

Telephone: 020 7066 9346

Email: enquiries@fs-cp.org.uk

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Submitted online

Dear Sir / Madam,

Financial Services Consumer Panel response to the Insolvency Service's Call for Evidence on the review of the personal insolvency framework

The Financial Services Consumer Panel is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK. The emphasis of our work is on activities that are regulated by the FCA, however we also look at the impact on consumers of activities that are not directly within but are still relevant to the operation of the FCA's rules and monitoring activities in the consumer debt advice sector. Whilst all not of the questions are applicable to the Panel, we have responded to those of most relevance.

The Panel welcomes the opportunity to respond to the Insolvency Service's Call for Evidence on the review of the personal insolvency framework. We continue to strongly support the FCA's work to regulate and restrict firms such as "debt packagers" to deliver better outcomes for consumers however, there have been long standing issues with the underlying framework that we are pleased to see the Insolvency Service addressing.

The Panel see the most critical improvements in this area as follows:

- Impartial holistic debt advice as the sole gateway to all insolvency solutions
- The ability to amend and move between solutions on an advised basis
- Effective implementation of the new Consumer Duty

Our responses to the questions posed in the consultation are included at Annex A below.

Yours sincerely

Helen Charlton

Chair, Financial Services Consumer Panel

Annex A

Q1: What should be the fundamental purpose of the personal insolvency framework? Does the current framework meet that purpose?

Personal insolvency should be available to consumers who are unable to meet their financial commitments and have no other prospects of clearing their debts within a reasonable timeframe without a structured debt solution that includes a full or partial write off, of money owed.

Personal insolvency solutions should be an outcome of regulated, high-quality debt advice where attempts have been made to maximise a person's income, explore repayment options with creditors, and seek forbearance in line with existing regulatory guidance. The Panel appreciates that there will be cases where a debt adviser will determine that no other solution is workable and may not elect to engage with creditors, going directly to a personal insolvency solution instead.

The original intention behind personal insolvency – to provide consumers with a “fresh start,” is the correct objective of the personal insolvency framework. Returning consumers to the mainstream economy without the pressure of past debts is important in terms of overall economic performance as well as the individual financial wellbeing of those impacted by high levels of personal debt.

In many ways, the current framework meets its intended purpose, however, adjustments to accommodate current levels of personal debt and increasing complexity in the financial lives of consumers are required. Current insolvency provisions do not provide the flexibility required for today's consumers such as the ability to move between solutions. As the call for evidence suggests, there are a number of challenges presented due to insolvency procedures such as Individual Voluntary Agreements being used at scale for individual consumers when this regime was originally designed to support entrepreneurs and traders. New challenges have also arisen from changes to the consumer journey into insolvency procedures, in particular: aggressively marketed lead generation, particular in online environments.

We would also like to see more emphasis on supporting small businesses and making use of the original intentions of the insolvency framework. Reducing penalties and prohibitions, we believe, can make insolvency a more accessible and effective tool in helping small businesses while providing suitable solutions for individual consumers.

Q2: 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?

The Panel feel the balance is achieved so long as a number of insolvency solutions remain available including IVAs, DROs, and the planned SDRP. This is also dependent on the ability to provide flexibility to consumers to move between solutions in response to changes in circumstances as mentioned in question 1.

The balance required to determine objectives such as 'can pay, will pay' can only be maintained when high-quality debt advice is available and provided before entering into an insolvency solution. Specifically, this would mean bringing IVAs in line with other solutions enabling debt advisers to identify consumers that would benefit from an insolvency solution. This would avoid solutions being selected in the interest of Insolvency Practitioners who are unable to effectively assess principles such as 'can pay, will pay' in the current regime. Where an Insolvency Practitioner would like to provide debt advice, they should be regulated by the FCA as a debt advice provider. If an

Insolvency Practitioner is unwilling to be dual regulated then they should not be able to advise on the suitability of any debt solution, including IVAs.

This balance also requires appropriate oversight of debt advice quality and fair outcomes by the FCA. Currently, reliance is often placed on commissioning organisations such as the Money and Pensions Service (MaPS) as a proxy for the oversight that the FCA should be providing. MaPS-funded providers often complain of being “double regulated, by MaPS and FCA, while non-MaPS commissioned debt advice, including provision that is exempt from FCA authorisation, is not subject to any transparent and consistent quality controls at all.

Q3: Please provide any evidence to show how well the objectives of ‘fresh start’ and ‘can pay, will pay’ are being met.

No comment.

Q4: Please explain whether there should be different objectives for different personal insolvency procedures.

The objective for all insolvency procedures should be to provide consumers a set of pathways to reduce or eliminate the burden of debt while enabling those that can afford to, and want to pay, a method to do so. No solution should be overly punitive. or prevent individuals from future employment or holding certain positions, e.g., company directorships, unless conduct makes them unfit for such positions.

Solutions should not extend over an unreasonable timeframe. This principle is generally recognised in informal debt solutions like debt management plans and token payment arrangements. Asking consumers to commit to repayment plans and terms over periods in excess of 10 years may deliver poor outcomes. Solutions should also enable consumers to pay a portion of their debt where they desire to do so, and it is deemed affordable by the application of an objective framework such as the Standard Financial Statement. Many consumers do want to pay something towards their debt and when they are unable to, it can negatively impact their personal financial wellbeing.

Q5: Please consider whether there should be different options for trading and consumer debtors. If so, how would the features differ?

The framework should recognise that for self-employed people the distinction between business and personal finances may be less obvious, suggesting that a closely similar insolvency framework might be appropriate. For other businesses, the framework should offer a range of solutions which recognise that smaller businesses may be less sophisticated and vulnerable in similar ways to individuals, whereas larger businesses might have access to internal and external resources to help navigate the system. The expectations and rights of creditors should be calibrated accordingly.

Q6: How effective are the current safeguards (public records, public registers, restrictions and sanctions on debtors) at protecting the integrity of the personal insolvency framework?

While the Panel understand and accept that there may be consumers who are put off choosing an insolvency solution as it is publicly reported, this may act as a barrier to consumers getting the debt relief they need. The public registers can lead to overly punitive actions including preventing employment or limiting the ability of consumers to take on certain roles, which may lead to social exclusion.

The Panel would like to see the following actions in respect to the public register:

- Ensuring the consequences of insolvency are more carefully differentiated and are not punitive – so as not to lead to social exclusion.
- Improvements on how information on process with procedures is kept up to date and shared in a timely fashion (this will build on the Registry Trust’s campaign to mandate CRA recognition of discharged CCIs).

The above would likely encourage consumers to access insolvency solutions and go some way to reduce the suggested harm created by the existence of a public register.

The Panel suggest a mechanism for reviewing the consequences of insolvency (such as no or a lack of access to credit) so that consumers are not shut off from mainstream finance and potentially socially excluded as a result of attempting to rectify and pay back their debts.

Q7: 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?

No comment.

Q8: How, if at all, should the personal insolvency framework distinguish between honest/unfortunate and dishonest/reckless debtors?

Insolvency solutions must provide flexibility for the fact that life events can create a need for plans to be amended or enable consumers to move between solutions. This is particularly necessary when accounting for recent events such as the pandemic and the current cost of living increase. There will always be personal as well as external and macroeconomic events that impact an individual’s ability to pay and/or maintain a solution.

The Panel would agree with a principle that like debt advice the insolvency framework should be “judgement free”. The reasons why consumers find themselves in financial difficulty should not affect their ability to access a range of fair and affordable routes to discharge their debts. Equally, if consumers fail to comply or maintain engagement with their debt solution having had the risks and consequences explained to them, then it is fair that that consumer has their options reviewed and restricted.

As the use of consumer credit and debt levels increase, it is increasingly necessary to offer longer term solutions alongside the insolvency framework such as the options contemplated in the proposed SDRP. In order to accommodate longer term solutions, flexibility is even more important as challenges arising in a plan that runs for up to 10 years are almost inevitable. There is also a need to protect consumers from creditor action when moving between solutions in the event that delays cannot be avoided through changes in legislation. As an example, it can take 8-12 weeks for a consumer to move from an IVA to a DRO today. During this time, they may be subjected to creditor collections or enforcement action and undue stress.

Where a debtor has been found to be dishonest or reckless as a result of a fair judicial process, then there is no reason why they should avoid punitive actions or sanctions. The experience highlighted in this call for evidence would suggest that this applies to a very small number of people and therefore reinforces the requirement to develop solutions aimed at supporting those that are attempting to do the right thing.

Q9: 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.

There are well-evidenced links between debt problems and mental ill-health, so a priority should be the better integration of the consumer journey for debt remedies and debt advice with mental health support. Lessons could be learned from work done by the Money and Pensions Service and organisations such as the Social Prescribing Academy. We expand on this point in our answer to Question 14.¹

Q10: Who should bear the costs of entering and administering personal insolvency procedures?

Where a longer-term insolvency tool is appropriate, it is fair that the consumer pays the associated costs and that these be split over the duration of the plan. Where a solution such as a DRO is appropriate, an attempt should be made to recover the costs from the consumer, however, it is recognised that this may not be affordable. In such a case, means tested support should be funded by the Government using existing provisions such as the Bank Levy which funds MaPS debt advice and other services. The reliance on charitable and not-for-profit organisations to cover these costs is an option but should not be relied upon given their ever-changing funding environment.

Q11: How should the costs of entering and administering personal insolvency procedures be paid and structured between the different parties?

See response to question 10.

Q12: What options are available to debtors and creditors who are unable to afford the cost of bankruptcy, IVA or a DRO?

In some cases, debtors can seek grants from charitable organisations to cover these expenses. As outlined in Question 10 we believe there is a need to change this funding model. The alternative is extended periods of relying on token payments and creditor forbearance which are bad for individuals financial, physical and mental health as well as creditors. There is a risk that people may turn to unsustainable – and even dangerous forms of borrowing to delay the moment of financial reckoning. Changing the funding model in a fair way is likely to be less costly to individuals and the economy than these alternatives.

Q13: What are the main consequential costs of the different insolvency procedures?

No comments.

Q14: 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?

Rather than concentrating on removing the stigma attached to any specific procedure, time and attention should be given to promoting debt advice and helping consumers understand how debt advice can benefit them. Learnings from campaigns to promote mental health support and reduce the stigma from seeking help, can be applied to debt advice. There is little stigma attached to a treatment prescribed by a GP. If insolvency and other debt solutions are "prescribed" by debt advisers, this should help to reduce

¹ See for example <https://moneyandpensionservice.org.uk/improve-financial-wellbeing-for-your-patients/> and <https://socialprescribingacademy.org.uk/back-on-track/>

any associated stigma. In order to achieve this, it is necessary to ensure that debt solutions, including insolvency procedures, are only accessible following high-quality debt advice and perhaps additional work to change the vocabulary of being in debt, including not calling the help received, debt advice but something less pejorative such as money 'assistance' or 'advice' for instance. Emphasising the help and support available is an important factor in driving improved consumer outcomes. For instance, it prevents consumers resorting to illegal or high-cost short-term lending 'solutions' which can worsen their situation.

We highlight in Q6 above a suggested mechanism for reviewing the consequences of insolvency (such as no or a lack of access to credit) so that consumers are not shut off from mainstream finance and potentially socially excluded as a result of attempting to rectify and pay back their debts.

Q15: Please provide any evidence to show whether consequential costs serve a useful purpose or whether they produce unintended consequences for different stakeholder groups.

No comments.

Q16: Do you believe the current insolvency procedures are working as intended? Please provide any evidence you have.

Insolvency procedures such as DROs work better than previous following changes to debt and asset limits. More must be done to maintain debt and asset limits at appropriate levels in an environment where prices can change rapidly. Adjustments to limits should use a predetermined formula so that long consultation and change timelines can be avoided. These extended processes can lead to consumer detriment or the need to change solutions in the future which can be destabilising for consumers. More flexibility is also required to enable the inclusion of new debts in a DRO.

IVAs have the power to be beneficial tools, however, this procedure has been negatively impacted by poor selling practices and advice resulting in detrimental consumer outcomes. Additional flexibility with the IVA system is also needed as evidenced by the help provided to consumers during the Covid-19 pandemic. It must be recognised that life events both internal and external do occur and help must be available to avoid the need to break an IVA plan.

Q17: How well do those in financial distress navigate the current regime and could this be improved? Please provide evidence to support your answer.

Navigating insolvency or any other regime related to financial difficulty is complex for consumers.

In many cases, the journey begins with seeking support from a lender, energy company, or local authority. Consumers do not yet have a level of trust or an expectation of support from these parties. Their reputation and past conduct cause consumers to be sceptical of any help offered from these bodies.

Another significant and increasingly important doorway into the debt remedy regime are online search engines. These environments are dominated by for-profit lead generation, which crowds out free debt advice and can lead to people in financial difficulty not being informed of their full range of options or, worse, relying on a remedy that is ill-suited to their situation. The rise of lead generation makes it all the more important that the regulation of IVAs is brought into line with other solutions and that consumers receive adequate debt advice before committing to an IVA.

For others in financial distress, there is low awareness of the availability of high-quality, free debt advice. Signposting to sources of support is often handled very poorly by creditors. It's often called out on the back of a letter, or at the end of a call when the agent and customer are no longer truly engaged. Services which may offer the best help are not promoted or advertised while many commercial "solutions" which may not deliver good outcomes are heavily promoted, often via channels where those in the most distress are engaged or on TV and radio in the middle of the night.

We are pleased the FCA has worked with MoneyHelper to inform consumers of their options, but we would also like to see firms make better use of signposting and partnering with third sector organisations and charities in order that their customers have full access to the resources available to them. This signposting needs to be 'smart', so that it is resourced appropriately and is meaningful to the end user, but it should be a requirement of firms to help in this regard rather than rely solely on the regulator. Acknowledging the need for debt advice often requires an individual to acknowledge they are "in debt." People will often know they have used credit or may be struggling but declaring they are "in debt" requires a certain level of self-reflection similar to acknowledging that one has an issue with an addiction or mental health. This prevents people from accessing help early. One solution would be to move away from the concept of debt advice and begin talking about money advice or something similar. This language is already often used informally by service providers. While this is not directly in the scope of this call for evidence, it is a change that we believe would assist consumers with accessing insolvency solutions.

Aside from challenges with debt advice, people are often faced with navigating complex legal procedures and working with professionals who may not always be able to articulate procedures in accessible language. In particular, Insolvency Practitioners can often be extremely challenging to work with especially when they are located within larger law firms or other settings where the average consumer may not regularly engage. This supports moving the responsibility to a rebranded debt advice capability.

Q18: 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?

The existing insolvency procedures offer a variety of options both long and short term. They also offer solutions for those able to pay some amount towards their debt and those that cannot pay at all or pay very little. While creditors are often left receiving very little in return, especially from those who make use of procedures such as a DRO, most lenders have been able to price this into their products and services. Insolvency arrangements can provide certainty for creditors by resolving a customers' situation and saving expensive and likely fruitless efforts to re-engage and collect money owed. The chief challenge is that insolvency solutions are often not transferable. They do not provide a flexible component of a strategy for debt resolution over time that recognises how often and how quickly people's circumstances can change. As such, insolvency is likely to remain suitable for a relatively small proportion of people in debt, whose circumstances can be reliably foreseen over a period of years.

Q19: How well do the existing insolvency procedures work for sole traders and partnerships? Please provide any evidence you may have.

No comment.

Q20: How could the personal insolvency framework be improved for sole traders and partnerships?

No comment.

Q21: What evidence do you have of the number of IVAs/Partnership Voluntary Arrangements which relate to sole traders and partnerships?

No comment.

Q22: What are the main factors which influence an individual's decision to enter a particular procedure?

The majority of consumers do not enter the insolvency system with an idea of which solution they prefer². They are reliant on guidance from a debt adviser and/or insolvency practitioner. Which solution they select is often a function of the total amount of debt they have and/or value of any assets. We believe the majority of people enter the system wanting to repay some portion of their debt, however, they may be guided to an alternative solution based on their financial circumstances.

Again, there is evidence that these decisions can be heavily influenced by advertising and a "push" towards a particular solution based on the commercial incentives offered to providers. This problem is exacerbated by the use of search engines as the front door to help with debt problems, an environment that is dominated by paid-for search and for-profit lead generation. In general, we continue to strongly support the FCA's work to regulate and place restrictions on firms such as "debt packagers" to deliver better outcomes for consumers.

Q23: How could an individual's decision to enter a particular procedure could be better informed?

The decision to enter an insolvency procedure or debt solution should be an outcome of holistic, impartial debt advice as mentioned in previous questions.

Q24: What evidence do you have of the impact that a public register has on an individual's decision to choose a particular insolvency route?

While we do not hold such evidence ourselves it is likely that debt advice charities do, relating to data that they have collated from consumers who have reached out for help and advice.

Consumers are likely not worried about the existence of the register but rather the consequences of being on that register in some scenarios, including public stigma. This is why we believe reform is required in terms of an employer's ability to deny or terminate employment based on a decision to access an insolvency solution. As mentioned previously, changes to make the implications of insolvency more differentiated and proportionate, and to remove punitive penalties would help to remove barriers to consumers getting the help they require while preserving the ability for creditors to access the register to support creditworthiness and affordability assessment.

Q25: What impact does professional debt advice have on debtors when choosing a personal insolvency solution? Please provide evidence to support your answer.

When debt advice is provided and is high-quality and impartial, it can greatly improve the outcomes achieved. It will often also lead to better compliance with agreed plans as debt advisers are able to help consumers create sustainable budgets, maximise income,

² A minority do, ringing up a debt advice provider and asking for a particular solution (usually a DRO). Often such certainty is misplaced, because people don't appreciate the full complexity of eligibility conditions.

and offer an accessible support system to navigate complex gateways (e.g. the DRO administration process) or in the event of changes to an individual's circumstances.

IPs are not all set up to deliver this level of support and may not be best placed to offer the level of support necessary. It should also be noted that consumers in financial difficulty may also be facing other issues such as food or energy poverty, or other issues. Debt advice networks are better able to address the holistic needs of consumers than IPs working independently.

Q26: 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.

The Panel see the barriers to accessing personal insolvency solutions very much the same as those which are present in all stages of financial services and/or financial difficulty, usually referred to as vulnerability. In particular, vulnerabilities such as language and financial capability often make insolvency solutions challenging for consumers. The use of complex legal procedures which can be difficult for native speakers to understand are extremely difficult for those speaking other languages. While we don't have specific evidence, we suspect that many IPs are not set up to handle multiple languages.

Given the volumes of insolvency solutions accessed in recent years and the complexity of personal finance, we also believe that financial capability can be an issue and that IPs may not be able to check for understanding or support consumers who need additional help in this area. This is an area the debt advice sector has been supporting for years and again supports our call for debt advice to play a more key role in the access of insolvency solutions.

Q27: 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.

As noted above we see the most critical improvements being:

- Impartial holistic debt advice as the sole gateway to all insolvency solutions
- The ability to amend and move between solutions on an advised basis
- Effective implementation of the new Consumer Duty

There is also a need for savings limits to be increased. Many debt advisers and IPs use the £25 Single Financial Statement (SFS) savings buffer when working out repayment plans and budgets. This amount of savings does not allow consumers to build financial resilience in order to prevent the need to use credit in the future to manage through financial shocks that may occur. While we appreciate that a balance must be struck between servicing existing debt and savings, we believe a higher savings limit would benefit consumers and wider society.

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

No comment.