



Debt Solutions in the UK

Draft opportunities for change

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1 Introduction

The Money Advice Service (MAS) has a statutory obligation to improve the availability, quality and consistency of debt advice across the UK. To help achieve this objective, MAS has undertaken a review of the formal and informal courses of action available to people who have problem debt, to understand the extent to which the available options meet their needs and to identify ways in which the current system could be improved, particularly from the perspective of debtors.

The review has been wide-ranging and has incorporated several different research projects, as well as consultations with c. 40 organisations, as follows:

- A comprehensive review of the literature concerning the effectiveness of current options for people to deal with problem debt, carried out for MAS by the research agency ICF International. This work references 80 sources of information as well as data from stakeholder interviews.
- Qualitative in-depth interviews with people who had experience of dealing with problem debt by means of a formal course of action or a Debt Management Plan.¹ The research was carried out for MAS by the research agency ESRO.
- Expert Workshops in Glasgow and London, facilitated by MAS, to obtain the views of advice sector and industry representatives. A list of the participating organisations is provided in the Appendix (some organisations attended more than one event).
- Expert Interviews to follow up issues raised in the earlier stages of the review. These were conducted by Professor Sharon Collard, who was commissioned by MAS to help develop a set of draft opportunities for change designed to improve the current system.
- Group discussions with insolvency professionals operating in England & Wales (kindly arranged by R3) and insolvency professionals operating in Scotland (kindly arranged by ICAS).

From this review, we have produced a draft set of 24 opportunities for change. These are an initial long-list of changes that the research

and consultation has suggested could help people manage their problem debt more effectively.

We will now review these opportunities with the debt sector in order to establish which are practicable and workable (either in their current form, or in a revised form), and which are not. Mindful that each would require significant effort and resource to implement, we will also look to establish how the workable opportunities should be prioritised.

This further round of consultation will allow MAS to produce a shorter final set of recommendations, which it intends to have ratified by the debt sector through the Debt Advice Steering Group. The final recommendations and supporting evidence will be published by MAS in 2017.

The opportunities are summarised in Chapter 2, and discussed in detail in Chapters 4–11. Chapter 3 sets out a brief overview of the debt landscape to provide context.

2 Summary of opportunities

The research and consultation described in Chapter 1 has led us to identify a long-list of 24 opportunities for change. These are set out in Table 1. MAS intends to conduct a further round of consultation in order to produce a shorter final set of recommendations informed by this long-list.

Table 1: Summary of opportunities

Regulation of Insolvency Practitioners (IPs) – Chapter 4

There are opportunities:

1. To establish a more consistent approach to the regulation of IPs, either through the removal of the current exclusions from FCA regulation or a more consistent approach to personal insolvency regulation through the Recognised Professional Bodies (RPBs).
2. To bring lead-generators into regulation, either directly by the FCA, or by the Recognised Professional Bodies.

Funding Debt Advice and Debt Management – Chapter 5

There is an opportunity:

3. To carry out an independent review into funding for debt advice and debt management. This has been highlighted by the debt sector (through the Debt Advice Steering Group) as a priority. While the scope of any review should be independently defined, it may wish to consider options such as a levy on non-FCA regulated creditors, to help fund a DAS-type scheme across the UK as well as other debt advice provision.

Bankruptcy – Chapter 6

There are opportunities:

4. To carry out an independent review into the fees for debtor-petitioned bankruptcy in England & Wales, in particular to consider whether they present an unreasonable barrier to access.
5. To re-introduce fee remission for low-income bankruptcy applicants, so that eligible applicants pay lower fees.
6. To allow debtors to submit their bankruptcy application once 50% of the fee has been paid, rather than having to pay the full sum in advance.

7. To update the GOV.UK and online bankruptcy portals to provide clear information and signposting to sources of financial help that can specifically be used to pay bankruptcy fees (rather than a general source of information for types of financial support that may or may not be used to pay bankruptcy fees).
8. As part of an independent review into funding for debt advice and debt management (see opportunity 3), to consider whether funders of debt advice could provide direct assistance with bankruptcy fees (and also DRO fees) when other possible ways of raising the fees have been exhausted.
9. In line with the DRO scheme, to introduce intermediation of online bankruptcy applications by an approved adviser.
10. To modify the online bankruptcy application portal to include prominent and easy-to-understand information about consequences and alternatives; as well as signposting to advice services and online tools to help with more complex issues such as home valuation.
11. For the online bankruptcy application tool to send automated notifications to creditors so they become aware of the bankruptcy application sooner and cease debt recovery.

Gaps in Provision – Chapter 7

There are opportunities:

12. To explore options to help homeowners who are ‘asset rich and cash poor’ unlock equity in their property in order to deal with their problem debt while, for example, allowing them to stay in their home on reasonable and fair terms.
13. To consider introducing a statutory debt repayment scheme across the UK, for example a version of Scotland’s Debt Arrangement Scheme. Such a scheme would provide debtors who can afford to make repayments with the protections called for by The Children’s Society and others. As noted earlier, it could be intermediated by authorised advisers and funded by a levy on lenders and other non-FCA-regulated creditors, including some government departments.
14. To abolish Administration Orders because they are redundant.

Processes and Procedures – Chapter 8

There are opportunities:

15. For Credit Reference Agencies (CRAs), creditors, debt advice providers and MAS to explore the development of one online income-and-expenditure portal, linked to the introduction of the Standard Financial Statement. For people with fluctuating incomes, this could have a mechanism that would allow debt repayment to be flexible in response to the ups and downs of their earnings (for example repayment as a proportion of income, rather than a fixed monetary amount).
16. In collaboration with the FCA, for debt management providers and relevant trade and advice sector bodies to share examples of good practice in executing annual reviews and consider ways to frame reviews so that debtors are more likely to participate.

Informal Courses of Action – Chapter 9

There are opportunities:

17. To ensure that debtors who use a self-help process are treated in exactly the same way as those who choose to use a third party, in line with Lending Standards Board best practice.
18. To establish a central DMP register (e.g. operating along the lines of a closed user group) which records that a DMP is in place. The register could be extended to include other informal payment arrangements as well.
19. If debtors move from an informal repayment arrangement (such as a token payment plan) to a DRO (for example because of a change in their circumstances), to allow the period of time spent informally making repayments to count towards the DRO's 12-month 'moratorium period'. If token payments have been made for 12 months or more, the moratorium period should be considered spent. (This sort of 'passporting' could also benefit people whose formal arrangements are revoked because of a change in circumstance.)
20. For MAS to work with industry and the advice sector to develop 'an active management' approach to better support people on non-statutory courses of action, particularly those on token payment plans. This could include: signposting to other types of help such as employment support, income maximisation, help to make an insurance claim; and placing a time limit on token payment plans so they are reviewed after say, 3–6 months, and

a decision taken whether the debtor should consider another (formal) course of action instead.

Credit Data and Debtor 'Rehabilitation' – Chapter 10

There are opportunities:

21. To make information about the impact on someone's credit file of different courses of action as clear as it can be, with signposting to advice where the debtor may require further guidance on their own situation. There could also be more upfront discussion of credit files in the debt advice process given that this is something people in debt are often concerned about and engaged with.
22. For debtor 'rehabilitation' to continue to be explored by cross-sector representatives, mindful of the risks and benefits of recording and sharing this type of information.

Creditor Behaviour – Chapter 11

There are opportunities:

23. For the Cabinet Office, supported by the debt advice sector and debt bodies, to continue to bring about changes that lead to greater fairness in government debt collection.
24. For MAS to collate and share examples of good practice in arrears management and debt collection from FCA-regulated and non-FCA-regulated creditors; and work with creditors and regulatory bodies such as the UK Regulators Network (UKRN) to develop and promote updated benchmarks of good practice.

MAS will review these opportunities with the debt sector in order to establish which are practicable and workable (either in their current form, or in a revised form), and which are not. Mindful that each would require significant effort and resource to implement, MAS will also look to establish how the workable opportunities should be prioritised.

3 The Debt Landscape

This chapter provides some context for the opportunities for change identified. It draws on the evidence that MAS collated for this review.

MAS estimates that around 8 million people in the UK are over-indebted: they have missed bills or payments in three of the last six months or they feel their debts to be a heavy burden. The evidence shows that it is common for people in this situation to only seek professional help when they reach a crisis point; and some people may not seek help even then.

People with problem debt experience a variety of circumstances and have a diverse set of needs. Flexible employment in the UK (such as zero-hours contracts) means that increasing numbers of people have fluctuating and uncertain incomes that can make it difficult to maintain steady, regular debt repayments.^{2 3}

People with problem debt also have different abilities and desires when it comes to sorting out their problem debt. They range from those who want to (or have to) sort out their problems themselves, through to others who want or need extensive help to sort out their problems. In the UK, there are different advice providers that cater to these different needs, as we discuss in section 3.2.

3.1 What options are there to help people deal with problem debt?

There exists a range of options available to help people deal with their problem debt. These include formal courses of action that share the following characteristics:

- they are set out in legislation (and are different in Scotland compared to the rest of the UK);
- they prevent creditors from taking any further action against the debtor;
- they freeze interest and other charges on the debt;
- they generally provide some debt forgiveness (where a proportion of the money owed is written off);
- they are recorded on a public register; and
- they limit the consumer credit that a debtor can take out for a set period.

People with problem debt can also turn to informal courses of action. While these courses of action can be subject to industry or regulatory guidance, they do not provide debtors with any guarantees or legal protections. Informal courses of action include (but are not limited to) debt management plans; token payment plans; debt consolidation; full and final debt settlement; debt moratoria; and debt write-off. There is no central register of informal courses of action and creditors vary in terms of what they report to credit reference agencies. This means we do not know with certainty how many people are managing their problem debt in these ways. However, it is estimated that there were 240,000 debt management plans in 2014 alone;⁴ this suggests the number of people following any informal course of action far outstrips those in formal personal insolvency.

The experts interviewed for this review largely supported that view. They also highlighted the continued evolution of the landscape, such as the shift of debt advice from OFT to FCA regulation; the move to online bankruptcy applications for debtor petitions in England & Wales; and in Scotland, recent reviews of Protected Trust Deeds and the Debt Arrangement Scheme, as well as an overhaul of the route into sequestration for people with few assets.

3.2 The role of third parties

The complex landscape of formal and informal options to deal with problem debt is further complicated by the different ways that people can access them. Formal options are generally only available via a regulated third party (i.e. debtors cannot apply directly themselves), where the third party could be a not-for-profit organisation or a for-profit firm. The exception is in England & Wales, where individuals who want to declare bankruptcy can now apply directly online.

Not-for-profit organisations and for-profit firms can also play a part in informal options. Notably, third parties are involved in setting up and administering debt management plans, either charging a fee to the debtor or requesting a voluntary payment from their creditors, depending on their business model. Here, the benefit for the debtor is that the third party negotiates with their lenders (and potentially other creditors as well) and disburses the monthly debt repayment on their behalf.

But people in debt can also set up their own repayment arrangements with their creditors, either with or without the help of a third party; the same is true of other informal options as well. In these situations, the third party (which is usually a not-for-profit debt advice provider) typically helps the debtor identify a suitable course of action and then provides support and information for them to self-manage their problem debt. This might involve helping them to draw up an accurate income-and-expenditure statement on which to base repayment offers; and providing template letters they can use to negotiate with their creditors.

3.3 How people choose options

The evidence consistently shows low levels of public awareness about the types of help available to sort out problem debt, both in terms of options and providers. While research respondents may know the CAB brand, for example, they don't necessarily equate CAB with debt advice. And while people tend to have some idea what bankruptcy is, they have little idea about other courses of action.⁵

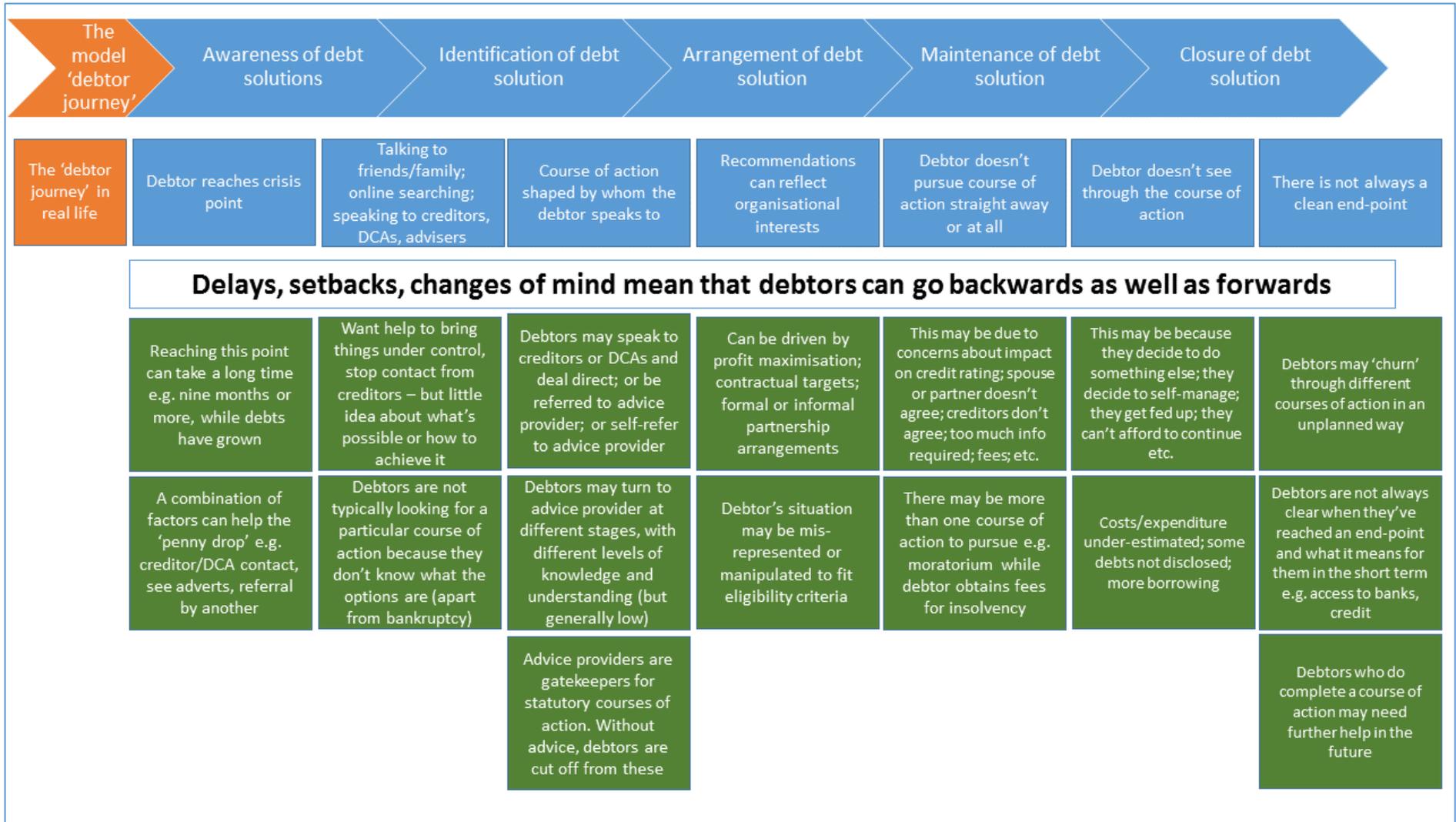
The way (or ways) that someone ends up dealing with their problem debt is influenced by a host of factors such as their employment (e.g. whether they have a permanent job and steady income, or are an agency worker with periods in and out of work), their disposable income, whether or not they are a homeowner, their other assets, their profession, and how they feel about different options. It is also shaped by who they speak to – their creditors, third parties, friends and family.

Moreover, rather than rationally assessing all their available options, someone in problem debt may choose to go with the first option (or the first provider) that offers them the chance to sort out their problem debt quickly and straightforwardly. This does not mean that people necessarily end up in the wrong option, or a sub-optimal one, but there is a risk of this happening.

The evidence also shows that the journey out of debt (or at least towards more manageable debt) is not always smooth. For example, people can abandon a course of action; or move from one to another. Figure 1 attempts to show the theory of dealing with problem debt versus the reality that is reported in research studies of the obstacles and setbacks that people in problem debt can face.

The remainder of this report (Chapters 4–11) sets out the opportunities for change identified through this review.

Figure 1: The debtor journey – theory and reality



4 Regulation of Insolvency Practitioners

Different third parties are regulated by different bodies that have different regulatory regimes and tools.

Insolvency is a regulated profession under the Insolvency Act 1986; the Insolvency Rules 1986; and the Enterprise Act 2002. Only a licensed insolvency practitioner (IP) may be appointed in relation to formal insolvency procedures. In terms of personal insolvency, this means that only a licensed IP can act as a trustee in bankruptcy; and only a licensed IP can advise on formal procedures in respect of Individual Voluntary Arrangements (IVAs). All qualified IPs must be licensed and regulated by a recognised professional body (an RPB), of which there are five. In England & Wales, the Insolvency Service is responsible for oversight regulation of the profession; in Scotland, this is a function of the Accountant in Bankruptcy; and in Northern Ireland, of the Northern Ireland Insolvency Service.⁶

Since April 2014, the Financial Conduct Authority has been responsible for the regulation of consumer credit in the UK, including firms and individuals that provide debt counselling to consumers (more commonly called debt advice) that relates to “*debts under a credit agreement or a consumer hire agreement or to a group of debts that include such debts.*”⁷ In other words, firms or individuals that only advise on other types of debt (such as tax debt) do not have to be FCA-regulated. There are other exceptions set out in the FCA’s Handbook (PERG17), which include local authorities and members of the legal profession. Insolvency practitioners are also excluded from FCA regulation, including “*in reasonable contemplation of that person’s appointment as an insolvency practitioner.*”⁸ In practice, this means that IPs can give debt advice provided they reasonably expect to be appointed in respect of an IVA (but not otherwise).⁹

4.1 Issues

The Expert Workshops and Interviews highlighted some specific concerns about the current regulation of IPs.

Since the advent of FCA regulation, small and medium-sized IPs in particular have exited the consumer credit debt advice market. While these IPs may have previously provided consumer credit debt advice

that fell outside the IP exclusion, to continue offering this type of advice would require FCA authorisation. Given that their work tends to be mainly corporate insolvency, it is likely these IPs saw little benefit in applying for FCA authorisation when consumer credit debt problems constituted a minor part of their work. As a result, they no longer provide consumer credit debt advice at all. A membership survey carried out by R3 in 2015 showed that around 10% of IPs specialising in personal insolvency had stopped giving consumer credit advice (which would include consumer credit debt) since the FCA began regulating consumer credit.¹⁰

More worrying from a consumer perspective, the IP exclusion also creates a regulatory loophole that could be exploited by unscrupulous firms to their competitive advantage. Expert respondents (including insolvency professionals) feared that some large firms were using the exclusion to write large volumes of IVA or Trust Deed business, where an IVA or Trust Deed might not be in debtors' best interests. In November 2016, IVA and Trust Deed volumes were at their highest levels since Q4 2010, with growth of 35% compared to the same quarter in 2015. Continued growth is expected, for reasons that include increased marketing activity by unregulated providers, along with firms switching away from debt management to IVAs and Trust Deeds as a result of FCA regulation.¹¹

Firms exploiting the IP exclusion may obtain business from lead-generators (firms that find people with debt problems and sell on their contact details) that do not have to be FCA regulated either.^{12 13} There are serious concerns about how lead-generators obtain their sales leads (for example cold-calling people on public debt registers) and how they present their services,¹⁴ with fears that people end up in an IVA or Trust Deed that is not suitable and has no realistic chance of completion, but which generates significant referral fees for the lead-generator.¹⁵

There was a view among some of the Expert participants that the RPBs regulating IPs have not kept pace with these industry developments, and where they find problems some focus on the individual IP rather than the firm (or, say, its business model). This reflects the different approaches to regulation taken by the RPBs, which impacts on the behaviour of the IPs they regulate, and the outcomes for debtors.

4.2 Opportunities for change

From the Expert Interviews carried out for this review (and other sources such as blogs produced by advice and insolvency professionals) there is support for changes to the regulation of IPs and lead-generators.

1. We suggest that a more consistent approach to the regulation of IPs is established. Two possible models suggested by our review are:
 - a. To remove the current exclusions from FCA regulation for IPs (and potentially others), which would require collaborative effort from the FCA, the Insolvency Services in England & Wales and Northern Ireland, the Accountant in Bankruptcy and the RPBs. This would mean that debt advice could only be provided by an FCA-regulated firm. For example, if an IP was not FCA regulated to give debt advice, they could only take referrals for IVAs or Trust Deeds from an FCA authorised firm that had determined this was a suitable course of action.
 - b. For the Insolvency Services in England & Wales and Northern Ireland and the Accountant in Bankruptcy to encourage RPBs to take a more consistent approach to personal insolvency regulation, to ensure that personal insolvency firms as well as individual IPs come under proper scrutiny. This might involve the creation of a single independent regulator, rather than the current model of five RPBs overseen by the Insolvency Services and the Accountant in Bankruptcy.
2. We suggest that lead-generators are brought into regulation, either directly by the FCA (which requires HM Treasury to create a new regulated activity), or by RPBs, provided RPBs are reformed in the ways suggested above.

5 Funding Debt Advice and Debt Management

Debt advice and debt management are funded in a variety of ways in the UK. The Money Advice Service is the biggest single funder of debt advice in the UK (with the money coming from a levy on FCA regulated firms), through its contracts with authorised not-for-profit agencies (such as CAB and Advice UK members).¹⁶ Some of the other ways that not-for-profit providers fund their services include contracts and service level agreements, e.g. with government agencies, local councils, housing associations, utility firms; grant funding e.g. from trusts and foundations; and donations e.g. from private firms and individuals. These sources of funding pay for agencies to deliver debt advice and, in some cases, to pay for approved advisers to help people apply for a Debt Relief Order (in England, Wales and Northern Ireland) or to the Debt Arrangement Scheme (in Scotland).

Debt management firms provide debt advice and help to set up and run debt management plans where these are a suitable option. There are two main types of firms:

- Debt management firms that charge customers a fee for their services, often a percentage of the debtor's disposable income that they have available to pay their non-priority debts. The fee is generally deducted from the amount that creditors receive; the repayment *minus the fee* is the amount recorded on the debtor's credit file.
- Firms that provide advice and debt management free of charge. They are funded by creditors, who pay them a percentage of the debt payments they receive (known as a 'Fair Share' payment). This payment is voluntary, which means that not all creditors who receive debt payments pay; or they may pay a lower proportion than requested. Because these debt managers invoice creditors for the 'Fair Share' payment, creditors receive the *full amount* of repayment made by the debtor, and this is the amount recorded on the debtor's credit file. The biggest providers of DMPs funded by Fair Share are StepChange Debt Charity and PayPlan (a for-profit firm);

Christians Against Poverty also provide Fair Share DMPs on a smaller scale. These providers may have other sources of funding as well as 'Fair Share' payments.

5.1 Issues

Advice providers act as gatekeepers to legal options for dealing with problem debt notably the Debt Relief Order (in England, Wales and Northern Ireland) and the Debt Arrangement Scheme (Scotland). If debtors cannot access an advice provider because demand outstrips supply, their options are immediately circumscribed.

Since April 2013 legal aid funding for personal debt issues has largely ceased, significantly reducing the capacity of the advice sector (and particularly not-for-profit agencies) to provide access to justice through specialist debt advice.^{17 18}

According to the Expert Interviews, both the creditor-pays and debtor-pays models for funding debt management plans are under pressure. This is due to the reduced amounts of disposable income that debtors have available to pay towards their non-priority debts, as well as the challenge of repaying debt for people who have insecure and fluctuating earnings from agency or contract work.

The squeeze on disposable income is set to continue with changes such as the planned auto-escalation of workplace pension contributions in 2017; and increased direct deductions from Universal Credit for Council Tax, court fines and certain other liabilities. FCA regulation is also having an impact, as some providers shed DMP clients who do not engage with annual reviews. The creditor-pays model is undermined by its voluntary nature as well.

Creditors other than FCA-regulated firms (such as utility firms, but also central and local government) now represent a large proportion of the problem debt that people seek help with. For example, Council Tax arrears are a greater problem for people seeking help from debt charities than in the past, and are now the most common problem cited by clients who use MAS-funded debt advice services.^{19 20}

These creditors benefit from debt advice and debt management but currently do not contribute to a levy (although they may fund services in other ways).

5.2 Opportunities for change

There is a real challenge in funding debt advice and debt management in ways that are equitable; that somehow limit or manage vested interests; and that provide people who have limited means with access to debt options designed to help them.

3. We suggest that an independent review is carried out into funding for debt advice and debt management. This has been highlighted by the debt sector (through the Debt Advice Steering Group) as a priority. While the scope of any review should be independently defined, it may wish to consider options such as a levy on creditors that are not FCA-regulated (such as some central government departments, local authorities and utility firms) to pay for debt advice and to help fund a DAS-type scheme across the UK.

6 Bankruptcy

Bankruptcy (sequestration in Scotland) is intended to help people make a fresh start by dealing with debts they cannot pay. It has serious consequences in terms of access to bank accounts and credit, and for employment prospects in some professions and public appointments. The evidence highlights two key issues with bankruptcy that mainly relate to England & Wales: bankruptcy fees; and the new online application process for individuals who petition for their own bankruptcy.

6.1 Bankruptcy fees

Confirming previous research, participants across the board in the Expert Workshops and Expert Interviews were concerned that bankruptcy fees continue to be a significant barrier to debtor applications. They feared that insolvent debtors resort to a less suitable debt option (such as a low-value debt management plan or token payment plan) if they cannot afford to petition for their own bankruptcy.

Bankruptcy fees generate income to cover the costs of the system. The current cost of going bankrupt is £680 in England & Wales, which comprises a deposit fee of £550 and an Adjudicator's fee of £130. In Scotland, the total cost is £200. This significant difference between England & Wales and Scotland seems to be largely accounted for by the difference in scale of the Official Receiver (which administers bankruptcy in England & Wales) and the Accountant in Bankruptcy (which administers sequestration in Scotland). Expert participants still questioned why the fees in England & Wales are not lower, given the application process is now entirely online.²¹

While Expert participants welcomed the fact that bankruptcy fees in England & Wales can now be paid in instalments (since the introduction of online-only applications in April 2016 – see below), the fact that debtors cannot submit their application until they have paid the full fee may result in considerable delays in debt relief. Moreover, while low-income applicants were previously able to get remission from paying the court fee, there is no fee remission for the Adjudicator fee in the new online application system.

For debtors who want to make themselves bankrupt but cannot afford to, one option is to apply for financial help from a charity, something that debt advisers often used to facilitate. The move to online applications means that debtors no longer have to access debt advice, which may also reduce their chances of finding out about, and successfully applying for, financial support with bankruptcy fees.²²

6.2 Opportunities for change

Concerns have long been expressed about the obstacle that bankruptcy fees present to people with problem debt. While Expert participants cautiously welcomed recent changes, more needs to be done.

4. We suggest that an independent review is carried out into the fees for debtor-petitioned bankruptcy in England & Wales, in particular to consider whether they present an unreasonable barrier to access.
5. We suggest that fee remission for low-income applicants is re-introduced, so that eligible applicants pay lower fees.
6. We suggest that debtors are allowed to submit their bankruptcy application once 50% of the fee has been paid, rather than having to pay the full sum in advance.
7. We suggest that the GOV.UK and online bankruptcy portals are updated to provide clear information and signposting to sources of financial help that can specifically be used to pay bankruptcy fees (rather than a general source of information for types of financial support that may or may not be used to pay bankruptcy fees).
8. We suggest that the independent review into funding for debt advice and debt management (see opportunity 3 above) considers whether funders of debt advice could provide direct assistance with bankruptcy fees (and also DRO fees) when other possible ways of raising the fees have been exhausted.

6.3 Online applications for debtor-petitioned bankruptcy

While Expert participants welcomed the quicker and more efficient service offered by online-only applications for bankruptcy in England & Wales (since 6 April 2016),²³ they were concerned about debtors being able to apply for bankruptcy themselves without taking any advice. This seems at odds with the Debt Relief Order scheme (which has somewhat less serious consequences than bankruptcy), where applications are processed and vetted by an approved intermediary

before they are submitted to the Insolvency Service DRO Unit.

Particular concerns were that:

- Debtors may not fully understand the impacts of bankruptcy, and apply online when another course of action might be more suitable.
- The absence of any 'cooling off' period in the online system means that the debtor cannot change their mind once they have submitted their application.
- Debtors may struggle with elements of the online application process, e.g. reporting their income and expenditure in detail; home valuation. This can lead to errors and rejected applications.

Advisers and creditors also noted that creditors do not always receive timely information about bankruptcy applications, meaning they continue collections activities when these should be ceased.

6.4 Opportunities for change

9. In line with the DRO scheme, we suggest that online bankruptcy applications are intermediated by an approved adviser. This builds a 'safety valve' into the process to make sure bankruptcy is a suitable (and fully understood) option for the debtor.
10. We suggest that the online bankruptcy application portal is modified to include prominent and easy-to-understand information about consequences and alternatives; and signposting to advice services and online tools to help with more complex issues such as home valuation.
11. We suggest that the online bankruptcy application tool sends automated notifications to creditors so they become aware of the bankruptcy application sooner and cease debt recovery.

7 Gaps in Provision

There are a range of courses of action available to debtors across the UK, some that are set down in legislation (generally called formal options) and others that are not (generally called informal). Even so, there remain concerns about people and situations that are not well served by current provision.

7.1 Issues

Supporting other evidence, Expert participants across the board confirmed that debtors with negligible or negative disposable income (i.e. their outgoings exceed their income) are a group with few options under the current system. Moreover, this group has been growing in size. StepChange Debt Charity, for example, reports that over 50,000 of its clients in the first half of 2016 (representing 29% of its total number of clients) had insufficient income to make ends meet.²⁴

For these debtors, debt repayment (even token amounts) may not be feasible. People with few or no assets may be eligible for the Minimal Asset Process (in Scotland) or the Debt Relief Order (in the rest of the UK), provided they are prepared to accept the consequences. For those with assets (such as homeowners) but little or no disposable income, bankruptcy (or sequestration in Scotland) is, in theory, an option if they can afford the fees. In reality, few people are prepared to sacrifice their home for a fresh start unless, for example, they have negative equity; and the use of equity release as an option to deal with problem debt is relatively uncommon. Debt write-off by creditors is unusual unless there are exceptional circumstances.

In addition, the current options for repaying debt do not take into account the growth of flexible working in the UK. Repayment plans are generally premised on someone having a regular, stable income. This presents problems for workers with fluctuating earnings, such as from self-employment or zero-hours contracts, where the amount they can afford to repay may vary from month to month, including some months where they might not be able to pay anything.

For people who can afford to make repayments, and do so informally through a debt management plan or a repayment arrangement they make with their creditors themselves, there are no guarantees that creditors will cease enforcement action or cease to charge fees or

interest; or that they won't reinstate action and charges after a period of cessation. To offer debtors in this situation some certainty and protection, there have been various calls for a statutory breathing space, most recently from The Children's Society.²⁵

Finally, some legal schemes for dealing with problem debt risk becoming redundant because their criteria do not keep pace with consumer debt. This is the case with Administration Orders, a court-based system for repaying debt that was popular in the past but has fallen out of use because the debt must be less than £5,000.^{26 27} As a result, only 194 Administration Orders were granted in 2014.²⁸

7.2 Opportunities for change

Changes in the macro-economy and the knock-on effects for work and earnings create challenges for dealing with problem debt that can seem difficult to resolve. In order to close some of the gaps in provision highlighted by this review:

12. We suggest that options are explored to help homeowners who are 'asset rich and cash poor' unlock equity in their property in order to deal with their problem debt while, for example, allowing them to stay in their home on reasonable and fair terms.
13. We suggest that a statutory debt repayment scheme, for example a version of Scotland's Debt Arrangement Scheme, is introduced across the UK. This type of scheme would provide debtors who can afford to make repayments the protections called for by The Children's Society and others. As noted earlier, it could be intermediated by authorised advisers and funded by a levy on lenders and other non-FCA-regulated creditors, including some government departments.
14. We suggest that Administration Orders are abolished because they are redundant.

Closing the gap in provision for people with insecure and fluctuating earnings from flexible employment presents a particular challenge and, in the next section, we suggest exploring whether there is a mechanism that would allow debt repayment to be flexible in response to the ups and downs of their earnings (Opportunity 15). As part of the consultation on these opportunities, we welcome other ideas and thoughts about ways to support people in this situation.

8 Processes and Procedures

The evidence highlights a range of issues related to the processes and procedures for delivering debt options. Two in particular stand out as candidates for change because they are integral parts of regulated debt advice: how income and expenditure information is captured and used; and regular reviews of repayment plans.

8.1 Income and expenditure

In debt advice and debt management, a detailed analysis of income and expenditure forms the basis for working out a debtor's disposable income. This shows whether they are in a position to make repayment offers and, if they are, the level of repayment that stands the best chance of being sustained (notwithstanding any change in their circumstances). The planned introduction of a Standard Financial Statement (SFS) from 1 March 2017 will mean that major debt advice providers and creditors use the same format to consistently assess income and expenditure.²⁹

While a consistent approach is welcome, it does not overcome the issue that people are asked for the same income-and-expenditure information multiple times over the period they are trying to sort out their debt problems. Nor does it overcome the problem that people with insecure employment (e.g. because they work on zero-hours contracts) may struggle to maintain the same debt repayment over a period of time because their earnings fluctuate and they may have spells with little or no earned income.

8.2 Opportunities for change

Credit Reference Agencies (CRAs) are already exploring online income-and-expenditure portals as a business proposition. A portal could hold this data centrally and, with the individual's permission, a CRA could pre-populate fields using data that they hold, helping to ensure that the data is accurate and up-to-date. This could also help avoid debtors returning to debt advice just so an adviser can update their income and expenditure (for example, where a creditor has asked for a review). Questions remain whether creditors would be prepared to pay to access an online portal, or to share a Standard Financial Statement that they have collated; or whether CRAs would be prepared to collaborate on one portal, rather than developing their own.

These issues notwithstanding:

15. We suggest that CRAs, creditors, debt advice providers and MAS explore the development of one online income-and-expenditure portal, linked to the introduction of the Standard Financial Statement. For people with fluctuating incomes (discussed above), this could have a mechanism that would allow debt repayment to be flexible in response to the ups and downs of their earnings (for example repayment as a proportion of income, rather than a fixed monetary amount).

More generally, as Reynolds (2017) highlights, there is a great deal of potential for technology – such as Application Programme Interfaces (APIs) – to enable data sharing in the debt advice process, to the benefit of debtors and creditors.³⁰ It could, for example, allow debt advisers to connect directly with creditors to access creditor documentation (e.g. credit agreement, payments outstanding etc.) as well as share a client’s overall financial situation.

8.3 Regular reviews

All authorised debt management providers are required to regularly review a client’s financial situation and, where appropriate, increase or decrease their payments. For FCA-regulated firms, failure to do this is a breach of the rules, for which there are serious consequences. For the debtor, failure to comply with a review can result in termination of the plan.

Evidence from Expert participants, which centred mainly on debt management plans, indicates that providers can struggle to engage debtors in a regular (generally annual) review. One respondent reported that having to “dynamite” people into a review was not uncommon as they have reached an agreement that they feel is affordable, and they no longer have much (if any) contact with the creditors who are included in the plan.

In such a situation, the idea of change may seem unappealing, particularly if, as is often the case, it might involve higher repayments. Efforts to engage clients who may be resistant to the idea of a review can also be resource-intensive.

8.4 Opportunities for change

Regular reviews can potentially play an important part in the 'debtor journey' but currently do not seem to be working as well as they could.

16. In collaboration with the FCA, we suggest that debt management providers and relevant trade and advice sector bodies share examples of good practice in executing annual reviews and consider ways to frame reviews so that debtors are more likely to participate. For example, is there value in linking the review to someone's credit file and their credit rating, if that's important to them?

9 Informal Courses of Action

If people with problem debt are not eligible for – or do not want to follow – a formal course of action, there are informal options available to help them repay their debt (such as debt management plans, token payment plans, full and final debt settlement, or debt consolidation) or to obtain debt forgiveness (such as debt moratoria and debt write-off). As already noted, informal payment arrangements do not provide debtors with any guarantees or legal protections in terms of enforcement action by creditors or the application of interest and other charges.

9.1 Issues

Advisers and debtors value the flexibility offered by informal repayment arrangements to sort out debt problems. There is no public record of informal arrangements, for instance, and debtors are generally free to end the arrangement without penalty.

Even so, there are concerns about the inconsistent way different creditors approach informal arrangements which creates uncertainty for advisers and debtors. Research with people who negotiate with their creditors themselves (rather than through a third party), for example, shows that creditors do not always accept their repayment offers, even though they may eventually accept the same offer from a third party.³¹ In a Thematic Review published in December 2016, the FCA found quite significant variability in the forbearance and repayment solutions offered by lenders to customers in early arrears.³²

Advisers also worry that debtors can be left to languish on token payment plans for long periods of time, when a different course of action (such as DAS or DRO) would have meant quicker debt resolution (provided the debtor had agreed).

There is no central register of informal courses of action and, while lenders can add a ‘special instruction flag’ on a credit file to show there is an informal repayment arrangement in place, in practice creditors vary in terms of what they report to credit reference agencies.

9.2 Opportunities for change

We do not know with any certainty how many people are managing their problem debt in informal ways, but it is likely to be many more than manage their debt through a formal course of action.

17. We suggest that debtors who use a self-help process are treated in exactly the same way as those who choose to use a third party, in line with Lending Standards Board best practice.³³
18. We suggest that a central DMP register is established (e.g. operating along the lines of a closed user group) which records that a DMP is in place.³⁴ The register could be extended to include other informal payment arrangements as well.
19. If debtors move from an informal repayment arrangement (such as a token payment plan) to a DRO (for example because of a change in their circumstances), we suggest that the period of time spent informally making repayments should count towards the DRO's 12-month 'moratorium period'.³⁵ If token payments have been made for 12 months or more, the moratorium period should be considered spent. (This sort of 'passporting' could also benefit people whose formal arrangements are revoked because of a change in circumstance.)
20. We suggest that MAS works with industry and the advice sector to develop 'an active management' approach to better support people on non-statutory courses of action, particular those on token payment plans. This could include: signposting to other types of help such as employment support, income maximisation, help to make an insurance claim; and placing a time limit on token payment plans so they are reviewed after say, 3–6 months, and a decision taken whether the debtor should consider another (formal) course of action instead.

10 Credit Data and Debtor 'Rehabilitation'

When it comes to consumer credit and household bills (such as energy), data sharing with credit reference agencies is largely voluntary, guided by a cross-industry forum called the Standing Committee on Reciprocity and the Principles of Reciprocity that it administers.

There is evidence that people are increasingly conscious of their credit file (held by credit reference agencies) and its impact on their access to borrowing – driven at least in part by CRAs' own product marketing.

Credit files contain public record data, including data related to debt problems, such as: court judgements (including showing when they have been satisfied); insolvency data (e.g. from the Insolvency Service and the Accountant in Bankruptcy); and industry data about different products. This information stays on a file for a fixed period of time and lenders use it to inform their lending decisions.

Credit files are also important because they help people prove their identity and to access credit contracts for services such as mobile phones, energy, and insurance.

10.1 Issues

While people are conscious of their credit file and its importance in accessing credit, there remains a lot of confusion about how this information is used and how credit ratings are affected by problem debt. In particular, it is not always clear (or easy to find out) what the impact of a debt management plan is on someone's credit file, as different creditors may treat these plans in different ways. This could be addressed by opportunity 19 above, regarding the creation of a DMP register.

Given the number of people on a formal or informal course of action to deal with their debt problems at any one time, there is growing interest in debtor 'rehabilitation' and the idea that credit files could better reflect a good debt repayment record, either paid via an informal or formal arrangement. This 'good behaviour' could help

repair someone's credit file and potentially provide them with access to mainstream credit (or other sources of affordable credit) once they have repaid what they owe.³⁶ This depends how lenders use this information, however, and whether this type of 'good behaviour' is predictive of a borrower's future behaviour when it comes to repaying credit. Expert participants were concerned that some people still continue to borrow when they are in debt repayment arrangements, which risks exacerbating their debt problems; any further lending post-repayment had to be responsible and not risk further debt.

10.2 Opportunities for change

Properly implemented, 'rehabilitation' and future access to credit could be important motivators for people to sort out their debt problems.

21. We suggest that information about the impact on someone's credit file of different courses of action is as clear as it can be, with signposting to advice where the debtor may require further guidance on their own situation. There could also be more upfront discussion of credit files in the debt advice process given that this is something people in debt are often concerned about and engaged with.
22. We suggest that debtor 'rehabilitation' continues to be explored by cross-sector representatives, mindful of the risks and benefits of recording and sharing this type of information.

11 Creditor Behaviour

Consumer credit is now regulated by the Financial Conduct Authority, along with other retail financial services. Regulated firms are bound by the FCA's Handbook which sets out in detail the rules they must follow. The FCA has also sought to provoke discussion and promote good practice on issues such as customers in vulnerable circumstances, through its Occasional Paper series and associated events.³⁷ Other non-financial-services creditors are not regulated in the same way, however, and their behaviour can undermine debt resolution.

11.1 Issues

The Expert Workshops and Interviews reported problems with local and central government creditors (especially DWP, HMRC, MOJ) that are not FCA-regulated, which can undermine or completely derail efforts to manage problem debts. The problems included poor communication with debt advice and debt management providers which create delays and setbacks; a lack of government support for work to improve standards in debt advice and debt management, such as the Standard Financial Statement; a lack of debt forgiveness by government creditors in situations where there is little alternative; and poor practice in government debt collection, for example the use of bailiffs in Council Tax debt collection.³⁸ Some of the same comments were made about utility and telecoms firms. A Cabinet Office working party on fairness in Government debt collection, which includes industry and advice sector representatives, has been exploring ways to bring about improvements in Government debt collection.

11.2 Opportunities for change

23. We suggest that the Cabinet Office, supported by the debt advice sector and debt bodies, continues to bring about changes that lead to greater fairness in government debt collection.
24. We suggest that MAS collates and shares examples of good practice in arrears management and debt collection from FCA-regulated and non-FCA regulated creditors; and works with creditors and regulatory bodies such as the UK Regulators

Network (UKRN) to develop and promote updated benchmarks of good practice.

Appendix

The following organisations took part in the Expert Workshops to discuss the current framework of options to help people who have problem debt. This included a discussion at the September 2016 Debt Advice Operational Group meeting about gaps in provision and a PEST analysis (looking at the impact of political, economic, social and technological factors).

Glasgow Expert Workshop, August 2016

Accountant in Bankruptcy
Condies Business Recovery and Insolvency
Dumfries & Galloway Citizens Advice Service
Glasgow City Council
Money Advice Scotland
Royal Bank of Scotland
StepChange Debt Charity

London Expert Workshop, September 2016

Barclays
Citizens Advice
Consumer Credit Association
Computershare Mortgage Services
Credit Services Association
Debt Resolution Forum
DEMSA
Hyde Housing Group
Lloyds Banking Group
Money Advice Trust
Nationwide Building Society
R3
Royal Bank of Scotland
StepChange Debt Charity
Welsh Government

Debt Advice Operational Group, September 2016

Advice UK
Barclays
British Bankers Association
Capital One
Consumer Credit Association
Citizens Advice NI
Christians Against Poverty
Citizens Advice
Citizens Advice Scotland
Computershare Mortgage Services

Debt Advice Foundation
Debt Resolution Forum
DEMSEA
Experian
Hyde Housing Group
Institute of Money Advisers
Marston Holdings
Money Advice Trust
Nationwide Building Society
PayPlan
StepChange Debt Charity
Toynbee Hall
Welsh Government

References

- ¹ Interviews were conducted with 48 individuals who had experience of bankruptcy/sequestration; Debt Relief Order (England); Individual Voluntary Arrangement; Trust Deed (Scotland); Debt Arrangement Scheme (Scotland); Debt Management Plan.
- ² ONS, *Contracts that do not guarantee a minimum number of hours* (2016). Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/march2016#how-many-no-guaranteed-hours-contracts-are-there> [accessed 30 January 2017].
- ³ Daniel Tomlinson, *Zero-hours contracts: casual contracts are becoming a permanent feature of the UK economy* (2016). Resolution Foundation Blog. Available at: <http://www.resolutionfoundation.org/media/blog/zero-hours-contracts-casual-contracts-are-becoming-a-permanent-feature-of-the-uk-economy/> [accessed 30 January 2017].
- ⁴ ICF, *Review of the Literature concerning the Effectiveness of Current Debt Solutions. Final Report for the Money Advice Service* (2017). The Expert Interviews indicate the number to be higher, at around 400,000 debt management plans.
- ⁵ ICF, *Review of the Literature concerning the Effectiveness of Current Debt Solutions. Final Report for the Money Advice Service* (2017).
- ⁶ Lorraine Conway, *Regulation of Insolvency Practitioners (IPs). Commons Briefing Paper CBP5531* (October 2016). Available at: <http://researchbriefings.files.parliament.uk/documents/SN05531/SN05531.pdf> [accessed 29 November 2016].
- ⁷ FCA, *FCA Handbook, PERG 17.7* (2016). Available at: <https://www.handbook.fca.org.uk/handbook/PERG/17.pdf> [accessed 29 November 2016].
- ⁸ FCA, *FCA Handbook, PERG 2.9.26* (2016). Available at: <https://www.handbook.fca.org.uk/handbook/PERG/2/9.pdf> [accessed 29 November 2016].
- ⁹ According to R3, “*The FCA interprets that exemption as ending the moment the insolvency practitioner realises that the debtor will not enter an IVA.*” <https://www.r3.org.uk/index.cfm?page=1949&element=26025&refpage=1865>
- ¹⁰ Personal correspondence with R3.
- ¹¹ TDX Group, *Insolvency Market Trends November Update* (2016).
- ¹² However, before an FCA-regulated firm (such as a debt management firm) enters into an agreement to accept sales leads from a lead generator, it must take “*reasonable steps*” to ensure the lead generator is compliant with FCA rules. See: *FCA Handbook, CONC 8.9* (2014). Available at <https://www.handbook.fca.org.uk/handbook/CONC/8/9.html?date=2016-01-29> [accessed 29 November 2016].
- ¹³ Meg Van Rooyen, *Why the FCA must regulate Insolvency Practitioners and Lead Generators* (2 August 2016). Available at: <http://www.moneyadviceblog.org/2016/08/02/why-the-fca-must-regulate-insolvency-practitioners-and-lead-generators/> [accessed 29 November 2016]
- ¹⁴ See, for example, <http://debtcamel.co.uk/iva-lead-generators/>
- ¹⁵ Personal Insolvency Law Unit, *Interim Report* (2016). Govan Law Centre. Available at: <http://www.govanlc.com/GLCinsolvencyreport.pdf> [accessed 5 December 2016]
- ¹⁶ See for details: <https://www.moneyadvice.org.uk/en/corporate/debt-advice#services-in-2016/17>

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- ¹⁷ House of Commons Justice Committee Report, *Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012* (2015). Available at: www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf [accessed 29 November 2016].
- ¹⁸ Citizens Advice, *Citizens Advice Submission to the Justice Select Committee inquiry into the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012* (April 2014).
- ¹⁹ StepChange Debt Charity, *Press Release: Debt Charities see Record Council Tax Arrears Problems* (4 May 2016). Available at: <https://www.stepchange.org/Mediacentre/Pressreleases/RecordCouncilTaxarrearsproblems.aspx> [accessed 29 November 2016]
- ²⁰ Citizens Advice Cymru, *Fairness for all: improving council tax debt collection in Wales* (September 2016). Available from: <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Wales/Fairness%20for%20all%20-%20September%202016%20-%20Google%20Docs.pdf> [accessed 29 November 2016]
- ²¹ The bankruptcy fee was reduced in April 2016 from £705 to £655 to reflect the move online (see <http://www.harringtonbrooks.co.uk/blog/increase-bankruptcy-fee-21-july-2016/>). Since then, the deposit has increased by £25, from £525 to £550.
- ²² There is a link on the GOV.UK website to the Turn2Us website which has information about grants, some of which could be used to pay bankruptcy fees. Debtors would therefore need to go to the Turn2Us website, search for suitable grants and work out whether or not they are eligible to apply.
- ²³ Since 6 April 2016, applications must be submitted online via the central UK Government website <https://www.gov.uk/> to an Adjudicator within the Insolvency Service.
- ²⁴ StepChange Debt Charity, *Statistics Mid-Yearbook* (2016). Available at: <https://www.stepchange.org/policy-and-research/personal-debt-statistics-2016-mid-yearbook.aspx> [accessed 30 November 2016].
- ²⁵ <http://www.childrenssociety.org.uk/what-you-can-do/campaign-for-change/breathing-space>
- ²⁶ See for details: <https://www.gov.uk/options-for-paying-off-your-debts/administration-orders>
- ²⁷ By way of comparison, UK households owed an average of £6,991 in consumer credit debt in September 2016. Source: The Money Charity, *The Money Statistics November 2016*. Available at: <http://themoneycharity.org.uk/money-statistics/> [accessed 30 November 2016].
- ²⁸ ICF, *Review of the Literature concerning the Effectiveness of Current Debt Solutions. Final Report for the Money Advice Service* (2017).
- ²⁹ <https://www.moneyadvice.service.org.uk/en/corporate/press-release-standard-financial-statement>
- ³⁰ Faith Reynolds, *Open Banking: A Consumer Perspective*. Available at: <http://newcityagenda.co.uk/wp-content/uploads/2017/01/Open-Banking-Print-Ready-A4.pdf> [accessed 30 January 2017].
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- ³³ Lending Standards Board, *Standards Development Project, Affordability Assessments and Repayment Plans* (September 2016). Available at: <https://www.lendingstandardsboard.org.uk/wp-content/uploads/2016/09/standards-development-project-affordability-assessments-and-repayment-plans.pdf> [accessed 1 December 2016].
- ³⁴ A DMP Register could record other information as well, such as reasons for DMP breakages; and DMPs that are converted to an IVA, Trust Deed or other insolvency. For the register to be effective, in line with current practice and the DMP Protocol, creditors should place a default against an account once a DMP is in place. There should then be no further marketing to debtors as long as they are on the DMP register. The FCA already holds a good deal of information on DMPs that could be utilised for this purpose.
- ³⁵ In a DRO, all the debts that are included in the order are put on hold for 12 months. This is called the ‘moratorium period’. During this time creditors cannot take debt recovery action without court permission. At the end of the 12 months, the debtor is free of all the debts listed in the order provided their circumstances have not changed. Source: Lorraine Conway, *Regulation of Insolvency Practitioners (IPs). Commons Briefing Paper CBP5531* (October 2016).
- ³⁶ See for example: Arrow Global, *Debt Britain 2016: The Big Picture* (July 2016). Available from: <http://www.arrowglobal.net/lib/docs/071341-debtbritain-2016-finaldigital-dps.pdf> [accessed 1 December 2016].
- ³⁷ Martin Coppack, Yasmin Raza, Simon Sarkar, Kate Scribbins, *Consumer Vulnerability. FCA Occasional Paper 8* (2015). Available at: <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-8.pdf> [accessed 1 December 2016].
- ³⁸ See for example: Citizens Advice Cymru, *Fairness for all: improving council tax debt collection in Wales* (September 2016).