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The future of insolvency regulation

StepChange Debt Charity response

Summary

StepChange Debt Charity is the UK's largest specialist debt advice charity, championing the needs of people in debt. Through our subsidiary, StepChange Voluntary Arrangements, we also set up and support client's seeking an IVA. As a charity delivering both debt advice and IVAs, we are responding to the Insolvency Service's proposals as both a consumer advocate and an IVA provider who will be subject to the reformed system of insolvency regulation. We are primarily interested in personal insolvency and effective regulation of the IVA market.

We welcome the Insolvency Service's proposals for an enhanced model of regulation for Insolvency Practitioners (IP). The creation of a single regulator in the Insolvency Service to replace the current system of Recognised Professional Bodies (RPBs) will help consolidate a fragmented system. We particularly welcome the proposal to extend regulation to firms offering insolvency services, and in particular the additional requirements on large IVA providers.

The current level of consumer risk and detriment in the IVA market is unacceptable. The Insolvency Service found evidence of mis-selling in 2018, with budgets manipulated to put consumers onto IVAs when another solution would have been more appropriate.[1] Over 1 in 4 IVAs registered in 2018 had terminated by the end of last year.[2] When an IVA fails within the first few years a large chunk of repayments will have gone towards IP fees meaning consumers will have paid the cost for a solution for which they do not see the benefits. In many cases they are left in a worse position than they were in at the outset, still lumbered with problem debt. The Insolvency Service has highlighted the corporate culture and policies of large volume providers as the cause for much of this malpractice, while admitting that the current regulatory structure has not been able to tackle these problems effectively.[3] The current system was designed to regulate a market involving small sole practitioner firms, not the large corporate providers who now deliver the bulk of IVAs.

We think the proposed regulator will need to be split between **corporate** and **personal functions** to effectively pursue a consumer protection agenda. The insolvency landscape is broad, ranging from large corporate insolvencies of multi-national companies to personal insolvency solutions for highly indebted individuals like IVAs. The regulatory issues related to these areas are likely to be very different. As a consumer advocate we are concerned that a single regulator with a single set of regulatory objectives will lack the necessary focus to address consumer harm and secure positive consumer outcomes.

As well as the need for consumer specialisation, there are several areas where the proposals risk weakening the effectiveness of the new regulator. These include:

- **Independence and delegated functions –** proposals to delegate functions to RPBs risk replicating the current system which the Insolvency Service has itself found to be unable to tackle the consumer detriment caused by volume IVA providers. These bodies are too close

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[1] The Insolvency Service (2018), Review of the monitoring and regulation of insolvency practitioners
[2] The Insolvency Service (2022), Individual Voluntary Arrangements Outcomes and Providers 2021
[3] The Insolvency Service (2018), Review of the monitoring and regulation of insolvency practitioners

to the profession to deliver independent oversight and investigation needed to tackle poor practices. The regulator itself will need to secure adequate separation from the profession and firewalls will also need to be established between other areas of the Insolvency Service to ensure to the regulator can conduct its functions independently.

- **Weak powers of investigation** – the proposals do not appear to have fully considered the extent of investigatory functions that will be necessary for the regulator to pro-actively pursue an agenda of raising standards. Current proposals are based on limited monitoring of data alongside an enhanced whistleblowing/complaints regime. The regulator will need to be empowered to require information, conduct its own consumer research, and establish systems of regular engagement with consumer bodies to respond quickly to consumer harms.
- **Inadequate compensation** – while proposals for a new system of consumer redress are welcome, the proposed level of compensation is currently set too low and not enough emphasis has been put on accessibility. The risks consumers face with IVAs are considerable, fees run into the thousands and when an IVA terminates early an can be left in a worse position than when they entered into the IVA . Where it is clear an IVA has been mis-sold, consumers need to be able to secure equivalent redress to the harm caused. We support an ombudsman style system that would be as accessible as possible for consumers.
- **Regulatory arbitrage and adequate standards** – under the current regime in personal insolvency some providers are regulated by the FCA while others are not. The proposed new regime must not exacerbate the possibility of regulatory arbitrage lowering standards or creating different standards of consumer protection for different IVA providers. The current proposals do not appear to adequately consider these risks. Standards placed on firms will need to replicate FCA rules as closely as possible particularly in relation to business models and senior management responsibilities.
- **Cost implications for small providers** – while funding arrangements are still being worked out, there needs to be consideration of costs on small providers. It's vital that a 'polluter pays' principle is embedded in the future funding regime. While regulatory costs will have to be met by all market participants, where it is possible costs should be linked to harm caused.

The proposals represent a positive first step towards refreshing the regulatory regime governing IPs and firms providing insolvency services, particularly IVA's. We are keen to work constructively with the Insolvency Service to develop the future regulatory framework. We would welcome the opportunity to share our understanding of consumer issues and framing objectives, standards, and approaches that our long experience of working with regulators in other markets suggest will be needed to deliver good outcomes.

Questions

Question 1. What are your views on the Government taking on the role of single regulator for the insolvency profession?

We welcome the consolidation of the regulatory functions in a single regulator for the whole IP profession. The proposals represent a positive step in re-structuring regulation of the insolvency profession to reflect the way in which the market has changed over the last 30 years. Changes in the personal insolvency landscape have been particularly dramatic and the Government's proposals to establish a single regulator with the power to regulate firms directly is exactly the change that is required to ensure effective monitoring of the large providers that have emerged in the IVA market. The current RPB regime is fractured and has been unable to respond quickly or effectively to the consumer harm caused by these large providers. For the new regulator to be successful, it must be sure not to replicate the fragmented standards infrastructure that currently exists as well as securing adequate separation from both industry and internally between other areas of the Insolvency Service. Given the acute consumer detriment caused by the large-scale mis-selling of IVAs but the relatively small part of the total insolvency landscape this market represents, it may be necessary for the regulator to include a specialised function overseeing personal insolvency. The regulator will need to be pro-active in this oversight, focused on raising standards through meaningful investigation and information gathering. It will also need to ensure that opportunities for regulatory arbitrage are reduced, ensuring that its regulatory requirements do not allow firms to evade more stringent requirements placed on competitors by the FCA.

There is an urgent need for regulatory action to address consumer harm in the IVA market. 81,199 IVAs were registered last year, the largest single year figure on record and more than double the number registered in 2015.[4] While termination rates on newer IVAs fell – probably because of the Covid-related temporary reduction in payments offered over the past two years - termination rates over the lifetime of an IVA increased from approximately 25% for IVAs registered between 2011 and 2014 to more than 30% for IVAs registered in 2016 and 2017. The 2016 and 2017 numbers are the highest since 2009.[5] If an individual doesn't complete their IVA, then they will incur the costs of setting up and administering the IVA, while seeing no benefit. When an IVA is terminated within the first two years, individuals can find that of their repayments have gone on IP fees. They can be in a worse position than before taking out the IVA. Tens of thousands of highly indebted, financially vulnerable consumers being left saddled with debt after the lengthy process of setting up an IVA having also had to keep up repayments for several years represents a significant consumer protection failure in personal insolvency policy that needs urgent attention.

Unfortunately, the current regulatory regime has failed to keep pace with changes in the market. The mass selling of IVAs by large corporate providers represents a qualitative shift from the individual IP

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[4] The Insolvency Service (2022), Individual Voluntary Arrangements Outcomes and Providers 2021
[5] *Ibid*

practitioner firms that were the norm in the 1980s and 90s. The current regulatory system is designed to monitor IPs working out of these small practices rather than assessing the business models and practices of large firms. When the volume of IVAs began rapidly increasing in the early-mid 2000s, the IVA Protocol was introduced to establish a more rigid process that IPs had to follow when delivering simple consumer IVAs. While this initially led to a reduction in the number of IVAs registered and the proportion that were being terminated prematurely, by 2014 both were increasing again.

Last year, nearly 80% of IVAs were delivered by just five firms.[6] In a 2018 review of the regulation of IVAs, the Insolvency Service identified the attributes of the new market actors which has made them so elusive to the current regulatory structure, commenting that, "the corporate structure of some providers means the IP is often an employee; supervising several thousand cases with little control or say over the actions or policies of the firm."[7] It found evidence of volume providers manipulating budgets and misadvising people onto IVAs when bankruptcy would have been more appropriate. The FCA has found that IVA providers often acquire customers through debt packagers who are paid referral fees of between £500-£1370 to pass on individuals who are eligible for an IVA.[8] We believe these referral fees can act as an incentive for both intermediaries and IVA providers to place consumers into an unsuitable and potentially harmful IVA. The changes proposed in this consultation move towards a system that will be able to tackle these poor practices - improving standards and consumer outcomes accordingly.

The current system is fragmented and lacks independence, the success of the single regulator will be dependent on its ability to avoid replicating the current arrangement too closely. The proposals to consolidate the 4 RPBs that currently conduct the main regulatory functions is a welcome effort to address the current fragmentation. However, plans to delegate functions back to these bodies need to be considered carefully as there is a risk of replicating systems that have proven ineffective. A lack of independence has also contributed to the inability of the current system to address consumer harm. The standard setting Joint Insolvency Committee (JIC) is dominated by members of the profession and can, at times, resemble a trade body rather than an independent regulatory body committed to high standards of consumer protection. Attention will need to be paid to ensure a more effective separation between industry and the regulator than that which currently exists. Fire walls within the department will also need to be established to ensure its independence within government, particularly in respect of other functions of the Insolvency Service.

As a debt advice charity and consumer advocate our focus is on personal insolvency. The vastly different regulatory issues effecting personal and corporate insolvency will be a challenge to a single regulator. Setting regulatory objectives to cover both these areas will make it harder to ensure the regulator is focussed on delivering positive consumer outcomes. Our confidence in the new regulator will be based on its ability to set effective standards which improve practices and consumer outcomes in the IVA market. This will require a similar approach to that taken by other consumer

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[6] *Ibid*
[7] The Insolvency Service (2018), Review of the monitoring and regulation of insolvency practitioners
[8] FCA (2021), Debt packagers: proposals for new rules, p 23.

regulators where high level principles feed through into clear standards. For example, FCA Principle 6 requires firms to pay due regard to customers' interests and treat them fairly.[9] This sits behind specific rules on business models and senior management accountability in the FCA Handbook. The insolvency regulator will need to establish a similar regulatory framework with which to raise standards and change practices at volume IVA providers. Given the complexity of the personal insolvency landscape and the need for a specific framework of regulation to achieve good consumer outcomes, it may be necessary for the single regulator to separate its personal and corporate functions.

It will also need to ensure that standards do not worsen current regulatory arbitrage problems. Currently some firms providing IVAs can be regulated by the FCA while others can take advantage of an exemption. This already means two-tier regulation of firms that means consumers can experience different standards when seeking an IVA from different providers. The new regulator must be sure at the very least not to worsen this problem and, if possible, reduce opportunities for arbitrage by aligning with FCA standards where possible. The Insolvency Service and the FCA should quickly review the exemption IPs currently have from FCA regulation when acting in 'expectation of an appointment.' This need is pressing as following the FCA intervention on *debt packager* referral fees we are likely to see more IVA providers seeking to acquire clients directly from their own online promotions or from lead generators, raising the question as to where the independent debt advice is being done that would create an actual *expectation* of an appointment.

Finally, the plans involve primary legislation and significant restructuring of the existing regulatory structure. These changes will take time, but the scale of consumer detriment in the IVA market requires urgent action. Current initiatives to address these harms have proven wholly inadequate. Revising the Code of Ethics and re-wording SIPs are not enough to tackle the pernicious business models of large firms and warped incentives caused by referral fees. While the FCA's action on debt packager firms should help close one area of market dysfunction, it will not tackle lead generators or volume provider malpractice. The Insolvency Service's proposals are a step in the right direction, but there needs to be a plan for urgent substantive action in the interim to tackle the harms currently occurring in the IVA market.

Question 2. Do you think this would achieve the objective of strengthening the insolvency regime and give those impacted by insolvency proceedings confidence in the regulatory regime?

Strengthening the insolvency regime and increasing confidence in the IP regulatory regime are not necessarily the same objective and we believe it is important for the government to consider the need for the regulatory regime to better address specific problems in the insolvency landscape. Our most pressing concern in the current insolvency regulatory regime is the mis-selling of IVAs.

[9] FCA (2018), PRIN 2.1 The Principles, the FCA is proposing to raise expectations of firms further through its consumer duty

Tackling this problem is not necessarily about strengthening the insolvency regime but embedding adequate consumer safeguards. Similarly, improving confidence of those impacted by the regulatory regime is a little vague. There is a huge diversity of groups impacted by the insolvency regime. Corporate insolvency can impact bodies like large corporations and pension funds while IVAs are generally used by households in deep financial difficulty. Trying to capture these two elements of the insolvency regime under the same broad objectives is a recipe for regulatory confusion.

A better approach may be to split regulation of corporate and personal insolvency. The issue of IVA mis-selling requires specific regulatory focus with objectives about ensuring positive consumer outcomes. For example, the regulator should have a clear objective related to preventing consumer harm with a focus on vulnerable consumers. This would follow through into clear standards aimed at achieving set consumer outcomes. In relation to IVAs this would mean establishing standards like FCA CONC 8 rules on the provision of debt advice and debt counselling on IPs. It would also mean targeting specific consumer outcomes like a certain reduction in the proportion of early terminations, assessing firms on the number of consumers provided with extra support and targets related to the prompt and satisfactory resolution of complaints. The objectives as currently drafted do not lend themselves to establishing these kind of positive consumer outcomes. This may be due to the difficulty of trying to capture the two very different sides of insolvency in a single body and single set of objectives.

Question 3. Do you consider the proposed objectives would provide a suitable overarching framework for the new government regulator or do you have any other suggestions? Please explain your answer.

The objectives are a step forward from those established in 2015 but we are still not confident that they are sufficient to properly embed the necessary regulatory standards to eradicate consumer harm.

We welcome the additional focus on outcomes in the proposed new objectives, as a clear sense of good outcomes is central to regulatory effectiveness. However, it is not clear how ‘consistent and effective’ outcomes will translate into key consumer safeguards. Objectives need to be worded to guide the standards that flow from them and only deliver outcomes if a strong framework of standards is in place to achieve the objectives. The reference to outcomes in the same objective as supporting regulated parties to comply feels that outcomes in this instance relate to fulfilling statutory duties. There is a big difference between ensuring compliance and aiming to raise standards in an industry. Similarly, the reference to ‘fair treatment’ and ‘protecting the public interest’ do not seem tied to consumer issues. While the fair treatment mentions those impacted by insolvency’ neither objective refers to consumers explicitly.

This lack of explicit regard for consumer outcomes has hampered the current regulatory regime in its efforts to address poor outcomes in the IVA Market. SIP 3.1 which only goes as far as requiring IPs to place consumers on a ‘viable solution’, for example, has not prevented continued poor practice. IVA termination rates suggest that even this limited standard is not being effectively assessed. IPs may feel able to demonstrate compliance with this minimum standard, while not necessarily delivering a good outcome for IVA consumers. Standards would be raised, and outcomes improved, if IVA providers were required to demonstrate a solution was the best option for an individual. A regulator with explicit consumer protection objectives tied to a clear and more specific set of consumer outcomes would be more likely to address these weaknesses in standards.

Not only are consumers not mentioned in the objectives but there is also no mention of vulnerabilities. This contrasts with recent moves by the FCA to establish a Consumer Duty which combines a consumer principle with cross-cutting rules and outcomes intended to set standards for firm culture and behaviours.[10] This Duty sits alongside the FCA's comprehensive vulnerability guidance which firms are also meant to follow.[11] This regime is intended to place consumer interests at the heart of businesses. The lack of a similar statement of intent in the Insolvency Service's proposed objectives risks creating a regulator that does not have the required focus on consumer interests or the needs of those with vulnerabilities. The impact assessment does not even mention the positive impact on consumers and only touches on the current risks to vulnerable consumers. The regulator should be aiming to do more than improve market confidence, it should be focused on high standards of consumer protection.

This may again come down to the difficulty of drafting objectives for the regulation of a sector which covers both corporate and personal insolvency. The outcomes sought in the high-risk consumer IVA market are different from those in the case of an insolvency services provider dealing with an insolvent multi-national corporation. To ensure that objectives crystalise into clear regulatory standards it may be necessary to create distinct objectives for the two areas of insolvency. We'd welcome opportunity to work with the Insolvency service on building understanding of consumer issues and framing objectives, standards, and approaches that our long experience of working with regulators in other markets suggest will be needed to deliver good outcomes.

Question 4. Do you consider these to be the correct functions for the regulator in respect of Insolvency Practitioners and in respect of firms offering insolvency services? Please explain your answer.

The functions look to be the correct ones for an effective consumer regulator. We are particularly pleased to see that the body will have the power to regulate and impose sanctions on firms. This is the largest gap in the current regulatory framework which was designed to regulate small IP practices and not the large factory IVA providers. It will be vital for the new regulator to have effective monitoring and sanctioning powers over firms to deter these policies and close firms that are persistently found to be selling IVAs inappropriately.

We also welcome the proposed authorisation, monitoring, and sanctioning functions in relation to IPs. If tied to effective consumer protection standards, consistent approaches to these functions will help

[10] FCA (2021), CP21/36: A new Consumer Duty: feedback to CP21/13 and further consultation
[11] FCA (2021), FG21/1 Guidance for firms on the fair treatment of vulnerable customers

introduce more effective safeguards into the insolvency market. We have significant concerns about the proposal for some functions to be delegated to professional bodies. We have raised concerns about the closeness of these bodies to the industry they are meant to oversee, any new regulator utilising them for regulatory functions will need to be confident that they are able to act independently. Any role in monitoring or supervisory activity for the professional body risks continuing the situation where the industry is effectively holding itself to account on standards. This will inhibit the effectiveness of new standards.

Question 5. Are there any other functions for which you consider the regulator would require powers?

We are concerned about the absence of any mention of vulnerability in the consultation or impact assessment. This has been an area of increasing regulatory focus in recent years with comprehensive strategies published by Ofgem and the FCA. These regulators have recognised the specific needs of many consumers and the potential for all consumers to experience vulnerability at points in their lives and the need for firms to be cognisant of this. Given the circumstances that will often have led to someone requiring a personal insolvency solution, individuals will often be coming to IPs and firms in vulnerable circumstances. The regulator should see setting a vulnerability strategy for the profession as one of its key consumer protection functions. This should include setting clear standards for identifying and responding to vulnerabilities with data requirements that allow for comparison across the market and against benchmarks. Once again this is a role which relates largely to personal insolvency and therefore a function that risks getting watered down or missed among the priorities of corporate insolvency. It adds to the case for there to be a distinct body within the regulator focussed on personal insolvency and IVAs.

The proposals are also not clear on the regulator's investigative functions. We are concerned that the functions currently described will lead to limited powers in this area. General MI reporting by firms to be monitored by the regulator, with complaints and whistleblowing will be insufficient to provide the impetus for regulatory action. It's vital that the regulator is given more pro-active functions of market investigation. This should include a budget for consumer research, regular forums with consumer bodies as well as strong information requiring powers to allow it to pursue a regulatory agenda aimed at improving consumer outcomes.

We recommend that the regulator implements a similar system to the FCA'S regarding senior management accountability.[12] Under these rules the FCA requires firms to name employees responsible for specific roles as outlined in the FCA rulebook. To ensure effective accountability, the regulator will need to have similar powers to require firms to name key personnel and outline what the functions and reporting requirements for these individuals.

[12] FCA (2018), SYSC 2.1

Question 6. Do you agree that the single regulator should have responsibility for setting standards for the insolvency profession? Please explain your answer.

Yes, we have long advocated for a single regulator to set standards. We share the Insolvency Service’s doubts about the current JIC process which can be slow and is heavily weighted in favour of the IP profession. We welcome the commitment to not delegate these functions.

Question 7. Do you agree that it would help to improve consistency and increase public confidence if the function of investigation of complaints was carried out directly by the single regulator? Please explain your answer.

We agree that taking the RPBs out of the complaint process is a positive step towards improving confidence in the system. As professional membership bodies they are too close to the profession to be viewed as independent and objective and, as the Insolvency Service has identified, complaints handling is slow and is not effectively addressing systemic issues. However, for the proposed system to address these problems it needs to be structured in a way that allows prompt provision of consumer redress while also having sufficient capacity to tackle bigger regulatory non-compliance. If the single regulator is successful in establishing effective standards alongside an accessible complaints system, there is potential for a substantial volume of complaints from consumers given the scale of IVA mis-selling. The single regulator may struggle to deal with these consumer complaints alongside institutional complaints from creditors or consumer advocates which will require pro-active investigative work. We support an ombudsman style structure for consumer redress complaints with the body joined to the regulator through memorandums of understanding to facilitate monitoring of trends in consumer grievances. The single regulator would then be given greater capacity to conduct investigations and respond to wider institutional failings in the market.

Even under this structure, the effectiveness of the complaints system will depend on the robustness of the standards against which complaints are assessed. The new system will only increase confidence if there are well articulated standards linked to clear consumer outcomes against which complaints are assessed. Given the overlaps in the current oversight regime between the profession, Insolvency Service and RPBs establishing a truly independent complaints process within the Insolvency Service will require careful design to ensure confidence.

Question 8. What are your views of the proposed disciplinary and enforcement process and the scope to challenge the decision of the regulator? Please provide reasons to support your answer.

We support the ambition for the regulator to be intelligence led, but intelligence gathering needs to be embedded into regulatory activity with strong powers to require data from firms rather than a passive system based on whistle blowing or complaints. The consultation mentions the Insolvency Service's experience responding to intelligence and the potential for the proposed system to resolve limitations to current whistleblowing routes. These should lead to improvements to the current regime, but they do not indicate that the new regulator would be set up to mandate regular information submissions from the market or create intelligence pro-actively by setting benchmarks and conducting its own reviews. There are various ways in which a regulator can gather intelligence and pursue an agenda based on information it has received. Through its 'Social Obligations Reporting' requirements, Ofgem receives quarterly and annual data submissions from energy suppliers on a broad range of metrics to monitor both compliance with vulnerability policies as well establishing benchmarks that allow for standards to be raised in relation to key regulatory objectives.[13] This is combined with its core compliance monitoring activity which includes regular forums with consumer bodies, targeted consumer research as well as ad hoc information requests to suppliers.[14] It's not clear the current proposals has sufficiently considered the range of regulator activity that will be required for it be effective in pursuing an agenda through information gathering and regulator initiated research. The new regulator must deploy a similar range of intelligence gathering techniques to avoid become too passive or complacent about consumer experiences and outcomes.

We agree that the proposal for appeals to be heard by an independent Appeals Officer rather than an independent tribunal might help reduce costs. However, given the requirement for a person holding this role to have technical insolvency expertise, and the relatively small pool of people likely to have this expertise, the Insolvency Service will need to consider how to ensure the role is perceived as independent.

Question 9. Are there any other functions which you think should be carried out directly by the single regulator? Please explain your answer.

The proposed functions look like the right ones for an effective regulator. How these functions are interpreted will be more important. For example, its consumer protection remit must include setting out a vulnerability strategy for the sector and driving improvements in this area.

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[13] Ofgem, Consumer vulnerability protections
[14] Ofgem, Compliance and Enforcement

Question 10. In your view should the functions specified above be capable of being delegated to other bodies to carry out on behalf of the single regulator? Please explain your answer.

We have significant concerns about proposals to delegate monitoring and authorisation functions to bodies which may include RPBs. The Insolvency Service's own review of the profession in 2018 found that RPBs were struggling to effectively monitor volume IVA providers.[15] This group of large corporate providers now dominate the market, providing close to 80% of IVAs. Effective monitoring and supervision of these firms will be essential if the new regulator is to address the problems in the market. This function should not be left to bodies which have already been deemed ineffective.

The RPBs currently resemble trade bodies representing the interests of IPs rather than regulatory bodies dedicated to raising standards and improving consumer outcomes. The proposed regulator already faces questions as to its independence by being situated within the Insolvency Service that is a functioning part of the current regulatory regime. To delegate functions to RPBs whose independence is compromised may further challenge the perception that the new regulator is independent.

The current system already offers opportunities for regulatory arbitrage that can benefit IVA providers to the detriment of consumers. Where IVA providers are acquiring leads directly from online promotions or from lead generators, it is hard to see how IPs are acting in 'expectation of appointment' when the individuals coming to them have received no regulated debt advice and may well have been misled about the nature of the support they have been receiving. Consumers acquired through this pathway may enter an IVA under a vastly different consumer protection framework to those passing through FCA regulated debt advice. The new regulator should aim to reduce these opportunities for regulatory arbitrage and establish common standards and protections for consumers including online promotions. To do this, it needs to align as closely as possible with the FCA regulatory regime regarding the expectations placed on firms in relation to business models and senior management accountability as well as standards placed in relation to debt counselling. Involving RPBs in the delivery of monitoring functions risks embedding too light-touch regulation rather than holding firms to account against higher expectations for good consumer outcomes. The insolvency Service will also need to consider how to ensure consistency and proportionality (in terms of replicated regulatory burden) where firms are covered by the Insolvency Service regulator and authorised by the FCA.

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15 Insolvency Service (2018), Review of the monitoring and regulation of insolvency practitioners

Question 11. Are there any other functions that you think should be capable of being delegated to other bodies to carry out on behalf of the single regulator? Please explain your answer.

No, delegating functions risks replicating the existing regime.

Question 12. In your opinion would the introduction of the statutory regulation of firms help to improve professional standards and stamp out abuses by making firms accountable, alongside Insolvency Practitioners? Please explain your answer.

Statutory regulation of firms is a necessary step in updating the regulatory structure to reflect the insolvency profession as it is today, particularly the IVA market which has grown massively in recent years. Volume IVA providers are currently able to escape effective regulation as the regime is set up to monitor small firms with a few IPs rather than the providers where salaried employees provide IVAs according to firm policy rather than a bespoke assessment of circumstances conducted by an IP. The Insolvency Service found evidence of poor advice at these providers, potentially leading to individuals being sold IVAs inappropriately.[16] An FOI from 2019 which broke termination rates down by firm found that termination rates at the top 3 providers were 55% higher than the average for the other providers.[17]

While regulation of volume provider firms is a necessary step in cleaning up these practices, the success of the regulator will depend on its ambitions to regulate business models. Currently IVA providers can acquire new customers by paying large referral fees to debt packagers and lead generators. The bad incentives built into these referral chains have been exposed by the Insolvency Service and the FCA, with debt packagers and lead generators found to be manipulating budgets and glossing over alternative insolvency options to secure the referral fee. In some cases, IVA providers themselves have been behind questionable promotional material which seeks to attract people to an IVA by painting it as an easy way to clear debts. To tackle these practices, the regulator will need to be empowered to sanction firms conducting themselves in this way as well as making clear stipulations about acceptable business models. There will need to be equivalent standards as those applied by the FCA and the Consumer Credit Act. CONC 2.7 makes it clear that firms carrying out regulated activates will only meet threshold conditions if their business models are deemed to be in the interests of consumers and adequately consider consumer risks.[18] Assessing business models against such clearly articulated consumer outcome principles will be necessary to make a system of firm regulation effective.

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16 The Insolvency Service (2018), Review of the monitoring and regulation of insolvency practitioners, p. 10
17 FOI data on termination rates by IVA providers can be found here. At the top 3 providers 21.4% of IVAs had terminated by 2019 compared to 13.8% for the rest of the market.
18 FCA Handbook, CONC 2.7 Business Model

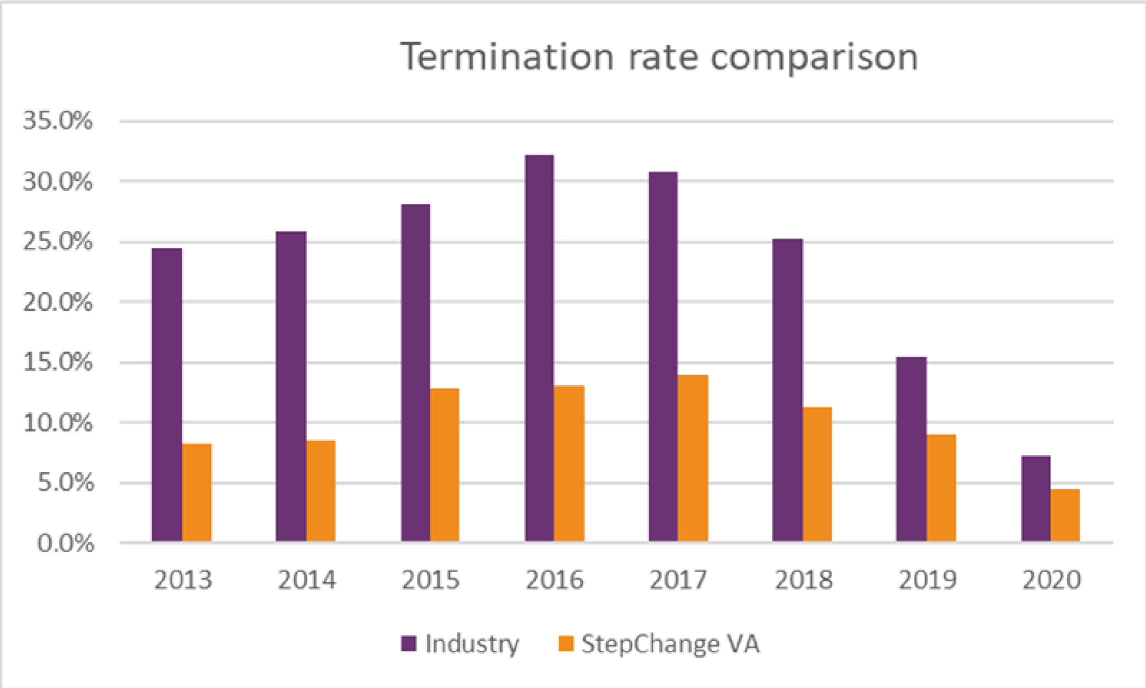
Given the changes in the structure of the IVA market it may also be necessary to reform the current exemption IPs have from FCA debt counselling regulations when acting in reasonable expectation of an appointment. The exemption allows IPs to administer an IVA for an individual who has been referred to them without providing holistic debt advice. This was partly granted under the expectation that consumers arriving at an IP would have received debt advice from the organisation that referred them to an IP. Given the well-documented failings in the advice process at lead generator and debt packager firms this exemption is already causing significant risk to consumers. With the FCA's intention to ban referral fees for debt packager firms, it's likely that IPs will be acquiring clients directly from the market or from lead generators. In this context the exemption is not appropriate as those coming to IPs will need a full debt advice session to understand their circumstances and the correct route to resolve their debt problems. A review of the IP exemption alongside regulation of firms will be needed to address the harm currently impacting consumers. Given the proposed changes will require statutory legislation, this provides an opportune moment to re-assess the current exemption.

Question 13. The Government believes that all firms offering insolvency services should be authorised and meet certain minimum regulatory requirements, but that additional regulatory requirements should mainly be targeted at firms which have the potential to cause most damage to the insolvency market. What is your view? Please explain your answer.

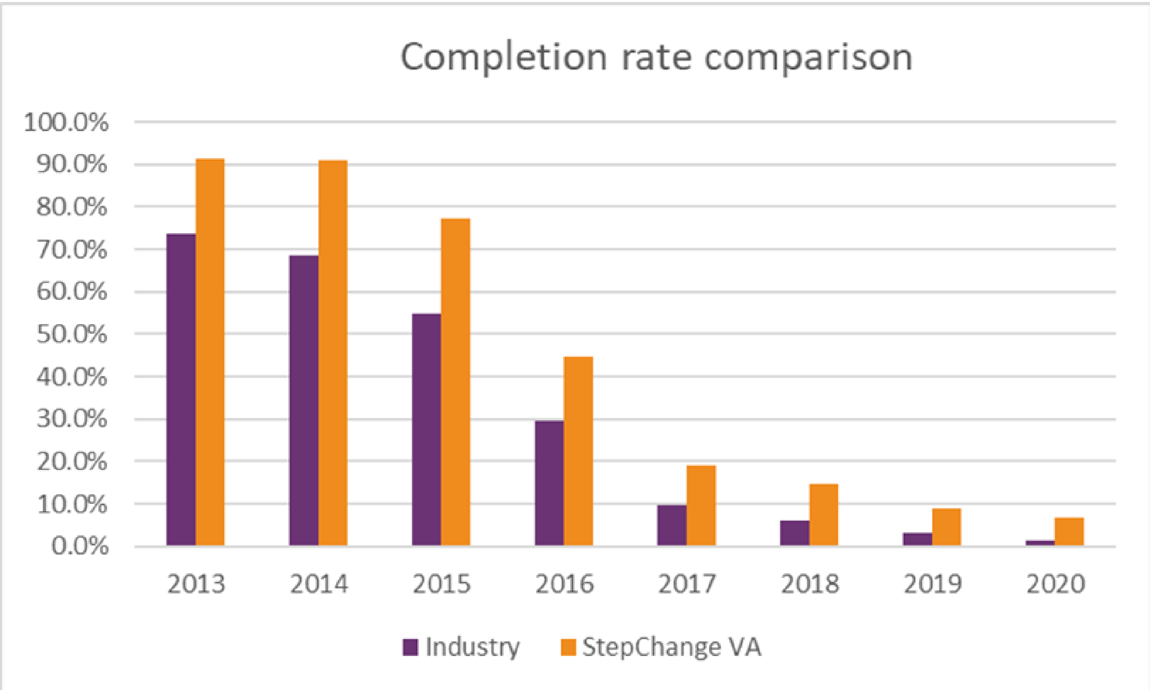
We agree with this approach. 82% of IVAs set up in 2020 were concentrated among 10 volume providers.[19] High termination rates among these providers are driven by market incentives which make it more profitable to prioritise administering a higher volume of IVAs rather than delivering positive consumer outcomes. This is a consequence of a lack of regulatory oversight which means there are few sanctions for poorly advising consumers to take an IVA.

The Insolvency Service does not regularly publish registration and termination rates broken down by firm, but recent stats show a significant difference in the termination rate of IVAs registered by StepChange VA and the rest of the market. The chart below demonstrated that StepChange VA termination rates have been consistently and significantly below the market average over the last decade.

[19] The Insolvency Service (2020), Insolvency Statistics – October to December 2020

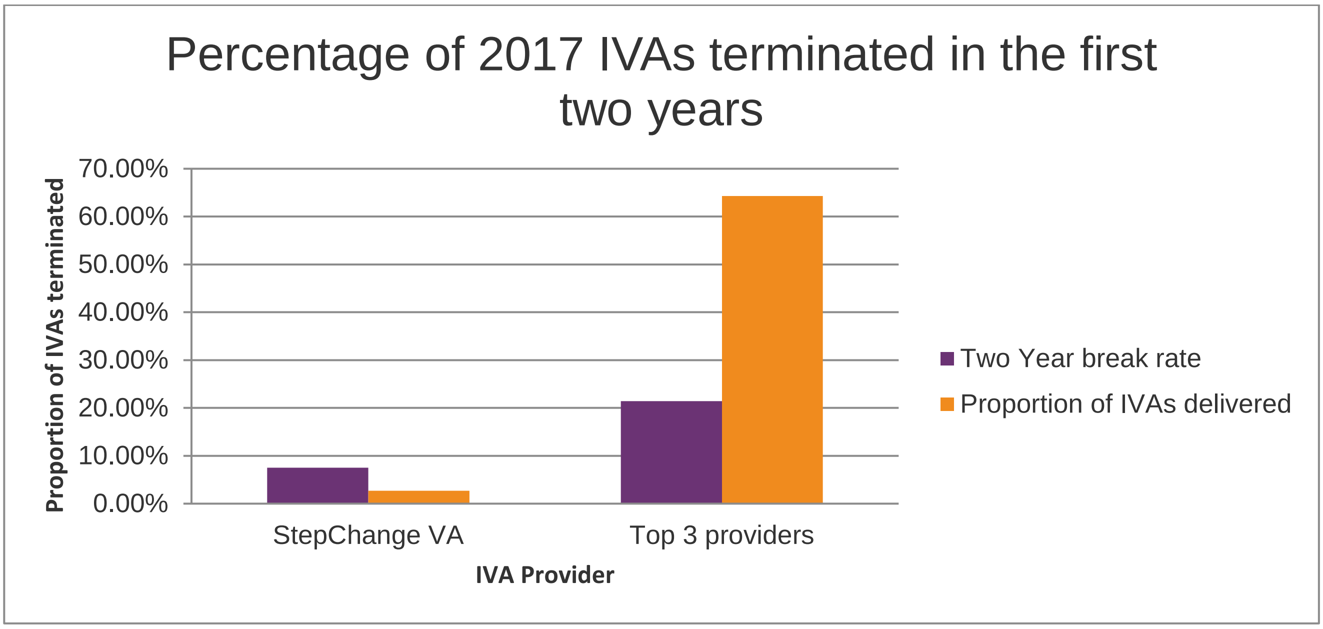


The performance of StepChange VA also stands out when looking at completion rates.



With IP fees front loaded and minimal transparency around IVA outcomes, there is no commercial incentive for providers to ensure an IVA is completed. There is a strong case to look at the design of IVAs and consider a pro-rata fee structure like that applied with Debt Management Plans. This would mean providers would only realise the full benefits of an IVA when a consumer does also. From a regulatory perspective, this disparity between StepChange VA and the rest of the market suggests providers have different attitudes to good consumer outcomes and the current regulatory framework is not doing enough to influence this. There is evidence to suggest that this is partly down the inability of the current regulatory framework to tackle the business practices of large volume providers where poor outcomes seem to be concentrated.

A 2019 FOI data release from the Insolvency Service FOI revealed the extent to which the problem of high termination rates is concentrated in high volume providers. In that year, StepChange VA delivered 2.5% of IVAs so would have been classed as a volume provider if such a definition had existed at the time. However, this was still a relatively small proportion compared to the three highest volume providers. Over 20% of IVAs at these firms were terminated within the first two years compared with 7.5% at StepChange VA.



[20]

At volume providers where IPs oversee thousands of IVAs and may have limited control over the policies of their employer, the current regulatory model is not directed at the right individuals. In its review of the monitoring and regulation of IPs by the Recognised Professional Bodies (RPBs) the Insolvency Service raised questions about whether the best interests of consumers are always at the heart of volume provider decisions about IVAs. The review highlighted that, in some volume providers, "the corporate structure of some providers means the IP is often an employee; supervising several thousand cases with little control or say over the actions or policies of the firm."[21] It found instances of poor advice, budget manipulation to push consumers onto IVAs and a general lack of consideration for the affordability of an IVA for consumers.

Following the Insolvency Service's review, the Insolvency Practitioners Association (IPA) – who regulate most IPs employed by volume IVA providers[22] – has taken steps to strengthen the monitoring and scrutiny of volume providers. High volume providers will now be subject to 'continuous monitoring' utilising real time access to their systems. The IPA also stated its intention to increase the frequency of monitoring visits for these firms, up to four per year (compared to one

[20] FOI data on termination rates by IVA providers can be found here
[21] Insolvency Service (2018), Review of the monitoring and regulation of insolvency practitioners
[22] IPA (2018), Press Release: IPA announces continuous monitoring of high-volume

previously).[23] However, even with this increased scrutiny, the current regulatory regime has been unable to address problems in the IVA market.

The situation remains that consumer detriment is concentrated at a small number of providers. There needs to be regulatory focus on these actors that goes far beyond existing efforts to single them out for scrutiny. The new regime needs to be focussed on improving outcomes for consumers and this means going further than current regulatory apparatus to target the sources of detriment.

Question 14. In your view should certain firms be subject to an additional requirements regime before they can offer insolvency services? If so, what sort of firms do you think should be subject to an additional requirements regime? Please explain your answer.

Yes, firms engaging in activities with a higher risk of consumer detriment should be subject to an additional requirements regime. We have supported the previous definition of volume providers as those firms delivering more than 2% of annual IVAs however we are aware of the potential for such thresholds to negatively impact the functioning of the market by setting an arbitrary 'cliff edge' for additional regulatory requirements. It may be better to estimate a volume of delivery that is reasonable for a single IP to deliver in a year. Setting a clear threshold at a reasonable volume for a sole practitioner should allow the regulator to focus on larger providers. All the current regulatory evidence makes it clear that consumer harm is concentrated at volume providers and that standards of governance are seriously lacking. These firms must be subject to greater regulatory oversight than the current system.

Question 15. Do you think that the regulation of firms should require a firm subject to an additional requirements regime to nominate a senior responsible person for ensuring that the firm meets the required standards for firm regulation? Please explain your answer.

Yes, large scale firms should have internal systems adequate to ensure compliance with regulations. The FCA's senior management responsibilities regime offers a useful example to imitate. Here, allocated senior managers must be responsible and accountable for key areas of a firm's activities with clear definitions of the responsibilities that must be covered.[24]. This is an essential part of the regulation of financial service firms as it allows the FCA to monitor firms more effectively, communicating directly with responsible individuals and establishing clear accountability for compliance to regulatory standards across different areas. For example, in respect of a similar approach to IVA providers, an individual designated as responsible for consumer outcomes may be

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[23] *Ibid*
[24] FCA Handbook, SYSC 4.7 Senior management responsibilities for UK relevant authorised persons: allocation of responsibilities

held to account according to regulatory requirements about effectiveness of any advice and suitability assessments, amount of vulnerability support offered, and extent of due diligence conducted on referral chains. Under FCA rules firms are responsible for ensuring appointed senior managers are sufficiently qualified and competent to carry out their roles. The FCA Handbook sets out exactly what different roles entail, and the personal or firm liabilities related to each role. Senior managers are required to make regular reports to internal superiors to allow effective monitoring of firm performance against regulatory requirements.

Question 16. If so, would you envisage that the senior responsible person would be an Insolvency Practitioner? If not, please specify what requirements there should be for that role?

Not necessarily. The person needs to have responsibility for the governance and business model of the firm. This may be a senior manager or CEO who is not an IP but needs to be held to account for non-compliance. The FCA's SYSC rules can place requirements on firms to have appointed individuals responsible and accountable for key areas of a firm's activities.[25] The CASS rules regarding client assets apply directly to debt management firms, with firms required to allocate a senior manager responsible for compliance.[26] FCA authorised IVA providers will already be covered by this regime. The new regulator will need to consider applying similar provisions for IVA firms that will be subject to its remit.

Question 17. Do you think that a single public register for Insolvency Practitioners and firms that offer insolvency services will provide greater transparency and confidence in the regulatory regime? Please explain your answer.

We support a public register for IPs and firms. Client acquisition in the IVA market currently involves firms claiming to have credentials that they often do not have. In several cases lead generator firms have been found to be imitating debt advice providers like StepChange, claiming to be fully qualified debt advisers when they're not. These firms promote IVAs as a product through which people can easily clear their debts, claiming to be experts in debt solution and insolvency options. Customers who take up an IVA through this path will often have had more suitable options available which weren't described to them, and they then find it very challenging to keep up repayments for the length of an IVA. While a public register would not resolve all these problems, it will add some much-needed transparency to the market by allowing individuals to check whether the firms they are interacting with are approved to provide IVAs.

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25 FCA Handbook, SYSC 4.7.4
26 FCA Handbook, CASS 11.3.2

We would support even greater transparency beyond just disciplinary records. Customers should be able to compare IPs and firms on the termination rates of their IVAs so they can make a judgement about the quality of the advice provided by an IP as well as how well they support individuals to maintain their IVAs beyond the first two years. Current statistics releases do not break termination rates down to the firm level. This is vital information for both external oversight of the market as well as for consumers seeking to understand the historic conduct of providers.

Question 18. What is your view on the regulator having a statutory power to direct an Insolvency Practitioner or firm, to pay compensation or otherwise make good loss or damage due to their acts or omissions? Please explain your answer.

We support the proposal for a statutory power to direct compensation. However, this will require some specialisation within the regulator as the consumer focus required will be mean different objectives and functions to those applied in the corporate insolvency space. For individual redress complaints, the gold-standard in consumer regulation is for complaints body and regulator to be independent from each other. Consumer complaints related to IVAs should be handled by an independent, ombudsman style body with the regulator taking a pro-active investigatory role into wider institutional failures.

The consultation rules out the Financial Ombudsman Service (FOS) but we are of the view that this body would be well suited to handle complaints on about mis-sold IVAs. While the insolvency is a highly specialised field, FOS already covers highly specialised areas of financial service and has proven itself capable of developing the internal expertise to assess complaints in these areas effectively. FOS already has some jurisdiction over FCA authorised IVA providers, so it makes sense for it to cover the whole of the market. The consultation raises concerns about unsubstantiated complaints which we think are unfounded. Insolvency is an area that relates to individual financial loss but so do most complaints relating to financial services which do not leave FOS inundated with spurious complaints. Individuals accessing IVAs will be heavily indebted and often facing wider financial difficulties as part of complex lives. The priority should be making a complaints system as efficient and accessible as possible as these consumers will have less time and capacity to make complaints than those in non-debt related sectors.

We do support the regulator having statutory powers to direct IPs or firms to make good on any damages caused. Effective sanctioning powers are essential for any effective regulator. The body should be compelled to pursue its own investigatory work into the functioning of the market and have the power to deploy sanctions accordingly. As with the FCA-FOS relationship, the regulator should also have the power to act on findings made by a consumer complaints body to sanction a firm and require compensation to be paid. A memorandum of understanding and close partnership working with the complaints body will also assist in the regulator’s wider investigative work, forming part of its data gathering and market monitoring.

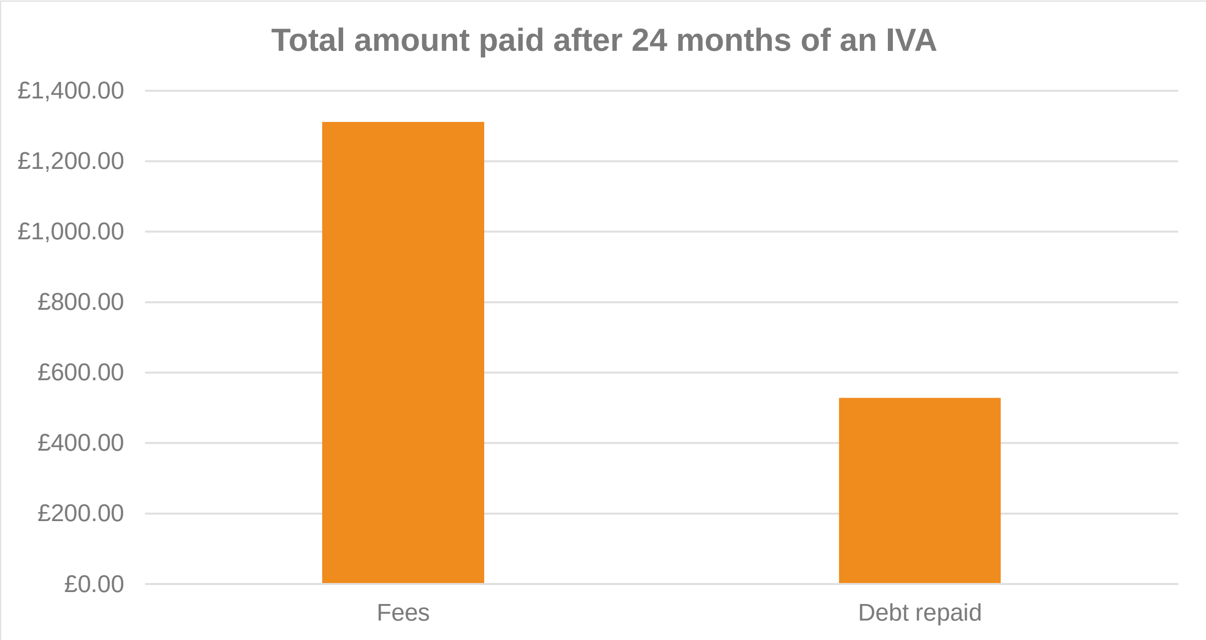
Question 19. What is your view on the amount of compensation that the regulator could direct an Insolvency Practitioner or firm to pay for financial loss? Please explain your answer.

We support proposals for the regulator to have the power to require IPs to restore an individual to their original position, this should include compensation for consequential loss including distress. While the consultation suggests this may be a non-monetary form of redress, in the case of IVAs there are significant financial risks for consumers which are currently not adequately considered by some providers. It's vital that the regulator has the power to instruct a provider to restore someone to their previous financial position in cases where it is evident that an IP wrongly advised them to choose an IVA or failed in their duties to support an individual through the course of the solution. We are concerned that the proposed level of compensation is too low. £250 will not be sufficient to restore someone to their previous position given the costs involved in an IVA. It will also be important that the regulator secures strong partnerships with other regulators to ensure that all IVA market participants are accountable for cases of mis-selling.

The way IVAs are currently structured means early termination can have a significant financial impact on an individual. This will often be far more than £250 and, in cases where an IVA has clearly been mis-sold, would justify a much greater level of compensation. Intermediaries have established a fixed fee model un which IPs can charge individuals £3650 inclusive of VAT for processing their IVA. They also expect proposals to address the frontloading of fees by distributing 30% of repayments to creditors and 70% to fees after the second month of an IVA. However, during the first two months of an IVA, 100% of payments go towards fees. Using a typical StepChange client as an example, it can be seen how the fee structure of an IVA can mean an individual pays substantial costs without realising the benefits of an IVA if they terminate early.

Client profile	Illustrative case[27]
Debt level	£38,800
Total fees paid after 12 months	£1,312
Total debt repaid after 12 months	£528
Debt level if IVA fails within one year	£38,272

[27] Debt level and budget surplus are based on averages for StepChange VA clients in 2020. We have a policy of only placing individuals on an IVA if they have a minimum disposable income of over £80 with the average for the last 12 months being above £188.



In this case, if the consumer's IVA was to fail after 24 months, they would find whilst they had paid nearly £2000 their debt had reduced by just £528. This means they would still be facing £38,272 of the original £38,800. This is an illustrative case which likely underestimates the potential costs.

The new DRO limit of £30,000 means debt levels for individuals being referred for IVAs will be even higher than previously. At StepChange we occasionally see consumers returning to debt advice after an IVA from another provider has terminated early. In many cases these clients need to transfer to a new debt solution like a DRO (£90) or even bankruptcy (£680). These solutions can be prohibitively expensive for heavily indebted individuals who have minimal disposable income. Where it can be established that these individuals should not have been put onto an IVA (this will depend on clear regulatory standards), these costs should be met by providers who have been shown to have acted poorly. It is not right that individuals who have sought to resolve their debt problem should find themselves in an even worse position because of poor advice and questionable commercial practices. The evidence of mis-selling of these solutions uncovered by the Insolvency Service is the area of consumer harm that it is most important the new regulator addresses. Levels of compensation need to be set to match the scale of harm that is currently caused so that consumers can secure adequate redress in the new regulatory system.

The experience of an IVA failing in this way clearly has non-monetary implications. The mental health impacts of debt are well documented and finding yourself back in even deeper debt after thinking that you were on course to resolve debt issues can be devastating. It's positive to see proposals for compensation in cases where a service failure has caused distress or anxiety, but we feel that £250 is far too low to adequately compensate for the harm caused. FOS awards compensation for distress, inconvenience, pain and suffering and damage to reputation. Awards can be excess of £5000 with consideration given to days lost at work, time spent resolving a matter and any pre-existing vulnerabilities of a consumer which may have exacerbates harm.[28] The time invested into

[28] FOS, Compensation for distress or inconvenience

setting up an IVA and attempting to save it before termination would likely lead to awards much higher than £250 under this framework. The regulator must establish a much more sophisticated system for compensating consumers for non-monetary impacts.

The new regulator will also need to establish close partnerships with other consumer regulators to ensure that actors involved in the IVA market are not able to evade a compensation scheme. We see clients misled by lead generators impersonating debt advice charities, passing over personal information and being referred to IPs for an IVA incorrectly. This experience can be traumatic, with people feeling betrayed and anxious at having passed personal information to an untrustworthy source. We are concerned that there is a risk that the consumer redress will be too confined to IPs or their firms rather than capturing the full range of market participants in the IVA market. Lead generators and debt packagers may be subject to other regulatory regimes, but they play a central role in the consumer harm caused by IVAs. It’s vital that the regulator has powers to extract compensation or at least establishes agreements with other regulators who can take their own enforcement action against firms causing stress and anxiety to IVA consumers.

Question 20. Which option or options, do you consider would be most suitable to fund a compensation scheme for the insolvency profession? Alternatively, do you have a suggestion on how a compensation scheme for the insolvency profession might be funded? Please explain your answer.

We support a levy on IPs and firms to fund a compensation scheme for consumer redress. We also support replacing the current bonding arrangements with a system of indemnity insurance like that currently used in accountancy. This insurance would be for cases of serious misconduct, fraud, or dishonesty from IPs. The consumer redress scheme would need to be funded separately via a levy on all firms which could also be linked to the volume of complaints incurred to not unfairly penalise firms for misconduct by other actors and to ensure that the burden on smaller firms is manageable. This system would reflect the levy approach applied by FOS to fund a free consumer complaints and redress service in financial services. FOS receives a levy from all financial service firms according to the level of complaints cases they expect to receive from a firm so it proportional to firm size and the harm they cause. This is in addition to a fee charged for every complaint received after 25 complaints, further linking contributions to the amount of ‘pollution’ caused.[29]

[29] FOS, Governance and funding

Question 21. Are there any further impacts (including social impacts) that you think need inclusion or further consideration in the Impact Assessment?

The Impact Assessment identifies some general consequences of debt for individuals and the potential social benefits of alleviating these problems. The Impact Assessment does not appear to identify the specific consumer harms caused by failures in the IVA market. The harms caused by being misled by a lead generator imitating a debt advice organisation or an IVA failing withing the first two years when fees have almost entirely gone on IP fees should be central to the new regulator's mission. Addressing these issues would have the wider social benefits connected to improved mental health – reduced use of public services, reduced crime and positive impacts of more engaged consumers. The wider economic benefits of reducing the IVA termination rates also do not seem captured in the assessment. Individuals can find themselves in a worse position than at the outset of their IVA after two years. The economic drag effects of excessive household and consumer debt are well documented.[30] One of the central consumer outcomes which the regulator should be pursuing is a significant reduction in IVA terminations, this should result in more individuals becoming debt free and returning to the market as consumers with viable disposable income.

Question 22. What are your views on the above proposals for funding of insolvency regulation? Do you have any other suggestions for self-funding of regulation?

We support the 'polluter pays principle' but recognise that to ensure the regulator and consumer complaints body is properly funded there will need to be a system of general levies. Administration fees to cover running costs seem reasonable with additional fees for those subject to additional requirements. As a provider we are happy with the notion of extra requirements and some extra fees for larger providers, which may include us. As with our proposal for linking funding for a consumer redress scheme, fees could be set according to a direct assessment of harm caused. In this case fee level could be based on termination rates, with high fees required of firms underperforming market averages or regulatory benchmarks. This would begin to switch the bad incentives currently existing in the market, with firms realising tangible benefits from reducing termination rates rather than just chasing volume.

We also support the aim of avoiding fee duplication. The Insolvency Service must be sure to maintain its independence under the proposed system. Fixed fees for the regulatory regime including specific elements like monitoring visits have the potential to re-create the principal-agent problems associated with the RPB regime. Fee levels must be set out in legislation alongside details on how fees can be updated. The regulator must have primary power to set fees so that it is able to conduct its business idenpendently. There is also the issue of fee duplication for FCA authorised IVA providers. Has the

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[30] BIS Working Papers (2017), The real effects of household debt in the short and long run

Insolvency Service considered this and how it might prevent these providers being subject to the fees of two regimes?

Question 23. Should the current minimum statutory requirements of a bond be extended as proposed to include the following (if you disagree, please explain your answer, including any alternative proposal or any additional factors to be included):

Our main concern with the proposals to change minimum statutory requirements and these interim measures overall is that additional costs for bonding and compliance will unfairly penalise smaller providers. Many of the changes seem aimed at Insolvency services working on large corporate insolvencies where estates may be under-bonded leaving creditors out of pocket in cases of malpractice. This situation rarely effects the consumer insolvencies administered by providers like StepChange VA.

In the cases we deal with, consumers generally have minimal assets and bonds cover more than the value of an estate. The arrangements we currently have with insurers who provide these bonds are reasonable enough for us to continue practicing. Similarly, the costs of regulatory compliance that we currently face are tough but not too onerous as to put our business at risk.

However, the consumer IVA market is highly concentrated, and in devising interim bonding proposals, the Insolvency Service must be sure not to concentrate the market further by pushing small practices out of business. This may mean applying some of the changes only to certain sections of the market, like the proposals for an additional requirements regime under the single regulator. From our perspective, it may be safer to leave the current arrangements as they are until a new system has been put in place.

We support ending the current bond system and replacing it with a system of indemnity insurance like that currently used in accountancy. Under this arrangement firms would be required to maintain a certain level of insurance set by the regulator. This would mean costs would be higher for firms found to most regularly acting fraudulently or dishonestly. This would simplify the current system and embed the ‘polluter pays’ principle. This is essential for ensuring changes don’t push small providers under and therefore further concentrate the market.

Question 25.Should a minimum period of run-off cover be provided for in statute and should the period be 2 years? If not 2 years, what should it be? Do you see any disadvantages to applying a minimum period for run-off cover?

Question26. Where a maximum indemnity period is applied by a bond provider: should the maximum period an insolvency estate is covered be at least 6 years from the date of appointment? should the Insolvency Practitioner be able to extend cover past the maximum period if they are still appointed on the case, with agreement from the bond provider?

We are not averse to either of these changes but impress on the Insolvency Service the need to consider potential increased insurance costs for small providers. Any changes to terms of bonds which may increase risks and costs for bond providers will likely increase costs for these bonds. This change could be applied only in cases where the value of an estate exceeds a certain amount to protect smaller consumer providers from excessive costs.

Question 30. The minimum insolvency estate specific cover is currently £5,000. The Government proposes that this should be increased to £20,000. Would this level provide sufficient cover for small insolvency cases?

Increases to the SPS and GPS have the potential to increase costs for small providers and concentrate the personal insolvency market even further. In the consumer IVA market, estates do not generally exceed the current £250,000 cover. Tripling GPS to £750,000 will lead to significant increases in insurance costs for small providers. The Insolvency Service must consider the potential impact of these costs on providers and the market before implementing them. It may be better to leave arrangements as they are until a new system has been properly designed to replace it permanently.

Question 31. Should the GPS be reformed to cover interest, investigation, parallel and bond claim costs of the successor Insolvency Practitioner?

While we support the general principle behind this proposal, we once again emphasise the need for the Insolvency Service to be aware of the potential costs for small providers.

Question 34. Would adding a requirement for Insolvency Practitioners to declare the level of cover specific to that estate as part of the initial report to creditors be helpful information for creditors? If so, should any changes to the level of cover also be reported?

We support these changes to increase transparency and improve disclosure with creditors. It's important that these requirements are proportionate so as not to unduly increase costs.

Question 38. Do you agree that the proposed changes to the current requirements for bonding should be made now pending any more significant changes to the regulatory regime?

We think the risks associated with the proposed changes for smaller providers are too great and the Insolvency Service should wait until a permanent replacement system is ready to be implemented. It is not clear that the Insolvency Service has conducted an adequate risk assessment for the full range of market actors across personal and corporate insolvency. Given the potential for these changes to push small providers out of business and concentrate the consumer IVA market even further, we think they should be reconsidered. There may be ways to structure the changes to limit costs for smaller providers. However, we would prefer an ambition for making more significant changes on a fixed timeline rather than putting in place interim measures without a clear end date that could cause serious disruption to the market.

Question 39. Considering the changes proposed to the bonding regime above, would the introduction of a single regulator present opportunities for more fundamental reform of the bonding regime? If so, please give reasons for your answers including any suggestions you may have on a proposed reform.

The single regulator presents an ideal opportunity to reform the bonding regime. The proposals for a consolidated and centrally run system of consumer redress means the market will be moving closer to a situation in which risk is pooled among firms rather than centred on IPs. In personal insolvency, this shift in emphasis reflects the way the IVA market has changed with larger firms now providing the bulk of consumer IVAs rather than sole practitioner IP offices. This will mean firms paying levies to fund a single system of regulation including a complaints body with the ability to grant compensation to consumers. Under this system, it makes sense to replace the current antiquated bond regime with a modern system of indemnity insurance. This could replicate the system in accountancy where firms are required by their regulator to hold a certain minimum level of insurance although they are encouraged to hold as much as they can afford. Successful claims which are then made against these firms are paid from this insurance, requiring firms to then top it up. This will mean firms most often found guilty of dishonest or fraudulent behaviour will face the most onerous costs. Given the changes to the wider regulatory structure are aimed at updating the regime in recognition of the greater role played by corporate firms in place of sole practitioners, it makes sense to update the insurance mechanism in the same manner.

Question 41. Do you think that a levy-funded scheme should replace the existing bonding regime, and cover not only acts of fraud or dishonesty by an Insolvency Practitioner but also a broader compensation regime? Please explain your answer.

We have raised the need for the regulator to have distinct corporate and personal insolvency arms because of the vastly different regulatory objectives that will be needed in these two areas. For personal insolvency, our proposed funding system for the new single regulator and complaints body would involve a mix of levy funding, professional indemnity insurance and case-based costs. This would involve costs being spread across the market but with a 'polluter pays' principle meaning that higher costs would be incurred by actors more regularly found guilty of misconduct.

The single regulator would be funded by a levy on firms based on the volume of IVAs delivered. This would also include a premium for those subject to the additional requirements regime. The levy would also fund an independent complaints body. We support an ombudsman style body like FOS. This body would receive additional funding via a per-case fee, meaning that those firms subject to the most complaints would be subject to higher costs. This body would be able to secure consumer redress through compensation. For firms, this compensation could be drawn from their insurance indemnity fund which we support as a replacement to the current bonding arrangements. This indemnity fund would be a single insurance fund like that used in accountancy. The regulator would set the minimum level of insurance required and it would have to be topped up anytime it dropped below this level. This indemnity fund would also be used to cover cases of fraudulent or dishonest practice by IPs. It would be up to firms to decide how to fund this insurance, with IPs likely sharing the burden with the firm.