FINANCIAL CONDUCT AUTHORITY

Policy Statement

PS23/5

# Debt Packagers: Feedback to CP23/5 and Final Rules

June 2023

# This relates to

Consultation Paper 23/5
which is available on our website at
www.fca.org.uk/publications

**Email:**
cp23-5@fca.org.uk

**Moving around this document**

Use your browser's bookmarks and tools to navigate.

To **search** on a PC use Ctrl+F or Command+F on MACs.



# Contents



**Request an alternative format**

Please complete this form if you require this content in an alternative format.

## Chapter 1

# Summary

**1.1** In CP23/5, we set out our proposals to ban referral fees, and other forms of commission or remuneration, paid by debt solution providers to debt packagers following our first consultation, CP21/30.

**1.2** The consultation closed on 2 March 2023, and we received 27 responses.

**1.3** In this policy statement (PS) we summarise the feedback received and our response. We also set out our final rules.

## Who this affects

**1.4** This PS will primarily affect:

- debt packager firms and appointed representatives who act as debt packagers and their principals
- Individual Voluntary Arrangement (IVA) and Protected Trust Deed (PTD) providers and Insolvency Practitioners (IPs)
- persons who provide leads to debt advice and debt solution providers
- firms administering Debt Management Plans (DMP) and/or the Debt Arrangement Scheme (DAS)
- not-for-profit debt advice providers (NFP)
- consumer groups who represent people who may seek debt advice
- Recognised Professional Bodies (RPBs) who authorise and regulate Insolvency Practitioners

## The wider context of this policy statement

**1.5** Debt packagers are commercial debt advice providers which do not typically provide debt solutions themselves. They are a relatively small sub-sector of the debt advice market; around 52,000 of the 1.7 million people who seek debt advice every year start their journey with a debt packager.

**1.6** Our analysis of data from debt packager firms indicates that almost all revenue generated by debt packager firms comes from referring customers to debt solution providers in return for a referral fee.

**1.7** We also know that debt packager firms receive much higher referral fees for IVAs and PTDs than for other debt solutions such as DMPs, which generate lower referral fees, or Debt Relief Orders (DROs), which don't generate any fees. Based on our evidence, the median referral fee to debt packagers for IVAs in 2019-2020 was £940, and £1,340 for PTDs versus £240 – £260 for DMP referrals.

1.8 This indicates that there is an incentive for debt packager firms to provide advice which is not compliant with our rules or is biased towards recommending the debt solutions that generate the most revenue for the firm, even if this advice does not have regard to the customer's best interests.

1.9 In CP21/30 we noted that of the 1.7 million consumers who sought debt advice overall in the UK in 2020, only 5% (or 88,000) registered for an IVA or PTD. By comparison, we estimate that over 20% of debt packager customers are accepted on to an IVA or PTD, four times higher than the national average.

1.10 We recognise that referral fees can allow firms to perform valuable services, but mismanagement of the conflict of interest they present can lead to serious harm to consumers. In CP21/30 and CP23/5 we set out our view that failure to adequately manage the strong conflict of interest inherent in the debt packager business model leads to firms not complying with our rules. This creates an unacceptable risk that consumers are placed on solutions (especially IVAs or PTDs) that may be unsuitable for them, which may lead to one or more of the following harms:

- consumers paying more than is necessary for a solution
- increased and prolonged indebtedness
- lower wellbeing
- creditors may find it more expensive and less efficient to recover outstanding debts

1.11 This view was based on the analysis set out in CP23/5, as well as the historical evidence of poor standards which led to us issuing supervisory warnings in the form of a Dear CEO letter in 2018 addressed to all debt packagers. In addition, we reminded the wider debt advice market of their obligations and key risks we had identified in the form of a Portfolio letter in 2020. Our subsequent supervisory action resulted in a number of large debt packagers leaving the market or being subject to voluntary requirements to cease business.

1.12 In CP21/30 and CP23/5, we presented evidence we had gathered which showed debt packager firms were not complying with our rules. In particular, we identified concerns that some debt packager firms appear to have:

- manipulated customers' income and expenditure (I&E) information to meet the criteria for an IVA or PTD
- not presented the risks and benefits of different solutions in a balanced way
- provided advice that did not accurately reflect their conversations with customers or information that customers had given

1.13 Customers seeking debt advice are often in highly vulnerable circumstances. Our existing rules are there to ensure these customers are protected and can trust the advice they get is appropriate to their individual circumstances and based on a sufficiently full assessment of their financial circumstances.

1.14 The evidence we have seen suggests debt packagers' mismanagement of the conflict of interest leads them to not comply with our rules which puts consumers at risk of harm. Therefore, to make sure that consumers are adequately protected, we proposed new rules to ban debt packagers from receiving remuneration from debt solution providers.

### How it links to our objectives

1.15 The new rules set out in this paper will support our consumer protection objective.

1.16 Through making these rules, we intend to remove an incentive which we see as leading to non-compliance with existing rules which are intended to provide an adequate level of consumer protection.

## What we are changing

1.17 We are placing a ban on debt packagers receiving remuneration from debt solution providers.

1.18 The ban covers any commission, fee or any other financial consideration, received by a debt packager firm, directly or indirectly, from a debt solution provider in connection with the firm referring customers to a debt solution provider, or any other related services.

1.19 The rules will remove the inherent conflict of interest in the debt packager business model. This will provide an appropriate level of protection to consumers by removing a significant driver of the risk of harm to consumers. The harm here is where consumers end up on debt solutions that require them to make payments which they cannot afford or missing out on alternative, cheaper solutions, which may be more appropriate to their needs.

1.20 Our rules anticipate that conflicts of interest may arise in the markets we regulate and require firms to manage them appropriately. Our rules also require that firms have regard to the best interests of customers. We recognise conflicts of interest can be successfully managed by firms, however we feel the ban is appropriate in these circumstances because:

- **a.** The consumers affected by the consequences of mismanagement of the conflict of interest often show signs of vulnerability, which may affect their ability to assess already complex options.
- **b.** We have seen widespread non-compliance with existing rules even after we set our expectations on how the conflict of interest should be managed.
- **c.** We have taken action against individual firms previously, but the scale of the non-compliance has meant this is not an effective way to stop it occurring throughout the wider market, while using our resources effectively.

1.21 The ban will not apply to not-for-profit (NFP) debt advice firms or to regulated providers of debt solutions (including debt management plans) who have a different business model to debt packagers. The conflict of interest from referral fees is less acute in the case of such firms who provide debt solutions themselves. Referral fees typically make up only a small part of these firms' revenues. We do not have evidence of the same serious concerns as we have for debt packagers and note that the last Thematic Review into DMP providers (TR 19/01) found significant improvement in this sector.

**1.22** Appointed representatives, (including those of DMP providers) who act as debt packagers will be subject to the ban. Mixed revenue debt packagers will also be subject to the ban since we consider that, unlike NFP or debt management firms – who operate different business models – referral fees paid to debt packagers, including mixed revenue firms, are likely to always be a driver of harm (as we discussed in CP23/5 paragraphs 2.48 to 2.51). Further, we want to prevent debt packagers from being able to avoid our proposed rules by adapting their business models in minor ways so as to be out of scope.

**1.23** We are also introducing new perimeter guidance. This will make it clear that referring customers to debt solution providers who only offer one solution could fall under the regulated activity of debt counselling. Persons who operate as lead generators for IVA/PTD providers must consider carefully if they are carrying out activities which require authorisation. IPs who act as lead generators should also consider if they need authorisation, since their exclusion from carrying out regulated activity may not apply in this situation.

## Outcome we are seeking

**1.24** We want consumers who seek debt advice to receive appropriate and compliant debt advice, which supports their recovery and, where appropriate, helps them to access a suitable debt solution.

**1.25** By banning debt packagers from receiving remuneration from debt solution providers, the new rules will remove a strong incentive for them to offer advice which does not have regard to the best interests of the customer or is not appropriate to their individual circumstances, as required by our existing rules.

**1.26** We anticipate that debt packagers will either leave the market or adapt their business model away from debt packaging to one which doesn't have the same acute conflict of interest and is more aligned with consumers' interests. As a result, consumers who seek regulated debt advice will be more likely to receive compliant advice.

**1.27** We do not believe this intervention will materially impact the supply of debt advice. This view is shared by the Money and Pensions Service and is covered in more detail later in this Policy Statement (see page 21).

**1.28** In removing a strong incentive not to offer compliant advice, our rules should, consequently, reduce the overall number of consumers being referred to solutions that are not right for them, and suffering harm as a result. Our guidance will help to clarify the perimeter and when activities carried out by lead generators could be regulated activities.

**1.29** Our intervention is key to helping ensure consumers receive appropriate debt advice and suitable solutions and links to our 2023/24 Business Plan focus area of 'reducing and preventing serious harm'.

## Measuring success

1.30 We expect to see a significant change in the debt packager sector, with no debt packager firm receiving remuneration from debt solution providers. We will monitor the impact on debt packagers to see how many leave the market and how others modify their business model.

1.31 We want to see consumers receiving compliant advice. As a result, while some customers will continue to be recommended an IVA or PTD where this is appropriate, we would expect fewer customers to be recommended these than if they had gone to a firm which was incentivised through referral fees to recommend these debt solutions.

1.32 We will monitor the market proactively using data-led intelligence. This will allow us to understand whether firms are adapting their business models in response to our intervention or exiting the market. Where firms adapt their business model, we will monitor to determine whether practices evolve in the interest of good consumer outcomes.

1.33 As proposed in our consultation, the ban will not apply to debt management firms. But we see a risk that debt packager firms could look to become appointed representatives of a debt management firm to seek to avoid the proposed referral fee ban. This would not be an acceptable outcome as it would expose consumers to the same risks from the debt packager business model that we are seeking to address. Our rules therefore include an obligation on principal firms (including debt management firms) to take all reasonable steps to ensure that their appointed representatives do not receive any remuneration from debt solution providers unless the appointed representative is genuinely acting as a debt management firm itself. We will monitor this actively.

## Summary of feedback and our response

1.34 We received 27 responses from a variety of stakeholders. These included responses from debt packagers, other commercial and not-for-profit advice providers, consumer bodies, trade bodies, insolvency practitioners and others. Please refer to the Feedback Statement in Chapter 2 for a full overview of the feedback received and our response.

1.35 There was overall support for the proposal to ban debt packagers from receiving referral fees. A number of respondents supported our combined evidence base and said the ban needed to be implemented as quickly as possible because of the high risk of harm to consumers and current cost-of-living challenges.

1.36 **Statistical Methodology:** Some respondents challenged our Cost Benefit Analysis (CBA) and some submitted a statistical report which suggested problems with our methodology. We sought comment on this report from an external statistician who is a member of the FCA's supplier framework and who has expertise in, and advised us on, the approach we took. The statistician advised us the respondents' report contained a number of misunderstandings regarding the methodology we had used to support our evidence gathering and analysis (see pages 15-16 for more detail). The statistician's view aligned with our own opinion and that of internal experts following analysis of the response, so we do not consider the report's findings to have merit.

1.37 **Market Developments:** We received no response that suggested there had been a material change in either the market as a whole or the management of the conflict of interest, which would require us to change our approach. Respondents did flag changes in the insolvency landscape including new guidelines regarding IVAs introduced by the Insolvency Service and RPBs (including an update to the Statement of Insolvency Practice, SIP 3.1). These updates aim to ensure that IPs check whether advice has been provided to customers before accepting them and, if so, to seek to ensure that the IP has remedied any shortcomings in that advice. However, since this applies only to IPs, we do not consider that this will materially change the DPs' conflict of interest. Additionally, even if it prompts more IPs to spot inappropriate referrals, that does not remove the harm caused by poor debt packager advice, since debt packagers are outside of the scope of SIP 3.1.

1.38 **Capacity Concerns:** Some respondents raised concerns that capacity in the debt advice sector is already being stretched because of cost-of-living challenges, and that removing a source of debt advice would lead to customers not being able to access the help they need. We had already considered this in our CPs and believe that there would be only a limited impact. This is because debt packagers make up only a small part of the debt advice market. Of the 52,000 consumers that get referred by debt packagers, around 46% of people are already referred to the not-for-profit (NFP) sector. This means the increase in demand for NFP services is small relative to the size of the market. Even if all debt packagers were to leave the market, we expect the debt advice sector to have sufficient capacity to meet the needs of customers who would otherwise have gone to debt packagers.

1.39 We anticipate that debt packagers will either leave the market or adapt their business model away from debt packaging to one which doesn't have the same acute conflict of interest and is more aligned with consumers' interests. As things stand therefore, we believe the risk of substantial harm from non-compliant debt packager advice outweighs its value in providing advice capacity.

1.40 The Money and Pensions Service (MaPS) believes the impact of withdrawal would be minimal. It is confident that its funded organisations, together with the wider debt sector, would have the increased capacity and resilience to meet demand that may arise if debt packager firms exit the market. In September 2022, MaPS announced a 26-month extension to its community-based debt services, starting from 1 February 2023. At the same time, MaPS launched new contracts for nationally accessible and business-debt services, bringing total investment in debt advice services to £76 million each year. In Year 1, it expects its commissioned services to see a 65% increase in capacity and by Year 3, these services will have capacity to support more than 650,000 people. Its strategy to increase pro-active engagement with customers and work with creditors to make efficient and effective referrals to debt advice will ensure those customers are proactively routed to free advice through its network.

1.41 **Implementation Period:** We received a mix of responses to our proposed implementation period of 2 months. Nearly half of the responses we received, mainly those from debt packagers and IPs, disagreed with a 2-month implementation period either because they thought the ban should not go ahead, or else felt that there was not sufficient time for businesses to adapt and change their business models. They proposed alternative timelines of 3 – 6 months.

**1.42** Other respondents disagreed for different reasons. In our first CP we proposed an implementation period of 1 month, and some respondents felt that the risk of harm was so severe and the fact that over a year has passed since the first consultation means the FCA must act more quickly.

**1.43** Around a third of respondents felt that 2 months is a reasonable timescale.

**1.44** We considered carefully feedback to the 2-month implementation period we proposed. Whilst we are conscious of the need to act quickly to prevent the risk of harm to consumers arising from the debt packager business model, we are also conscious of the severe impact on firms. For that reason, we consider that 4 months would be an appropriate time period to allow firms more time to adjust their businesses in the interests of serving customers well, or to wind down their business in an orderly way.

**1.45** Nevertheless, we do not want consumers to be exposed unnecessarily to the risks we have identified. For this reason, the implementation period will only be available for existing firms. New entrants, including any new appointed representatives an existing debt packager appoints, will be subject to the ban with immediate effect.

## Equality and diversity considerations

**1.46** We considered the equality and diversity impacts of the proposal in CP21/30 and again in CP23/5 based on findings from the 2020 Financial Lives survey. We have now updated this with findings from the Financial Lives survey run in 2022. This research indicated that use of debt advice in the preceding 12 months had fallen from 4% in February 2020 to 3% in May 2022. There has also been a drop in use of debt advice by people showing characteristics of vulnerability from 7% in 2020 to 5% in 2022. Use of debt advice dropped slightly for minority ethnic groups from 5% in 2020 to 3% in 2022, the same level as non-minority ethnic respondents. However, the use of debt advice remains higher among the over-indebted (10% in 2022), renters (6% in 2022), and lower income households. 7% of those who live in households with an income of less that £15k a year used debt advice.

**1.47** We consider that the proposals will improve outcomes for people seeking debt advice and so do not consider that they would negatively affect people with protected characteristics. We set this out in CP21/30 and CP23/5 and did not receive any feedback.

## Next steps

**1.48** Firms subject to the new rules in the instrument in Appendix 1 must take steps to ensure they comply. In summary, where CONC 8.3.11R applies, existing debt packager firms must ensure they do not receive any commission, fee or any other financial consideration from a debt solution provider for any referral or related service conducted after **2 October 2023**.

1.49 Any firms who act as principal to appointed representatives who would fall under the scope of the ban if they were an authorised person must take all reasonable steps to ensure that these appointed representatives also comply with the ban, as required under CONC 8.3.16R, by **2 October 2023** (subject to CONC 8.3.11R(2)).

1.50 Firms who start, or restart, carrying out debt packager business from **2 June 2023** will be subject to the ban and will not benefit from the implementation period. The rules also apply with immediate effect to principals with respect to any appointed representatives carrying out debt packager activity who are appointed on or after **2 June 2023**.

1.51 Lead generators and insolvency practitioners should consider the new guidance in PERG and apply for authorisation where appropriate.

## Chapter 2

# Feedback from CP23/5 and our response

2.1 In CP23/5 we consulted on updated rules and guidance regarding remuneration for debt packagers and provided the feedback received to our first consultation, CP21/30. In this chapter we present the feedback to the questions we asked in CP23/5 and our response.

2.2 We received 27 responses to CP23/5. These included responses from:

- debt packager firms
- other commercial debt advice providers
- consumer bodies
- trade bodies representing advice providers and debt management firms
- recognised professional bodies
- insolvency practitioners
- not-for-profit organisations
- others including debt purchasers, insolvency consultants, government bodies and members of the public.

## New proposal for ban on remuneration from debt solution providers

2.3 In CP23/5 we set out our updated proposal for a ban on debt packagers receiving referral fees, commission, or any other financial consideration from a debt solution provider for providing referrals or other related services. In Chapter 2 and the Cost Benefit Analysis (CBA), we presented the additional evidence we had gathered since our first consultation (CP21/30). Our findings from this additional evidence continued to show that the remuneration model for debt packagers is driving an unacceptable level of risk of consumer harm.

2.4 In respect of the combined evidence base from CP21/30 and the subsequent work we carried out in 2022, we asked:

> *Q1: Do you have any comments on our consolidated evidence base (including as it is detailed in the CBA)?*

2.5 We received 22 responses to this question. Eleven respondents either supported the consolidated evidence base we had presented or did not have comments to the contrary. Many of these respondents were concerned at the findings of high levels of non-compliance in our most recent case file reviews and tended to agree that this evidence supports the need for intervention. One respondent suggested that we had "gone beyond what could have been reasonably expected to obtain further evidence and be certain that the problems with debt packager firms are very real".

2.6 Eleven respondents expressed dissatisfaction with the consolidated evidence base. Within these there were differing opinions. One respondent suggested the evidence base was too narrow as it did not include firms that are unregulated, such as lead generators, which they believe are the primary offenders.

2.7 Other respondents either did not agree with the substance of the evidence base or the statistical approach we employed, or they considered the evidence was weak.

2.8 We received 6 very similar responses from debt packager firms and insolvency practitioners which stated that:

- Evidence NFPs had provided that customers had received unsuitable advice from debt packagers was 'hearsay'.
- There was a lack of evidence that customers are paying more than necessary for a solution, suffering prolonged indebtedness or lower wellbeing.
- There was no quantification of the number of customers who had decided not to pursue an IVA/PTD despite being advised one, which they stated could prove that consumers are able to make an informed decision.
- The assumption that all customers who are advised by debt packagers would automatically switch to NFPs was challenged.
- Customers can choose to vote with their feet on an IVA if they feel customer service is bad or their circumstances have changed and is not being listened to by the IP.
- Other reasons for IVAs failing include when a customer has an increase in income but refuses to increase their IVA repayments.
- The illustrative example in Chapter 4 was challenged and it was claimed the same can be said of commercial DMP providers and that the fees paid would have been wasted if the client did a DRO at the outset.
- The claim that creditors will get increased returns from better quality debt advice was challenged on the basis that if more customers opt for a DRO this would reduce returns for creditors as compared to an IVA.
- They challenged that there would be no additional fees for the FCA. Examples given included supervision/enforcement of new rules and any legal costs.

2.9 Three of these respondents also submitted a statistical report which assessed the methodology we had used in our analysis.

2.10 Separately, 1 respondent questioned whether the issues identified were specific to call recordings where an IVA was recommended, or whether we had similar findings where a DRO or bankruptcy was recommended. Another, an insolvency practice, felt the sample did not reflect the whole market, rather it only represented a number of 'bad actors'. They believe that the debt packager market, when conducted correctly, provides a valuable service to indebted consumers.

2.11 One RPB believed that the nature and number of harms caused by debt packagers remains presumed, rather than supported by evidence. They pointed to the small size of the firms in the additional evidence from 2022 and that the total size of the debt packager market is uncertain.

## Our response

**Comments as 'hearsay'**
Some respondents alleged that evidence provided by NFPs about their customers is 'hearsay'. As a regulator we consider seriously but not uncritically any notification of consumer harm. We actively seek feedback in the form of responses to consultations which allows us to take into account a broad range of perspectives and experiences in the industry. Importantly, we combine this qualitative evidence with quantitative evidence, such as our statistical analysis, to draw conclusions about market practices.

**Evidence of consumer harm**
The same respondents claimed there was a lack of evidence that customers are paying more than necessary for a solution, suffering prolonged indebtedness or lower wellbeing. In CP21/30 and CP23/5 we explained the reasons why quantitative evidence on eventual customer outcomes, including complaints data, was not reliable. This is because customers cannot reliably identify whether the advice they received was non-compliant or biased owing to an asymmetry of information between the firm and their customer, their vulnerable circumstances when seeking debt advice, and issues with behavioural biases (see pages 19-23 of CP21/30). Many respondents to CP23/5 and CP21/30 flagged their first-hand experiences dealing with customers who suffered harm as result of ending up on the wrong debt solution. Citizens Advice has published a report which highlights a number of harms IVA customers suffered as a result of poor-quality debt advice. They found, for instance, that 39% of respondents said an IVA made their debt worse, suggesting that those IVAs had been inappropriately entered into. While not all of this advice will have been provided by debt packagers, the report further indicates the high numbers of IVA customers struggling to make repayments, having to cut back on everyday essentials, and negative impacts on debt levels as a result.

**Take up of IVA/PTD recommendation**
The respondents asked why we did not present a figure representing the number of people who are advised to take an IVA and subsequently did not take it. Any such number would be a snapshot and hard to discern. However, we note that in CP21/30 we provided our findings from 2019-2020 that 85% of customers who were advised an IVA or PTD by a debt packager were accepted onto the solution (paragraph 2.19). We consider that customers should be able to rely on recommendations given to them by debt advisers in an area where they may lack the ability and knowledge to make an informed choice on their own. So even if there are customers who decide not to opt for an IVA, this does not negate the risk of harm posed to customers who were unable to make an informed choice and do take an IVA when it is not suitable for them. Further, if a customer is referred to an IVA and decides not to take it, they now have

to find alternative advice. This adds another step to their advice journey increasing the risk that they disengage from the debt advice market and that their financial position deteriorates further.

### Switching to NFPs

These respondents questioned our assumption that consumers who would have become potential customers of debt packagers would seek advice from NFPs instead if debt packagers left the market. Even if not all customers will switch to NFPs, this assumption served as an upper bound on our estimates of the capacity of the NFP advice market to absorb customers that would otherwise have been serviced by debt packagers (see page 21). We believe that, given the size of the NFP and commercial debt advice sector relative to the debt packager sector, the vast majority of consumers needing debt advice will be able to switch to one of these providers.

### Customers can choose to leave IVAs

The respondents claimed customers can choose to leave an IVA if the service from the IP is bad, or their circumstances change. While there may be some customers who do take this option and successfully enter into a new IVA, we think it is unlikely many would do so. The negative impact from terminating an IVA, such as the sunk costs of fees already paid and reverting to outstanding debts with individual creditors are highly likely to dissuade many customers from making this choice. In our CBA in CP23/5, our illustrative example[1] showed how termination of an IVA after 3 years of £80 monthly payments would lead to them paying £864 in fees and just £2,016 off their debt. As the solution has failed, they would still be in arrears debt totalling £27,984 (£30,000 original debt – £2,016). This would be a highly undesirable outcome if there is uncertainty about whether a new debt solution could be arranged.

Another finding from the Citizens Advice report was that 46% of people surveyed had to cut back on essential spending to keep up with their IVA repayments. Additionally, 32% said they had to borrow money to keep up with the repayments. This suggests it may not be simple for customers to leave an IVA if they aren't happy with the service.

### Reasons for IVAs failing

We know there may be many reasons why an IVA fails. It is one of the reasons why we determined it would not be reasonably practicable to rely on IVA failure rates as a means of assessing the risk of harm from non-compliant advice. As we stated in CP23/5, if we were to follow up on case files we reviewed to determine whether IVA failure occurs where we have observed non-compliant advice from debt packagers, this would take several years and would not provide the full picture regarding compliance with our rules. We consider the risk of harm to be too great to delay our intervention in this way.

1 Table 1 page 37, CP23/5

### Illustrative examples

The illustrative examples in the CP were intended to show the ways in which non-compliant advice can lead to harm, and how we believe the material benefits of the proposed intervention will be delivered to customers seeking debt advice. We did not include them as evidence of the proportionality of the policy. Moreover, in respect of DMPs, we note in our 2019 Thematic Review of the debt management sector that for the majority of the firms in our sample we saw increased efforts to achieve good outcomes for customers and to comply with our rules. Our regulatory scrutiny and interventions in the debt management sector appeared to be a significant reason for changes in their culture.

Further, many DMPs don't incur a cost and those using fee charging providers should be being made aware that free providers are available. Informal DMPs are much more flexible and cause less harm on failure that IVAs. The main harms are the time spent trying to settle debts if a debt relief solution would have been more suitable or the cost of the DMP (if fee charging) and these fees are likely to be much less than for an IVA or PTD.

We believe that the evidence of non-compliance we found strongly supports the policy. Moreover, the respondents' example serves to illustrate our point that inappropriate referrals lead to paying unnecessarily high fees. We do not support any one solution over another. DMPs and IVAs both have their place, but inappropriate referrals to them lead to harm, as illustrated by our, and the respondents', illustrative examples.

### Creditor returns

On the feedback that creditors may get lower returns from better quality debt advice as a result of more DROs being advised rather than IVAs, we do not agree that this is the case. Where an IVA is recommended to a customer inappropriately, it is likely that it will fail if the customer cannot keep up with the repayments which may have been allocated in a large part to the IP's fees in the first years without substantially reducing debts to creditors. Such cases are unlikely to offer fair value to creditors, who may find it more expensive and less efficient to recover outstanding debts. There will still be customers for whom an IVA is the best option, and they will rightly continue to be recommended that option. However, if there are fewer IVAs failing due to poor advice, then creditors can have greater confidence that the IVAs that are set up will be completed.

### Extra costs for FCA

The respondents questioned our assertion that there will be no expected additional costs to the FCA. We expect any FCA activity involving supervision and enforcement of the proposed intervention will fall under our 'Business as Usual' operations and therefore not significantly increase our costs.

### Statistical Report

CP23/5 set out our revised evidence base. To ensure that our evidence was representative of the market, we sought independent input from an external statistician with expertise in sampling for market research. We have considered the statistical report submitted by a number of the respondents and sought a view from the external statistician. The challenge from the respondents is based on the premise that we were trying to estimate a precise level of non-compliance. They argue that our approach is not suitable to do that. In fact, when assessing the need to intervene, we were not trying to estimate a precise level of non-compliance. Instead, we implemented a method which would tell us with a high degree of certainty if each firm was likely to be giving non-compliant advice at a level that supported an intervention. The method also told us whether this firm's behaviour was likely to be typical of the behaviour of the other firms in their segment of the market (supporting our intervention), or whether they were likely to be an outlier (suggesting an alternative intervention might be more appropriate). This method allows us to make conclusions with a high degree of certainty without using the FCA's and firms' resources to gather and review an excessive number of case files. The certainty reduces the likelihood that our sample is not representative of the wider market. We outlined this process in more detail in Annex 3 to the CP.

We used the estimated level of non-compliance from our sampling to estimate the costs and benefits for the population. We included a range around the central estimates of costs and benefits to show this uncertainty. But we did not directly use the estimated level of non-compliance in the market as justification for the intervention, instead using the robust testing process outlined in the above paragraph (and Annex 3 to the CP). We therefore do not accept the premise of the statistical report's arguments.

Furthermore, the report submitted by the respondents also suggested a different approach to estimating the level of non-compliance in the market, and to estimate the likelihood of this figure being typical of all firms in the market. Applying this different approach we would calculate that 89% (+/-6%) of paid referrals show evidence of non-compliance. We consider this level justifies our intervention in any event. Therefore, even if we had followed the statistical report's proposed approach, it would not have had any material impact on the outcome of the further evidence gathering exercise.

**Assessment of referrals to DRO and Bankruptcy**

One respondent questioned whether the issues we identified were unique to call recordings where an IVA/PTD referral was made, or whether similar issues would be found in calls where a DRO or bankruptcy was recommended. The respondent felt that the evidence requested from debt packager firms was led by the outcome the FCA desired.

The scope of our work was informed by the relatively high referral rates to IVAs and PTDs we found among debt packager advice. Taken together with our findings that referrals to IVAs and PTDs pay the highest referral fee to debt packagers, we considered this was the highest priority area to focus on. In CP21/30 we set out our findings that only 6% of debt packager customers were referred to DROs, and only 1% were referred to bankruptcy/sequestration, compared to 30% to IVAs or PTDs.

With a referral fee-reliant business model, firms are not necessarily commercially incentivised to have proper governance and procedures to ensure generally that compliant advice is given. Investing in proper governance and procedures would ensure compliance with our rules and deliver benefits to consumers. However, the acute conflict of interest, which the evidence suggests is not being adequately managed in this case, undermines the incentives of firms to invest in this way because doing so could decrease the number or profitability of the firms' customers. So it is not an answer to our concerns about the debt packager business model to observe that similar issues may be present in the cases where DRO or bankruptcy are recommended.

**Sample size and scale of debt packager market**
Two respondents felt that the sample size in our evidence base was too small, and as such only represented 'bad actors' in the market, rather than being representative of the market as a whole. One, an IP, said that in their experience debt packagers provided an invaluable service to their clients and they follow the regulations in the correct manner. The other, an RPB, felt that since our estimates of the number of debt packagers had changed from 39 to 33, the number of debt packagers remains uncertain and, as a result, so does the extent of any problem.

We worked with internal and external statistical experts to decide how many firms and files we would need to sample to ensure the evidence we gathered was representative of the debt packager market. We did not target bad actors, we chose the firms for our sample randomly. The firms we gathered evidence from represented 85% of the market by customer numbers and 86% of the files we reviewed from these firms showed evidence of non-compliance. Adjusting for the different market shares of the firms we reviewed, and the different number of files we reviewed from some of the firms, our external statistician has estimated that 89% (±6% confidence interval) of the fee-paying referrals made by debt packagers contain evidence of non-compliance.

We note the claims of 'bad actors' from a variety of respondents. For example, we also received feedback suggesting that customers of solution providers are often 'prepped' by advisers not to disclose assets, or to lie about their income or expenditure to ensure they are accepted onto a solution. However, we cannot be certain that this situation affects all solution providers. Our conclusions were therefore based on a statistical analysis applied to debt packagers generally, not individual instances of poor advice.

We cover broader market considerations, including lead generators on page 25.

**2.12** Given that some time had elapsed since our first consultation, we asked:

> *Q2: Do you think there have been any developments (since 2020, and since our consultation in 2021) which have materially changed the management of the conflict of interest? If so, can you provide evidence of these developments?*

**2.13** We received 14 responses to this question.

**2.14** Three respondents highlighted certain IVA providers have gone into administration since 2020 and suggested there may be a decrease in the funds available to pay debt packagers following the withdrawal of certain funders. They gave no specific inference as to the effect on the management of the conflict of interest, however.

**2.15** Two respondents highlighted changes to the regulatory guidance for IVA providers. For example, the updated Insolvency Code of Ethics introduced in May 2020. However, one of these respondents suggested that based on the evidence presented in our updated CBA, the amendments to the Insolvency Code of Ethics do not appear to have resulted in any increase in effective pressure from the firms paying IVA referral fees on the practices of debt packager firms.

**2.16** Two respondents highlighted the introduction of the new SIP 3.1 which came into effect in March 2023 in England and Wales and states at paragraph 12 that:

*'Any shortcomings in the advice, including in relation to the referrer's authorisation, should be remedied by the insolvency practitioner giving appropriate advice themselves'*

**2.17** One of those respondents suggested, however, that this does not explicitly require the due diligence to extend to questioning how the referring firm acquired the client and whether this client acquisition was tainted by any unfair or misleading advertising practices.

**2.18** Two respondents made a general observation about the reduction in the number of debt packagers following the supervisory action we took in 2021.

**2.19** One respondent, a debt adviser, suggested that rather than seeing better management of conflicts of interest, some firms appear to be adapting to try to circumvent the proposed rules.

**2.20** Many respondents pointed to general changes in the market without specifically suggesting that this may have had an impact on the management of the conflict of interest. For example, respondents highlighted increasing take up of IVAs and high breakage rates and the fallout from the Covid-19 pandemic and the impact of cost-of-living challenges leading to more customers seeking relief from their financial worries.

**2.21** Citing our finding that on average almost all of debt packagers' income comes from referral fees, one respondent questioned how it would be possible for any such debt packager to adequately manage the conflict of interest.

## Our response

From the responses received we have not identified a significant development which has materially changed the management of the conflict of interest in the debt packager business model.

**Developments in the insolvency framework**
Respondents highlighted developments in the funding models of firms that provide IVAs, and recent failures of such firms. While some said that higher levels of funding in recent years may have led to debt packagers being able to earn more in referral fees, it is not clear that any change in this funding would affect the conflict of interest inherent in the debt packager business model.

Other feedback suggested the failures could have been avoided if additional rules were in place that prevented persons unfit to operate IVA firms being involved in such practices. It is not clear which rules the respondent was referring to, however. Since this comment is related to IVA solution providers, we do not consider that it would affect debt packagers' management of their own conflict of interest.

On the changes to insolvency rules, we worked closely with the Insolvency Service to understand the changes being brought about through the updated SIP 3.1, which we welcome. These rules apply to insolvency practitioners, not to FCA authorised debt packagers, and so long as debt packagers can continue to collect referral fees under their current business model, the risk of harm from a mismanagement for the conflict of interest remains.

**Changes in debt packagers' business models**
Noting the concerns raised by the respondent regarding debt packagers adapting to try to circumvent the rules, we said in CP23/5 that if the proposed rules are made, we would monitor the market proactively using data-led intelligence which would allow us to understand whether firms are adapting their business models in response to our intervention or exiting the market.

We reiterate that where firms adapt their business model, including the use of ARs, we would monitor to determine whether practices evolve in the interest of good consumer outcomes.

We also note respondents' observations that the number of debt packagers active in the market has decreased since we first took action against the firms as a result of the work we carried out that identified bad practice. We nevertheless consider that the interventions we are setting out in this policy statement are still necessary to address any mismanagement of the conflict of interest in the wider debt packager market currently and in the future.

**2.22** We also asked:

> *Q3: Do you think there are any developments in the market which have changed the factors informing our decision as to the right intervention to tackle the harm or risk of harm we have seen? If so, can you provide evidence of these developments?*

**2.23** We received 16 responses to this question. Similarly to Q2, 8 respondents referenced the collapse of some IVA providers in recent years. Six of these respondents – a mixture of debt packagers and IP firms – submitted very similar responses. They suggested that this could lead to better consumer outcomes from a more competitive market. Another respondent, a trade body, suggested that it may lead to certain IVA providers dominating the market with limited consumer choice as a result.

**2.24** Four respondents pointed to the increasing demand for debt advice services due to cost-of-living challenges. They expressed concerns about NFP debt advice being able to meet demand. One also mentioned that some debt advice firms are leaving the market. One respondent had heard anecdotal evidence that some customers are waiting 3 months or more for NFP advice. Some of these respondents questioned whether the FCA should expand its regulatory reach rather than curtailing a source of debt advice.

**2.25** Three respondents cited recent increases in fraudulent websites and online promotions impersonating legitimate debt advice firms or charities. Some suggested that despite the Advertising Standards Agency (ASA) issuing several rulings against 'impersonator sites' since 2020, the issue has not been resolved.

**2.26** One respondent said that the Government's decision not to proceed with laying regulations to implement the Statutory Debt Repayment Plan (SDRP) this year has caused harm. They said that the SDRP, as an alternative to IVAs, would have eliminated the conflict of interest.

## Our response

**Impacts of failures of IVA firms**
Noting the differing opinions we received on the possible effects changes in the insolvency market may have, we consider that it is unclear what impact this would ultimately have on the debt packager market. As such we do not consider that this would be a reason to change our decision on the appropriate course of action to address the risk of harm we have identified.

**Cost-of-living pressures and sector capacity**
Cost-of-living challenges are likely to drive an increase in demand for debt advice. We are concerned by the findings of charities that more and more customers are finding themselves in vulnerable circumstances. In particular, the rise in negative budgets signalled by StepChange and others. Data collected as part our engagement with key debt advice firms

suggests that both the numbers of customers they are serving and the proportion of customers with negative budgets continues to increase.

In this context, we consider it ever more important that consumers have access to good quality debt advice, and that poor practice is dealt with swiftly. With respect to capacity in the market, we consider that even if debt packagers leave the market because of our intervention, they represent a relatively small proportion of the overall market. As such, any impact on capacity should be minimal.

The Money and Pensions Service (MaPS) has confirmed that given the evidence the FCA holds on the poor quality and detrimental impact of much of the debt advice provided by the debt packager market, it believes the impact of withdrawal will be minimal and is confident that its funded organisations together with the wider debt sector will have the increased capacity and resilience to meet demand that may arise if debt packager firms exit the market.

In September 2022, MaPS announced a 26-month extension to its community-based debt services, starting from 1 February 2023. At the same time, MaPS launched new contracts for nationally accessible and business-debt services, bringing total investment in debt advice services to £76m each year.

In Year 1 MaPS expect its commissioned services to see a 65% increase in capacity and by Year 3, these services will have capacity to support more than 650,000 people. Its strategy to increase pro-active engagement with customers and work with creditors to make efficient and effective referrals to debt advice will ensure those customers are proactively routed to free advice through its network.

Additionally, we are aware that firms are looking to automate aspects of the debt advice journey through online and digital platforms. Digital platforms can help firms address capacity constraints and provide an accessible platform for consumers. We encourage firms that are seeking to innovate in this sector to contact our Innovation services.

We therefore do not believe a change in our proposed approach is necessary.

### Fraudulent websites

We remain concerned at reports of misleading advertising and firms impersonating legitimate debt advice firms or NFPs. We use data to tackle online harms by monitoring websites containing illegal promotions. This involves scanning approximately 100,000 websites created every day to identify those that appear to be scams. Where we identify fraudulent websites, we are proactive and take prompt action by publishing an alert on our website (typically within 24 hours) and requesting that the website host disables or takes down the website. However, we have no power to require websites to be taken down and sometimes illegal content can remain visible to consumers even after we have issued an alert. We are committed in our work to tackle scams, with advertising to raise consumer awareness and help prevent people from falling foul to fraudsters with our ScamSmart website, by issuing thousands of warnings each year on specific threats, as well as taking criminal and civil action when within our remit.

**SDRP**

We note one respondent felt that the SDRP could have eliminated the conflict of interest. As the timelines for the consideration of the SDRP have changed, it is not clear yet how it would be structured or what impacts it would have on solutions that are currently available. We do not consider it appropriate to delay our intervention given the evidence we have found that there is a serious risk of harm arising from the acute conflict of interest inherent to the debt packager business model.

---

**2.27** Following our review of the feedback to CP21/30, we made some minor clarificatory amendments to the proposed rules. These were:

- a new provision CONC 8.3.10G(4), to further explain the purpose of the anti-avoidance provisions and the reference to an 'insignificant amount of total annual revenue'
- an amendment to CONC 8.3.11R(2), to clarify that the proposed ban on referral fees does not apply where a debt packager's contractual right to payment has accrued at the time of any rules coming into force
- a clarification to CONC 8.3.14R(3) to ensure that the carve-out for officers of the UK's insolvency services only applies where such person is employed in that capacity
- a reference to the new Principle 12 (consumer duty)

**2.28** We also proposed new perimeter guidance which makes clear that to pass consumers to a solution provider who only offers 1 solution could constitute the regulated activity of debt counselling, depending on the circumstances of the individual case.

**2.29** We asked:

*Q4: Do you have any further comments on our amended proposals and the draft Handbook text in Appendix 1 including the new PERG guidance?*

**2.30** We received 20 responses to this question. Eight respondents expressed support for the rules and/or guidance or confirmed that they did not have any comments to add. Nevertheless, some of these respondents also expressed concerns that debt packagers could find ways to circumvent the prohibition.

**2.31** Six of the responses submitted – from a mixture of debt packagers and insolvency firms – were very similar and asked why the FCA does not simply remove debt packager firms' licences instead of allowing them to continue giving advice for no fee while monitoring any applications of debt packagers to become NFPs. They felt that including mixed revenue firms within the ban would be in direct contradiction with CONC 8.3.9R (2). They also questioned how we would enforce the PERG guidance given each case would have individual circumstances.

**2.32** Six respondents expressed concerns that lead generators remain unregulated and that there may be an increase in their activities due to the ban on debt packagers receiving referral fees. One respondent, an NFP advice provider, strongly agreed with the rules and guidance, but asked that the FCA go further. They believe that activities such as 'fact find' filtering that steers consumers towards a particular solution, or promotions that heavily emphasise a particular solution in a way likely to influence customer choice should be included within the guidance.

**2.33** Three respondents were concerned that a loophole could emerge from the guidance whereby an insolvency practitioner or debt solutions firm could state that it offers more debt options that it really does. This would enable the lead generator to argue they had acted in good faith when making a referral to them without authorisation.

**2.34** A further 2 respondents believed the rules and/or guidance would only be effective if supervised. One respondent further suggested that we should adopt a more assertive stance than monitoring the market. They suggest the FCA should, for example, include this issue within communications to firms about the Consumer Duty; assess outcomes consumers receive from NFP debt advisers; and consider, in future, data requests to assess business models, both within and outside the proposed ban.

**2.35** Two respondents believe that a waiver or exemption should be available for firms acting as appointed Money Advisers or Continuing Money Advisers (CMA) under the Scottish DAS scheme.

**2.36** Two respondents, a consumer group/panel and an IP, disagreed with the exclusion of NFP or debt management firms from the ban. The former said this was an opportunity for bad actors to alter their corporate structures and circumvent the ban, and the latter said including NFPs and debt management firms within the ban would remedy bad practice across the industry.

**2.37** Two respondents, an IP and a trade body, felt that Principle 12 (Consumer Duty) would sufficiently address the concerns in the market.

**2.38** One respondent, a trade body, asked whether the PERG guidance applies such that an Insolvency Practice that offers an IVA in England and Wales, and a PTD in Scotland, would be considered as only offering 'a particular solution'.

**2.39** Another respondent, a debt counselling firm, stated that despite the change made to CONC 8.3.14R, the term 'officer' is still not clearly defined. They believe there remains ambiguity as to which roles this exclusion applies to (for example whether IPs are excluded).

**2.40** One respondent, a trade body, believed there should be a clear exclusion of the proposed rules where there are inter-company cross-charges within a group subject to the same ownership. They also did not agree with a ban on fees for genuine work undertaken on behalf of a debt solution provider, for example 'Fair Share' income funding wider debt advice and the administration of DMPs. They further believe that CONC

8.3.12 (3) should be removed or amended so that it does not cover work undertaken on behalf of the debt solution provider as an outsourced provider.

**2.41** One respondent, an IP, who disagreed with the proposed ban, felt that CONC 8.3.10G if accompanied by adequate supervision, ought to be sufficient to ensure the provision of good advice. They also supported the removal of appointed representative status, though not through the proposed rules.

## Our response

**Referral fee ban vs supervisory action**
Before consulting on a ban on referral fees we first sought to address the issues we had identified through supervisory work. This included setting out clear expectations in a 'Dear CEO' letter to debt packagers in 2018, which was followed up by a Portfolio Letter to all debt advice firms in 2020. In 2020-21, we undertook multi-firm work (MFW) to see if there were still concerns with this sector following our warnings. We found serious concerns with 90% of the files we reviewed where a fee-generating recommendation was made. We wrote to several firms identifying our concerns about their practices, making clear our concern with them continuing to offer advice to consumers while those issues remained unresolved. Five firms subsequently applied for voluntary requirements to be imposed. However, we consider that continued high supervisory focus would not be an efficient use of limited resources given the scale of the non-compliance we continue to see.

**Mixed revenue firms**
Respondents stated that including mixed revenue firms in the ban would contradict the conditions we set out in CONC 8.3.9R (2) for firms which do not themselves provide debt solutions. They claimed that our representation of 'mixed revenue' firms as firms whose revenue from debt packaging is less than 70%, could also capture firms whose revenue is significantly less than 70%. As such, they say this contradicts CONC 8.3.9R (2).

CONC 8.3.9R (1)(a) states that the ban applies to a firm with respect to debt counselling where the firm does not itself provide debt solutions. CONC 8.3.9R (2) clarifies that a firm is treated as not itself providing debt solutions for the purposes of CONC 8.3.9R(1)(a) where the firm:

a. provides debt solutions on a single or occasional basis; and/or
b. receives only an insignificant amount of its total annual revenue from providing debt solutions

We do not believe there is a contradiction here. CONC 8.3.9R (2) is not directed at mixed revenue firms, but may apply to a mixed revenue firm which also offers debt solutions. It was drafted for the purpose of anti-avoidance of the rules, to ensure that existing debt packagers would not be able to simply start to provide a small amount of debt solutions themselves to fall outside the ban.

The threshold for CONC 8.3.9(2) to apply is where a firm 'receives only an insignificant amount of total annual revenue from providing debt solutions'.

On the respondents' concerns that there may be instances where mixed revenue firms receive significantly less than 70% of their revenue from referrals, we note firstly that this threshold was devised solely for the purpose of categorising the market in our evidence base, and is not meant to represent any interpretation of the rules. Secondly, there may be cases of debt packagers whose main business, and thus majority of their revenue, comes from activities other than debt advice and the provision of debt solutions. In any such case, we expect the proposed rules would only have a limited impact on the mixed revenue firm's business overall. As noted in CP23/5, we want to prevent debt packagers from being able to avoid our proposed rules by adapting their business models in minor ways so as to be out of scope. This is why we proposed to maintain the scope of the proposed ban to cover all debt packagers, including mixed revenue firms.

**Enforcement of PERG guidance**

The FCA does not enforce guidance (see page 10 of The Reader's Guide to the Handbook which explains that '*Guidance is not binding and need not be followed to achieve compliance with the relevant rule of requirement')*. We monitor potential unauthorised business activity and take action on a case-by-case basis. We remind firms that a breach of the general prohibition is a criminal offence.

**Lead generators and perceived PERG loophole**

Many respondents raised concerns about lead generators, especially noting that it is difficult for consumers to differentiate between them and regulated debt packagers or that the activities they are carrying out are very close to giving regulated debt advice.

We are concerned that unregulated firms may be carrying out activity for which they would require FCA authorisation. This is why we proposed the new PERG guidance to make clear when lead generators may need to be authorised by us.

The perimeter is set in the Regulated Activities Order, so any change to bring lead generators generally into our regulatory scope would be a matter for Parliament to decide on.

The guidance makes clear that any recommendation intended to implicitly steer the consumer to a single debt solution could constitute regulated debt advice. Whether it does so 'will depend on the individual circumstances in each case and is likely to involve a consideration of the process as a whole.'

### Enhanced monitoring and supervision

In response to the suggestion that we carry out monitoring, writing to firms, business model assessments, reviews of case files, these are actions that we already carry out.

### Waivers for DAS scheme Money Advisers

We have already exempted payment in relation to the administration by a 'money adviser' approved under The Debt Arrangement Scheme (Scotland) Regulations 2011 of a customer's application for a Debt Arrangement Scheme under those Regulations from the ban.

We also carve out from the ban payments made pursuant to an enactment, which would include any payments prescribed by those Regulations. With respect to individual firms' circumstances we would need to assess on a case-by-case basis to determine whether the conflict of interest was being adequately managed.

### Exclusion of NFPs and debt management firms from ban

As stated in CP23/5, we consider that the conflict of interest presented by referral fees is less acute in NFPs and debt management firms as it typically makes up only a small part of their revenues. So we are not considering expanding the ban at this stage, but we will keep this under review.

Where debt packager firms seek to change their business model, we will review any application to vary permissions in accordance with our statutory powers, ensuring that it is consistent with advancing our consumer protection objective.

### Consumer Duty

Principle 12, the Consumer Duty, states that 'a firm must act to deliver good outcomes for retail customers.' We fully agree with respondents' views that Principle 12 will be highly relevant for the provision of good debt advice. Indeed, our new rules include guidance (CONC 8.3.10G (1)(a)) reminding firms that they must comply with the consumer duty as part of the provisions we have drafted for the referral fee ban.

While Principle 12 requires a more outcomes-focused approach, it does not preclude us from taking action where we have found evidence of poor practice or non-compliance with existing rules. As we have consistently found such evidence in all the file reviews we have performed despite numerous supervisory warnings, we consider that it is appropriate and proportionate to implement this ban to prevent further harms to consumers arising from this business model.

### Particular solution across jurisdictions

We agree with the respondent that offering equivalent solutions in different jurisdictions should not be considered as offering multiple solutions for the purposes of the PERG guidance. We therefore consider that any IP or firm offering, for example, an Individual Voluntary Arrangement in England and Wales, and a Protected Trust Deed in Scotland, would be considered as only offering 'a particular solution'.

**Definition of 'officer'**
We believe that our clarificatory changes to the rules do account for the respondent's concerns, but for clarity we confirm that CONC 8.3.14R(3) does not exclude payments made by Insolvency Practitioners.

**Exclusion for inter-company cross-charging**
CONC 8.3.13R clarifies that 'debt solution providers' includes their 'associates', which extends to members of the provider's group where they are a corporate (by reference to the firm's controllers). This seeks to avoid a risk of a loophole in the ban for intra-group transfers, which would otherwise allow debt packagers to join a provider's group and still receive referral fees.

CONC 8.3.12R(3) also seeks to avoid creating a loophole whereby debt packagers could simply put in place outsourcing arrangements with providers to circumvent the ban on referral fees.

**Sufficiency of CONC 8.3.10G if accompanied by adequate supervision and wider comments on appointed representatives**
CONC 8.3.10G alone without the operative ban in 8.3.11R would simply be restating and offering guidance on existing rules, which have not been sufficient to prevent firms from failing to adequately manage the conflict of interest. Our treatment of appointed representative status more generally is being developed separately, including through new rules announced in 2022 to improve oversight by principals.

---

**2.42** Having reflected on feedback from CP21/30, we considered the need to address the risk of harm posed by debt packagers' mismanagement of the conflict of interest with allowing firms a reasonable timeframe to make changes to their business models. We updated our proposed implementation period of 1 month to 2 months.

**2.43** We asked:

*Q5:* ***Do you agree with the proposed implementation period of 2 months?***

*Q6:* ***If you do not agree with the proposed implementation period, what alternative implementation period would you recommend? Please provide evidence for the length of implementation period you believe is required.***

**2.44** We received 22 responses to Q5 and 11 to Q6. Of those who responded to Q5, 3 thought the implementation period should be shorter than 2 months; 7 agreed with 2 months; 10 thought it should be longer or not happen at all; and 2 respondents did not express a clear view. Those who agreed with the proposed implementation timeline – a mixture of NFPs, other debt advice firms, consumer groups and trade bodies – said it was fair and reasonable. They believe it is an appropriate timescale to enable debt packagers and solution providers to implement required changes while reflecting the urgency to prevent any further harm to individuals seeking debt advice and support.

**2.45** The respondents who did not express a clear view – a debt counselling firm and an RPB – suggested either that implementation should be brought forward as quickly as possible, or they acknowledged that the market has been anticipating this for some time, but still expressed concerns about the ability for firms to adapt within the proposed timeframes.

**2.46** Those respondents who did not agree with the proposed implementation period differed in their reasoning. Most felt that 2 months would not give enough time for firms to submit new business applications. We understand 'new business applications' to include firms seeking variations to their permissions. Some firms may adapt their business models by making more use of existing permissions, and some may apply for new permissions. There is also the possibility firms may no longer provide authorised debt advice or any other regulated activity where they wind down their business activities or else direct their business to other areas of activity outside the perimeter.

**2.47** Respondents also flagged the increasing demand for debt advice services as a reason for disagreeing with the proposed implementation period. Some of these respondents proposed alternative timescales of between 3 months and 6 months. Another suggested that a more considered consultation is required and should align with the timeline for the review of personal insolvency framework.

**2.48** Three respondents believed that immediate action is needed, and suggested that the 1-month implementation period proposed in CP21/30 should be retained. One respondent, a trade body, did not suggest an alternative timescale, but instead suggested that more targeted action against obvious bad actors was needed.

**Our response**

We note the varied opinions expressed in response to this question. Having carefully considered the feedback, we believe 4 months is an appropriate length of implementation period.

We recognise we must act proportionately. Without excluding the various important points made above, we consider that, for the following principal reasons, our proposals meet that requirement:

**a.** The provision of an appropriate degree of protection for consumers is a key statutory objective. It is engaged particularly strongly in the present context. There is cogent evidence that the conflict of interest inherent in the current debt packager remuneration model is driving the poor advice and non-compliance seen in this sector, giving rise to an unacceptable risk of consumer harm. The rates of non-compliance identified through our file reviews are extremely high. Our view of the sector is supported by the majority of the feedback we have received.

**b.** The proposals specifically target the conflict of interest we have identified by banning the remuneration model which causes it. The proposals are therefore calibrated to promote the objective of ensuring an appropriate degree of consumer protection.

**c.** We have considered a range of alternative interventions to address the problem. Given the evidence of non-compliance with existing rules despite multiple supervisory warnings, creating additional rules without the proposed intervention is unlikely to address the underlying problem posed by the remuneration model. It would also require a disproportionate, time-consuming cycle of monitoring and enforcement. We do not think that would be an efficient and economic use of resources. Having identified such serious problems in the sector, it is appropriate for us to take targeted action in relation to the underlying cause, rather than simply addressing the symptoms.

These factors suggest that, now we have an evidence base we are satisfied with, it is in the interests of consumers that the proposals take effect as soon as possible.

However, we are also seeking to make sure our proposals strike a fair balance between the interests of consumers and the interests of firms, taking account of the severity of the impact on firms. In addition we stated in CP23/5 that we do not wish to see firms that provide useful services for customers leave the market. We acknowledge that the constraint on firms of banning a particular remuneration model is significant. We also acknowledge, in particular, that the economic impact on existing debt packager firms of banning a remuneration model they already use is likely to be severe. We do consider it likely that a high proportion of referral fees to debt packager firms result from poor, non-compliant, advice and so the legitimate cost to firms of the proposal, in terms of lost future revenue from the remuneration model, may be limited. However, the overall economic impact of the ban on existing debt packager firms will still be severe.

We are taking three steps in relation to the timing of the new rules to mitigate the severity of that impact. First, the rules will not affect an existing firm's ability to collect and receive payment for work completed before the rules become applicable to that firm. Second, we are distinguishing between our treatment of new entrants to the market, for whom the rules will enter into force immediately, and existing debt packager firms who will benefit from an implementation period. Third, we have given that implementation period a significant length, exceeding the period we proposed in CP23/5.

In terms of the precise length of the implementation period, again, we have sought to balance the interests of consumers against the interests of firms. We note that some respondents proposed an alternative timescale of between 3 and 6 months. We have taken this into account. We also take into account that even a period at the top end of that proposal might turn out to be not long enough for a firm to adjust or wind down their business in an orderly way. Overall we believe that a period of 4 months is appropriate. That period will give existing firms a significant amount of time to adapt or wind down their business. We acknowledge that 4 months may not be long enough for adjustment plans to be implemented and that some firms may wind down as a result.

However, the following principal reasons point against providing for a longer period than 4 months:

a. The evidence suggests there is a high risk of harm to consumers posed by poor advice, and this is a particularly acute concern given the current cost of living challenges. The longer the implementation period, the longer that risk continues.
b. The evidence suggests there is widespread and serious non-compliance amongst debt packager firms, even with our existing rules.
c. This is despite repeated attempts by us to ensure compliance.
d. Those firms are subject a regulatory regime which presupposes the possibility of changes to rules to ensure an appropriate degree of protection for consumers.
e. Furthermore, the announcement of our final rules should not come as a surprise to firms, given the previous actions we have taken in relation to this sector and the ongoing consultation about a ban.

In all the circumstances, permitting the continued use of a remuneration model for a prolonged period in excess of 4 months, after we have concluded on the basis of cogent evidence that it is driving widespread non-compliance, poor advice, and an unacceptable risk of consumer harm, would not represent a fair balance, even taking into account the severe impact on firms.

Accordingly, we will allow existing debt packager firms a 4 month implementation period. Those firms will be able to continue to receive and collect payment for work completed before the end of the implementation period. New entrants to the market, including any new appointed representatives an existing debt packager appoints, will be subject to the ban with immediate effect. Firms who start, or restart, carrying out debt packager business from today's date will be subject to the ban and will not benefit from the implementation period.

## Annex 1

# List of non-confidential respondents

Brooke Meade Insolvency

Chartered Accountants Ireland

Citizens Advice Scotland

Clear Path Insolvency Ltd

Creditfix

Debt Managers Standards Association Limited

FS Consumer Panel

Insolvency Practitioners Association (IPA)

McCambridge Duffy

MLS Insolvency Ltd

Money Advice Scotland

Money Advice Trust

Money Plus Group

Parker Philips Insolvency

Promethean Finance Ltd

R3

StepChange

Totemic Limited (PayPlan)

UK Finance

United Insolvency Ltd

## Annex 2

# Abbreviations used in this paper

| Abbreviation | Description |
|---|---|
| **AR** | Appointed Representative |
| **CBA** | Cost Benefit Analysis |
| **CEO** | Chief Executive Officer |
| **COI** | Conflict of interest |
| **CONC** | Consumer Credit sourcebook |
| **CP** | Consultation Paper |
| **DAS** | Debt Arrangement Scheme |
| **DRO** | Debt Relief Order |
| **DMP** | Debt Management Plan |
| **DP** | Debt Packager |
| **FCA** | Financial Conduct Authority |
| **FSMA** | Financial Services and Markets Act 2000 |
| **IP** | Insolvency Practitioner |
| **IS** | Insolvency Service |
| **IVA** | Individual Voluntary Arrangement |
| **I&E** | Income and Expenditure |
| **MaPS** | Money and Pensions Service |
| **MFW** | Multi-firm work |
| **NFP** | Not for profit |
| **PTD** | Protected Trust Deed |
| **PS** | Policy Statement |
| **SDRP** | Statutory Debt Repayment Plan |

All our publications are available to download from www.fca.org.uk.

**Request an alternative format**

Please complete this form if you require this content in an alternative format.

**Sign up** for our **news and publications alerts**

# Appendix 1

# Made rules – Legal instrument

# CONSUMER CREDIT (DEBT PACKAGER REMUNERATION FROM DEBT SOLUTION PROVIDERS) INSTRUMENT 2023

## Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 137A (General rule-making power);
(2) section 137D (General rules: product intervention);
(3) section 137T (General supplementary powers); and
(4) section 139A (Power of the FCA to give guidance).

B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

## Commencement

C. This instrument comes into force on 2 June 2023.

## Amendments to the Handbook

D. The Consumer Credit sourcebook (CONC) is amended in accordance with Annex A to this instrument.

## Amendments to the material outside the Handbook

E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex B to this instrument.

## Citation

F. This instrument may be cited as the Consumer Credit (Debt Packager Remuneration from Debt Solution Providers) Instrument 2023.

By order of the Board
25 May 2023

## Annex A

## Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text.

### 8 Debt advice

…

### 8.3 Pre contract information and advice requirements

…

8.3.8 G …

Prohibition on debt packager remuneration from debt solution providers

Scope

8.3.9 R (1) *CONC* 8.3.11R to *CONC* 8.3.15R:

(a) apply to a *firm* with respect to *debt counselling* where the *firm* does not itself provide *debt solutions*; and

(b) do not apply to a *firm* that is a *not-for-profit debt advice body*.

(2) A *firm* is treated as not itself providing *debt solutions* for the purposes of *CONC* 8.3.9R(1)(a) where the *firm*:

(a) provides *debt solutions* on a single or occasional basis; and/or

(b) receives only an insignificant amount of its total annual revenue from providing *debt solutions*.

Context, purpose and anti-avoidance

8.3.10 G (1) *Firms* are reminded that when referring *customers* to *debt solution* providers, or carrying on related services, a *firm* must comply with its obligations under:

(a) *Principle* 12 (Consumer Duty) to act to deliver good outcomes for *retail customers* and/or *Principle* 6 (Customers' interests) to pay due regard to the interests of its *customers* and treat them fairly; and

(b) *CONC* 8.3.2R(1) to ensure that all advice given and action taken by the *firm*, its agent or its *appointed representative*:

(i) has regard to the best interests of the *customer*;

(ii) is appropriate to the individual circumstances of the *customer*; and

(iii) is based on a sufficiently full assessment of the financial circumstances of the *customer*.

(2) The purpose of the prohibition in *CONC* 8.3.11R is to remove the conflict of interest between a debt packager's obligations under *CONC*, including those referred to in *CONC* 8.3.10G(1), and the financial incentive to act in a way which generates revenue in the form of referral fees from *debt solution* providers.

(3) The effect of *CONC* 8.3.9R(2) is that *firms* will not be able to avoid the prohibition in *CONC* 8.3.11R by starting to provide a small number of *debt solutions* for that purpose.

(4) For the purposes of *CONC* 8.3.9R(2)(b), the amount of total annual revenue received from providing *debt solutions* is unlikely to be considered significant if an undue risk of non-compliant debt advice arising out of a conflict of interest of the kind described in *CONC* 8.3.10G(2) continues to exist.

(5) For the purposes of *CONC* 8.3.10G(1)(a), during the period to which *CONC* TP 8(6) to (7) applies, the *FCA* considers it unlikely that an increase in either the referral of *customers* to *debt solution* providers or carrying on related services, would be in accordance with *Principle* 6 or *Principle* 12.

Prohibition

8.3.11 R (1) A *firm* must not (and must take all reasonable steps to ensure that none of its *associates* or its *appointed representatives*):

(a) enter into an agreement to receive;

(b) solicit or accept; or

(c) seek to exercise, enforce or rely on rights or obligations under an agreement to receive,

any commission, fee or any other financial consideration, directly or indirectly, from a *debt solution* provider in connection with the *firm* referring *customers* to a *debt solution* provider, or any other related services, except as provided in *CONC* 8.3.14R.

(2) *CONC* 8.3.11(1)(b) and (c) do not apply where the *firm* has an accrued contractual right to payment for the referral, or related services, in relation to a *customer* prior to the coming into force of *CONC* 8.3.11R(1).

8.3.12 R ‘Related service(s)’ for the purposes of *CONC* 8.3.9R to *CONC* 8.3.11R includes:

(1) recommending a *debt solution* provider;

(2) providing *debt counselling* services to *customers* prior to those *customers* being referred to a *debt solution* provider or entering into a *debt solution*; and

(3) providing *debt counselling* services to *customers* who have been referred to the *firm* by a *debt solution* provider.

8.3.13 R ‘*Debt solution* provider(s)’ for the purposes of *CONC* 8.3.10G to *CONC* 8.3.12R includes such providers’ *associates* and *appointed representatives.*

8.3.14 R *CONC* 8.3.11R does not apply to payments made:

(1) pursuant to an enactment;

(2) in relation to the administration by a ‘money adviser’ approved under The Debt Arrangement Scheme (Scotland) Regulations 2011 of a *customer*’s application for a Debt Arrangement Scheme under those Regulations; or

(3) by a person employed as an officer of:

(a) (in relation to England and Wales) the Insolvency Service;

(b) (in relation to Scotland) the Accountant in Bankruptcy; or

(c) (in relation to Northern Ireland) the Insolvency Service.

Record keeping

8.3.15 G *Firms* are reminded of their obligations in *SYSC* 9.1.1R to keep orderly records, which must be sufficient to enable the *FCA* to monitor the *firm’s* compliance with the requirements of the *regulatory system*.

Application of the prohibition to appointed representatives

8.3.16 R *Principals* which have an *appointed representative* to whom *CONC* 8.3.9R(1) would apply if the *appointed representative* were an *authorised person* must take all reasonable steps to ensure that such an *appointed representative* complies with *CONC* 8.3.11R as if the references in that *rule* to ‘*firm*’ applied to such an *appointed representative*.

8.3.17 G The purpose of *CONC* 8.3.16R is to prevent a debt packager *firm* from becoming an *appointed representative* in order to avoid *CONC* 8.3.11R applying to it and continuing to be conflicted by the financial incentive to act in a way which generates revenue from *debt solution* providers.

…

**TP 8 Other transitional provisions**

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|---|---|---|---|---|---|
| … | | | | | |
| (5) | … | | | | |
| (6) | *CONC* 8.3.11R | R | (a) A *firm* which is carrying out activity described in *CONC* 8.3.9R immediately before 2 June 2023 may comply with *CONC* as if *CONC* 8.3.11R had not been made, until (but not including) 3 October 2023.<br><br>(b) *CONC* TP 8(6)(a) does not affect the application of *CONC* 8.3.16R to a *firm* in respect of an *appointed representative* in circumstances where the *appointed representative* was appointed after 1 June 2023 or did not carry out activity described in *CONC* 8.3.9R immediately before 2 June 2023. | 2 June 2023 until (but not including) 3 October 2023 | 2 June 2023 |
| (7) | *CONC* 8.3.11R | G | The effect of *CONC* TP 8(6) is to provide a transitional period to all existing debt packager *firms* and their existing *appointed representatives*, where | 2 June 2023 until (but not including) 3 October 2023 | 2 June 2023 |

| | | | | | |
|---|---|---|---|---|---|
| | | | such *firms* or *appointed representatives* are carrying on debt packager business immediately before the prohibition in *CONC* 8.3.11R comes into force. | | |

## Annex B

## Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text.

**2 Authorisation and regulated activities**

…

**2.9 Regulated activities: exclusions applicable in certain circumstances**

…

Insolvency practitioners

…

2.9.26 G These exclusions apply to a *person* acting as an insolvency practitioner. The term "insolvency practitioner" is to be read with section 388 of the Insolvency Act 1986 or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989. The exclusions relating to *debt adjusting*, *debt counselling* and *providing credit information services* also apply to any activity carried on by a *person* acting in reasonable contemplation of that *person's* appointment as an insolvency practitioner. <u>In relation to *debt counselling*, insolvency practitioners may find *PERG* 17.7 helpful, including examples 12, 13 and 13A.</u>

…

**17 Consumer credit debt counselling**

…

**17.7 Examples**

**Q7.1 Please give me some examples of what is and is not debt counselling**

Please see the following table. All the examples assume that the advice or information relates to debts under a *credit agreement* or a *consumer hire agreement* or to a group of debts that include such debts.

| | | |
|---|---|---|
| | Examples of what is and is not *debt counselling* | |
| | Example | Explanation |
| | … | |
| | (13) A *person* recommends that a debtor obtains advice from a particular *debt* | Taken on its own it is not *debt counselling* because the adviser is |

| | | |
|---|---|---|
| | *counselling firm*, ABC Debt Management. | advising the debtor to obtain advice from another adviser.<br><br>However, if ABC Debt Management only offers one debt solution (e.g. a debt management plan), the referral could constitute a recommendation intended implicitly to steer the debtor in the direction of that particular debt solution and, therefore, could be advice (in which case it would be *debt counselling*).<br><br>Consequently, whether or not *debt counselling* is involved will depend on the individual circumstances in each case and is likely to involve a consideration of the process as a whole. |
| | (13A) A *person* recommends that a debtor obtains advice from a particular insolvency practitioner or their *firm*. | Taken on its own it is not *debt counselling* because the adviser is advising the debtor to obtain advice from another adviser.<br><br>However, where the insolvency practitioner or their *firm* only offers advice in relation to a particular *debt solution* (e.g. an individual voluntary arrangement or a protected trust deed), the referral could constitute a recommendation intended to implicitly steer the debtor in the direction of that particular *debt solution* and, therefore, could be advice (in which case it would be *debt counselling*).<br><br>Consequently, whether or not *debt counselling* is involved will depend on the individual circumstances in each case and is likely to involve a consideration of the process as a whole. |
| | … | |

Pub ref: 008062

FINANCIAL CONDUCT AUTHORITY


12 Endeavour Square London E20 1JN
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk