

CP21/30: Debt Packagers - proposals for new rules

BSA Response

Restricted
20 December 2021

Introduction

The BSA strongly supports the FCA's proposals to prohibit debt packagers from receiving referral fees from debt solution providers. Our members have seen evidence of consumer harm as a result of current practice, and these proposals address that harm.

If the primary drive of this intervention is to prevent the risk of consumer harm, however, we believe that:

1. Consideration should be given to applying a blanket ban, regardless of the nature of the firm making the referral or the income derived by it from that referral. This would ensure absolute clarity and reduce the need for more complexity in relation to debt management firms.
2. In order to effectively ensure a consistently good outcome for vulnerable consumers facing debt, there should be further legislative intervention to achieve a similar approach to the activities of unregulated lead generators. Without that, the practice of such firms receiving referral fees for directing vulnerable consumers to debt solutions that are costly and inappropriate will continue and the consumer harm that has been identified will not have been fully resolved. Therefore, while we welcome this development, we urge the FCA to call on support of Government, the Insolvency Service, Insolvency Practitioners Association and the myriad of other Recognised Professional Bodies to make the necessary changes to achieve this outcome. Failing to do so will mean that only part of the problem will have been addressed.

Q1: Do you agree with our assessment that the remuneration model for debt packager firms is driving consumer harm?

Yes. The current remuneration model creates a conflict of interest for the firm and as the FCA correctly points out this leads to what we consider to be an unacceptable risk of consumer harm. Advising consumers who will generally be in a vulnerable position to embark on a course of action that is not in their best interests in order to generate fee income for the firm is at odds with FCA principles, rules and guidance.

Q2: Do you agree that the only effective remedy is to ban receipt of remuneration for referrals by debt packager firms?

Having considered the other options set out in the CP we agree that this is the only effective remedy in the current circumstances. It will be important that the FCA effectively polices the risk it has identified whereby current debt packager firms may also seek to move to become unregulated lead generators and provide leads to debt solution providers but not advice.

Given this and the potential impact on the ongoing viability of certain debt packager firms, the FCA should consider whether the proposed ban might give rise to conditions similar to those that arise in the case of CMC phoenixing. It would be an undesirable outcome should individuals involved in some of the egregious practices identified in the CP re-emerge and benefit financially as a result of their understanding of how firms operated in the past.

Q3: Do you agree that we should not include debt management firms or not-for-profit debt advice firms in our proposals?

This is more difficult. If the primary driver for this intervention is to prevent consumer harm, then there is an argument that the ban should be applied across the board, regardless of the nature of the firm or the value it derives from referral fees. Simply because fee income of this sort is a minor part of the income for debt management firms in particular doesn't remove the risk of a potential conflict, which an absolute prohibition would achieve. Assuming that the primary driver is to address actual or potential customer harm, and also given our comments in response to Q4 below, we see no reason why a blanket ban on remuneration of this type should not be applied.

Q4: Do you have any comments on our proposed obligation on debt management firms who act as principals?

Rather than introduce rules and guidance to deal with this situation, the FCA should give further consideration to a universal prohibition which could achieve greater clarity and reduce complexity for both firms and the FCA. It would also have little impact on consumers seeking to use/being referred to debt management services given the numbers cited in the CP.

Q5: Do you have any comments on the draft rules?

Subject to our comments above, no.

Q6: Do you have any comments on the planned implementation period?

No. Proposals seem acceptable.

Q7: Do you have any comments on, or relevant additional data for, our draft cost benefit analysis?

No.

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