“Response to Consultation on the Authorisation Requirements and standards for Debt Management Firms”.

Consultation Paper CP70

Background

MoneyVillage Ltd

An Irish owned professional debt management service provider with alliance partners who are industry leading providers in the UK, and are founding members of the Debt Management Standards Association.

The Company has developed a debt intermediation model for helping Irish families establish a debt renegotiation structure to negotiate more favorable terms with creditors. Evolved from Irish expertise and our partner’s successful business model, operating in the UK since 1998.

Debt Management Service: Structured intermediation between clients (indebted households & individuals) and their unsecured or secured creditors. Represented by a voluntary debt management agreement and ongoing support to clients along with engagement with their creditors.

Uniquely it also offers comprehensive debt renegotiation AND educational services

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How the model works:

1. **Personal debt management service**

Intermediation between indebted households and their creditors

- Holistic debt management agreement with multiple creditors(secured and unsecured)
- Prioritising secured debts through the CCMA and MARP structure.
- End to end debtor and creditor processes, includes all forms of debt including some business debts, where applicable.
- Superior debtor/creditor business model v traditional debt collection model
- Provides for the possibility of earned discharge of debt

2. **One-of-a-kind educational programme**

Emphasises financial literacy learning and development

- Practical adult learning on how to use money wisely
- Step-by-step guide with tools on how to handle and work one's way out of debt
- Encourages behavioural change in using debt

Consumer debt is €147.7bn mortgages and c€29bn in other largely unsecured debt.

Approximately 146,000* households in arrears.

Approximately one in five mortgages is in arrears over 90 days.

People in the 20's and 30's, married/co-habiting with children represent the most financially vulnerable cohort.

Trends indicate escalating household financial fragility with many experiencing dramatic and sudden decline in incomes which is increasing debt repayment burdens:

One of the key challenges is to avoid inappropriate mortgage holder behaviour thereby compounding the arrears problem

- Credit delinquencies have increased substantially since onset of current international slowdown (source Irish Credit Bureau).
- More homeowners have negative equity and CANNOT borrow or move home – in negative equity trap.
- Multiple creditors – all looking for payment – race to the courts
- Declining incomes in many sectors putting squeeze on finances
- Lenders systems not able to cope with the avalanche of consumer debt.
- CCMA only focuses on private homes, and does not include unsecured debt or rental investment debt.
- Repossession forbearance: buys time but does not deal with underlying issue of unaffordable indebtedness.

Throughout 2008 – 2013 bodies such as MABS received increasing number of calls from consumers experiencing problems servicing debts – looking for support, information.

MABS resources are stretched with an active case load of 22,962 in **2009**. Allocated budget provision 2009 was €17.93m funding 60 offices and c255 full time/part time staff. This represented a cost of circa €950 per case when you extract the information on cases.

With consumer borrowings in excess of €29bn (largely unsecured) and €147.7bn in mortgage debt, the number of households experiencing financial stress requiring debt management services is likely to be considerably higher than the number and debt load currently serviced by MABS.

This deficit in meeting the need for the debt management and mortgage counselling services cannot be filled by the state or taxpayer. There is therefore a great need to promote Debt Management Services within a **realistic** regulated environment, as recommended by the Law Reform Commission.

Legal system reflects dated concepts of debtor obligations and creditor rights - hence the Law Reform consultation on personal insolvency and the New Insolvency service.

Other countries have non-court based debt resolution systems along a continuum from voluntary debt management agreements to statutory personal insolvency

There is a great need to regulate the market for debt management services – For example in the UK; the Office of Fair Trading OFT has published guidance on debt management. UK trade body DEMSA's code of practice is approved under the OFT Consumer Codes Approval Scheme for advice for debt management plans (DMP) and Individual Voluntary Arrangements (IVA).

MoneyVillage Ltd is a founding member of the Debt Management Association of Ireland (DMAI). In the absence of regulation DMAI have published a code of conduct for the members in Ireland, and have lobbied all stakeholders for regulation of the Industry for the past four years.

MoneyVillage Ltd welcomes the new legislation on debt management services. However the authorisation process is **excessive** to the extreme and is not in line with the existing authorisation requirements for retail intermediaries. Also given the fact that the Central Bank have classified this authorisation for levy purposes, not dissimilar to retail intermediaries, why is the authorisation process this extreme compared to the same or similar classification?, where financial advice is given.

MoneyVillage Ltd makes the following additional comments on the proposed Authorisation standards and requirements.

4. Proposed authorisation requirements for Debt Management Firms

Excepted person – MoneyVillage Ltd questions why MABS are excluded from regulation, given the fact that Debt advice is now an extremely complex matter, and companies that are funded by state, should be setting the highest example of prudence, regulation and compliance. MABS are the largest debt management organisation in the state, and how will the consumer be compensated if bad advice is given by a MABS representative?

5. Minimum Competency Code 2011

Recognised qualifications should be QFA **and** a minimum of the Personal Insolvency Practitioners course or the recently developed Mortgage arrears course. QFA qualifications do not provide the required expertise in this field. We would also suggest that a level of experience in this area needs to be demonstrated as part of the authorisation application.

PART A - Authorisation Requirements

1 Introduction and General Comments

1.2 Any infringement is a criminal offense and if it is a limited company, every director is counted as having committed an offense. It is too onerous that all directors are culpabable for the actions of one. The body corporate should be liable. I would doubt that even banks or insurance companies and the directors are subject to this clause. A similar criminal offense applies to point 1.8.

1.5

Part A of the proposed authorisation deals solely with debt management services. Part B deals with other required legislation. MoneyVillage Ltd believes that in order to have a complete debt management service, which includes the renegotiation of credit and the payment of those debts to the creditors, the Central Bank are proposing two separate authorisation processes, namely Debt Management authorisation and Payment Services authorisation. Furthermore the Payment Service authorisation precludes sole traders from the application process. Therefore a self employed Individual cannot through this process become fully authorized for the full debt management service, i.e. advice and payments to creditors.

This is completely at odds with European and UK legislation and the recent Personal Insolvency authorisation process through the Insolvency Service of Ireland, for Debt Settlement arrangements and Personal Insolvency arrangements, which in reality are a formal debt management plan. MoneyVillage

Ltd proposes that there is one authorisation process only, with individual client bonding or client fund segregation for those debt management companies or sole traders that wish to handle payments to creditors.

2. **Solvency**

The calculations for Insolvency are very strict and are not in line with similar authorisation for retail intermediaries.

3 **Professional Indemnity Insurance**

3.2 We do not understand the reasoning behind the level of cover required. The amount of Insurance to cover based on the value of all debts, is an insurmountable and uninsurable figure for many practices, and unlikely to be available in the market place. The normal cover any Insurance company will provide is min €1m million cover, and a minimum of €1.5 million in aggregate or no limit on the number of claims. In reality the company should/will only be liable for the fees it charges for the advice given, similar to PI cover most professional practices have.

4 **Organisation and Management**

4.1

The Debt Management firm should have a robust I.T system and process in place to manage the relationship between creditor and debtor.

This system should record the following:

- All documentation and customer data.
- All correspondence verbal and written between debt manager and debtor and debt manager and creditor.

4.5

For a small office outsourcing compliance or having a full time separate compliance officer may not be feasible from a cost perspective. This is extremely costly and impractical and will exclude many experienced advisors from the role. We recommend that the requirement for a Compliance officer should be similar to the requirement for other retail intermediary firms.

4.6

For a small office the additional cost of providing an internal audit function may not be feasable.The area for audit, is the advice given by the debt management company and this can be combined with the compliance function. No other authorised retail intermediary requires this function.

Overall the additional cost of organisational requirements may be prohibitive for a small to medium organisation to operate in this environment, and MoneyVillage Ltd proposes that these requirements would be similar to that of a normal retail intermediary.

6 **Ownership**

This clause is extremely onerous and puts a complete hammerlock on any changes of share ownership above 10%, and also demands that the Central Bank must be informed in any transfer above 10%

8 **Place of Business**

This clause seems to mean that all places of business must be located in Ireland.
Can the firm deal with customers outside of Ireland that have emigrated and still have debts in Ireland that need to be managed.
Can the firm outsource (clause 7) part of its functions outside of Ireland or is the firm restricted to outsourcing part of its function within Ireland.

Money Village would concur that many thousands of people have emigrated and need a debt management service, despite the fact that they live abroad.
Equally with modern day technology, many parts of the debt management business that are not available in Ireland, but may be available in the matured UK debt management market could be outsourced to these locations e.g. software and hardware providers etc.

Summary

In summary Money Village have been at the forefront of lobbying for regulating the debt management Industry, as the firm believes there is a great need for these services in Ireland.
The proposed regulation does not promote debt management services as defined in the act through small to medium firms for the following reasons.

- It is clear from the complexity of the authorisation process that it is designed for large corporate companies that have the resources to provide all the internal compliance and risk management functions and controls to operate at this level.
- The complexity of authorisation is far in excess of the normal retail intermediary process and is more in line with the Payment services authorisation process.
- To complete the full gambit of debt management services similar to that operating in most global jurisdictions, firms would have to authorise through two separate pieces of legislation.
- The Central Bank should focus more on the experience and qualifications of the candidates or Firms giving advice.
- There does not seem to be any joined up thinking at government dept level. The Insolvency Service authorisation would be more in line with what is required at all levels of authorisation.

As a company that has been to the forefront of lobbying for regulation and has spent the last four years dealing with Irish consumers in debt, we believe we have a great understanding and knowledge of the requirements for a fair and equitable relationship between debtors and creditors.

The proposed regulation as it stands will effectively restrict debt advice to those companies that have the resources to get authorised.The Central bank will over night wipe out the smaller, specialised debt intermediary, thus restricting reasonably priced advice to the consumer.

Yours Sincerely

Eugene McDarby
C.E.O

On behalf of MoneyVillage Ltd.