Response to Consultation on the Authorisation Requirements and Standards for Debt Management Firms

From Brendan Burgess Brendan@askaboutmoney.com

To debtmanagementservices@centralbank.ie

23 September 2013

A note on the author

Brendan Burgess is a chartered accountant and was a member for the Government's Expert Group on Mortgage Arrears and Personal Debt – the Cooney Group. He is the founder of the consumer website askaboutmoney.com . He was the first Chairman of the Consumer Panel of IFSRA. The views in this submission are his own.

1 A distinction must be made between debt advice and debt management.

Although the Act does not make this distinction, the regulatory regime must make the distinction. The requirements for someone who provides advice should be very different from the requirements for someone who takes cash from the consumer with a view to paying creditors.

The regulatory regime appropriate to a debt advisor would not be sufficient for a debt management company.

The regulatory regime appropriate to a debt management company would be excessive for a debt advisor.

If no distinction is made in the regulatory regime, the provision of debt advice will not be a viable business on its own. So the provision of independent debt advice will be limited to those who are also Debt Management companies. The vast majority of borrowers in trouble need reasonably priced debt advice – they don't need the much more expensive debt management.

I will confine my submission to the regulation of debt advice.

2 No case has been made for the regulation of debt advice or debt advisors

The provision of generic investment and financial advice is not a regulated activity in Ireland. The provision of advice in relation to specific investment products is.

It is not clear to me why general financial advice is unregulated, while it is proposed to heavily regulate debt advice.

3 Struggling Debtors need accessible and independent debt advice. The biggest threat facing them is being bounced into an inappropriate insolvency arrangement by a PIP.

The Personal Insolvency Practitioner is a mediator between the borrower and the creditors and as such does not and should not act in the best interests of the borrower.

Making a declaration of insolvency is a very serious matter. Before doing so, a debtor should go through a systematic advice process with a debt advisor, who should not be a PIP. The danger is that a free consultation with a PIP will result in the debtor opting for a PIA or a DSA without considering the alternatives.

During the preparation of the PIA or DSA, the debtor may require the advice of someone acting in their best interests. They should be able to access an independent Debt Advisor easily and at a reasonable cost.

Nothing should be done by this regulatory regime to discourage competent, independent debt advisors.

4. Debt advisory services need to be fostered and not regulated out of existence

Under the proposed regime, Mortgage Intermediaries will not be able to offer debt advice unless they register separately as Debt Management Companies.

Many distressed mortgage holders' first point of call is the mortgage broker who arranged their mortgage for them in the first place. Such a mortgage broker is often well placed to advise on the options and, maybe, even to negotiate with the lender on their behalf.

Such advice could be considered incidental to their main business, in much the same way that debt advice is incidental to the services of a firm of accountants. As such, it would not be separately regulated.

The following options should be considered:

Mortgage Intermediaries should require no further authorisation where such advice is incidental to their main work.

The Mortgage Intermediary Authorisation could be extended to allow Mortgage Intermediaries to provide advice to distressed mortgage holders.

A similar approach could be taken to the extension of authorisation to Authorised Advisors and Multi Agency Intermediaries.

5 The regulatory regime should not impose such costs on debt advisors that distressed borrowers cannot afford to use their services

There is a real danger that over-regulation and very high Professional Indemnity insurance will drive smaller operators and part-time operators out of business. This will leave the market exclusively to larger firms who may be too expensive for the ordinary consumer with perhaps a mortgage and some unsecured debt. It could also result in a situation that debt advice might not be a viable business in its own right, and so may be provided only by debt management companies.

The Central Bank must bear in mind at all times, that all regulation is ultimately paid for by the consumer. If the Central Bank overregulates this area, they will be imposing excessive costs on the consumer. In this case, the consumer is already in serious financial distress.

6. It is not clear the Professional Indemnity insurance is required, never mind the very high level specified in the Consultation Paper

"3.2 The amount insured shall be at least **equivalent to the total value of all the debts of consumers related to the services of the debt management firm** subject to a minimum cover of €1,500,000, with no limit on the number of claims in any one year"

I presume that the above is a typo?

The potential loss from professional negligence for a debt advisor is a lot lower than the potential loss for an investment product advisor. An investor with €1m to invest, could lose it all due to negligent advice and have a potential claim for €1m. A borrower with debts of €1m can't "lose" €1m due to negligent advice. It's very difficult for the performance of a debt advisor to be assessed. Consequently, it's very difficult for the negligence of a debt advisor to be assessed. I have seen two very competent debt advisors give very different advice on the same case study. I would not say that either is right or wrong.

I understand that in the UK, the holders of Category E licenses, "Debt counselling" , which would be the equivalent of what I mean by "debt advice", do not require Professional Indemnity insurance at all.

If it is felt necessary that Debt Advisors should have Professional Indemnity insurance, a level similar to that for Insurance Intermediaries and proposed for Investment Product Intermediaries would be more than enough - an annual limit of €1.25m per claim and €1.85m in aggregate.

7 The regulatory regime should not impose such restrictions on debt advisors that they move North of the border

The regime must ensure that Irish consumers are protected from being preyed upon by unscrupulous overseas debt management companies which are not subject to the same regulation as they would be if they were regulated in the state.

For example, the requirement for ludicrous amounts of Professional Indemnity insurance, would drive debt advisors to the North.

8 Borrowers with debts exceeding €3m should not be regarded as consumers and so advisors to them should be exempt from Regulation

If I understand the definitions correctly, a teacher with €5m of mortgages on buy to let properties could claim to be a consumer under this legislation. Perhaps a borrower with a mortgage of €1m on their family home is a consumer, but someone with €5m of debt on buy to let properties is not?

I suggest that an overall limit of €3m of debt (secured and unsecured) be the cut-off point. €3m is the ceiling on secured debt for a Personal Insolvency Arrangement.