HM Treasury consultation: Public financial guidance review – proposal for consultation

Response by the Association of Business Recovery Professionals ('R3') to the consultation issued in March 2016

R3 is the trade body for the UK insolvency profession. R3 represents insolvency practitioners working in firms of all sizes, from the global legal and accountancy firms through to smaller, local firms, as well as insolvency lawyers and other professionals working in the insolvency and restructuring profession.

Insolvency practitioners play a vital role in providing advice to those in financial difficulty. In 2013-14, insolvency practitioners assisted more than 60,000 individuals through an insolvency procedure, advised more than 135,000 individuals, and started work on cases that will help individuals repay £5bn of debt to creditors within five years[1].

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

Executive summary

- R3 welcomes the significant amount of work being done by the government and the FCA to improve access to financial advice and regulating debt advice. However, we believe that more work should be done on improving access specifically to debt advice and encouraging consumers to deal with their debts at an early stage. The creation of the new money guidance body provides an opportunity to do this.

- We believe that the new money guidance body should have the opportunity to carry out research into barriers for consumers seeking debt advice, including issues such as: when and how consumers seek advice to deal with their debts; and understanding more about the stigma associated with using a personal insolvency procedure to deal with debts. A co-ordinated effort from the new body, debt advice sector and insolvency profession would help to ensure that consumers have the opportunity to deal with their debts in the most appropriate way for their circumstances.

- R3 believes the new body has a vital role to play in financial education related to dealing with debt. As well as research into the barriers to seeking debt advice, the money guidance body could also seek to more comprehensively publicise and positively advertise options for seeking debt advice on its website and through one-to-one advice.

- R3 believes that providers of debt advice should be FCA authorised or regulated by an insolvency regulatory body. More should be done by government regulatory bodies to protect indebted individuals from misleading or incorrect debt and financial advice provided by unregulated advisers and organisations. R3 is, however, concerned that FCA authorisation of insolvency

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

practitioners (who are already regulated for giving debt advice through their insolvency regulatory body) has led to dual regulation of insolvency practitioners. This has led to 9% of insolvency practitioners who had previously provided personal debt advice no longer giving advice, therefore reducing the availability of regulated debt advice to consumers.

Q4. What role do you think the new money guidance body should have in providing research?

Recommendation: The new money guidance body, working with the debt advice sector and insolvency profession, should work together to find ways to break down the barriers that deter consumers from seeking the most appropriate debt advice; to reduce the stigma of insolvency and dealing with debts; and to improve consumers' understanding of what an insolvency process entails and might 'mean' for them. A co-ordinated effort across the sector would help to ensure that consumers have the opportunity to deal with their debts in the most appropriate way for their circumstances. As well as research into the barriers, this work could also include more comprehensive publicity and positive advertising to educate consumers about their options for seeking debt advice.

A significant amount of work is being done by the government and FCA to improve access to financial advice (through the 2015 Financial Advice and Market Review) and regulating debt advice (through the introduction of FCA authorisation in 2014). This work is very welcome and will no doubt go some way in benefitting the consumer. However, R3 believes that more work needs to be done around the areas of access to debt advice and encouraging consumers to deal with their debts at an early stage to prevent them from becoming unsustainable.

The Money Advice Service website currently outlines the different types of insolvency procedures and where to find more information. This is something we would strongly encourage the new body to continue doing. However we believe the new body should also consider doing more research into areas such as: the stigma associated with a personal insolvency procedure; why consumers leave seeking debt advice so late; and why they often don't choose the most appropriate debt relief solution for their circumstances.

a) *Timeliness and appropriateness of advice*

Early intervention and appropriate advice and action in dealing with debts are vital in ensuring that debts are dealt with before they become unsustainable for the consumer. Delays in individuals seeking debt advice mean that debts can mount unnecessarily, reducing the individual's options and, in some cases, leaving little alternative but a formal insolvency process. A delay in obtaining debt advice can also leave financially struggling individuals open to creditor pressure, which may cause rushed decisions about their options and how to resolve their financial situation.

In January 2014, 49% of R3 members said that it takes individuals more than a year from first showing signs of financial distress to approach them for advice. Just 5% of members said they are typically approached less than three months from when an individual first shows signs of financial distress.

R3's Personal Debt Snapshot research in March 2014[2] asked British adults (who said that they had debt worries) whom they would approach for help with any personal debt worries: 42% of British adults with debt worries indicated that they would most likely approach a family member for help, followed by 24% who said that they would approach a voluntary organisation or charity.

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

R3 is concerned that so relatively few people would seek the free, expert advice that is available and that relatively so many British adults wouldn't know who to turn to at all. The vast majority of insolvency practitioners will offer an hour's worth of professional advice for free, while many debt advice agencies and charities employee qualified advisers who are also able to provide debt advice.

b) Stigma of dealing with debts through personal insolvency procedures

Research by R3 in August 2015[3] asked approximately 2,000 British adults about their views on insolvency. The findings were mixed – whilst it is positive to see that approximately 50% of adults believe that the social stigma of insolvency is less than it was a decade ago, almost half (48%) believe that there is still a stigma associated with insolvency.

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

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

R3 is concerned that 'mind-set' issues such as fear, shame or even over-optimism, have a negative impact on the number of individuals who decide to seek advice on personal insolvency, or indeed who might later choose to enter a personal insolvency procedure, even where it the most appropriate way to deal with their debts. By way of example, in R3's January 2014 member survey,

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[2] R3/Com Res Personal Debt Snapshot Wave 13 report 'Are personal finances taking a turn for the worse?' – March 2014
https://www.r3.org.uk/media/documents/policy/research_reports/personal_debt_snap/R3_Personal_Debt_Snapshot_Wave_13.pdf

[3] R3/Com Res Personal Debt Snapshot report 'Attitudes to insolvency and the impact of a potential rise in interest rates' - August 2015
https://www.r3.org.uk/media/documents/policy/research_reports/personal_debt_snap/R3_Personal_Debt_Snapshot_Wave_17.pdf

45% of insolvency practitioners said that they have seen an individual in a Debt Management Plan who should have been in a formal insolvency procedure instead and who, therefore, may not have received appropriate advice about how to resolve their financial situation or, based on their perception of the stigma around formal insolvency, decided to opt for the 'less formal' option of a Debt Management Plan.

Financial education around how to properly deal with debt problems by seeking appropriate debt advice needs to be improved, as does education about the personal insolvency options available and what is involved in each one. It should not be the case that people do not consider the insolvency options available to them because they are not clear about what is involved. R3 believes that the new money guidance body has a vital role to play in improving this aspect of financial education, working alongside other organisations in both the private and public sector.

Q5. Would limiting providers of debt advice to FCA authorised firms rule out any type of provider?

Recommendation: Providers of debt advice should be FCA authorised <u>or</u> regulated by an insolvency regulatory body and more should be done by government regulatory bodies to protect indebted individuals from misleading or incorrect debt and financial advice provided by unregulated advisers and organisations. However, the current position of requiring insolvency practitioners to be FCA authorised as well as regulated by an insolvency regulatory body has led to dual regulation of the insolvency profession and has caused a subsequent reduction in the availability of debt advice for consumers. R3 therefore recommends that insolvency practitioners should not need to be FCA authorised, as their insolvency regulatory body already regulates debt advice.

a) The importance of FCA authorisation or insolvency regulation for those giving debt advice

R3 believes that providers of debt advice should be either FCA authorised <u>or</u> regulated by an insolvency regulatory body. R3 has serious concerns about the provision of debt and financial advice by unregulated organisations or advisers, who may not be regulated by either the FCA or an insolvency regulatory body. These organisations or advisers can cause significant harm to consumers by targeting those who are already in insolvency procedures, or who are considering entering an insolvency process in order to resolve their financial situation. Their 'marketing' is done with a view to encouraging consumers to opt for a different insolvency or debt relief procedure which is in the unregulated adviser's interest, but may not be in the consumer's interest.

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

Those who lack the financial acumen to understand the risks of taking unregulated advice are particularly vulnerable to this type of marketing. This could be anyone from company directors to individuals with consumer debt problems. Unlicensed advisers and organisations often claim to be able to remove all of the worry of a financial situation and to help individuals or company directors avoid legal duties that they may owe. R3 is concerned that by taking financial or debt advice from an unregulated adviser (often for a fee), an individual or director may receive misleading or incorrect advice about how to resolve their financial problems and the duties or responsibilities that they owe to their creditors or their business. This can make their financial situation far worse and may even result in indebted individuals or company directors breaking the law.

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

b) FCA authorisation of insolvency practitioners

The introduction of the FCA authorisation regime for regulated consumer credit activities in April was a welcome step towards tackling poor debt advice and raising standards within the debt management market.

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

However, the FCA interprets the exclusion as ending the moment that it becomes clear that the insolvency practitioner will not be appointed to a formal personal insolvency procedure. At this point, the insolvency practitioner must immediately stop giving advice and will have to tell the consumer to look elsewhere for advice if they are not FCA authorised. This is confusing to the consumer and leaves them in 'limbo' and having to start all over again in seeking advice, potentially with a professional who isn't as well qualified as the insolvency practitioner, and wastes precious time in helping them to address their financial problems. At worst, consumers in this situation may be dissuaded from seeking any further advice and will not deal with their financial situation.

Insolvency practitioners are members of a heavily regulated profession: it takes several years to train as an insolvency practitioner (the average age for qualification is 33) and, once qualified, practitioners are closely monitored by regulatory bodies. Providing comprehensive debt advice and information about possible debt relief solutions (including pre-insolvency advice) are necessary and fundamental parts of their role. In addition to regulating insolvency practitioners across all insolvency processes, the insolvency regulatory bodies also already monitor 'pre-appointment' debt advice – <u>the exact issue that FCA authorisation seeks to monitor</u>. R3 is therefore very concerned that requiring insolvency practitioners to hold FCA authorisation in order to give consumer credit advice is an unnecessary additional burden and cost, particularly for smaller insolvency firms, who may decide this burden is too much and therefore leave the market, reducing the choice and supply of debt advice for consumers.

R3's October 2015 survey showed that 9% of insolvency practitioners who have provided personal advice have already stopped giving such advice since FCA authorisation was introduced. A reduction in the professional debt advice market only serves to be detrimental to the consumer.

R3 believes that this situation could be resolved by a reinterpretation of the exclusion (by reinterpreting it as applying to cases where, at the outset, the insolvency practitioner was in reasonable contemplation of an insolvency appointment) or by an amendment to the statutory instrument.

Q6. How could the new money guidance body work with the debt advice providers most effectively to ensure that their expertise is captured and informs contract design?

R3 would encourage the new body to consider the value and role of insolvency practitioners in providing debt advice to consumers.

In 2013-14 insolvency practitioners advised 135,000 people about their finances, helped approximately 60,000 individuals through an insolvency procedure and helped individuals start to repay £5bn of personal debt to creditors within five years[4].

R3 would be keen to work with the new money guidance body to discuss the role of the insolvency profession in providing debt advice and help in any way it can to support the provision of appropriate and comprehensive debt advice.

Q7. How do organisations currently monitor outcomes? Do you have any suggestions for the outcomes which should be monitored?

Whilst the final outcomes for individuals who have been through a formal insolvency process, such as a bankruptcy or an Individual Voluntary Arrangement, are already recorded, R3 believes that a key outcome that should be monitored is the 'debt journey' of the consumer from initially seeking advice through to how they may or may not deal with their debts. It would also be useful to find out how consumers seek advice and then take, or do not take, advice. This type of information would be very helpful for policy makers and debt advisers in understanding the behaviour of consumers and consequently identifying barriers to dealing with debt and establishing solutions that will ensure a better outcome for consumers in the long run.

Q15. Which content on the MAS website is most useful to customers?

The MAS website includes information on the different formal insolvency procedures. It would also be very useful for the website to include information that informs consumers that each procedure is only appropriate to specific financial circumstances and that consumers should seek to obtain advice from FCA authorised or insolvency regulated advisers who will advise them on the best solution for their circumstances. R3 is concerned that some consumers do not seek appropriate advice and can end up in the wrong debt solution and therefore not deal with their debts in the most sustainable

[4] 'Why insolvency matters: The insolvency profession's value to the UK economy', published May 2015

way, for example 45% of insolvency practitioners said they have seen an individual in a Debt Management Plan that should have been in a formal insolvency procedure.

R3 would also encourage the new body to do more on its website to publicise the importance of dealing with debts at an early stage and, by working with both the insolvency profession and the debt advice sector, to find ways to refer to insolvency procedures in a way that will reduce the stigma of entering an insolvency process to deal with debts (see answer to question 5 for more detail).

R3
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