A new approach to financial regulation: transferring consumer credit regulation to the Financial Conduct Authority.

Response from The Debt Resolution Forum (DRF)

For the attention of:

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Debt Resolution Forum

The DRF is a representational, training, monitoring and complaints handling body for fee-charging debt resolution businesses.

The DRF provides an independently accredited qualification for members' staff (the Certificate in Debt Resolution), monitors members compliance with DRF's standards (and other regulation and guidance, including that provided by the OFT), through an inspection service provided by an insolvency recognised professional body, the Insolvency Practitioner's Association (IPA) and has an independent complaints and disciplinary committee for dealing with any consumer complaints.

The DRF also funds independent research into the work of fee-charging debt resolution firms and the outcomes for their clients.

Further details can be found at www.debtresolutionforum.org.uk

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Conduct requirements and rules	DRF Response
1 What are your views on the Government's proposal to carry forward CCA conduct requirements which cannot be easily replicated in FCA rules? Do you agree with the Government's intention to require the FCA to review these retained CCA provisions, with a view to moving to rules-based alternatives wherever possible?	The DRF broadly agrees with these plans/intentions. By implementing regulations, MICOBS, Treating Customers Fairly (TCF) and the Handbook in the form of Regulation and Guidance, it is clear what is required of firms. The Office of Fair Trading (OFT) Debt Management Guidance, has often been thought of as guidance open to opinion rather than legal interpretation. However, we would warn that any move towards an entirely rules-based regime may make it more difficult, not less, to monitor businesses that aim to remain, as far as they can, outside the scope of regulation. These outsiders are usually the most prolific source of consumer detriment and have often proved difficult to enforce against. The FCA must use its enforcement powers to the full from day 1 and make it financially unattractive for so-called "compliant" firms to buy from or use the services of "non-compliant" lead sources. It may be that investigatory activity, in response to consumer or other complaint, needs to be a continuing major focus for FSA.
2 How, if at all, do you think industry codes can complement FCA conduct regulation?	The DRF believes industry codes and protocols can be immensely valuable, especially in areas, such as personal debt resolution, where FCA (formerly as FSA) has little history of undertaking regulation. Codes under the former OFT Consumer Codes Approval scheme (now transferred to Trading Standards Institute) exceed the

	requirements of OFT guidance documents. Membership of bodies that are compliant with a code identifies organisations that aim to exceed statutory guidance. Reports made under a code scheme identify if non-compliance exists and actions taken to correct it. Therefore code membership should help focus enforcement resources on those that are in a body with a code but are non-compliant and, with more difficulty but probably more importantly, on those who have chosen to stay outside a body with a code. Protocols, such as the IVA Protocol and the very recent DMP protocol are also helpful. Protocols like these facilitate engagement between stakeholders (for example, consumer representatives, creditors and debt resolution companies) and create an opportunity to raise standards in all aspects of a particular area, rather than just in the performance of one stakeholder group. The DRF's major concern is that, in an industry such as debt resolution, where there may be a significant number of organisations that aim to resist regulation, the presence of codes and code compliant companies could encourage FCA to concentrate on easy targets for enforcement (companies that are visibly, through codes, committed to high standards of compliance) and to put less effort into enforcement against small, unregulated businesses that are difficult to assess and do not respect reporting requirements. Businesses that adopt and embrace regulation believe themselves to be easy targets as they are identifiable. A business that embraces compliance and TCF should be able to provide evidence of compliant behaviours – but we would welcome

	clarification of the FCA's likely attitude to businesses at or beyond the margin of authorisation.
Authorisation	**DRF Response**
3 What are your views on the Government's proposals for the two tier authorisation regime? Is the scope of the limited permission regime right?	The DRF broadly agrees that the proposals are appropriate. However, we believe that: 1. In the area of debt resolution, any organisation that is taking in monies from debtors and distributing them to creditors should be considered as a "higher risk" organisation and should be authorised as such. 2. In the area of debt resolution, any organisation that receives payment that is performance dependant should be considered as higher risk (i.e. the practice of a "fairshare" contribution from creditors, as a percentage of monies recovered, creates a higher risk activity). The DRF has sent, with this consuLtation, the independent studies that we funded, undertaken by Zero-Credit, which gives a number of examples of poor advice given by free-to-client providers. (a) DRF Outcomes Case Studies Final. (pages 12-15). (b) Free to Fee, May 2013 (p16)[1].
4 What are your views on the proposed changes to the appointed representatives regime?	The DRF believes the proposed changes to the appointed representatives regime are appropriate to debt resolution companies that may offer ancillary product lines and to debt resolution companies that have relationships with otherwise unregulated

[1] Due to be published shortly.

	lead introducers, ensuring appropriate responsibility is taken by the business accepting the leads. However, the appointed representatives model is not one the debt resolution industry has used in the past. The AR model represents an additional area of complex change for debt resolution firms to incorporate, beyond direct authorisation. The DRF believes strong consideration should be given to a separate, extended, timeline for the introduction of appointed representatives.
5 What are your views on the proposed approach for dealing with those currently covered by group licences?	As stated above, we believe not-for-profit debt advice providers should be placed in the higher risk category when: 1. They hold and distribute debtors' monies 2. They are funded by performance-based payments from creditors or others Our Free-to-fee study (Case-studies drawn from a sample of the 20% of debt resolution clients who chose fee-charging firms after experience of free advice providers) has examples of this poor advice. See, especially, page 16, para 3: "***So, if I can go back to [charity], [advice centre] told you about [charity]. Was it only the debt management information they gave you, or were there other things that they mentioned?*** *I think it was maybe the thing that they gave me, they did sort of mention an IVA, but she was really pushing for this 8 years at £500 and I kept saying I can't do that. Then they sent me out something for some information and I thought I don't know this information, you know, but she was really sort of saying "Yes, you must". I thought it was very accusatory and I*

	already felt dreadful, so if you're going to make someone feel worse…" *And see page 21, which looks at the current perceived bias against solutions signposted by creditors).* We also believe those bodies authorised in the lower risk group should be required to come under the jurisdiction of FOS – consumer's should not have lesser rights simply because they have chosen not to pay for debt advice. As noted above the DRF has funded independent research that clearly shows that people in free-to-client plans have issues over the advice and service they are given: They should be able to seek redress. We are also providing, with this response, a copy of our shortly to be published independent study of client outcomes in the free to client sector, which clearly shows examples of advice where we would expect consumers to have redress, for example: *"I went back to [advice centre] but because I broke my agreement, they [creditors] wouldn't have owt to do with me again, but this other gentleman started talking it over and he keeps saying he's writing and they keep saying they haven't seen a letter.* *...Well, I went out, I missed one or two payments, so I went back and I felt, you know, I felt hurt really, to think, just because I'd missed two payments she wouldn't take it on again.*" Having one FOS regime for all would also provide a valuable source of performance comparison between the free-to-client and fee charging sectors.

	The DRF notes that it is proposed that licenced insolvency practitioners should be authorised under the higher risk regime if they provide, for example, pre-appointment debt advice. The DRF believes this is unnecessary because licenced insolvency practitioners are already subject to a specialised monitoring (and licensing) regime by their recognised regulated body where this is the case. The DRF believes that licenced insolvency practitioners should be subject to higher risk authorisation only where they provide non-statutory debt resolution procedures such as debt management plans or where personal insolvency procedures form a clear majority of the individual's appointments.
Scope of regulation	**DRF Response**
6 What are your views on the Government's proposals for scope of regulation, including changes in respect of credit intermediation, tracing agents and credit reference agencies?	The DRF believes that it is appropriate that activity relating to debt should become regulated activities subject to FSMA.
7 Are there any exemptions that are to be carried forward that should be reconsidered?	The DRF has no comments.

8 What are your views on the proposed new activity to capture the activities of peer to peer platforms?	The DRF believes that these proposals are appropriate, as long as the sector is not stifled by disproportionate regulation.
9 Do consultation respondents have any data on the activity of lead generators in the debt management sector? What detriment is being cause by these firms? And what are your views on a suitable regulatory response?	The DRF believes the eight week period provided for this consultation was insufficient for any meaningful contribution of data to be provided. However, The DRF is anxious to be of assistance in this regard and would welcome an opportunity to provide appropriate data as part of our continuing commitment to fund independent research on the activities of fee-charging debt management companies. We have provided, along with this consultation, copies of relevant independent research that the DRF has funded. Lead introduction companies are probably a large source of confusion for the consumer. The DRF is anxious to see this addressed and to assist in this regard. In relation to the detriment caused by lead introduction firms, The DRF believes that this, where there is detriment, is largely caused by: 1. Unconsented, repetitive and over-persistent cold-calling. 2. Inappropriate advice given by untrained advisors (or sales talk that purports to be advice and is not). In the case of the first, The DRF believes that this is not a real problem for the debt resolution industry. This was examined closely in the Office of Fair Trading's response to the Citizens' Advice super complaint on up-front fees and cold-calling. In relation to cold-calling and debt resolution, the OFT said:

	"It would appear that the majority of the unexpected marketing calls, emails and texts received by consumers are being made with consumers' consent. This contact is not therefore regarded by businesses as being cold calling. In their responses to an OFT questionnaire issued to credit brokers and debt management businesses, most businesses told us that they do not use cold calling, but may instead use what they describe as 'warm calling'. Such 'warm calling' involves contacting consumers who these businesses say have, at some stage, either directly given their consent for that business to contact the consumer, or the consumer has indirectly given consent by agreeing that another business can pass their details to a third party... *"... At the present time, the OFT does not consider it appropriate to recommend that the Government considers legislation to ban cold or warm calling. ...* *"... The OFT also notes that unexpected calls will not in themselves always cause consumer detriment. Indeed, some consumers who were unaware of the existence of a service may, for instance, benefit from an unexpected call even if they did not remember giving their consent to receiving it."* In relation to inappropriate advice or sales patter, The DRF believes that this practice will largely be dealt with by the move to FSMA regulation/authorisation and the introduction of appointed representatives. However, this will only be effective if FCA has the resources and direction to conduct enforcement activity against lead introducers (and those to whom they sell leads) who endeavour to remain outside the authorisation framework. The introduction of appointed representatives will ensure that those

	debt resolution companies that employ lead introducers take great care to ensure their introducers are compliant with relevant rules. The DRF does not believe it will eliminate the risk of lead introducer non-compliance, especially if it is not introduced under a separate timeline that allows debt resolution companies to meet all the changes in compliance applying directly to them. Lead introducers that do not do this will find it impossible to work with the larger and more established companies in the debt resolution space. There will undoubtedly still be non-compliant lead introducers but, as long as enforcement resources are available, they should be targetable by the FCA. Non-compliant lead introducers will also find it more and more difficult to find an outlet for their leads.
Enforcement and redress	**DRF Response**
10. What are your views on the Government's proposal to repeal many of the criminal offences in the CCA and make breaches of these requirements, once in rules, subject to the FCA's enforcement toolkit?	The DRF believes that the proposals relating to enforcement and redress are largely appropriate and likely to provide a greater commercial incentive to compliance than the current regime. However, as above, the DRF continues to be concerned that, whilst an effective enforcement "toolkit" is being constructed to use against firms that are authorised, most of the detriment will exist amongst firms that come and go in the unauthorised hinterland. DRF would want to be assured that resources were being deployed proportionately against the areas where most detriment occurs and not just in those areas, amongst authorised firms, where less-detrimental infringements are easier to detect.
Interim permissions	**DRF Response**

11. What are your views on the proposed interim permissions regime?	The DRF is broadly supportive of the proposed interim permissions regime. However: 1. We would not wish to see the forthcoming consultation on fees truncated, as this one has been. 2. The DRF would welcome early detail concerning the proposed transfer process. 3. The DRF believes holders of group licences who both take in and distribute clients' monies or who are paid a contribution from creditors based on monies recovered should be required to apply for an interim permission.
12. If you are operating a peer to peer platform and do not hold an OFT licence, what are your views on the transitional arrangements for peer to peer platforms?	N/A