46. The profession's role in, and track record of, providing debt advice led to licensed insolvency practitioners being granted an exemption from the FCA's consumer credit authorisation framework when it was introduced in 2014. The exemption stated that insolvency practitioners do not require FCA authorisation to provide debt advice and information about possible debt relief solutions in situations where they are appointed to act in a statutory insolvency procedure or where "there is reasonable contemplation of an appointment as an insolvency practitioner".
47. However, contrary to what was originally proposed, the Government and FCA have adopted a narrow interpretation of this exemption. Under this interpretation, when providing pre-insolvency advice, the exemption for insolvency practitioners ends as soon as it becomes apparent that they are no longer in 'reasonable contemplation' of an appointment to a statutory insolvency procedure.
48. This interpretation is harmful to individuals with problem debt. When approaching an insolvency practitioner for advice, it is rarely obvious at the outset that an individual needs to enter a statutory insolvency procedure, and so any advice from a non-FCA authorised insolvency practitioner will be incomplete or may lead to the individual being turned away before advice is provided.
49. Similarly, there are cases where an individual may, at the outset, appear to be a candidate for an insolvency procedure but where it turns out an insolvency procedure is not needed. At this point, where there are consumer debts, a non-FCA authorised insolvency practitioner would have to cease providing advice immediately, and the individual in need of advice would be forced to go elsewhere.
50. One common problem insolvency practitioners encounter in their work is that individuals do not always seek advice when they should; turning people away once they have taken the decision to seek advice should therefore be avoided where possible. Once turned away, it may be some time before an individual is identified by another source of advice as being a candidate for an insolvency procedure (and then redirected back to an insolvency practitioner or other appropriate advisor), while others may simply be discouraged from seeking further advice.
51. Effective, professional, qualified advice is needed to increase the chances of someone ending up in the most appropriate debt solution for their situation. Unfortunately, people in debt do not always have access to professional, qualified advice. An R3 survey of 2,045 British adults, carried out by ComRes in February 2017, found that people are more likely to have approached friends and family for personal finance advice than a qualified advisor. While 69% of British adults said they have approached friends and family for advice about personal finances, 45% of British adults said they have never spoken to a bank for personal finance advice, 48% had never spoken to non-government money advice bodies, 60% had never spoken to a professional financial advisor, and 64% had never spoken to Government-backed money advice bodies. The current FCA authorisation framework, which limits the availability of professional, qualified advice, risks raising the height of the hurdle between individuals in problem debt and effective debt relief.
52. The Government's interpretation of the authorisation exemption is also harmful to insolvency practitioners and the provision of debt advice in the UK. The requirement that insolvency practitioners obtain FCA authorisation in addition to their existing insolvency licence creates a system of dual-regulation of insolvency practitioners. For smaller firms, in particular, this system has created an intolerable cost and regulatory burden; some of R3's members from smaller firms have ceased personal insolvency work because they cannot afford the substantial cost of FCA compliance. This removes choice for individuals in need of debt advice and makes it harder for the advice sector to offer the bespoke debt solutions in which smaller firms have historically specialised.
53. The current cost of living challenges are likely to put additional pressure on the debt advice sector's resources as more individuals fall into financial distress. One simple way of both spreading this burden and

improving the accessibility of debt advice in the UK would be to revise the existing exemption from FCA authorisation for licensed insolvency practitioners.

54. Given the above, and that, as per paragraphs 44 to 45, insolvency practitioners are licensed, and regulated to provide advice about problem debts, insolvency practitioners should be included as a qualifying source of debt advice for breathing space eligibility.

Prevention: financial education

55. In order to help fulfil one of its key purposes – of rehabilitating indebted individuals – the personal insolvency framework must place more focus on financial education, in order to prevent individuals from entering formal solutions in the first place where possible, as well as to support individuals who are already in these solutions.
56. Scotland introduced reforms in its *Bankruptcy and Debt Advice Act 2014* in which the trustee in bankruptcy must decide whether an indebted individual should undertake a course of targeted financial education within six months of the date of award of bankruptcy. Making financial education a condition for early discharge from bankruptcy in England and Wales, as outlined in paragraph 12 point e, would not only aid in preventing many individuals from entering a ‘cycle’ of debt; it could also help to identify individuals who abuse the system.

Question 2: If ‘fresh start’ and ‘can pay, will pay’ are the right objectives for the personal insolvency regime, does the current framework get the balance right?

Question 3: Please provide any evidence to show how well the objectives of ‘fresh start’ and ‘can pay, will pay’ are being met.

57. The objective of a “fresh start” is subjective, dependent partly on the individual’s personal views. However, we would broadly agree that these are two of the correct objectives for the personal insolvency framework, while also including the objectives of “prevention” and the need for the framework to “uphold the public interest”.
58. As outlined in our response to the previous question, the current framework does not sufficiently support individuals in genuine need of help – and offer them a “fresh start” – nor does it sufficiently penalise those who abuse the system or ensure creditors are repaid where possible – so that the “can pay, will pay” objective is fulfilled.
59. As outlined in paragraph 32, we would support the introduction of a tool, used consistently across all regulated and qualified sources of debt advice and similar in principle to Scotland’s CFT, which would determine the level of contribution that a debtor might pay in respect of their debt solution based on their income, assets and expenditure, to ascertain whether an individual “can pay”.
60. Furthermore, as noted in paragraph 10, point d, there is a lack of emphasis on, and attention given to, “prevention” within the current framework – so that individuals can be helped to avoid entering formal debt solutions in the first place. Alongside better financial education for individuals before, during and after they enter a solution, a more effective synthesis of the informal and formal debt solutions would be helpful, so that informal debt solutions can better help to prevent and/or support individuals entering formal solutions. In light of this, we would reiterate our urge to Government in paragraph 7 to review how *all* the personal insolvency options work together – rather than simply reviewing the three formal insolvency options.

Question 4: Please explain whether there should be different objectives for different personal insolvency procedures.

61. While the different formal personal insolvency options should cater towards the differing circumstances of indebted individuals, as laid out in paragraph 16, our members do not feel that there should be different

objectives for different personal insolvency procedures. The various formal *and* informal options should synthesise effectively to ensure that the fundamental purpose and the objectives, as described in paragraphs 14 and 57, of the framework are met.

Question 5: Please consider whether there should be different options for trading and consumer debtors. If so, how would the features differ?

62. Our members do not feel that there should be different options for trading and consumer debtors, with only 35% of R3 members surveyed responding that different options should exist. The key objectives of the framework, as outlined in paragraph 57, should be the same for trading and consumer debtors – and the options available to meet these objectives should also be the same.

Question 6: How effective are the current safeguards (public records, public registers, restrictions and sanctions on debtors) at protecting the integrity of the personal insolvency framework?

63. According to R3 members surveyed in September 2022, the current safeguards are not sufficiently effective at protecting the integrity of the framework due to a lack of awareness from creditors and consumers that they exist. Less than half of members surveyed thought that each of the various safeguards were effective in protecting the framework's integrity:

- a. Only 30% thought public records were effective or very effective in protecting the integrity of the framework;
- b. 37% thought public records were effective or very effective at protecting the framework's integrity;
- c. 37% thought restrictions were effective or very effective at protecting the framework's integrity;
- d. 35% thought sanctions on debtors were effective or very effective at protecting the framework's integrity.

64. Our members have noted that it is not widely known that the Individual Insolvency Register can be checked to view an individual's history, and it is even less known that individual petitions can be looked at. This should be made clearer, while not leading to the stigmatisation of individuals.

65. Where an insolvency practitioner is acting as a supervisor in an IVA or a trustee in bankruptcy, there should be an option for them to be able to see if the indebted individual has previously entered a formal insolvency procedure – even after an individual's details have been removed from the register – as well as who acted as trustee or supervisor for that previous procedure. Furthermore, where an individual has previously entered a formal procedure, the insolvency practitioner should also be able to access the individual's financial history in relation to this procedure.

66. Knowing about the individual's prior history and having the option to contact the practitioner who dealt with the individual's prior personal insolvency procedure would allow the insolvency practitioner to gain a wider understanding of the individual's circumstances more quickly, and allow them to better support the individual and ensure returns to creditors are maximised where possible. Importantly, it would also help the insolvency practitioner to better ascertain where wrongdoing has occurred, so as to protect the integrity of the framework.

Question 7: To what extent does the current enforcement regime (BROs/DRROs and criminal sanctions) adequately achieve the aims of deterring future misconduct (both individual and general) and protecting the public?

67. Our members do not feel that the current enforcement regime of BROs/DRROs and criminal sanctions adequately deter from future misconduct. Only 11% of members surveyed felt they were effective, with 28% saying that they were only somewhat effective and 46% responding that they were not effective.

Members have noted that while the enforcement tools are effective in theory, they are not currently enforced widely or robustly enough.

Question 8: How, if at all, should the personal insolvency framework distinguish between honest/unfortunate and dishonest/reckless debtors?

68. The majority – 61% – of R3 members surveyed felt that the current framework is not effective in distinguishing between individuals who are in genuine need of help and who engage with their personal insolvency process, and those who have carelessly let their debts accrue or who have abused the system.
69. Not only does this result in the former group of individuals being disproportionately penalised – it also risks damaging creditors’ confidence in the system. Our members have raised concerns about the lack of consistency with regards to Government departments penalising acts of misconduct.
70. While creditors tend to be thought of as large corporations, in our members’ experience many creditors that are affected by an individual entering a personal insolvency solution are in fact smaller businesses or individuals. Some of these have become creditors involuntarily. For example, a member cited an example of an individual who was wrongfully sued by a debtor and was owed money following the court case, but the debtor then declared bankruptcy.
71. When a debtor is unable to repay their debts, this can have a hugely detrimental financial impact on a small creditor. It is therefore vital that the enforcement regime is effective in distinguishing between honest and dishonest debtors, and in deterring from future misconduct. Only 44% of R3 members surveyed felt that the current framework is effective in enabling creditors to recover debts owed to them.

Discharge conditions

72. The current 12-month term of bankruptcy makes no distinction between those who have accrued their debts recklessly and/or have sought to hide their assets and those who have merely been the unfortunate victims of circumstance. Drawing this distinction seems crucial to maintaining the confidence of creditors by avoiding the impression that bankruptcy is a “soft option”. The onus is currently on the trustee to extend the term of bankruptcy should this be necessary, and in many cases this is deemed not to be feasible given the costs involved in the extension. Our members have also raised concern that 12 months is not usually a sufficient period of time to properly investigate the actions of the indebted individual for possible misconduct.
73. The current system also lacks a middle ground. Prior to 2003, the standard term of bankruptcy was three years. This was reduced to 12 months on the grounds that doing so could help to promote entrepreneurship by allowing entrepreneurs whose initial business ventures had failed to be swiftly rehabilitated and in a position to try again. While it is unclear what effect this has had on entrepreneurship, the number of trading-related bankruptcies as a proportion of overall case numbers has fallen significantly since 2003.
74. In a recent survey of R3 members, 61% felt that the discharge conditions for bankruptcy are currently too lenient.
75. A three-year bankruptcy term would restore the balance between debtors and creditors to the situation before 2003. While a return to a three-year standard term may help to reduce “bankruptcy tourism”, where foreign debtors seek to be declared bankrupt in England and Wales in order to benefit from a reduced term of bankruptcy, this would mean that England and Wales would still have one of the lowest standard terms of bankruptcy in the world. A three-year bankruptcy term would bring the framework in England and Wales in line with other nations, such as Australia, where bankruptcy lasts three years.¹⁸

¹⁸ Australian Financial Security Authority. [‘What is bankruptcy?’](#)

76. There should then be an option for the debtor to apply for this to be reduced to a two-year term, which the trustee could agree to if they feel that the debtor is shown to be engaging with the process and the debtor is able to show that they are attending financial education courses. As noted in paragraphs 55 to 56, financial education becoming a condition for early discharge from bankruptcy would help to prevent individuals from entering a “cycle” of debt as well as to help identify individuals who abuse the system.

Question 9: Are there any features of other regimes that would be beneficial to consider for England and Wales and how effective are these features? For example, debt counselling and rehabilitation programmes.

77. We reiterate the points outlined in paragraphs 22 to 23 that the initial fees to enter the equivalents of bankruptcy and DROs in England and Wales are high when compared to countries such as Scotland and Ireland. The cost of an individual entering bankruptcy in Scotland is £200,¹⁹ whereas it is €200 in Ireland.²⁰ Meanwhile, in March 2021, Scotland permanently reduced its DRO equivalent – the MAP – from £90 to £50,²¹ while in Ireland there is no fee for accessing a DRN – the Irish equivalent to a DRO.²² As highlighted in paragraphs 30 to 33, we recommend that the costs for entering these solutions are modified in England and Wales, so that cost of entry no longer poses as significant a barrier to entry.

78. Legislation related to personal insolvency is devolved throughout the UK and legislation related to personal insolvency in Scotland is overseen by the Accountant in Bankruptcy. There are a number of features of the Scottish framework that we believe would be beneficial to consider for England and Wales, in order to allow more individuals to access the solutions most suitable to them, as well as to improve the financial education that individuals receive.

79. As noted in paragraph 42, another feature of Scotland’s personal insolvency framework that would be beneficial to adopt in England and Wales is the requirement for indebted individuals to be provided with a Debt Advice and Information Package, when creditors are taking steps to recover money through diligence or when they intend to make the individual bankrupt.²³ We believe that it would be beneficial for there to be a requirement for *all* individuals who are about to enter a statutory solution to receive information about the solution in England and Wales – potentially through the single portal, should this be introduced as a gateway for offering guidance to individuals prior to them entering a formal procedure.

80. As explained in paragraph 32, we would also support the introduction of a tool, used consistently across all regulated and qualified sources of debt advice and similar in principle to Scotland’s CFT, which would determine the level of contribution that a debtor might pay in respect of their debt solution based on their income and expenditure, to ascertain whether an individual “can pay”. In Scotland, those who advise debtors on Scottish statutory debt relief and management options, are obliged to use the CFT when assessing a debtor’s financial situation and their ability to pay a contribution. A trustee must use the CFT to determine the amount of contribution payable in a PTD and bankruptcy and a money adviser must use the CFT to determine the expected contribution payable under the Scottish Government’s Debt Arrangement Scheme and on submission of a debtor’s application for bankruptcy.²⁴ This includes taking into account: household composition and any dependents or non-dependents in the household; income; assets (including heritable property; vehicles; insurance policies); and expenditure (including essential expenditure such as rent, mortgages, council tax, pension and life insurance, childcare costs, etc; phone costs; travel costs; housekeeping; and other expenses).²⁵

81. As outlined in paragraph 55, Scotland introduced reforms in its *Bankruptcy and Debt Advice Act 2014* in which the trustee in bankruptcy must decide whether an indebted individual should undertake a course of

¹⁹ MyGov.Scot, ‘[Applying for bankruptcy](#)’

²⁰ Citizens Information Ireland, ‘[What is bankruptcy?](#)’

²¹ Accountant In Bankruptcy, ‘[Scottish Statutory Debt Solutions Statistics, April to June 2022 \(2022-23 Quarter 1\)](#)’

²² Insolvency Service of Ireland, ‘[Debt Relief Notice \(DRN\)](#)’, p.5

²³ Accountant in Bankruptcy (2016). ‘[Debt and the consequences: Important information to help you deal with your creditors and debt](#)’, p.16

²⁴ *Ibid*

²⁵ *Ibid*, p.4-17

targeted financial education within six months of the date of award of bankruptcy. We have recommended that financial education should become a condition for early discharge from bankruptcy in England and Wales – not only to aid in preventing many individuals from entering a “cycle” of debt; but also to help to identify individuals who abuse the system.

82. There are also a number of features of the Australian personal insolvency framework that are useful to take into account when reviewing the framework in England and Wales. The Australian Financial Security Authority, the Government body overseeing Australia’s formal debt solutions, has a simple online webpage comparing the various formal options and financial eligibility, restrictions and fees and charges for each.²⁶ This could be a simple but useful addition to the UK Government’s website, particularly if a single gateway was introduced.
83. In Australia, where there is no fee to apply for bankruptcy,²⁷ and the process lasts for three years.²⁸ In paragraphs 72 to 77, we have outlined why a return to a three-year bankruptcy would be beneficial in England and Wales. A three-year bankruptcy, with the debtor being able to apply to the trustee to reduce this to two years, should the trustee believe that the debtor is sufficiently engaged with the process and financial education and that it is appropriate based on the individuals’ personal circumstances, would restore the balance between debtors and creditors to the situation before 2003.

Question 10: Who should bear the costs of entering and administering personal insolvency procedures?

Question 11: How should the costs of entering and administering personal insolvency procedures be paid and structured between the different parties?

84. When surveyed about who should primarily bear the costs of the following areas of the personal insolvency framework, and asked to choose between debtors, creditors, the Government, IPs or give an alternative suggestion:
- a. 60% felt that the Government should primarily bear the costs for Insolvency Service fees and 33% of R3 members surveyed felt that the Government should primarily bear the costs for debt advice;
 - b. 54% of R3 members felt that creditors should primarily bear the costs for court proceedings and insolvency practitioner fees by way of payment before the balance of funds are paid to creditors in bankruptcy and IVA cases.
85. With regards to how the costs of administering the various procedures should be structured, our members have suggested that it would be beneficial for each case containing assets to fund its own costs, and for each case to then allocate a percentage from the assets to cover the funding of all cases with no assets or those with insufficient assets to fund its own costs.

Question 12: What options are available to debtors and creditors who are unable to afford the cost of bankruptcy, IVA or a DRO?

86. There are very few options available to debtors and creditors who are unable to afford the cost of bankruptcy, IVA or a DRO. Paragraphs 29 to 33 outline our views on this issue and the solutions we have recommended to help address it.

Question 13: What are the main consequential costs of the different insolvency procedures?

²⁶ Australian Financial Security Authority, ‘[Compare the formal options](#)’

²⁷ *Ibid.*, ‘[Am I eligible for bankruptcy?](#)’

²⁸ *Ibid.*, ‘[What is bankruptcy?](#)’

87. We do not feel that R3 is well-placed to comment on the consequential costs and would recommend that Government look at responses from those organisations and charities providing free debt advice and support to indebted individuals.

Question 14: How can we reduce the stigma of insolvency to both encourage early action by those in financial difficulty and to support a ‘fresh start’ from debt relief?

88. As noted in paragraph 25, Debt Advice Foundation’s helpline statistics in August 2022 showed that 11% of those who phoned the charity’s helpline were recommended to enter bankruptcy but *none* ended up choosing this as a solution. Stigma may have played a role in discouraging some of these individuals from entering bankruptcy, despite them being advised that this was the best solution for them.

89. In order to reduce the stigma of bankruptcy, and the number of individuals who are put off entering it as a result, a greater distinction could be made between bankruptcies that have been declared through self-application and those that are creditor petitions. To this end, a bankruptcy initiated by self-application could be called a “Personal Insolvency Order” whereas the term “bankruptcy” could be reserved for those that have been started by a creditor’s petition.

90. Financial education is crucial to helping to reduce the stigma associated with personal insolvency and the ways in which the formal and informal procedures can help individuals recover financially from the debt they have accrued. We reiterate our comments in paragraph 60 about the need for any encompassing review of the framework to also review the status of financial education before, during, and after an individual has entered a formal or informal debt solution.

Question 15: Please provide any evidence to show whether consequential costs serve a useful purpose or whether they produce unintended consequences for different stakeholder groups.

91. Please see our response to question 13.

Question 16: Do you believe the current insolvency procedures are working as intended? Please provide any evidence you have.

92. Reiterating our comments from paragraph 16 our members feel that the three formal solutions – IVAs, DROs and bankruptcies – are the correct range of solutions. When asked how effective the three formal options are in enabling indebted individuals to deal with their debt 55% of R3 members thought IVAs were effective or very effective, 51% thought DROs were effective or very effective, and 82% thought that bankruptcies were effective or very effective.

93. That said, our members have recommended that the minimum level of equity required for a possession and sale of a bankrupt debtor’s home should be raised, to help ensure that the sale of the property is the correct course of action.

94. Furthermore, concerns have been raised by various stakeholders over the regulatory framework surrounding the volume IVA sector and the ways in which some IVAs are overseen.

95. The IVA sector has seen rapid innovation in recent years. The rise in consumer debt has led to a rise in the numbers of IVAs and has been linked to a new type of IVA provider entering the market: the volume IVA provider.²⁹ These firms specialise in and process significant numbers of IVAs, making this personal debt solution more accessible to indebted individuals and cheaper for creditors – the standardised IVAs³⁰ typically used by volume providers are less complex than tailored ones, which helps to keep costs down. In 2021, the five largest volume IVA providers accounted for 50,326 of a total of 81,199 new IVAs registered

²⁹ Volume IVA providers are defined for the purposes of this response as those firms which undertake 500 or more IVAs in any given calendar year. The Insolvency Services defines volume providers as “any firm that controls greater than 2% of the total market (including new and existing cases), or greater than 2% of new cases over a rolling three month period”

³⁰ Colloquially known as ‘Consumer IVAs’ or ‘Protocol IVAs’ and typically governed by The Straightforward Consumer IVA Protocol

(or 62%).³¹ The players in this market are also constantly evolving, with the firms handling the majority of IVAs having changed since they first became a popular debt solution for consumers.

96. Many of the regulatory challenges unique to volume IVA providers stem from these firms' structures and the type of debt they deal with. In a volume IVA provider, the insolvency practitioner may not be a key decisionmaker, the insolvency practitioner will be the supervisor of many more cases than counterparts elsewhere in the profession, and the firm may be part of a much larger group structure. Firms looking to meet (potentially costly) best practice also face pressure from creditors to keep costs down.
97. The Government's plan to introduce firm regulation for all firms offering insolvency services will help to address some of these regulatory issues. In our response to the Government's 2019 call for evidence on insolvency practitioner regulation we noted that volume IVA firms *"provide a particularly high-profile challenge to the 'traditional' 'insolvency practitioner-centric' model of insolvency regulation: an individual insolvency practitioner at a 'volume' practice is particularly reliant on their practice and colleagues to fulfil their statutory duties for potentially thousands of cases, while they are likely to exercise limited control over the practice's governance and structure. The regulatory challenges posed by 'volume' IVA practices have been outlined by both R3 and the Insolvency Service.*

"As stated in the R3 report on 'volume' IVAs practices, there is a need for regulation to pay at least some attention to the practice as well as the insolvency practitioner. This can make it easier to track estate funds, and to establish governance structures. The problem for the regulators is that the ability to look at practices is not contained within their remit as set out by the Insolvency Act 1986 and associated legislation. Instead, regulators have had to improvise: ICAEW can rely on its role as an accountancy regulator, for example, while the IPA, as far as we are aware, has come to its own contractual arrangements with a number of 'volume' practices.

"While the regulators' efforts in this area are welcome, the situation is far from ideal. The regulators should be given the same powers to act in all situations; insolvency practices should not be off-limits to some regulators and not others. Where there is a need to adapt regulation to changes in the marketplace, the Insolvency Service must be quicker to ensure that the regulators are working with the same toolkit."³²

Question 17: How well do those in financial distress navigate the current regime and could this be improved? Please provide evidence to support your answer.

98. Issues with the current framework prevent individuals from navigating it effectively. Only 33% of R3 members surveyed said that they felt that indebted individuals tend to be sufficiently engaged with the personal insolvency process.
99. As noted in paragraphs 32 to 37, indebted individuals are often uninformed about the various solutions and what they entail and are not always able to access qualified and regulated debt advice prior to entering a process. We believe the recommendation we have made in paragraphs 40 to 43 would help to mitigate this issue.
100. Meanwhile, as referred to in paragraph 37, internet searches for debt advice can lead individuals to debt introducers – companies that only seek to obtain information from individuals to sell on as leads – rather than charities or organisations offering proper and impartial advice. It can also be difficult for individuals to distinguish fake "charity" sites from real ones. For example, in 2019 the FCA issued a warning to consumers about a "clone" firm impersonating StepChange Debt Charity, using the names "Step to Change" and Step Changing."³³

³¹ Insolvency Service (2022). '[Commentary - Individual Voluntary Arrangements Outcomes and Providers 2021](#)'

³² R3 (2019). '[Regulation of Insolvency Practitioners – Review of the Current Regulatory Landscape](#)', p.9

³³ Financial Conduct Authority (2019). '[Step to Change \ Step Changing \(clone of FCA authorised firm\)](#)'

101. Last year R3 welcomed the FCA's proposal of new rules to ban debt packagers from receiving remuneration from debt solution providers, with the 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. However, in our response to the FCA's consultation on the subject we noted that "the ban is not going to be a panacea" and that "the market is likely to 'adapt' and may lead to variant business models, which the FCA needs to be wary of."³⁴ As noted in paragraph 38, we have also welcomed the ASA's announcement³⁵ that it would be taking targeted enforcement action to ensure that IVA and PTD advertisements met with advertising rules.
102. Another key issue with the current framework is the fact that, in most cases, no simple mechanism exists which would allow indebted individuals to transfer between the different statutory procedures.
103. One debt charity we spoke to recently noted that a number of their clients chose to enter bankruptcy when they would have met the income, asset and debt thresholds for a DRO because the value of their debt was close to the £30,000 DRO limit and they feared that debts they had not accounted for further down the line would push them over this limit and therefore leave them in limbo. Bankruptcy provided more certainty. Similarly, R3 members have also noted that a significant number of individuals who enter IVAs over an alternative procedure for which they would have been eligible, do so because of the certainty they provide and the perceived speed and ease of access. Seeking an alternative option would usually involve the individual having to access either an approved intermediary for a DRO or making an application online for bankruptcy themselves.
104. Furthermore, the framework does not account for the reality that the circumstances of indebted individuals can change very quickly, particularly in circumstances such as the current economic landscape. The recent significant rise in costs of energy and food, and the resulting challenges facing individuals, as outlined in paragraphs 27 to 28, are an example of this. The various cost increases over the past year may mean that a significant number of individuals entered into a solution which they will no longer be eligible for a few months down the line, as they incur more debts due to an increase in their outgoings, or due to the fact that they no longer have disposable income to make regular repayments to their creditors.
105. The financial eligibility criteria for DROs increasing last year has meant that a number of individuals in IVAs would now be eligible for a DRO, when they previously did not meet the criteria. A simple mechanism should be introduced to allow these individuals to transfer to a DRO if appropriate.
106. Finally, more Government data is needed about the outcomes of some of the personal insolvency solutions, in order to assess how well they are working. This is particularly true of the recently introduced breathing space. Although StepChange Debt Charity (who have delivered the majority of breathing space applications since the scheme opened) conducted a survey of their clients and found that 91% of those surveyed who entered breathing space went on to complete full debt advice, with 42% entering a repayment or insolvency solution after advice, the data informing these results came from 379 of the 69,613 individuals who applied for breathing space in the first 12 months that the scheme was running.³⁶ We would strongly encourage the Government to record and publish data showing the outcomes of *all* individuals who have entered breathing space, so that a broader evaluation of the scheme's effectiveness in seeking qualified advice and entering appropriate solutions can be made.

Question 18: Are the current personal insolvency procedures the right products to service the needs of both debtors and creditors today or are new procedure(s) needed to serve debtors and creditors better?

³⁴ R3 (2021). '[Financial Conduct Authority's Debt Packagers: Proposals for New Rules Consultation – Response from R3](#)', p.1-2

³⁵ Advertising Standards Agency (2022). '[Enforcement Update – Debt Management Ads](#)'

³⁶ StepChange (2022). '[One year of breathing space](#)'

107. The vast majority – 80% - of R3 members recently surveyed said that, rather than introduce new procedures, the Government should focus on reforming the existing procedures to amend any gaps or issues identified. Our recommendations in paragraph 12 suggest how these issues can be addressed.

108. We reiterate our comments in paragraph 7 that we would urge the Government to include all formal and informal personal insolvency solutions in its review of the framework – to ensure that all processes align effectively.

Question 19: How well do the existing insolvency procedures work for sole traders and partnerships? Please provide any evidence you may have.

109. When asked how effectively the existing insolvency procedures work for sole traders and partnerships:

- a. 55% felt that IVAs were effective or very effective;
- b. 15% felt that DROS were effective or very effective;
- c. 53% felt that bankruptcy was effective or very effective.

Question 20: How could the personal insolvency framework be improved for sole traders and partnerships?

110. The framework should be adapted so that it is easier for the trustee to continue to trade the sole trader business, where some of the businesses' value can still be realised for creditors. Currently, other than closing the business, the options available to the trustee to deal with the business are limited. In addition, members have suggested that some form of finance should be made available to sole trader businesses if an IVA is approved or a bankruptcy order is made, and the business is considered viable. This would help the business to recover financially in order to fund trading to benefit the bankruptcy estate or allow the business to trade post-bankruptcy.

Question 21: What evidence do you have of the number of IVAs/Partnership Voluntary Arrangements which relate to sole traders and partnerships?

Question 22: What are the main factors which influence an individual's decision to enter a particular procedure?

111. The following factors influence an individual's decision to enter a particular procedure:

- a. Cost to enter the procedure;
- b. Eligibility criteria in relation to income and assets;
- c. Debt advice;
- d. Concerns about future employment or impact on motor vehicle or home, which can deter some individuals from entering bankruptcy;
- e. Stigma, related in particular to bankruptcy;
- f. Understanding (or lack of) of the different solutions;
- g. Ease of accessibility (such as the ease of declaring bankruptcy online).

Question 23: How could an individual's decision to enter a particular procedure could be better informed?

112. Please see our comments in paragraphs 34 to 43.

Question 24: What evidence do you have of the impact that a public register has on an individual's decision to choose a particular insolvency route?

113. In our members' experience, a public register tends not to have a significant impact on an individual's decision to choose a particular insolvency route. Only 28% of R3 members surveyed believe that its impact is significant.

Question 25: What impact does professional debt advice have on debtors when choosing a personal insolvency solution? Please provide evidence to support your answer.

114. Evidence has shown that many individuals who do seek advice will follow the recommendation given by the adviser. The FCA's consultation on debt packagers in November 2021 noted that of the 54,000 people who sought advice from a debt packager between April 2019 and March 2020, 29% were recommended an IVA or PTD, of whom 85% entered the recommended solution.³⁷

115. That said, other factors related to the solution itself can deter debtors from following the advice received. Debt Advice Foundation's helpline statistics in August 2022 showed that while 64% of those who phoned the charity's helpline were recommended to enter one of the three formal solutions, only 31% did so.³⁸ Meanwhile, although only 16% of clients were recommended to enter an informal arrangement, 58% ended up choosing this as a solution.³⁹

116. It is therefore important that, alongside ensuring that individuals are able to access qualified and regulated debt advice, other barriers preventing people from accessing the correct solution – including cost of entry and stigma – are addressed.

Question 26: Please explain any other barriers to entry to personal insolvency which are not included in this call for evidence, highlighting any particular groups that are affected.

Question 27: How could the personal insolvency framework be improved, for example, to make access easier or movement between procedures easier? Please provide evidence to support your answer.

117. With regards to improving access to the various procedures, we reiterate our comments in paragraphs 21 to 44. We have also outlined our views on the importance of making it easier for individuals to move between procedures easier in paragraphs 102 to 104.

Question 28: Which elements of other national regimes could improve the personal insolvency framework in England and Wales?

118. Please see our response to question 9.

³⁷ FCA (2021). ['Debt packagers: proposals for new rules – Consultation paper'](#), p.10

³⁸ Debt Advice Foundation (2022). ['Debt Helpline Statistics: August 2022'](#), p.13

³⁹ *Ibid.*