Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Financial Conduct Authority
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By email: cp21-30@fca.org.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to CP21/30 – Debt packagers: proposals for new rules

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the FCA's consultation on new proposed rules for debt packager firms.

The Panel supports the FCA's proposal to ban debt packagers from receiving remuneration from debt solution providers. Any other intervention could cause existing or new debt packager firms to adapt their business model so that the risk of further harm would not be fully mitigated. The Panel believes the scope of the ban should include debt management and not-for-profit debt advice firms, to eliminate incentives for debt packagers to become not-for-profit advice providers and/or establish not-for-profit entities to circumvent regulation.

We also agree with the proposal for a one-month implementation period for the remuneration ban, however recognise there is a risk that consumers who contact debt packager firms during this period may be turned away or signposted to debt advice. To mitigate this risk, we suggest the FCA instruct debt packager firms to directly refer consumers to authorised not-for-profit debt advice agencies.

In parallel to the remuneration ban, the Panel believes the FCA should take urgent action to implement quality assurance monitoring in the market for debt advice. The FCA has historically relied upon quality assurance carried out by third parties, including the Money and Pensions Service (MaPS). However, considering that over 50% of debt advice given in the UK occurs outside of MaPS-funded agencies, we believe there is a strong argument for the FCA to enhance its direct monitoring of debt advice quality. Ultimately, this would help prevent consumer harm from manifesting at the outset of the process of seeking debt advice.

Our responses to the specific questions are included in Annex A below.

Yours sincerely,

Wanda Goldwag
Chair, Financial Services Consumer Panel

ANNEX A – Responses to questions

Question 1: Do you agree with our assessment that the remuneration model for debt packager firms is driving consumer harm?

Yes. The Panel agrees the current remuneration model for debt packager firms causes consumer harm as a result of poor and/or delayed advice for the most vulnerable customers in financial difficulty.

Question 2: Do you agree that the only effective remedy is to ban receipt of remuneration for referrals by debt packager firms?

Yes. We agree that any other remedy would likely only cause existing or new firms to adapt their business model and the risk of further harm would not be fully mitigated without a ban.

We do, however, believe that introducing higher quality standards for debt advice as referenced in section 3.12 would improve outcomes for consumers and may have identified this issue much earlier resulting in less actual harm. As the primary regulator for debt advice, the FCA should enhance its direct monitoring of debt advice quality.

While the FCA has historically relied upon quality assurance activities carried out by third parties including MaPS and debt advice funders, the Panel is concerned that this does not provide suitable coverage for the risks present in the wider debt advice marketplace. Over 50% of the debt advice given in the UK occurs outside of MaPS funded agencies. The general lack of clarity on the responsibility for quality monitoring leads to inconsistent quality assurance methods which lead to consumer harm. It is therefore extremely important that the FCA take immediate action to implement debt advice quality assurance monitoring to identify further areas of consumer harm and prevent new harms from arising.

Question 3: Do you agree that we should not include debt management firms or not-for-profit debt advice firms in our proposals?

No. The ban should apply to all organisations offering debt solutions directly and indirectly. While we appreciate that referral fees make up a small portion of income for debt management and not-for-profit debt advice firms, there is a risk that debt packager firms seek to become not-for-profit advice providers and/or establish not-for-profit entities to circumvent the ban especially given the ease of setting up a not-for-profit in the UK.

We also do not support the continued creation of a two-tier system where commercial and not-for-profit providers are subject to different rules. The current approach leads to commercial organisations "cherry-picking" those customers who appear to be most profitable leaving the remainder to the not-for-profit advice sector.

The two-tier system along with funding challenges has led to significant gaps in funding and delivery capacity as we have seen during the Covid-19 pandemic. A more robust and stable funding model, free from revenue streams such as referral fees is needed to preserve the availability of high-quality debt advice.

Question 4: Do you have any comments on our proposed obligation on debt management firms who act as principals?

We agree that debt management firms should ensure that any appointed representative does not take part in any activity that could be viewed as debt packaging and that no remuneration from such activity is paid. We also believe restrictions and obligations should apply to lead generators in this space should any remain once the ban has been implemented.

Question 5: Do you have any comments on the draft rules?

No comment.

Question 6: Do you have any comments on the planned implementation period?

We agree that rapid implementation of this ban is necessary given the ongoing consumer harm. The 1-month implementation is appropriate as firms have been warned multiple times about this conduct and have, in many cases, not taken appropriate action.

We would like to highlight the associated consumer risks with this fast implementation and encourage the FCA to take further action as part of the implementation to reduce the consumer risk.

1) Debt advice capacity - while we are not currently aware of any issues with debt advice capacity and FCA analysis states an expectation of no issues with this, we are concerned that funding for debt advice is not yet confirmed beyond April 2022. This together with the ongoing recommissioning process run by MaPS introduce significant risk to consumers.
2) Barriers to advice - we are aware of a risk that consumers who contact debt packager firms during the implementation period may be turned away or signposted to debt advice. This can create a major barrier to consumers who are attempting to seek advice in order to gain control over their financial situation. Consumers who encounter barriers often drop out of the debt management and advice ecosystem and may not again return until it’s too late. We would like to see the FCA instruct debt packager firms that they must directly refer consumers to at least one of the authorised not-for-profit debt advice agencies. This will enable a warm transfer in the best case or create a referral to be followed up by the debt advice provider in the worst case. This approach will help to reduce the number of consumers who do not receive the support they need.

Question 7: Do you have any comments on, or relevant additional data for, our draft cost-benefit analysis?

We feel that, for the most part, a thorough cost-benefit analysis has been completed and the logic applied for most assumptions is credible.

We are concerned that the FCA is unable to “reasonably estimate the number of people who end up on unsuitable solutions” as stated in Annex 2 - Section 10. We feel this further demonstrates, as outlined under question 2, gaps in the regulatory approach currently applied to the debt advice market by the FCA.

The Panel again calls for the FCA to improve its approach to the regulation and supervision of the debt advice market including the adoption of more robust tools and metrics for assessing the quality of debt advice given.