Response of the Insolvency Practitioners Association to the HM Treasury Consultation Paper *"Public Financial Guidance"*

Closing date: 22 December 2015

About the IPA

The Insolvency Practitioners Association is a membership body recognised in statute for the purposes of authorising Insolvency Practitioners under the Insolvency Act 1986 and Insolvency (Northern Ireland) Order 1989. It is the only recognised professional body to be solely involved in insolvency and for over fifty years the IPA is proud to have been at the forefront of development and reform within the profession.

The IPA has approximately 2,000 members, of whom 589 are currently licensed insolvency practitioners (483 of whom are authorised to take insolvency appointments). In addition to its recognition under the Insolvency Act for the purpose of licensing IPs, the IPA is also a Competent Authority approved by the Official Receiver for the purpose of authorising intermediaries to assist with debtors' applications for Debt Relief Orders.

The IPA currently licenses approximately one third of all UK insolvency appointment takers, who are subject to a robust regulatory regime, applied by the IPA's dedicated regulation teams carrying out complaints handling, monitoring and inspection functions. The IPA also undertakes monitoring visit work for the Debt Resolution Forum, a membership body which sets standards for its members when involved in providing non-statutory debt solutions to insolvent individuals (such as Debt Management Plans), and for the Royal Institution of Chartered Surveyors under a joint voluntary regulation scheme for registered property receivers.

The IPA has a longstanding and continuing commitment to improving standards in all areas of insolvency (and related) work. It was the first of the recognised bodies to introduce insolvency-specific ethics guidance for IPs, and the IPA continues to be a leading voice on insolvency matters such as the development of professional standards, widening access to insolvency knowledge and understanding, and encouraging those involved in insolvency case administration and insolvency-related work to acquire and maintain appropriate levels of competence and skills.

The comments and opinions expressed below represent the views of the IPA's Personal Insolvency Committee, a committee comprised of practitioners with a specialism and particular expertise in the area of personal insolvency, and are not intended to reflect the opinion of each individual and firm member of the Association (who remain at liberty to express their own views within their responses to this consultation). This response is limited to those sections of the consultation as are within our area of knowledge and expertise; predominantly the delivery of debt advice and the ability of the insolvency professional to contribute in a meaningful way to the cost effective delivery of those services.

Overview and general remarks

The regime for the regulation of insolvency practitioners is an effective and relatively mature one (dating from 1985). It has recently undergone further strengthening in the form of enhanced oversight powers being granted to the Insolvency Service. We believe that given there are already effective regulatory mechanisms in force, the current framework (which amounts to a requirement for dual regulation) is unnecessarily burdensome, producing a significant distortion to the market place, and resulting in detriment to consumers wishing to access professional debt advice.

We note, concur and endorse the view expressed in the introduction to this consultation that: *"This government also believes that any statutory or funding intervention in the guidance market should be targeted directly towards meeting consumer need, and should* ***complement intervention which is available from other providers****. Starting assumptions are that public financial guidance should particularly seek to meet consumer needs that cannot economically be met by other providers; and that its funding should be as efficient as possible."*

Insolvency practitioners are quite clearly within the category of "other providers" of debt advice. The current (albeit limited) exclusion from the requirement for FCA authorisation recognises this and demonstrates the intended policy in this regard. However, in responding to a number of the questions posed in this consultation, we will endeavour to illustrate how the role of the insolvency profession in debt advice provision has (perhaps, inadvertently) been diminished since the introduction of the FCA regime, and how this may be redressed to the benefit of both the consumers of their services and the public purse.

Chapter 1 – Introduction

Q1: Do people with protected characteristics under the Equalities Act 2010, or any consumers in vulnerable circumstances, have particular needs for public financial guidance or difficulty finding and obtaining that guidance?

In our experience, people with protected characteristics and/or in vulnerable circumstances are potentially more likely to benefit from the availability of face-to-face, bespoke professional services, rather than the provision of more generic information and guidance. For the reasons amplified upon below, we feel that the reduction in debt advice provision at a local level by insolvency practitioners may be detrimental to these groups.

The current regulatory structure risks creating a further advice gap for these groups, rather than filling one.

Chapter 2 – Debt

Q2. What additional, or alternative functions and structures could a statutory body put in place to effectively coordinate debt advice provision?

The consultation recognises that those with the most serious debt problems may require the intervention of a formal insolvency process in order to stabilise their position and move forward. The FCA's recent thematic review of debt advice provision was, in part, critical of the debt management sector, and to a lesser degree, the free-to-client providers, in their provision of advice about statutory debt solutions (bankruptcy and IVA).

We firmly believe that the most appropriate persons to be advising upon the availability, suitability and practical consequences of entering a formal insolvency scheme are those professionals who are licensed, insured and regulated in the conduct of those processes. However, the exclusion from FCA regulation currently afforded to licensed insolvency practitioners is deficient and inadequate to facilitate their contributing to the delivery of this advice.

It is an issue of considerable concern to the insolvency profession that a licensed insolvency practitioner may not recommend that a debtor file for their own bankruptcy, unless the practitioner is also authorised by the FCA.

This is as a result of the "reasonable contemplation" requirement within the drafting of the current exclusion for insolvency practitioners. To elaborate: In England, Wales and Northern Ireland (unlike in Scotland), a debtor may not select their own Trustee in Bankruptcy. The administration of the bankrupt's estate will either be performed by the Official Receiver, or a Trustee will be selected by creditors, or on a rota basis from amongst licensed insolvency practitioners operating within the Official Receivers' rota area. On which basis, whilst a licensed insolvency practitioner is the only person (other than the Official Receiver) who is qualified to act as Trustee in Bankruptcy, they cannot be said to be acting in "*reasonable contemplation*" of their own appointment when discussing the option of bankruptcy with an indebted individual, as that individual may not seek to appoint them.

It is clearly of considerable concern to insolvency practitioners, who feel strongly that this fetters their ability to properly advise debtors and devalues their status as licensed professionals. In effect, if they wish to advise on a full spectrum of statutory and non-statutory debt solutions, they must be dually regulated by both a "Recognised Professional Body" (such as the IPA) and by the FCA, which does not appear to have been the intention of the statutory exclusion from FCA authorisation that is afforded to them.

Insolvency professionals work in a mixed variety of practice backgrounds, with around half of them operating in small practices, delivering professional services on a local level to their communities. These practices were actively engaged over many years in debt advice provision to both consumers and local business people, generally providing free initial consultations on a face-to-face basis. These practitioners would typically be conducting a small number of cases each year, delivering advice on insolvency and non-statutory debt solutions to people based locally to them.

An analysis of practitioners monthly case returns to us indicates that there are a diminishing number of practitioners accepting Nominee (IVA) appointments and an increasing concentration of appointments with a small number of specialist providers. In the year ending 01 April 2015 the number of practitioners being appointed as nominee had fallen to 113 from 145 in 2013, and proportion of IVA nominee appointments conducted by firms undertaking less than 25 cases per year had fallen from 4.61% to 1.64%.

Nominee Appointments for IPA Authorised Practitioners

	Total for IPA Licensed IPs		Less than 25 cases per year			Less than 10 cases per year		
Y/E 01/04	**Nominee Appoint-ments**	**No of IPs**	**Nominee Appoint-ments**	**No of IPs**	**As % of total cases**	**Nominee Appoint-ments**	**No of IPs**	**As % of total cases**
2013	10,095	145	465	117	4.61%	176	92	1.74%
2014	15,619	112	450	87	2.88%	124	61	0.79%
2015	19,830	113	326	84	1.64%	147	69	0.74%

Many insolvency practitioners are simply unwilling to be dually-regulated for the purpose of accepting very small numbers of advice instructions each year, resulting in a drop in those willing to assist in these cases. Anecdotally, our members report tension between their professional obligations as an insolvency practitioner and the limitations of the current exclusion, resulting in an increasing unwillingness to engage in assisting consumers.

In the event an insolvency practitioner is unable to recommend an IVA, the practitioner is unable to provide their professional opinion as to the appropriate alternative, unless dually-regulated. In the annex to this response we have provided working examples of circumstances where the insolvency practitioner has been unable to assist their client with appropriate advice, given the current scope of the exclusion. In such circumstances, they will need to refer the client to an external source of advice, such as MAS, whose personnel are likely to be less qualified to advise than the insolvency professional themselves.

From the consumer's perspective, this means their "journey" is often an unsatisfactory one as they are passed from one adviser to another. A number of our practitioners work within large "free to client" debt solution providers (e.g. StepChange Debt Charity and PayPlan). They too report that where a debtor is found to be unsuitable for an IVA, the debtor's journey through advice provision may be adversely affected by having to be passed between departments. This is as a direct result of the insolvency practitioner within the IVA operation being unable to advocate bankruptcy, in appropriate cases. It seems unlikely to be in the interest of the consumer to be passed back and forth in this way.

We note that MAS is being encouraged to take further steps to improve the efficiency and effectiveness of the debt advice it funds and coordinates, in particular through 'channel shift' away from face-to-face advice where possible. There is additional capacity within the insolvency profession to assist in advising the over indebted, though those same practitioners are currently being restricted from doing so. Were the IP exclusion to be

extended to allow them to provide a broader spectrum of advice, we can see no reason why MAS could not feasibly refer clients to local sources of advice, where the client was in particular need of face-to-face advice, and/or was identified as being in need of specialist insolvency assistance.

Q3. What role should a statutory advice body have in providing quality assurance and setting standards for debt advice?

We believe that expected standards of practice for the delivery of debt advice should be set collectively by stakeholders. The primary delivery agencies for advice should be a party to that process, but should control the standard setting process as this would result in them setting their own operational standards. Greater coordination between the FCA and the Insolvency Service would also be welcome.

Q4. What scope is there to rationalise the funding of public financial guidance provision on debt?

Greater use of the resources available in the insolvency profession would necessarily reduce the burden on public funding. It should be noted that insolvency processes (in contrast to processes intended to repay debt in full), generally involve an element of debt write-off. Therefore, the cost of the service provision is effectively funded collectively by the creditors. The practitioner is paid a proportion of the funds they collect and the creditors receive a reduced return in respect of their debt. Insolvency proceedings also bring relief and forbearance to those in serious debt that non-statutory solutions typically do not afford. An increased use of these processes, where appropriate, would ease the suffering of many over-indebted households and effectively re-distribute some of the burden of debt.

Chapter 5 – What does government need to provide?

Q12. How do you think that the government could best complement voluntary sector provision of financial guidance?

Financial guidance necessarily covers a very broad spectrum of client needs, in a multiplicity of subject areas. Most generic guidance is limited in value and risks being misleading if overly simplistic.

There is a need for appropriate, unbiased triage whilst recognising that private sector specialists are willing and able to provide high levels of expertise and specialist services.

Q13. Do you think that the government could offer a more integrated public financial guidance service to consumers, throughout their lives? How do you think this could be achieved?

The government could do more to draw on the skills and experience of regulated professionals, both in terms of signposting and removal of unnecessary regulatory barriers. Equally, we are sure that many such professionals, and the organisations that regulate

and/or represent them, would be willing to collaborate in the delivery of better financial education provision.

Q14. Do you think the government should explore any alternative options for the provision of public financial guidance?

We believe that the government should place a greater emphasis on service coordination and collaboration with existing private sector provision, rather than direct service delivery.

Chapter 6 – How should it be provided?

Q15. Are the suggested core services the right ones? Should any core services be added?

In respect of the coordination of free-to-client debt advice appointments, the current regime is neglecting to fully utilise the resources of a profession dedicated to assisting individuals and businesses who are unable to pay their debts, and significantly hindering their ability to do so by (inadvertently) requiring the dual regulation of those professionals.

Many consumers will have complicating elements to their circumstances that would be best served with the input of a specialist insolvency professional. We would suggest that a referral link is created to existing Official Receiver's rotas of insolvency practitioners who are both willing and more than able to provide professional advice about personal insolvency.

According to our most recent analysis, more than 70% of our licensed insolvency practitioners currently continue to deal with small numbers of personal insolvency cases (bankruptcy or IVA) by providing high quality, locally delivered, professional services. Many of these practitioners operate within micro businesses themselves. We believe that the dual regulation is unnecessarily burdensome and a hindrance to the proper performance of their statutory functions. However, the effect of the current drafting of the Regulated Activities Order and Perimeter Guidance, (whether intentional or otherwise) is to impose the burden of dual regulation on them, or alternatively, to force them to withdraw from personal insolvency advice provision, as we understand a number have now done.

It cannot be in the interest of consumers to deny them access to professional assistance as a result of deficient drafting and we urge the government to consider a revision to the current term of the exclusion for insolvency practitioners.

This could easily be achieved by extending the scope of the current exclusion from FCA regulation to incorporate when the IP is acting in reasonable contemplation of their appointment, or that of the Official Receiver. This would facilitate free professional advice provision about IVA, bankruptcy and DRO, at a local level, that is uneconomical for the public sector to otherwise deliver. Alternatively, the "reasonable contemplation" requirement could simply be dropped. We fear that if a change is not forthcoming, the result will be a continuing concentration of advice provision within a decreasing number of high-volume providers, and a valuable resource for those with more complex needs or with more unusual circumstances will be lost.

Q16. Are the suggested principles the right ones to underpin the statutory provision of the core services? Should any principles be added or removed?

Whilst we commend the principles set out, the current structures are manifestly failing to deliver upon them:

Principle	Response
Consumer friendly. Consumers wanting to access impartial guidance should be able to find the answer to their queries.	Insolvency practitioners, who have no vested interest in doing so, yet are restricted from advocating bankruptcy, where they consider it to be the best solution for the client. This leads to unnecessary referrals and increases the risk of those clients receiving inappropriate advice.
Rationalised. Consumers should not have to assess the relative value of different statutory products on the same theme.	Whilst a laudable goal, the current statutory framework of debt solutions is such that an individual client may in fact be suitable for more than one solution, and there will be an element of individual preference, risk assessment and a personal choice to be exercised. The key factor is that choices should be made on a properly informed basis. Concluding which is the most appropriate solution for an individual will often be best achieved with specialist professional advice.
Efficient. Thought should be given to how to make statutory or government funding as efficient as possible.	The need for government funding could be significantly reduced if available private sector resource were more effectively utilised.
Cohesive. Government provision should complete not compete in the environment – it should not interfere with successful business models.	We accept that there have historically been some concerns about the quality of debt advice provision, particularly within the unregulated sector, which in turn may have precipitated a move towards public debt advice provision. However, notably, the recent FCA review identified significant deficiencies in the provision of advice about statutory debt solutions within current debt advice provision. Insolvency professionals (as the only persons authorised to conduct them) are unarguably best placed to advise on the implications for the individual on entering into a formal insolvency process, yet they are unduly restricted from doing so.
Evidence-based. Services available to consumers should be developed based on sound evidence of customer need.	We have provided evidence of market distortion (and resulting consumer detriment) created by the existing regime. Better use could be made of existing, regulated, private sector provision. Given the current restrictions, it is difficult to assess the extent to which consumer needs could be met by the private sector. However, with over 1,500 insolvency practitioners practicing nationally (only a small number of whom are believed to have sought FCA

	authorisation) it is not unreasonable to assume that service availability could be significantly enhanced.
Promoting innovation. Government provision should enable innovation in the sector.	The Straightforward Consumer IVA was entirely an innovation of the insolvency profession and has brought structured debt relief to many thousands of people, along with increasing stakeholder cooperation. The insolvency profession has both the capacity and the ability to innovate and deliver debt solutions and is currently unnecessarily hindered from doing so.

Q17. Do you think that statutory provision should be restructured to improve the guidance service to consumers, and if so, how?

We believe statutory provision should at first instance be by way of signposting to appropriate private sector provision rather than direct service provision, augmented with "gap filling" of basic advice to assist those with straightforward needs. A voucher system might assist with this, though it should be noted that currently, most insolvency practitioners will provide free initial consultations as a "loss leader" to those that generate a fee paying case.

However, the most urgent need is to remove unnecessary regulatory barriers from professionals who could and should be delivering the services consumers need.

For further information or assistance, contact us at:

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Annex – Working Examples of Limitations to the IP Exclusions

Debtors often make contact/attend for interview frightened and misinformed. At an initial meeting the IP (who has no prior knowledge of the individual) is presented with a set of circumstances and gives best advice based on that.

There are many areas where there is scope to fall outside the current IP exclusion and that would (unnecessarily) require an FCA authorisation in order to properly advise the client, in addition to an IP authorisation. There follow working examples of situations that have been presented to practitioners, where they would be unable to assist in the manner they consider most appropriate to the individual's needs, unless they had applied for dual regulation:

1. Debtor has unsecured debts of £50k. No surplus income and his property is in negative equity. Bankruptcy is the only realistic option, but the practitioner is precluded from explaining why this is the case:

   He has nothing to offer in an IVA or debt management and does not qualify for a debt relief order. The debtor wants to fully understand what Bankruptcy means before making a decision. There is no prospect of the IP being appointed as that is the creditors decision plus there are no assets in the estate to justify an appointment. The case will therefore remain with the OR.
   The IP having extensive experience of Bankruptcy is able to explain the practical and legal answers to questions posed such as:

   - Will I be able to keep my bank account?
   - Will I lose my house?
   - Are there any home visits?
   - How long will the stigma remain?
   - What happens in relation to ancillary relief orders?

2. A Director of a limited Company needs advice in relation to the Company's position and his personal position as he has given 3 personal guarantees totalling £75k and incurred credit card debt to support the Company. He also has an overdrawn Director's Loan account (£100k) that a Liquidator would pursue against him personally in the event the Company was liquidated.

   He has no personal assets but surplus income from another Company venture of £750 per month. The IP explains the implications of Bankruptcy and an IVA.

   The debtor confirms that as he would be expected to make payments for 5 years in an IVA and only 3 in Bankruptcy and given the size of the debts he intends to declare himself bankrupt (and resign as a Director-having been made aware that an undischarged Bankrupt cannot be a Director of a limited Company). However, given that an element of the debt concerned consists of consumer credit, the practitioner is unable to recommend bankruptcy (and may have inadvertently "advised" bankruptcy, by virtue of illustrating the different contribution periods).

3. The partners of an unincorporated legal practice attend and explain that the partnership is in financial difficulty. It has been presented with a winding up petition and they want to consider their options. This involves the IP advising on the 3 entities-the partnership and the 2 personal estates and explaining the implications of insolvency for each. Both agree that the partnership petition should be allowed to proceed but one partner has no personal assets and the other has equity in property and investments. One elects to go Bankrupt whilst the other wishes to explore an IVA. The practitioner may only advise the latter.

4. A debtor is 55 years old and has debts of £60k. His pension has a fund value of £100k.He wants to understand the implications of an IVA and Bankruptcy. In an IVA he could elect to draw some or all of his pension. In Bankruptcy recent case law suggests that an undrawn pension is beyond the scope of an IPO. This is a complex and evolving area and the debtor needs advice from someone who fully understands the options and implications of the alternative routes. The practitioner is hindered in assisting.

5. A debtor (barrister) owes HMRC £250K in assessed personal tax and a Bankruptcy petition has been presented. He has a good income stream although given the nature of his work this can be patchy. He also has equity in his property of £100k.He does not want to sell it for 2 years but an experienced IP will know that HMRC as the majority creditor will in an IVA insist on a sale within 12 months. Before embarking on the preparation of a full IVA proposal and to save costs the debtor has asked the IP to liaise with HMRC to ascertain if his proposal is likely to be accepted. At that stage it is difficult for the IP to say categorically that he is acting in reasonable contemplation of an insolvency appointment as HMRC could say no in which case Bankruptcy would be the only option.