

# The Debt Resolution Forum

## Member Code and Standards

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## **CONTENTS**

### **INTRODUCTION**

Primary Function	2
The Codes & Standards	2
General	2
Compliance with Statutory Regulations – all sections of Debt Resolution Forum Code & Standards	2
Compliance with OFT Debt Management Guidance	2
Administration and Monitoring of the DRF Code & Standards	3
<b>A:</b> Standards applied by DRF Members in their work with and on behalf of Debtors	5
<b>B:</b> Standards applied by DRF Members in their Dealings with Creditors	14
<b>C:</b> The Training, Qualification and Continuing Professional Development of DRF Members' Management and Staff	16
<b>D:</b> Corporate Standards of Governance Adopted by DRF Members	19
<b>E:</b> Client Funds	22
<b>F:</b> Advertising and Publicity	23
<b>G:</b> Fees and Other Charges	25
<b>H:</b> Conciliation and Complaints	27
<b>I:</b> Statements/Reviews/Information provided by the DRF	32
<b>J:</b> Regulatory Framework	35
<b>K:</b> Development of Standards	36

## **INTRODUCTION**

### **Primary Function**

The primary purpose and function of the Debt Resolution Forum (DRF) is to promote professional standards of resolving debtors' financial problems, focussed on the quality of advice provided to 'consumer' debtors by all DRF members across the range of solutions which is available to consumers and irrespective of the areas of solution specialisation of individual DRF members, (in this context 'Consumer' debtors are private individuals who have incurred unsecured indebtedness at a level which they are unable to service in full).

## **THE CODE & STANDARDS**

### **General**

This document details the standards to which DRF members are obliged to conduct their business.

DRF members and debt resolution companies wishing to join the DRF have to demonstrate, by inspection, that they comply with the standards and requirements set out in this Code and undertake to comply with all of its aspects.

DRF monitors and audits compliance with the Code by annually inspecting its members. This inspection is carried out by the Insolvency Practitioners Association's Debt Management Compliance Team. Members must agree that the DRF has the power to discipline or sanction any of its members, should they not adhere to this Code.

Conformity with this document is what will be measured during the course of the DRF annual monitoring visits by the monitoring and audit body. This document is subject to constant revision and members are responsible for ensuring they use current versions to guide their compliance activities in relation to DRF membership.

### **Compliance with Statutory Regulations - All Sections of Debt Resolution Forum Code & Standards**

All members must be licensed appropriately and carry out their business in accordance with requirements of the Consumer Credit Act 1974.

- All members must take into account all of the reforms introduced by the Consumer Credit Act 2006.
- All members must also comply with any and all other regulations which may apply, including:
- Unfair Contract Terms Act 1977
- Supply of Goods and Services Act 1982
- Consumer Protection Act 1987
- Data Protection Act 1998
- Unfair Terms in Consumer Contracts Regulations 1999
- Distance Selling Regulations 2000
- Financial Services (Distance Marketing) Regulations 2004
- Consumer Protection from Unfair Trading Regulations 2008

and any further enactments that may be introduced at any time in the future that directly concerns the consumers' rights in connection with any form of debt resolution.

### **Compliance with OFT Debt Management Guidance and FCA Rules**

- All members of the DRF must comply with all sections of DRF'S and FCA Rules.
- All members of the DRF must comply with the OFT's "Debt Management (and credit repair services) Guidance", March 2012 OFT 366rev and any future issues, revisions or commentaries including FCA high level principles and detailed rules.
- The Debt Management Guidance places important obligations on DRF members. The DRF Code & Standards is an extension of and is in addition to the OFT's guidelines and FCA principles and rules.
- The OFT's Debt Management Guidance can be found by following the link from the DRF's website, or by visiting any member's website or the OFT website.

### **Compliance with MAS Quality Framework for Organisations.**

- All members in categories A, B and C of DRF membership must comply with the standards for members set out in the Money Advice Service Quality Framework for Organisations.

### **Administration and Monitoring of the DRF Code & Standards**

The DRF Code & Standards are supervised and administered by the Code Administrator who is the Chairman or another appointed director (who shall be chairman of the code sub committee) from time to time of the DRF. The Code Administrator shall:

- Take steps to be satisfied that members' trading practices and documentation comply with the DRF Code & Standards.
- Pass complaints and disciplinary matters to the appropriate committee and panel in accordance with the Procedures set out.
- Ensure that the appropriate committee and panel report any breach of the Code & Standards to the member and recommend any remedial action.
- Ensure any recommendations for remedial action are communicated to the monitoring and audit body and that compliance is investigated in an appropriate and timely manner.
- Report to the Board and/or disciplinary committee any failure by a member to act upon any recommendation.
- Review, with the Code & Standards sub-committee and the monitoring and audit body, the content of the Code & Standards on an annual basis in the light of changing statutory and practical circumstances and, from time to time, make recommendations for changes based on the outcomes of complaints, disciplinary hearings and IPA inspections.
- Endeavour to identify emerging consumer concerns and undesirable trade practices by consulting closely with relevant bodies through Money Advice Liaison Group and otherwise. Endeavouring to ease these concerns and prevent undesirable practices by modifying and updating these standards as required.
- Provide an Annual Report on the operation of the Code & Standards and Procedures and ensure that this is circulated to the OFT and other interested parties.

This document is divided into the following sections:

- **Section A:** Standards applied by DRF Members in their work with and on behalf of Debtors
- **Section B:** Standards applied by DRF Members in their Dealings with Creditors
- **Section C:** The Training, Qualification and Continuing Professional Development of DRF Members' Management and Staff
- **Section D:** Corporate Standards of Governance Adopted by DRF Members
- **Section E:** Client Funds
- **Section F:** Advertising and Publicity
- **Section G:** Fees and Other Charges
- **Section H:** Conciliation and Complaints
- **Section I:** Statements/Reviews/Information provided by the DRF
- **Section J:** Regulatory Framework
- **Section K:** Development of Standards

## **A. Standards applied by DRF members in their work with and on behalf of Debtors**

### *A.1 Introduction*

#### A.1.1 Advice

DRF members must provide advice which is:-

- Consistent
- Objective
- Impartial
- Free at the point when they are first contacted by the debtor (see also '**Fees and other charges**' in **Section G**, below)
- Based on full knowledge of the debtor's financial and personal situation as disclosed to the member by the debtor.
- Provided on a basis that is intended to lead ultimately to the financial rehabilitation of the debtor.
- Provided following a process that provides full awareness of the client's situation and that, as far as is reasonable, ensures the client is advised concerning all areas of his financial situation (including, for example, priority debts and benefits and income maximisation). Where a member cannot provide suitable advice they should refer the client to an organisation that can.

#### A.1.2 Members must:

- Act solely in their clients' best interests.
- Help clients to clear their debts as quickly and efficiently as possible, and must not use high pressure selling tactics.
- Exercise all due discretion, in the best interests of the debtor, in deciding whether or not to accept a debtor onto a debt management programme, and must bear in mind that debt management programmes are not suitable for all debtors.
- Be transparent as to the basis of fees and charges collected.
- Make clients aware of the sources of free-to-client advice.
- Signpost or refer clients to sources of complementary advice where the client requires additional assistance that the member cannot provide.
- Be clear as to the risks arising in each of the options available.
- Take into account the attitude of the debtor to risk, where appropriate.
- Advise clients of the importance of paying secured loans and prioritising debts.
- Act at all times in the interest of their clients, while taking into account the interests of their creditors.
- Not employ or permit their staff or agents to employ any high pressure selling techniques or other techniques which the DRF may notify members to be unacceptable from time to time.

#### A.1.3 Pre-contract information

Members must:

- make a realistic assessment of the financial circumstances of the consumer before advice is given. Clients must be informed that verification of information given will be obtained in the form of pay slips, bank statements, credit card and loan statements, etc.
- keep confidential all information given to members by their clients (with the exception of the disclosure of relevant information, with the client's express consent, to relevant creditors or for the purpose of the independent investigation of a complaint).
- not misrepresent, whether by implication or omission, any term or condition of their arrangements for dealing with clients.

- use their best endeavours to ensure that clients fully understand the terms and conditions of the arrangements made on their behalf and the consequences in the event of default.
- encourage debtors to read documentation carefully and allow them sufficient time to consider any agreement or proposal to be made on their behalf and to obtain independent advice where appropriate.

#### A.1.4 Contracts

Members must:

- show that any advice given to the client to cancel direct debits and standing orders prior to a repayment plan being agreed with creditors must be demonstrably in the best interests of the client. (Members must clearly warn clients of the risks and consequences of this course of action if advised.)
- provide prospective clients (both verbally and in writing) with full and comprehensive details of all fees and costs to be paid by them prior to any commitment being entered into, including all payments to be made to any supporting or third party involved in the transaction.
- advise the client whether, in regard to the proposal, they are to be remunerated by the client alone or by a third party, or by a combination of the two.
- ensure that debtors are treated equally and that the needs of specific groups or individuals are recognised.
- maintain full records of their dealings with debtors and creditors and ensure that adequate means of storage and retrieval are in place. All documentation, in any form, should be kept for an appropriate period in accordance with Data Protection Guidelines.
- provide the client, upon completion or termination of a programme, with a full statement of the history of the programme and return any important documentation, e.g. pay slips or P60s.
- only provide other services or products such as Payment Protection Insurance if clients "opt in" to the purchase of such products.

- A.1.5 Clients should, at the outset, be given a statement to show how their money is being disbursed. This statement should include the balance owed (or the best estimate, when an accurate figure is not known) and the period of payment needed to clear the debts. The statement must include the fees charged by the member. Clients must be kept informed of any material changes to these arrangements when they occur.

#### A.2 *Extent of indebtedness*

DRF members advise/act on behalf of debtors in relation to debts including but not limited to:-

- credit card debt
- secured and unsecured debt
- student debt
- consolidation
- hire purchase and conditional sale agreements
- overdraft
- mortgage
- council tax
- gas and electricity bills
- fines
- income tax arrears and tax credit overpayments
- national insurance contributions
- rent
- business debts

- VAT
- water charges
- traffic penalties
- mail order
- the home credit industry

*A.3 Debt reduction*

Where appropriate, DRF members also assist debtors to use legal remedies to mitigate or reduce liabilities for certain debts, such as:-

- Consumer Credit Act debts
- extortionate credit bargains
- how to respond to bankruptcy action or other actions to enforce payment, such as distress execution, attachment of earnings, charging orders

*A.4 Creditor Action*

Where appropriate, DRF members advise debtors:-

- on courses of action in relation to disputed debt
- how to respond to bankruptcy action or other actions to enforce payment, such as distress, execution, attachment of earnings, charging orders
- of ways in which creditors might be challenged in relation to unenforceable debt
- on strategies for dealing with mortgage or other property repossession

*A.5 Income from benefits and tax credits*

DRF members will, where appropriate, provide information in relation to income through benefits and tax credits to which the debtor might be entitled. Specific advice should only be offered if the member has advisors with the requisite training and experience. This will be checked by the monitoring body. If the member does not have appropriate advisors, they should signpost or refer clients to sources of appropriate advice, for example, Citizens Advice.

*A.6 Debtor expectations*

DRF members will not raise false expectations as to outcomes, for example by dismissing the significance of the threats which may be received from individual creditors. Where appropriate, members will be positive in their approach to such threats and assist the debtor to face them.

*A.7 Verification of information*

DRF members subject information and explanation provided by the debtor as to his/her financial circumstances to rigorous verification (inter alia by obtaining copies of payslips, mortgage statements, property valuations and outgoings, e.g. rent, council tax, utility bills, etc.) in the development of a strategy for addressing the debtor's circumstances.

*A.8 Meeting the debtor*

Where DRF members do not consider that they are able to obtain all of the information and explanations needed to ensure that the debtor properly understands the options available without a face-to-face meeting, it is strongly recommended that such a meeting be advised before proceeding further. If the debtor declines the offer, a note should be included in the case records.

*A.9 Objectivity and impartiality*

The DRF advisor will always adopt an impartial and objective approach to debtor advice.

*A.10 Debtor involvement/decision*

DRF members involve the debtor in the process of exploring the solutions that may be available and ensure that the debtor understands the implications of each. Members provide sufficient verbal information to enable debtors to make an informed decision about whether or not they would benefit from the member's services - so that it is clear that in the final analysis, the chosen route has been selected by the debtor and not by the advisor.

*A.11 Debtor co-operation*

A.11.1 DRF members attempt to ensure that individual debtors are open, honest and committed in their dealings with them.

A.11.2 In the event of non co-operation by debtors at any stage in the debt resolution process, DRF members reserve the right to withdraw from the process. It should be made clear to debtors from the outset of the member's involvement that they may do so, in the event of non co-operation. Debtors are made aware of the potential consequences.

A.11.3 DRF members will provide clear explanation to debtors concerning fees already paid and the debtor's eligibility for refund of amounts undistributed to creditors, less appropriate fees.

A.11.4 DRF members advise creditors promptly of any such withdrawal action and of the reasons for it.

*A.12 Development of strategy*

A clear explanation of the tasks to be undertaken by the DRF member and the part which the debtor is expected to play in the development of and adherence to the strategy is set out in writing and a copy provided to the debtor.

*A.13 Adherence to strategy*

DRF members will assist the debtor to adhere to the strategy which has been developed, for example in dealing with priority debts or in the face of harassment by telephone or face-to-face visits from individual creditors. DRF members will also provide advice to debtors, where appropriate, on maximising income.

*A.14 Nature of service agreement*

DRF members enter into contractual arrangements with the debtors whom they represent that conform to the requirements of the Unfair Terms in Consumer Contract Regulations 1999 and the Consumer Protection from Unfair Trading Regulations 2008 and which:

- are recorded in clear, plain and intelligible English (or in the language/format (e.g. Braille) most easily intelligible to the debtor).
- identify the amounts of payments to be made, the management fees charged and the amount of debt outstanding to the best of the member's knowledge at the time the plan is entered into.
- set out the nature, range, cost and expected duration of the service to be provided. If these details cannot be firmly stated then the member must provide a best estimate. It should be made clear to the consumer that this is an estimate and the assumptions used to calculate the estimate must be made clear.
- allow consumers to withdraw from the contract where the amount of the total fee differs markedly from the original estimate.
- indicate the extent to which creditors will be bound by the solution to be put forward by the member on behalf of the debtor and the effect of it on the debtor's credit rating.
- identify the consequences and risks to the debtor of the proposed solution, and of the debtor failing to adhere to its terms.
- make it clear that the member will not seek to prohibit the debtor from corresponding direct with creditors.

- confirm that the member will deal with correspondence promptly and keep clients informed of all relevant communications.
- indicate, where appropriate, the terms on which the agreement may be cancelled or terminated by the debtor, including reference to the Financial Services (Distance Marketing) Regulations 2004.
- confirm that funds held by the member on behalf of the debtor from time to time will be paid promptly to creditors and will be held in the interim in a client account (see section E. Client Funds) which is not accessible for use in the member's own business or by parties to whom the debtor may be indebted. Funds can only be held in accordance with the provisions of the OFT's debt management guidance, which requires - unless special circumstances pertain - that distributions to creditors should be made within five working days of a member being in receipt of a client's payment.
- will not contain terms that imply that there are no circumstances where a customer is entitled to a refund.
- provide for a 'cooling off' period of not less than seven days during which the contract may be cancelled by the debtor.
- conform with the Consumer Protection (Distance Selling) Regulations 2000 as amended from time to time.

*A.15 Correspondence/communication*

DRF members deal appropriately and promptly with any correspondence and communication which they receive from the debtor, from creditors and from other parties interested in and reasonably entitled to information about the debtor and the debtor's affairs.

*A.16 Keeping the debtor informed*

DRF members keep the debtor informed of the progress of the case throughout and provide the debtor with copies of significant documents and correspondence. Members must promptly inform clients of the outcomes of negotiations with creditors. If significant changes occur in the terms offered by creditors or in the relationship between a member and creditor, then the member shall inform the client.

*A.17 Regular case reviews*

DRF members are committed to undertaking regular reviews of the debtor's circumstances on a proactive (i.e. DRF member driven) basis as well as in reaction to notification of changes in circumstance received from debtors and in any event undertake such reviews not less than annually. The purpose of this review is to ensure the member is aware of the client's current circumstances and any changes that may require a change in plan contributions and a change in the recommended product, even if that may require the member to advise a service it does not provide. The member should evidence in case notes that such a review has been undertaken.

*A.18 Maintenance of records and confidentiality*

A.18.1 DRF members maintain detailed records of the work done on each case and these are accessible on a systematic basis to the debtor and to the level required by the DRF, by any regulatory body and by relevant legislation. Such records are maintained and stored on a secure and confidential basis. The agreement with the debtor contains a clear commitment to confidentiality in respect of all communications (whether written, electronic, aural or visual) on the part of the member subject to:

- Access to the DRF appointed monitoring body
- Reports to creditors

A.18.2 DRF members inform debtors how they plan to use the information provided by them before it is collected. They also make clear the circumstances (if any) in which such

information may be shared with third parties and the extent to which they will obtain the prior consent of the debtor to its release.

- A.18.3 DRF members will take steps to ensure that any referrals made to them by third parties are done so in compliance with all relevant regulations and guidance. This process must take place at regular intervals but at least annually and, at the member's discretion, if referrals appear at any time to be being made in a non-compliant manner.
- A.18.4 DRF members will require any organisation to which they refer a client to provide appropriate information, with the client's consent, concerning the outcome achieved for a client and any further advice, product or referral provided.
- A.18.5 DRF members will have in place systems to record progress and outcomes of cases and will demonstrate to the monitoring body that this information is used to monitor effectiveness and to improve performance by the member.

*A.19 Information to be provided to Consumers Pre Contract – Verbal*

- A.19.1 Members must provide consumers with sufficient verbal information to enable consumers to make an informed decision about whether or not they would benefit from the member's services. Where a member contacts a potential client who has been referred by a credit broker or lender, the member must disclose at the outset of the conversation how they obtained the consumer's details, the services they offer and that they cannot themselves provide a loan.
- A.19.2 This will be confirmed by listening to calls, hearing call recordings during an inspection and by mystery shopping. Members will not be given notice of mystery shopping and their findings will be considered in the achieving of their inspection pass. Those members that do not have the facility to record calls will have their scripts inspected to ensure that they contain the agreed information and that it complies with all relevant legislation and regulations.

*A.20 Pre Contractual In Writing*

- A.20.1 All members must provide in writing, within 5 working days, the terms of the agreement to the consumer. The agreement must be written clearly and simply.

It must contain:

- the administration and management fees that will be payable, including any upfront fee or deposit, such as an initial arrangement fee.
- provisions stating that when a payment goes to the member company and not to the creditors, consumers must be warned that they will fall into arrears with their creditors.
- the circumstances in which costs will and will not be incurred and, if costs are incurred, what they will be.
- advice that the consumer has the opportunity to withdraw from the agreement.
- the procedures for withdrawal from a debt management programme.
- the nature of the service to be provided by the Member.
- an explanation of how fees are calculated.
- the service elements covered by the fees (for example the costs of verifying a client's income and expenditure, writing to creditors and verifying and calculating debts)
- the total cost to the consumer of the service including any initial or fixed fee or deposit, the periodic management fee to be paid to the member multiplied by the estimated length of the agreement.
- an estimation of the amount to be repaid and the likely duration of the contract.

- A.20.2 Where it is not possible to establish the cost or duration of a contract, members will provide the customer with a best estimate of the total cost and duration of the service, based on the payment being made, the management fees charged and the amount of debt outstanding. Estimates must be realistic and must be accompanied by the assumptions on which the estimate is based, as well as a clear warning that this is an estimate.
- A.20.3 If the service being provided is subject to the Financial Services (Distant Marketing) Regulations 2004 and/or the Distance Selling Regulations 2000, then the relevant information prescribed by that Act, including cancellation rights, must be advised to the consumer. This will include:-
- that creditors are not obliged to accept reduced payments or to freeze interest and/or charges and fees and that, unless they do so, repaying the same debt over a longer period of time will increase the total amount to be repaid.
  - that there is no guarantee that existing or threatened proceedings will be suspended or withdrawn. Collection actions, including default notices and litigation, can ensue or continue.
  - the likely impact of the debt resolution solution on the consumer's credit rating<sup>†</sup> that:
    - they might not be able to obtain credit in the short term
    - there is some likelihood that they will not be able to do so in the longer term
  - that the debtor should prioritise debts such as mortgage, rent, council tax, utility payments and arrears and ensure that an appropriate allowance is made for these payments within any debt resolution programme.
  - the nature of those commitments that will and those that will not be included within the repayment plan.
  - the likelihood that existing bankers may not continue banking facilities and information and advice on basic bank accounts.
  - the terms and conditions of any managed or other bank account or other banking service offered. Where a member or staff from a member recommends that, in the consumer's best interests, one of their options is a remortgage or further advance, or a consolidation loan, the member must disclose to the customer in writing the level of fee, commission or any other remuneration they will receive from the third party who arranges this service - if not already disclosed by the third party. Any such advice will be given with the requisite degree of care and, if it is in the consumer's best interests at that time, based on the information made available by the consumer and that the consumer must make full disclosure about his financial circumstances.

*A.21 The Service Agreement - In Writing*

The terms and conditions should be fair, written in plain language, easily legible, and must:

- detail the nature of services being provided, i.e. the debts which are included and those that will not be included in the programme.
- specify a period within which payments received from clients will normally be passed on (as specified under "Client Account" below).

*A.22 Cancellation or Withdrawal by the consumer*

A.22.1 Members must comply with the Financial Services (Distance Marketing) Regulations 2004 (regulations 9 & 10) regarding consumers' cancellation rights, which include the right to cancel, in certain circumstances, even if written information has been received by the consumer. DRF members' contracts must not include any term which states or implies that there are any circumstances in which a client is not entitled to a refund.

A.22.2 A refund may be due to a client if:

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<sup>†</sup> Members could usefully make clients aware of the guidance "Credit Explained" available from the Information Commissioner's Office.

- The member has promised more than it can deliver.
- The member has failed to conduct negotiations with the reasonable care and skill required by section 13 of the Supply of Goods and Services Act.
- There has been a total failure of consideration.

A.22.3 Clients in debt resolution schemes must not be prevented from corresponding with, or responding to creditors or their agents. It is reasonable for members to request that they be informed of all contact or correspondence with creditors and to receive copies of correspondence.

A.22.4 Members must deal with all correspondence promptly, and must keep the client informed of relevant communications. The agreement should allow the client to withdraw from the contract where, following signing of the contract or agreement, the total fee differs significantly from the estimate given prior to the contract (for example, because investigation of the client's circumstances reveal that the monthly payment must be larger than first estimated).

*A.23 Specific requirements relating to Individual Voluntary Arrangements*

A.23.1 The DRF Code & Standards addresses issues which arise prior to approval of an Individual Voluntary Arrangement (IVA) by creditors.

A.23.2 An IVA is a formal scheme where a debtor proposes a full or partial repayment of their debts to creditors, with the assistance and support of a licensed Insolvency Practitioner. The requirements of the DRF Code & Standards do not apply to the operation of IVAs, which are governed by the Insolvency Act 1986. The DRF Code & Standards, however, must at all times be observed by members when setting up an IVA and where the members' relationship with the client is not governed by and under the Insolvency Act 1986.

A.23.3 When advertising; marketing and giving pre-contractual advice on IVAs, DRF members must never:

- use statements such as "free of charge" or "at no cost to you because your creditors cover the costs". These statements imply all money paid by the consumer goes towards paying off their debt, whereas a proportion of the initial payments is paid towards the licensed insolvency practitioner's fees.
- claim consumers will be debt free in five years (or whatever the period the arrangement is for), without explaining that although they become debt free, the effect on their credit rating will last for six years.
- use statements claiming any debt write-off percentage that cannot be substantiated by the members own figures, on inspection or on demand from the DRF.
- claim they can guarantee a favourable outcome to negotiations with creditors.

A.23.4 DRF members must not fail to inform a home-owner seeking an IVA that they may be required to remortgage their property during the term or obtain a re-mortgage to realise equity to pay off some or all of the payments agreed under the IVA.

A.23.5 When providing pre-contractual advice and information the consumer must always be given advice that is in their best interests and should include:

- a clear explanation of all available options open to them.
- a clear explanation of the fees payable to the nominee and supervisor of the IVA.

A.23.6 Members must make debtors fully aware of the implications of entering into an IVA, namely: -

- if the debtor is a homeowner with sufficient equity they may be required to re-mortgage their home to release the equity to repay some or all of the remaining debt.

- if the IVA fails, this could lead to bankruptcy.
- a debtor's credit rating will be affected for six years.
- that the decision to accept an IVA proposal is entirely in the hands of creditors.

A.23.7 DRF members providing advice and assistance with IVA's should abide by and keep up to date with all industry and professional standards (SIPs), guidelines and protocols, including OFT debt management guidance.

A.24 *Extreme hardship*

Where it appears that an applicant cannot pay any management fees due to the severity of their financial position, members should either elect to take the case on a pro bono basis, without charging a fee unless the client's circumstances change (at which point fees must be fully explained and the client given the opportunity to terminate the programme without charge) or recommend such clients to non-profit advice centres.

A.25 *Fees and other charges* - see Section G

A.26 *Complaints* - see Section H

**B. Standards applied by DRF members in their dealings with Creditors**

*B.1 Balance of interests*

DRF members approach debt resolution on the basis of identifying the solution and the outcome which is most compatible with the financial and personal position of the debtor, whilst taking into account the interests of the creditors of the debtor and demonstrating to them that the proposal made on behalf of the debtor is reasonable in the circumstances and is achievable.

*B.2 Information for creditors*

B.2.1 DRF members seek to use a common form and standard of financial statement (or such other formula as may be generally recognised) for presentation to creditors. An example of this is the Common Financial Statement.

B.2.2 Expenditure items falling outside agreed trigger levels will be explained. Members will indicate the level of settlement offers which will normally be accepted. Accounts transferable to third parties for collection remain subject to DRF principles.

B.2.3 Members must provide lenders with clear payment proposals. Payment proposals must ensure, other than very small payments, pro-rata distribution of funds is made to all creditors.

B.2.4 DRF members must take all necessary and appropriate steps to provide accurate income and expenditure assessments concerning their clients, to allow creditors to make informed judgments about repayment proposals. If requested, verification of information must be provided.

B.2.5 If requested, members must provide creditors with their terms of business and an explanation of member's methods of operation.

B.2.6 If a client formally withdraws from a repayment programme, members must inform the relevant lenders in writing within seven working days of the client withdrawing.

*B.3 Fund transfers*

DRF members transfer funds received from debtors to the accounts designated by creditors promptly and by such payment mechanisms as may be agreed with individual creditors from time to time, or as required by statute, or as indicated by OFT guidelines.

*B.4 Creditor approval criteria and debtor motivation*

B.4.1 Individual DRF members seek to communicate regularly with creditors in order to understand their criteria for considering the various categories of debt resolution proposal from time to time.

B.4.2 DRF members will not act for debtors seeking debt compromise in circumstances where they could reasonably maintain their debts on a fully performing basis.

*B.5 Communications*

DRF members communicate regularly and openly with individual creditors when a solution has been put in place on behalf of a debtor and deal promptly with enquiries received from creditors.

*B.6 Creditor representative bodies*

The DRF seeks to engage with creditor representative bodies and with other stakeholder bodies on a regular basis.

*B.7 Outcomes achieved*

DRF members are committed to transparency in relation to outcomes achieved in areas such as returns to creditors, the level of acceptance of proposals by creditors, fees charged, failure rates etc. DRF members recognise that this is an important aspect of enabling the debtor to make an informed choice and to obtain creditor acceptance.

*B.8 Client funds - see Section E*

*B.9 Fees and other charges - see Section G*

*B.10 Complaints - see Section H*

**C. The training, qualification and continuing professional development of DRF Members' management and staff**

*C.1* The DRF requires members to train all client-facing staff to the standards contained within the Certificate in Debt Resolution (CertDR) – to either the Award or Certificate standard as the member deems appropriate, or to a standard that can be demonstrated is similar to these qualifications. In summary, DRF members are obliged to meet the following standards:

- All members must demonstrate that they provide their staff with appropriate training to enable them to carry out their work with knowledge and skill, efficiently and to the high standards required by DRF's Code.
- All staff employed by members must be aware of the existence of the DRF Code & Standards and the OFT Debt Management Guidance.
- All staff of members must be made aware of their specific responsibilities in ensuring that the Code & Standards and OFT Debt Management Guidance are adhered to.
- The training provided must ensure members' staff understands the Code & Standards requirements and their own legal obligations to consumers.
- Members must ensure that all staff are fully trained before they deal with consumers. Where staff are giving specific advice the training should be CertDR, CPPI or any such in-house training that has been previously agreed by DRF as being of the same high standard.
- DRF members must offer equality of service to any person, regardless of their race, creed, sex, disability or nationality.
- Members must have in place satisfactory provisions for dealing with vulnerable consumers. This may include and not be limited to those who are:
  - Disabled
  - Disadvantaged
  - Have difficulty with reading or writing
  - Have difficulty understanding basic mathematics
  - Have a lack of knowledge about a complex product or service
  - Those whose first language may not be English

*C.2* The DRF is committed to the development of a comprehensive system of training, qualification and continuing development for the staff of its members in the following disciplines:-

*C.2.1* Types of Debt

HP and conditional sale agreements - Credit card debts Secured or unsecured debts – Consolidations – Loans – Overdrafts – Mortgages – Leases - Guarantees given to banks or other third parties - Voluntary charging orders - Council tax – Maintenance - Domestic rates - Tax and national insurance debts - Traffic tickets/fines - Priority of debts - Dealing with continuing debt responsibilities, such as rent, mortgage and utilities payments.

*C.2.2* Consumer Credit Act

Scope - Agreements covered by the Act. Hire-purchase agreements. Conditional sale agreements. Procedure. Action by creditors to recover money/goods.

*C.2.3* Types of Court action; Magistrates/County Court

Bailiffs - powers and seizure of goods. Financial penalties for non-compliance with Court Orders. Compensation orders. Council tax and community charge. Maintenance Orders. Domestic rates. Tax debts and their treatment (for example in the consolidation of loans). Traffic tickets/fines. Other fines. Action by creditors to recover money/goods (Consumer Credit Act). Charging Orders. Repossession Orders. Attachment of earnings Orders.

*C.2.4* Dealing with harassment

Debtors' rights and remedies (Legal and Ombudsman). Legal constraints on creditors. Debtors' options. Relevance of prior claims.

C.2.5 Debt consolidation

Methodology of debt consolidation - mathematics, legal, practical issues. Display an understanding of the debt consolidation market. Consolidation options with existing lenders. Early repayment costs/ interest/fees/penalties. Re-mortgage options. Contrast analysis for best option for the debtor. Security/asset ratio. Penalties for default. Comparison with other 'options' in financial terms and personal implications.

C.2.6. Debt management plans

Methodology. Circumstances in which appropriate. Period of operation. Extent of creditor commitment. Level of debtor disclosure of circumstances. Contrast with other 'options'. Assets which may be included/excluded from proposals. Determining asset values. Maintaining asset values (eg. home and car insurance). Comparison with other 'options' in financial terms and personal implications.

C.2.7 Individual Voluntary Arrangements

Role of the IP as Nominee and Supervisor- Powers and duties; Comparisons with bankruptcy Contents of proposal; Requirements to bind creditors; Procedures for obtaining an interim Order; Documentation to be prepared, sworn, etc.; Modifications to proposal, rights of creditors to challenge; Ability to vary during course of IVA; Voting rights - approval and effect of approval; Position of secured and unsecured creditors; Priority creditors; Default of debtor and failure of proposal; Completion; Record of IVA and publicity; Comparison with other 'options' in financial terms and personal implications.

C.2.8 Bankruptcy orders

Bankruptcy petition (creditors). Debtor's petition. Interim Order. Respective positions, functions, powers and duties of Official Receiver and Trustee. Duty to cooperate with the Official Receiver and Trustee in Bankruptcy. Position of secured creditors. Priority debts. Non-priority debts. Credit agreements covered by the Consumer Credit Act. Bank overdrafts - guarantees given to a bank or any other third party. Bailiffs - powers and seizure of goods. Assets forming part of the estate and exempt items /funds. Hire purchase agreements/ conditional sale agreements. After acquired property. Matrimonial homes; partner's interest and rights. Re-mortgage. Charging Orders. Repossession Orders. Powers of sale. Income Payments Order. Disposition of Assets before and after Bankruptcy Petition. Public and private examination. Bankruptcy offences and disabilities. Restrictions on un-discharged bankrupts. Bankruptcy Restrictions Orders. Record of bankruptcy and publicity. Discharge or annulment of bankruptcy. Marshalling claims in joint and several estates. Comparison with other 'options' in financial terms and personal implications.

C.2.9 The Debtor's Property Interests (such as the Matrimonial Home)

Partner's and other parties' interests and rights. Relevance in IVA and bankruptcy. Identifying charges holders and dealing with future payments. Ascertaining debtor's share of value. Realisation of debtor's share of value.

C.2.10 Miscellaneous

Doing nothing/debtors in denial. Income maximisation of debtor, including the qualifying rules and means testing principles for:

- Income Support
- Income based Job Seekers Allowance
- Pension Credit
- Working Tax Credit
- Council Tax Benefit

- Housing Benefit
- Disability Living Allowance
- Statutory Sick Pay
- Incapacity Benefit
- Savings and investments

Different forms of insurance (life, redundancy, sickness or assets) - Tax coding - Pensions. Establishing the full trust and co-operation of debtors. What creditors can realistically be expected to be paid/ likely to accept.

C.2.11 Scotland and Northern Ireland

Parallel training, qualification and continuing development arrangements will be made in Scotland and Northern Ireland.

C.2.12 Continuing Professional Development

DRF members are committed to ensuring that adequate opportunities are available to support the continuing professional development of key staff members, as well as:

- putting arrangements in place to monitor, record and check CPD undertaken by staff.
- assuring the quality of CPD available, the accreditation of trainers and course providers.
- where members of staff are undergoing training, members must ensure they are adequately supervised by fully-trained staff.

**D. Corporate standards of governance adopted by DRF members**

*D.1 Statement of Compliance*

The directors, partners or proprietors of all applicants for membership complete a statement of compliance with DRF's standards and re-affirm that statement annually thereafter as a condition of continuing membership. Compliance of members with the DRF standards that apply to their membership category is normally subject to monitoring and inspection by a monitoring body appointed by the DRF within six months of admission to membership and on a continuing, risk-assessed basis thereafter, but normally at least annually. DRF members in categories A, B and C are required to satisfy the monitoring body that they have self-assessment processes and reporting requirements in place that would be likely to alert managers to any need for improvement in compliance performance.

*D.2 Member commitments*

DRF members will, at all times:

- comply with all legislative requirements, with debt management guidance issued by the Office of Fair Trading or any other body with statutory responsibility for the activities undertaken by members from time to time.
- ensure that they comply with their responsibilities under section 36 of the Consumer Credit Act 1974 to keep the OFT informed of changes relevant to their Consumer Credit License including, for example, changes of directors' addresses and use of trading names (all of which should be added to a members' Consumer credit License).
- comply with directives issued by the board of the DRF in relation to the conduct of business.
- have in place appropriate contingency plans for risks including business interruption, disaster recovery, unexpected increases or decreases in workload and human resource issues.
- ensure that they do not act in such a way as to, or which might be seen to, bring the DRF into disrepute.
- not condone, actively or tacitly, unprofessional, improper or illegal activity (or activity un-compliant with statutory guidelines or regulations) within their own organisations or agents and third parties with which they deal.
- where members refer clients to third parties, external associates or subsidiaries for supply of service, this should be made clear to the client.
- ensure that their advertisements and publicity issued comply with all legislative requirements and the DRF Code on advertising/publicity (Section F).
- commit to the continuous improvement of their business model in line with the FCA's six outcomes for treating customers fairly and collecting and using data about client outcomes, complaints and resources to create plans for the business that drive improvement to agreed timescales.
- Commit to sharing non-commercially sensitive information about good practice to DRF members and more widely.

All the above will be assessed by the DRF's monitoring body.

Business confidential information will remain confidential between the member and the monitoring body.

*D.3 Protection of client data*

DRF members respect the confidentiality of client information (i.e. debtors' and creditors') and are compliant with the provisions of the Data Protection Act 1998. Individual members explain to their clients the arrangements made to protect client data and to grant them access to it on request.

*D.4 Internal compliance checks*

DRF members undertake internal compliance checks on a regular and systematic basis, monitoring in particular the standards of advice provision. This process is designed to maintain and improve standards of performance, to prevent error, to assist in planning and to take disciplinary action where necessary. Staff of all DRF members are committed to the compliance process. Members should have appropriate self-monitoring procedures in place to ensure that they are aware of compliance performance within their organisation and can identify and remedy issues. The existence and efficacy of these procedures will be checked as part of the independent monitoring process.

*D.5 Passing client information to third parties*

If a member refers clients to external or associate (e.g. sister companies) suppliers of a service, such as an IVA, they must be completely transparent about this. This includes, for example, when calls are transferred between companies within the same group.

*D.6 Dealings with providers of introductions to debtors (lead introducers or lead generators)*

D.6.1 DRF members use their best endeavours to ensure that providers of introductions to debtors with whom they transact adhere to standards in their dealings with debtors which are no less rigorous than those applicable to DRF members, and will cease to transact with such providers if they do not so adhere.

D.6.2 DRF members must confirm that any lead provider holds an appropriate Consumer Credit Licence and DRF members must carry out due diligence activity to ensure the lead provider complies in full with the Debt Management Guidance and other relevant legislation, rules and guidance. Where a lead introducer operates in such a way as not to require a Consumer Credit Licence, members must still ensure the lead introducer meets the standards required by DRF and that the lead introducer does not mislead consumers. This due diligence must be carried out at reasonable intervals throughout the members' relationship with the lead provider. Member's compliance with this section will be assessed as part of the annual monitoring visit.

*D.7 Cold calling & canvassing (including by personal visit)*

D.7.1 DRF members respect the provisions of section 154 of the Consumer Credit Act 1974 (re cold calling/ canvassing) and do not accept referrals from credit brokers or lenders without obtaining evidence that the debtor has given informed prior consent to such referral.

D.7.2 Members will not cold call by personal visit for the purpose of promoting or selling debt management, debt adjusting, debt counselling or credit information services.

D.7.3 Where members undertake personal visits at the explicit request of a consumer, members must comply with the Cancellation of Contracts made in a Consumer's Home or Place of Work, etc. Regulations 2008 (The Doorstep Selling Regulations).

*D.8 Compliance with regulations affecting cold calling and canvassing*

Members must comply with the Privacy and Electronic Privacy and Electronic Communication Regulations and the rules set down by the Information Commissioners Office.

*D.9 Staff training and development*

DRF members are committed to a continuing process of staff supervision, training, appraisal and development (see C above). Compliance by staff with these requirements is subject to monitoring in accordance with the internal arrangements made by DRF members (and are monitored by the appointed body).

*D.10 Senior management*

D.10.1 DRF members make available to the monitoring body for audit:

- the identity and relevant experience of management
- their line responsibilities
- management development and CPD requirements
- internal audit procedures and arrangements
- the arrangements in place to assess risk at the corporate level
- the arrangements in place to ensure effective case management i.e: -
  - competence of staff
  - adequacy of management support and
  - capacity of systems
- the arrangements in place to identify and deal with conflicts of interest
- procedures in place for the supervision of advice staff, file review and advice staff appraisal
- money laundering/proceeds of crime checking procedures

*D.11 Debtor vulnerability*

DRF members support debtors where appropriate and possible, recognising the vulnerability of many debtors. DRF members refer cases, where none of the debt resolution solutions appear to be suitable in the debtor's circumstances, to appropriate alternative agencies (e.g. in the not for profit sector).

*D.12 Regular reviews*

DMP members undertake reviews of individual debtor files at least annually throughout the life of the financial plan with a view to ensuring, inter alia, that the solution being pursued on behalf of the debtor remains optimal from the point of view of both the debtor and creditors. Members ensure that any significant findings arising from such reviews are communicated promptly to the debtor.

*D.13 Insurances*

Individual DRF members must carry adequate insurances appropriate to all services provided and as required by statute. In addition, DRF members must carry professional indemnity insurance, the adequacy of which is subject to monitoring by the appointed monitoring body.

*D.14 Meeting FCA "Treating Customers Fairly" outcomes and demonstrating accessibility to community*

DRF members must be able to show the monitoring body that they have policies, processes and empowering structures in place to meet the FCA's six outcomes for Treating Customers Fairly (TCF). They must also show the monitoring body how they identify client groups (for example from client feedback, complaints records and DRF benchmarking data) and how they use this information to improve their services and meet clients needs.

*D.15 Complaints – see section H*

*D.16 Publicity/ Marketing - see section F*

**E. Client Funds**

*E.1 Client Funds, general responsibilities:*

- All members must maintain accurate, up to date records that detail all client payments and all contact with clients and their creditors.
- Clients' monies must not be accepted, post-dated or otherwise, before clients have received and acknowledged receipt of the member's written terms of business.
- Any interest earned on client monies should accrue to the benefit of the client, not the company.
- Members must pay clients' monies to creditors within five working days of clearance.
- If a client withdraws from a debt management programme, members must refund any monies held for disbursement, where the monies have not yet been distributed, excluding any reasonable administration fee.
- Members will refund all fees where a consumer cancels the contract during a cooling off period, or:
  - where the member has promised more than it can deliver if, for example, a member's written or oral marketing is over-optimistic.
  - a member has failed to conduct negotiations with the reasonable care and skill required by section 13 of the Supply of Goods and Services Act.
  - there has been a total failure of consideration.
- Where a member charges cancellation fees if a client wishes to terminate a plan the nature of the charges and the circumstances in which they may be charged must have been made clear to the client in pre-contract documentation and in any conversations with the client. Member's websites should also detail the circumstances in which cancellation fees may be charged as well as the nature and extent of these fees. Cancellation charges should be reasonable and appropriate and reflect the actual costs incurred by the member in cancelling the plan.

*E.2 Protection of client funds.*

DRF members have arrangements in place to ensure that funds held by them on behalf of the debtor from time to time are placed in a client account which is not accessible for use in the member's own business or by parties to whom the debtor may be indebted. These arrangements are subject to annual audit by the monitoring and audit body.

*E.3 Failure of DRF member*

The DRF is committed to ensuring that adequate arrangements are in place to ensure the prompt and efficient transfer of debtor relationships and finance plans to an appropriate DRF member or members as determined by the regulatory body in the event of the insolvency or termination of business of a DRF member (other than in the event of an orderly and solvent winding up).

*E.4* Members will, if asked by creditors and or clients and or the DRF, assist the clients of a failed debt management company by arranging an acceptable programme and will administer future disbursements without charging any up-front fee.

*E.5* DRF members will meet the costs associated with such transfer action.

## **F. Advertising and Publicity**

### *F.1 General*

- All members must ensure that all their advertising or promotional material, however published, is clear, accurate and truthful, and does not mislead expressly, or by implication or omission.
- Advertising or promotional material must comply with all regulations and guidelines in force at all times.
- Advertising or promotional material must contain reference to members' membership of the DRF and their adherence to the DRF Code & Standards, by use of the DRF logo and the Renewal Code logo showing the year they were last satisfactorily inspected by the DRF (Only members that have been inspected satisfactorily will be allowed to display these logos).
- All literature must give details of how consumers may obtain a copy of the DRF Code. All members' websites must link to this Code or hold a copy within its pages.
- All literature must explain the member's own customer complaints procedure and must refer to the customer's right also to access the DRF's complaints procedure and the Financial Ombudsman service. Member's websites must link to both DRF and FOS complaints schemes details.
- Members should note that the advertising and advice relating to Individual Voluntary Arrangements (IVAs) is a licensable activity and that members must comply with the Office of Fair Trading's Debt Management Guidance in relation to these aspects of IVAs. Additional requirements relating to IVAs are given at Section A.23, above.

### *F.2 Freedom to promote members' services*

Subject to the guidance which follows, DRF members may seek publicity for and/or advertise their services, achievements and products in any way consistent with the DRF code of practice (including internet advertising) but should not project an image inconsistent with that of an organisation bound to high ethical and technical standards.

### *F.3 Advertising & promotion – members' obligations*

- F.3.1 Advertisements must comply with the law and should conform as appropriate with the requirements and codes of the Advertising Standards Authority and the Committee of Advertising Practice (CAP) Broadcasting Committee of Advertising Practice (BCAP), particularly as to legality, decency, honesty, clarity and truthfulness. Advertisements must also comply with the Consumer Protection from Unfair Trading Regulations 2008.
- F.3.2 DRF Members must comply with the Data Protection Act 1998 (DPA) and with The Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECRs) – which govern how electronic marketing and advertising, including cold calling, should be carried out.
- F.3.3 DRF members must signpost consumers in England and Wales to the Insolvency Service's debtors' guide "In Debt? Dealing With Your Creditors", by providing either a downloadable copy of the document, or links to it, on their websites.

### *F.4 Advertising and promotion by lead introducers*

- F.4.1 DRF members ensure that any providers of introductions to debtors ("leads") with whom they have dealings hold the appropriate category of consumer credit licence and are aware of and understand the standards to which DRF members are committed. DRF members will use their best endeavours to ensure that lead providers' advertising and marketing materials are produced to similar standards to those prescribed in (2) above. DRF members will also use their best endeavours to ensure lead providers are compliant with the relevant

sections of OFT Debt Management Guidance. DRF members will cease to transact with such providers if they do not adhere to all of the above. See also D.5 above.

- F.4.2 DRF members must ensure that lead generators acting on their behalf must comply with The Data Protection Act 1998 (DPA) and with The Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECRs).

*F.5. Representation of Advertising*

An advertisement should be clearly distinguishable as such.

*F.6 Other materials*

The preceding considerations apply equally to websites, emails, internet search engines, contextual internet advertising and social networking sites, brochures and other marketing material, including letterheads.

*F.7 Accuracy*

A DRF member may be required to support or justify the accuracy of any statements made in any promotional material issued by the member or on the member's behalf.

*F.8 Consultation with appropriate bodies*

The DRF seeks to engage and consult on a regular basis with the bodies and authorities who are responsible for setting and applying advertising and promotional standards, with a view to ensuring as far as practicable that they have a good understanding of the services which DRF members provide and of the social and commercial environment in which they operate.

*F.9 Communication with stakeholders*

The DRF is committed to communicating with stakeholders (creditors and other financial advice bodies) in relation to the development and application of marketing, sales and advertising practices and standards among its members.

*F.10 Clarity as to commercial status of member*

- F.10.1 Members must at no time purport to provide free solutions or to be a charitable or government-backed organisation (unless that is the case). Where members provide free advice but charge for services subsequently provided, then that must be made clear wherever such a claim is made, in close association with that claim and with equal prominence.

- F.10.2 Any trading style used by a DRF member must not cause a consumer to infer that the organisation is anything other than a commercial firm that charges for its services. This requirement extends beyond the trading styles used and statements made concerning member services. Members published materials, including websites, should not adopt the look and feel of a charitable or government body.

*F.11 Failure of DRF member to comply with external advertising or promotional standards*

The appointed monitoring body will monitor and report complaints in relation to advertising/marketing standards (not limited to complaints to the DRF but including complaints to advertising and marketing regulatory bodies), breach of which will be referred to the DRF Complaints and Disciplinary Committee and, if upheld, will lead to disciplinary action.

## **G. Fees and other charges**

### *G.1 General obligations*

G.1.1 DRF Members provide advice to debtors at the point when they are first contacted by them which is free of charge, impartial and designed to enable the debtor to make an informed choice as to the solution which is best suited to his/her financial and personal circumstances, irrespective of the area or areas of solution specialisation of the DRF member providing the advice.

G.1.2 DRF Members ensure that, in cases where a debtor chooses to engage a DRF member to act on his/her behalf in order to implement the chosen solution:-

- full disclosure is made of all fees and charges levied by the member from the point of engagement through to completion of the member's work on behalf of the debtor and of the service provided to which individual fees and charges relate (whether the service is provided before, during or after implementation of the solution); and
- the financial plan drawn up by the member includes the amount and timing of payment of all fees and charges due, as well as the source of their payment (i.e. whether payment is made direct by the debtor, deducted from funds paid by the debtor or funded by a contribution from creditors) and;
- any commission/bonus/incentive payments made to staff providing advice to the debtor should not be structured in order to influence the advice given to the debtor. Solutions recommended must always represent appropriate advice to the debtor.

### *G.2 Transparency (fees and charges)*

G.2.1 DRF members make clear to consumers:

- the level of fees
- how fees are calculated
- the services covered by each fee element

G.2.2 DRF members will publish, clearly and prominently, full details of fees and terms and conditions on their websites and in other media convenient to debtors, creditors and to other stakeholders.

G.2.3 These provisions will be subject to audit by the appointed monitoring body in relation to the level and quality of service provided.

### *G.3 Fees for second or subsequent solutions*

G.3.1 DRF members must ensure that all fees charged are fully visible to the client and are made clear on members' websites, in pre-contract information and in telephone or face-to-face discussions with consumers. Where a second or subsequent solution may be subsequently offered to any client, the fees for this must also be made clear in members' websites and pre-contract information. In addition, when a second or subsequent solution is offered to a client all additional or subsequent fees must be made clear in pre-contract information and discussions with the client.

G.3.2 Members must clearly distinguish between any fee charged for switching between one service and another and any upfront fee associated with the new solution. As in G2 above, members must make clear the services provided in return for each fee element.

G.3.3 Where an existing solution (e.g. a DMP) is converted into another (e.g. an IVA) for the same debtor, the fees and charges made should reflect the lower costs associated with the provision of the information required to put in place the second solution (for example, where the second solution is based largely on information already obtained from the debtor at the inception of the arrangement or plan and on review of appropriateness of the first solution).

*G.4 Costs of modifications to proposals by debtors*

DRF members ensure that debtors and creditors are made aware of the extent to which fees and charges reflect the additional cost of dealing with modifications to proposals put forward by members on behalf of debtors.

*G.5 Reducing the cost of transactions*

DRF members seek to engage further with creditors, regulators and other stakeholders in order to establish the extent to which creditors can assist in reducing the cost of transactions (e.g. by agreeing to electronic transfers of funds, of information and of acknowledgement of receipt of proposals put forward on behalf of debtors and by working to reduce paperwork, postage costs, etc.).

*G.6. Payment methods*

DRF members will not accept payment of fees from credit cards, as this is likely to increase the total owed by a client. It is permissible to take fees from debit or pre-paid card payments.

## **H. Conciliation and Complaints**

### *H.1 Procedures operated by DRF members*

H.1.1 All members of the DRF must have a written complaints procedure that is readily available to all their clients and to anyone wishing to make a complaint. This must:

- be accessible, user friendly, fair and open and readily available to all clients and to anyone wishing to make a complaint.
- detail the steps the member will take to investigate complaints.
- identify the person responsible for investigating complaints.
- stipulate that the complaint will be acknowledged within three working days.
- ensure a fair response is made within ten working days.
- be conducted within a framework which is adequately resourced, be courteous and expeditious.
- be responsive and adaptable to reflect actions taken in response to complaints received or to trends identified.
- be adequately publicised in a manner designed to encourage feedback from stakeholders.
- be referred to in pre-contract information and available and signposted prominently on members' websites.
- comply with the requirements of the DRF complaints procedure and panel (qv).
- comply with the requirements of the Financial Ombudsman Service.
- link members' websites to both DRF's complaints procedures webpage and to the appropriate webpage on the Financial Ombudsman's Service website.

H.1.2 Members are required to record details of customers' complaints, the member's findings and any action taken in response and to produce these records as part of any DRF monitoring visit.

H.1.3 Members must co-operate with any intermediary consulted or engaged by the client in the event of a dispute.

### *H.2 The DRF Conciliation procedure and Complaints & Disciplinary Committee*

H.2.1 The DRF is committed to providing fair, independent procedures for dealing with complaints. Members must inform all clients and creditors that they are DRF members and draw prominent attention to the DRF Code & Standards and the DRF Conciliation and Complaints & Disciplinary Committee Procedure, to enable clients and creditors to be aware of their rights and remedies if they believe the Code & Standards has been breached.

H.2.2 Members must offer complainant's access to DRF's Conciliation and Complaints & Disciplinary Committee Procedure, which aims to bring about effective, quick, fair resolution that will be satisfactory to all parties, without affecting their rights. The features of the Conciliation and Complaints & Disciplinary Committee Procedure are as follows:

- Members will advertise the availability of the DRF Conciliation Procedure and Complaints & Disciplinary Committee on their website and in pre and post contract materials provided to prospects and clients.
- Members will point out the availability of the DRF conciliation service when a consumer first draws a complaint to their attention and, if the consumer is not satisfied by the outcome of the members own procedure, will offer the consumer the opportunity for

their complaint to be considered by the DRF.

- When a complaint is referred to the DRF's Conciliation and Complaints & Disciplinary Committee Procedure the matter will be reviewed and the DRF will endeavour to agree a solution with the member and the consumer, which may offer redress to the consumer, if appropriate, but will not make any disciplinary penalty against the member.
- The findings of the Conciliation and Complaints & Disciplinary Committee Procedure are not binding on the member or the complainant.
- The Conciliation and Complaints & Disciplinary Committee Procedure will be undertaken, in each case, by a DRF board member or member of the DRF staff who is independent of the firm complained of.
- The Conciliation and Complaints & Disciplinary Committee Procedure will conclude its process within eight weeks to enable the complainant to refer the matter to the Financial Ombudsman Service if not satisfied with the outcome and will not limit any individual's rights to complain to FOS.
- The Conciliation and Complaints & Disciplinary Committee Procedure will record its recommendations and outcomes in case the matter is referred to DRF's Conciliation and Complaints & Disciplinary Committee.

### *H.3 Complaints and disciplinary committee*

H.3.1 Members must accept that the decisions of the DRF Complaints & Disciplinary Committee are binding. Members shall not refuse to allow a complaint to be dealt with by the DRF Complaints and Disciplinary Committee or to the Financial Ombudsman Service if a client so chooses.

H.3.2 In addition to complaints lodged by clients and/or lenders, any action committed by a member that may be construed as bringing the DRF into disrepute will be considered as a disciplinary matter and dealt with in accordance with the DRF Conciliation and Complaints & Disciplinary Committee Procedures.

H.3.3 Members of the DRF are obliged to inform all clients of their membership of the DRF and the existence of the DRF Code & Standards prior to arranging a programme. In the event that the complainant is not satisfied with the member's response the member should inform the DRF and invite the complainant to take the issue to the DRF Conciliation Procedure and, if not satisfied, to the DRF Complaints & Disciplinary Committee.

### *H.4 Compensation and Redress*

Individual DRF members provide apology/restitution/compensation/redress to complainants in cases where their procedures identify errors or omissions in their handling of cases on a basis and at a level determined by each member (but subject to monitoring by the monitoring & audit body of the DRF) and as required by the Annex B of the Rules under the Consumer Credit Act 2006 or by either the DRF's complaints procedure or that of the Financial Ombudsman Service.

### *H.5 Transparency*

DRF members publish on their websites and in other relevant media information about their individual complaints handling procedures and the standards to which they are committed.

### *H.6 Further recourse available to complainants*

Complainants who are dissatisfied with the outcome of complaints made to DRF members may:-

- have recourse to DRF's Conciliation and Complaints & Disciplinary Committee, which will attempt to bring the parties to agreement, without prejudice to any of the parties involved and without affecting either parties' rights to take further action.

- have recourse to the independent Conciliation and Complaints & Disciplinary Committee of the DRF with a view to investigation of the conduct of the member in relation to the subject matter of the complaint; disciplinary action may be taken against the member in the event of an adverse finding by the appointed monitoring body –as detailed in DRF’s complaint’s procedure (qv).
- seek adjudication by the Financial Ombudsman Service under the Alternative Disputes Resolution Scheme under section 2.6.2 of Annex B of the Consumer Credit Act 2006 Rules (which is available only after the complaints procedure operated by the DRF members has been completed).
- Complainants are to be encouraged to take advantage of DRF’s Conciliation Procedure before referral to the Financial Ombudsman Service but are under no obligation to do so.

#### *H.7 DRF’s Complaints Handling Process*

- H.7.1 Any complaint about a member’s alleged breach of the DRF Code & Standards will be investigated fairly, promptly and efficiently. The DRF is committed to reaching an equitable solution and prompt redress for any complaint.
- H.7.2 If a debtor or creditor wishes to make a complaint about a member, they should in the first instance address their complaint directly to the member concerned.
- H.7.3 The DRF will be happy to discuss general matters on the telephone with consumers, but any complaint must be made in writing, either by post or electronically.
- H.7.4 The DRF is only able to rule on complaints about breaches of the Code & Standards by members but it will investigate complaints on other matters and, where appropriate, direct the complaint accordingly.

#### *H.8 Complaints & Disciplinary Committee*

- H.8.1 The DRF Complaints & Disciplinary Committee is appointed by the Board of the DRF and is responsible for the investigation and adjudication of the DRF Code & Standards.
- H.8.2 The Complaints & Disciplinary Committee consists of a chairman and two members who are fully independent from the debt resolution industry and are not connected in any way with members of the DRF. The Chairman of the DRF and one other member of the DRF’s Board may also sit on this committee, but it is quorate as long as all lay members are present. It is a condition of DRF membership that members accept the binding nature of all decisions reached by the Complaints & Disciplinary Committee.
- H.8.3 The Complaints & Disciplinary Committee’s independent members reserve the right to resign if DRF’s Board refuses to ratify an adjudication, decision or recommendations without due cause.
- H.8.4 The DRF Complaints & Disciplinary Committee can be convened as a consequence of acquiring information from a variety of sources including consumer complaints, complaints from creditors and complaints from other members, annual reviews, mystery shopping, customer satisfaction surveys, or any other source.
- H.8.5 Disciplinary action may be recommended by the Complaints & Disciplinary Committee and ratified by the DRF’s board in the event of the following:
- material and/or persistent breach of the DRF Code and Standards.
  - failure by a member to respond to complaints and/or decisions or recommendations within the time scale specified.
  - bringing the DRF into disrepute, or conduct which is prejudicial to the reputation, membership and/or objectives of the DRF.

*H.9 Financial Ombudsman Service*

All DRF members must hold a valid Consumer Credit License in all the categories appropriate to their business and their clients are eligible to refer unsatisfied complaints to the Financial Ombudsman Service.

*H.10 DRF Complaints Procedure*

H.10.1 The DRF Complaints & Disciplinary Committee will consider whether any complaint received, and which is unsatisfied by the DRF's Conciliation process, relates to a breach of the DRF Code & Standards. If a complaint is considered not to relate to a breach of the Code & Standards the complainant will be notified in writing. Notwithstanding that it may not be Code & Standards related, the Complaints & Disciplinary Committee may take it upon itself to investigate the matter or to recommend that the complainant take up the matter with another body.

H.10.2 At this stage the member will be contacted and asked to provide a report to the DRF giving full details of the alleged breach and how it has been or will be investigated by the member. On timely receipt of the completed report from the member, the Complaints & Disciplinary Committee will investigate and, adjudicate on the matter and communicate its findings, decision and recommendations to all parties. The Complaints Committee's decisions and recommendations are binding on the member.

H.10.3 If the adjudication finds that a material breach of the Code & Standards has occurred, the Complaints & Disciplinary Committee will, at that time, take any necessary action as outlined in section H (Conciliation and Complaints).

H.10.4 The decision of the Complaints & Disciplinary Committee, when communicated to the complainant will make it clear on what grounds the decision has been reached, what further action may be taken, and will set out the procedure to be taken, and the timescale, should the complainant not accept the decision.

H.10.5 If the complainant, after considering the decision, is not prepared to accept the decision, they may refer the matter to the Financial Ombudsman Service. The decision of the Financial Ombudsman is binding on all parties. Upon receipt of the decision of the Ombudsman, both parties will be advised accordingly and the Complaints & Disciplinary Committee may, take any necessary action in respect of any compliance or disciplinary findings upheld against the member.

H.10.6 All costs relating to the Complaints Handling and Independent Redress Procedures, or case fee charged by the Financial Ombudsman Service, will be borne by the member.

*H.11 Timetable for Complaints Handling*

- H.11.1
- The Complaints & Disciplinary Committee will acknowledge receipt of the complaint within 5 working days.
  - The Complaints & Disciplinary Committee will pass details of the complaint to the member concerned and require a report from them within 10 working days.
  - The member will respond within 10 working days from receiving the request from the Complaints & Disciplinary Committee.
  - The Complaints & Disciplinary Committee will issue their written findings within 20 working days.
  - The complainant will be made aware of his right to access the Financial Ombudsman Service should he/she not accept the findings.

H.11.2 If the complainant does not accept the findings of the Complaints & Disciplinary Committee, the complainant has the right to pass the complaint for consideration to the Financial Ombudsman Service. The DRF will issue a final response letter giving the reasons for rejection of the complaint.

It is in the interests of all parties to ensure that complaints are dealt with in a timely manner. Any referral to the Financial Ombudsman Service has to be made within 6 months of the issue of the final response letter, as required by the Financial Ombudsman Service from either the member or the DRF.

**I. Regulatory Framework: disciplinary procedures and issues.**

*1.1 DRF members are required to confirm, annually, that they are aware of and understand the entirety of the DRF Code & Standards and that they agree to adhere to, and be bound by, the DRF Code & Standards.*

*1.2 DRF will:-*

- In consultation with members and through a Code & Standards Sub-Committee, ensure standards are regularly reviewed and updated and incorporate them into the DRF Code & Standards, A member of the independent monitoring body will sit on this sub-committee.
- Monitor, through evaluation of annual inspections and evaluation of complaints heard, members adherence to the Code & Standards, and
- Investigate alleged breaches of the Code & Standards brought to its attention by any client of a member or any other interested party either by way of a formal complaint, invoking the DRF's disciplinary provisions or an informal complaint.

*1.3 Independent monitoring body*

*1.3.1 The Insolvency Practitioners Association (IPA) has been exclusively contracted by the DRF, to provide an independent monitoring and audit function to evaluate members' compliance with the DRF code & standards and the OFT debt management guidance and codes. This body, and the associated complaints panel, is independent from the DRF.*

*1.3.2 The IPA will undertake triennial five-day (three days on site) and annual three-day (one day on site) reviews of members' compliance with the DRF Code & Standards and the OFT Debt Management Guidance. A five day review is mandatory in the first year of membership.*

*1.3.3 The matters covered by and extent of the review is covered by the DRF Independent Inspection Framework.*

*1.4 Staff – monitoring and audit body.*

Monitoring and audit body personnel will demonstrate expert knowledge, relevant experience, impartiality and independence from DRF and its members.

*1.5 Regulatory tools*

Regulatory tools employed include:-

- mystery shopping
- ongoing customer satisfaction surveys
- spot checks on members
- routine audit
- self-certification/appraisal
- desk-top monitoring
- an independent inspection team
- complaints investigation capability
- (review of) internal audit

*I.6 Risk and proportionality*

The monitoring and audit function and the DRF is adequately funded/guaranteed/insured in order to avoid the risk of "regulatory capture" in relation to legal challenges by member firms against whom disciplinary action is taken. At the same time, the regulatory process to be established must be proportionate, relevant and targeted at the areas of greatest risk and be cost effective, recognising that the cost of regulation is borne ultimately by the debtors and creditors in the process and that unnecessary/over-regulation and bureaucracy can stifle innovation and competition.

*I.7 Avoiding Duplication*

The monitoring and audit body will be careful to avoid overlap and duplication in relation to those areas of activity of DRF members which are already subject to regulation and oversight by other bodies. At the same time, the DRF will seek to engage with regulatory bodies where appropriate and disciplinary action taken by any of them against DRF members or their staff may give rise to action against the member by the DRF in appropriate circumstances.

*I.8 Publication of upheld complaints/disciplinary action taken.*

The regulatory/disciplinary process includes a commitment to the prompt publication and transparency of outcomes, i.e. disciplinary action taken against DRF members would be publicised on the DRF website and in the media.

*I.9 Appeal – and due process*

The disciplinary process, arising from an upheld complaint or a negative finding unaddressed by a member in the course of an inspection or audit would be subject to rights of appeal and a commitment to the provision of a full explanation (to the member firm and to any third party complainant) of action taken by the DRF.

*I.10 Complaints*

I.10.1 The DRF has a clearly identified complaints procedure and Panel. The Complaints & Disciplinary Committee members, drawn from the panel will always include three members independent from the industry, the chair of the DRF and a DRF board director. All hearings will be chaired by an independent member of the Panel. Hearings will be quorate if only independent members are present. The DRF's website provides an explanation of how to complain about a DRF member, including a commitment to keep complainants informed of the progress of their complaint.

I.10.2 Where a complaint is received by DRF, the complainant will be offered informal redress and DRF will attempt to mediate between complainant and member. The DRF will make it clear to the complainant that this does not affect their rights to complain formally to the DRF or to the Financial Ombudsman Service.

I.10.3 Should a complainant decide to pursue a formal complaint to the DRF Complaints & Disciplinary Committee, then the costs of that complaint will be borne by the member.

I.10.4 The complaints procedure includes full disclosure of the complaint to the member as part of the investigation process designed to establish whether the member has been guilty of misconduct in relation to a breach of any of the standards applied to DRF members from time to time in connection with the matter which gave rise to the original complaint or to the member's handling of the complaint.

I.10.5 The procedure includes powers to take disciplinary action against the member (see below) and rights of appeal by the member.

I.10.6 In addition to reactive investigation, the monitoring and audit body's arrangements for establishing the effectiveness of the complaints procedures operated by members and of

establishing confidence in them among stakeholders will include routine surveys of complainants.

*I.11 Disciplinary action*

I.11.1 The DRF Board, following adjudication by the Complaints & Disciplinary Committee, may impose Sanctions against a DRF member. If the firm represented by a board member is the subject of a complaint, the board member concerned will be excluded from these proceedings. A member of the Complaints & Disciplinary panel can sit on both complaints and disciplinary hearings. If a complaint is upheld and a disciplinary hearing is convened as a consequence of the complaint then none of the members of the Complaints & Disciplinary Committee that sat on the original complaint hearing can sit on the disciplinary hearing.

I.11.2 The Complaints & Disciplinary Committee will review every disciplinary decision made by the DRF board and may choose to vary the sanction imposed by the board, subject to appeal by the member. The Complaints & Disciplinary Committee's decision regarding the sanction shall be final.

I.11.3 Sanctions may take the form of: -

- written warnings as to the member's future conduct.
- undertakings to be given by members to improve or change procedures, documentation or behavior.
- follow up and/or targeted IPA inspections and audits of members, at member's cost.
- suspension of DRF membership until the Board is satisfied that the Code and Standards are being properly observed.
- expulsion from DRF. Expulsion will be notified to members, creditors, by press notice, in a statement on the DRF's website, and to any regulatory bodies and other interested parties.

*I.12 Disciplinary actions – timescales*

I.12.1 The DRF undertakes that breaches of the Code & Standards will be investigated and, if required rectified as quickly as possible allowing for fair and due process.

I.12.2 On receiving evidence of a likely breach:

- the DRF will contact the member within 5 working days to request full details of the alleged breach.
- the member must respond within 10 working days of receipt of the request.
- the member will have 10 working days from any instruction from the Code & Standards Administrator to rectify the breach.

I.12.3 In the event of a member failing to comply with decisions and recommendations by the DRF, the member or the DRF may elect to call upon the independent Complaints & Disciplinary Committee to consider the matter and make adjudications, decisions and recommendations. Failure to implement decisions or recommendations within the timescale set will lead to the imposition of sanctions against the member as set out above.

**J. Regulatory Framework: Statements/reviews/information provided by the DRF**

*J.1 DRF mission statement and objectives*

The DRF will publish a mission statement/set of objectives on its formation/hard launch in conjunction with publication of the code & standards to which its members are committed.

*J.2 Impact assessment*

The DRF will publish an annual report and impact assessment indicating, inter alia, its relevance within the industry and its achievements against its mission statement/objectives.

*J.3 Annual report by monitoring and audit body*

The IPA will issue an annual report containing statistics and descriptions of its monitoring, inspection and complaints handling during the period as well as details of any disciplinary action taken against DRF members.

*J.4 Debtor solutions*

The DRF should publish and keep updated a summary of the circumstances in which debt management plans, consolidation loans, IVAs, bankruptcy and Debt Relief Orders (and in Scotland, sequestrations, trust deeds, protected trust deeds and debt arrangement schemes) respectively are recommended to debtors by DRF members (i.e. a description of each of the available 'solutions' which would enable the reader to differentiate between them as to flexibility, the extent to which creditors are bound in, period, cost, disclosure, downsides, current failure rates, returns to creditors etc.).

*J.5 Research into industry performance*

The DRF is committed to publishing a survey of the different ways and forms in which payments are made for the provision of solutions, whether by the debtor or the creditor, when and how such payments are made and the nature of the services provided in exchange for them. The DRF will publish a description of the services offered by its members and indicate outcomes achieved by them in areas such as returns to creditors, the level of acceptance of proposals by creditors, fees charged, failure rates, etc.

*J.6 Harassment*

The DRF will publish, in consultation with other bodies overseeing standards in the provision of advice to debtors (such as the Money Advice Liaison Group), a summary of harassment and how to deal with it.

**K. Development of DRF standards and member good practice**

The DRF is committed to member and stakeholder consultation in the continuous development of the DRF Code & Standards, including consultation with creditors, the not for profit sector and other interested parties.

The DRF will facilitate the gathering, sharing and feedback of non-commercially sensitive good practice both to members and more widely to other relevant organisations , through formal and informal member communication, provision of research data, mystery shopping and customer satisfaction, as well as encouraging members to play a full part in discussion groups and online and offline forums, etc.

**DRF Code & Standards**

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