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SIP 3.1 INDIVIDUAL VOLUNTARY ARRANGEMENTS

CONSULTATION QUESTIONNAIRE 12 AUGUST TO 5 NOVEMBER 2021

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Firm name: StepChange Debt Charity

RPB: StepChange VA IPs are regulated by the IPA. This a consumer response from StepChange Debt Charity

1. Do you believe that the revised version of SIP 3.1 identifies all appropriate principles?

No

We support the revised principles within SIP 3.1, particularly the additional responsibility on IPs to proactively ensure they are satisfied with the actions of lead generators and the greater focus on checking whether clients are making an informed decision.

However, we feel the content still falls short of standards set in the FCA Rulebook on regulated organisations providing debt counselling. Provisions can still do more to address the significant harm caused by lead generators and reduce the rates of early IVA termination.

2. If "no", what additions do you believe should be made to the principles contained in the SIP?

The FCA's CONC 8 standards provide a useful standard to compare the provisions of the new SIP 3.1. These conduct standards place high expectations on debt advice firms who provide debt counselling like Insolvency Practitioners (IPs). The CONC rules are supported by the FCA principles which set out the minimum standards for all financial service firms. A notable difference between the principles contained in the FCA Handbook and the SIP 3.1 principles is that the word 'must' is used by the FCA while in SIP principles are prefaced with 'should'. To improve the effectiveness of these principles it should be clear that practitioners are required to follow them as a minimum, removing the potential for any misunderstanding around responsibilities.

Principle 4 requires IPs to present sufficient information for customers to make an 'informed decision' that an IVA is an 'appropriate solution.' The aim should be for the client to be able to make a judgment that an IVA is 'the *most* appropriate solution.' In this respect and given that the SIP 3.1 aims to define professional standards for IPs, we ask whether SIP 3.1 requirements should look more like the sort of 'advised sales' regimes we see in other arears, such as the FCA Mortgage Conduct rules. There should also be stronger disclosure requirements on IPs to assist people in making this decision. The FCA's Mortgage Conduct rules have much more detailed standards and requirements around information disclosure. These rules require firms to clearly set out the range of products available and suggest simple wording that firms can use to ensure they communicate information in a way that customers understand. The rules contain a whole section on remuneration, requiring firms to clearly explain fees charged to the customer as well as all fees received from third parties. Where these cannot be set out in cash terms firms are required to provide illustrative examples of likely costs. This contrasts with SIP where there is no requirement for full transparency about fees paid to lead generators, no detailed standards about what information is needed to ensure a client is informed or guidance about how this could be communicated in a way clients will understand. The SIP would be further strengthened if there was a requirement to disclose market information about the proportion of successfully completed IVAs so that clients could better understand the risks involved. There could even be a requirement to show a comparison between the arranging firm's breakage rate compared to the market average, this information would help consumers better understand the market they are engaging with and the variety of performance between firms.

Paragraph 5 & 6 these principles could be strengthened by making more explicit reference to the steps that an IP needs to take to ensure affordability for a consumer. There is no reference to completing a full budgeting process and even where a client has arrived from a lead generator the principles only require an IP to ensure that the information they receive 'properly reflects the debtor's financial circumstances.' Given the IVA Protocol includes reference to making an income and expenditure assessment in line with the Standard Financial Statement (SFS) SIP should reflect this provision. There is still scope for the SIP to expand on what is meant by circumstances to ensure IPs are required to thoroughly assess an individual's likelihood of completing an IVA. The FCA's CONC 8 rules require an assessment of an individual's financial position but also their personal circumstances (including reason for financial difficulty, whether it is temporary or long term, whether they'd previously entered a solution and reasons for success or failure) and other relevant aspects of their personal circumstances like employment. The wording of SIP should attempt to replicate this. Rather than presenting options to a customer, the wording should require IPs to conduct a thorough assessment of the risks of non-completion through the duration of the IVA based on an full assessment of individual circumstances.

Principle 7 requires an IP to explain the consequences of an IVA but does not explicitly require them to explain the consequences of an IVA terminating before completion. It's vital that consumers understand that if an IVA fails early they can find that most of their repayments have gone towards IP fees rather than reducing their debt while interest and charges can be backdated. This explanation should be tailored to the individual's debts, asset position and how IP fees will fall due over the timeline of their IVA so they understand the full implications of not keeping to the agreement for the duration. An explanation of how falling further into financial difficulty and incurring additional debts during an IVA generally would also be useful in helping consumers understand how the IVA interacts with their circumstances on an ongoing basis.

Principle 8 calls for IPs to be satisfied that the IVA proposed is 'achievable.' We remain concerned that the Principles and SIP generally do not do enough to establish a universally acceptable level of risk assessment and appetite in respect of a consumer entering an IVA. The word 'achievable' here seems to put the emphasis on IVAs that can get the agreement of creditors rather than ones that the customer will be able to maintain for the duration. As previously mentioned, FCA CONC 8 rules do not end with the consideration of an individual's income and expenditure but personal circumstances and history in the round. FCA lending rules go even further and offer a higher standard of risk analysis that would greatly improve the consideration of risk in the delivery of IVAs. They require firms to consider typical drawdown and repayment patterns of their whole customer base using available data. Balancing considerations of typical customer behaviour with the circumstances of the individual. Something similar could be replicated in SIP. It should be made explicit that providers must use legacy data on break rates to inform decisions about putting individuals onto an IVA. If providers were required to use data from prior cases when considering an IVA it's likely we would begin to see the precipitous rise in break rates slow as the type of customers who regularly fail to complete their IVAs would begin to be sign-posted to other solutions.

3. Do you believe that the revised version of SIP 3.1 identifies the key compliance standards?

No

We support the strengthened provisions on the advice and information given to consumers. We still think some more explicit expectations can put on IPs to assess an individual's financial circumstances with particular care for those on marginal incomes whose situations are more precarious. We still think more can be done to explain the risks involved in an IVA and greater emphasis on the role of the supervisor in preventing an IVA from terminating early when someone experiences a change of circumstances.

4. If "no", what additions do you believe should be made to the key compliance standards contained in the SIP?

Paragraph 11 'assessing the options available' should be replaced with 'all potential debt relief solutions' as done in the principles to make clear this refers not only to options offered by specific firms.

In addition, it should be a requirement to prominently advise that free and independent advice can also be sought from debt advice organisations who are not bound by a statutory obligation to balance the interests of debtors and creditors. Contact information for such organisations or for the Money and Pensions Service should be directly provided to debtors as part of the advice process.

There should also be explicit provision to ensure that where the advice to the debtor includes setting out a comparison of the potential costs of different solutions, this is clear, understandable, and not misleading. This information should clearly represent and distinguish between the upfront costs to the debtor, fees paid from creditor contributions and implications of assets being realised. It should also include reference to risks of different solutions. While successfully completed IVAs have broadly the same outcomes for many clients as other forms as insolvency, until completed IVAs have a risk profile for consumers in terms of debt relief and protection that other insolvency solutions do not. The risks of less certain outcomes need to be clearly set out for clients to make an informed decision.

Furthermore, it should be stated that the full set of advice listed in this section should be provided in a 'durable medium' so that the debtor has a record and can refer to information as needed.

Paragraph 16 reference is made throughout to assessing the debtor's 'personal and financial circumstances.' We would prefer a much clearer direction to IPs assessing their income and expenditure with reference to common acceptable spending thresholds as used in the Single Financial Statement (SFS). This would reflect the wording used in the Protocol. The wording of 16(d) could be strengthened to help ensure sustainability. Explicit reference could be made here to checking whether clients with a marginal surplus income or those with benefit income will be able to fulfil their obligations under the agreement. Given that a small change of circumstances could prevent these individuals maintaining an IVA, IPs should be required to stress test their proposals with greater care.

Paragraph 19 clause c) should include reference to both understanding the consequences of an IVA and the consequences of an IVA failing. Similarly, clause e) references the 'likely' cost of each solution but this should be expanded to include the costs of a solution failing which may not be the most likely outcome but are important for an individual to consider.

Paragraph 19d) there needs to be clarity on when it is appropriate to obtain authority from a third-party whose income is included on an income & expenditure form. Individuals who are trying to become debt free often feel uncomfortable about dragging their partners into their debt problem. There also needs to be caution about instances of financial abuse where someone seeking an IVA could be put at risk by notifying their partner. Currently, in instances where a partner will be supporting a client with repayments IPs will write to them to confirm they are happy to do this for the duration and that they understand their responsibilities. In other cases, where a partner's income is not linked to the IVA, it's not clear what the purpose would be of getting additional verification from them? Checking this information with the third-party presents a difficult moment for all involved in the IVA process and can present challenges for the relationship between the IP and customer. It would therefore be helpful to have some specific examples of when it will be appropriate to seek this third-party authority and what constitutes an acceptable form of authority.

Paragraph 21 requires IPs to have procedures in place to ensure that the proposal is 'considered objectively, is credible and has a reasonable chance of being implemented in the form presented.' There needs to be greater emphasis on assessing the risks of failure as this can cause serious detriment for consumers. Objective consideration and ensuring an IVA will be accepted does not go far enough to factoring in these considerations of risk. As previously mentioned, IPs should be instructed to use legacy data on break rates to inform decisions about putting individuals onto an IVA.

Paragraph 23b) we are not clear what "a comparison of the estimated outcome of the IVA and the estimated outcome if the IVA is not approved" means here. Does this mean a comparison with bankruptcy or an alternative solution?

Paragraph 25 does not go far enough to address the current failure in the market around early termination. StepChange VA works closely with clients on an ongoing basis to reduce the risk of an IVA failing. For example, where an IVA remains the right solution for a client, but a temporary circumstance affects their ability to keep up with repayments, we will work to get a payment break or variation in place to prevent the IVA from failing. The impact of this approach can be seen when comparing termination rates during the first two years of an IVA. An average industry IVA is two and half times more likely to be terminated early than one delivered by StepChange VA. This rises to nearly three times when looking at IVAs terminated within the first two years. The first two years of an IVA are the most delicate period. The budgeting discipline required to keep up repayments can be a big adjustment for individuals, and they often require support during this time. SIP 3.1 focuses on the IP working in a timely and efficient fashion where alterations are needed during the IVA. There need to be specific expectations set about working with the customer facing difficulty – asking for a payment break, re-budgeting where appropriate and communicating any difficulties they are having clearly with creditors. It's vital that where a customer has a change in circumstances there is some responsibility placed on the IP to ensure the IVA doesn't fail and a sustainable agreement is reestablished. The volume of IVAs failing at this early stage suggests not enough is being done to keep IVAs on track.

Paragraph 25j) there should be a much shorter timeframe after the completion of the IVA in which the supervisor must issue the completion certificate, for example 21 days. Where a debtor may need to access another form of debt solution soon after the completion of an IVA, this is unreasonably delayed if the completion certificate is not issued in a timely manner and six months too long to leave people without appropriate solutions to address potential financial difficulties. The same provision is also needed for the issue of 'certificates of termination' which can be difficult to secure from supervisors and are needed promptly where an individual needs to access an alternative debt solution.

5. Do you believe the revised version of SIP 3.1 sets our adequately the key compliance standards required in relation to an IVA where there is involvement of the service introducers, and in particular lead generators and debt packagers?

Paragraph 13 requires IPs to ensure that debt packagers or lead generators have acted 'professionally and objectively.' This is vague and does not set a clear standard for the advice an individual should receive before arriving at an IP with an expectation for appointment. CONC 8.3.2 is much more explicit about what constitutes adequate advice in the process of debt advice. It states that firms must ensure that all advice given, and action taken by the firm or its agent or its appointed representative:

1. (a) has regard to the best interests of the customer;

2. (b) is appropriate to the individual circumstances of the customer; and

3. (c) is based on a sufficiently full assessment of the financial circumstances of the customer

This level of prescription would make clearer the expectation for IPs to ensure that the advice given to consumers before they reached the IP is appropriate for their circumstances rather than a more general notion of professionality.

Paragraph 14 we would prefer the use of the word 'independent' rather than 'impartial' debt advice. This would make it clearer that there needs to be separation between any lead generating firm and the IP's firm. Advice should not be influenced by any fee incentive or commercial relationship between the two entities.

The current wording of this paragraph only requires IPs to ensure that lead generators are regulated to conduct 'such activities.' It also requires 'appropriate due diligence' on any debt packager or lead-generator that led to an IVA appointment. This wording is vague and does not put enough responsibility on IPs to track the full chain of organisations that led to an individual's appointment. While Debt packager firms might be authorised and regulated by the FCA to provide debt advice, lead generators which seek to attract people looking for help with their debts (typically through online promotions) are often not. In cases where lead generators sell leads onto debt packager firms an IP merely checking that the firm from which they receive an appointment is regulated is not enough. Abuses in lead generation often deceive individuals into taking the path to an IVA further back in the process. There is widespread evidence of abuses like misleading adverts and firms attempting (especially online) to impersonate, or imply connection to, regulated debt advice agencies, including charities such as StepChange. An example from last year was the case of National Direct Service which was subject to an ASA determination. The company was linked to a paid-for internet search ad seen in July 2020 which was headed “Step to Change – Free Government Debt Support – Step into Change” and linked to the website stepdebtsupport.co.uk/step-change.

Our concern is that we continue to see online ads by lead generators that may cause people to be misled as to the status of a firm they are sharing their personal information with; and as a result, may be funnelled towards an IVA inappropriately. The SIP is not clear what appropriate due diligence means in the context of these extended chains that bring an individual to an appointment or what it means in relation to the specific abuses that have been identified. Checking that a firm is regulated will not be enough in the case of lead generation firms whose activity may not be regulated at all. In these instances, an IP should be required to check that an individual has not been misled and that any misconduct is reported accordingly.

Paragraph 18 relating the advice given by IPs requires them to have processes to ensure that advice given by debt packagers or lead generators is recorded accurately. While this is helpful, it does nothing to place standards on the quality of this advice. IPs should at least be satisfied that this advice would meet the standard contained in SIP 3.1 and, better, that it was delivered by a firm authorised by the FCA to provide debt advice.

If you have any other comments on the revised version of SIP 3.1 please provide further information below and set out the changes you would suggest be made to the SIP.

Our understanding was that the aim when revisiting SIPs was to remove references to legislation or repeat what is already in law in the Insolvency Act or Insolvency Rules, it seems some of additions for example some of points regarding contents of proposal are already covered in Insolvency rules 2016. We recommend a final edit to remove anything that is repeated in previous rules and legislation, referring IPs to rules/legislative provisions in these cases where they are linked.