

# Consultation Response



## StepChange Debt Charity response to the Central Bank of Ireland consultation: Additional Consumer Protection for Debt Management Firms

February 2014

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We are an independent charity dedicated to overcoming problem debt. Our advice and solutions are effective, tailored and importantly, free. Foundation for Credit Counselling. Wade House, Merrion Centre, Leeds LS2 8NG. Company No 2757055. Charity No 1016630. [www.stepchange.org](http://www.stepchange.org)

# Introduction

StepChange Debt Charity welcomes this opportunity to respond to this Central Bank of Ireland consultation on Additional Consumer Protection Requirements for Debt Management Firms.

StepChange Debt Charity is the largest specialist debt advice charity working across all four UK nations. In 2013 our telephone helpline and online debt remedy tool helped over 500,000 people to access free, impartial and high quality debt advice. We are also the UK's largest provider of free to client charitable debt management plans (DMPs), having introduced the DMP concept to the UK in 1993. At the end of 2013 our DMP's were helping over 145,000 people to make affordable and sustainable repayments to their creditors. In 2013 we helped people pay £338 million off their debt.

StepChange Debt Charity operated the multi-debt resolution pilot with the Central Bank of Ireland and is now in discussion with the Central Bank of Ireland, the Irish Banking Federation and the lender community about ongoing advice and debt management services including payment distribution.

We believe that our experience of helping people deal with problem debt makes us well placed to comment generally on consumer protection measures for debt management services. The commercial debt management sector in UK has been under scrutiny for a number of years; with a 2010 compliance review by the Office of Fair Trading finding widespread problems in the sector that caused the OFT significant concerns. Problems in the UK market have been ongoing since then and we continue to receive calls from people who have had problems with fee charging debt management providers.

The UK regulatory regime for debt management services (and consumer credit more generally) is currently changing, with responsibility moving to the Financial Conduct Authority. This follows a broad consensus that a stronger, more pro-active and rules based approach is needed to deliver effective consumer protection in UK credit and debt management markets.

Of course the recent experience of conduct problems in the UK debt management sector and the regulatory response may have little in common with market conditions in Ireland. But we hope that our comments in response to this consultation will be of some use in helping the Central Bank of Ireland develop a framework of consumer protection for debt management services. Our answers to the consultation questions are set out below.

**Question 1:** Do you agree that the current advertising requirements under the Code adequately protect consumers from the potential for consumer detriment associated with debt management services?

**Question 2:** If you believe that additional advertising rules should be introduced for the activity of debt management services, please outline what measures you think should be considered.

StepChange Debt Charity agrees that an effective consumer protection framework for debt management services will need to include provisions on advertising and promotions more generally. The list of concerns over marketing practices given in the consultation document are very similar to those raised about practices in the UK, suggesting that some firms may be using similar tactics to acquire clients in both jurisdictions.

We would broadly agree that the current advertisement requirements under Chapter 9 of the Consumer Protection Code set out a strong standard of consumer protection. Additional requirement 1.1 prohibits a firm from providing debt management services until the consumer has signed an agreement specifying the charges payable. The standard information template described in requirement 3.1 and Appendix 1 should also state fees and charges. However both of these requirements seem to apply where a consumer is already in contact with a debt management firm. By this time consumers who are financially vulnerable and desperate for help may be unlikely to contact a different provider or think again about the debt management proposal they have been offered.

Therefore we would ask the Central Bank of Ireland to consider incorporating more specific requirements on firms to explicitly state the fees and charges in promotions including prominent display in webpage promotions. The Central Bank of Ireland might also consider how additional code requirements might be used to require debt management providers to set out information on fees and charges in a standard form that would make it easier for consumers to compare offers.

StepChange Debt Charity strongly supports the proposal that the standard information template includes a clear statement that sources of free debt advice and services are available. However we would ask the Central Bank of Ireland to consider additionally requiring fee charging debt management firms to prominently state in advertisements and promotions (including web promotions) that free advice services are available.

**Question 3:** Do you agree with the proposed approach relating to client leads as outlined above? If not, please explain why?

StepChange Debt Charity broadly agrees with the proposed approach to client leads. However we would ask the Central Bank of Ireland to consider whether the

additional requirement 2.2 needs to go further. For instance, paragraph 3.40 and 3.41 of the consumer code place controls on the way that regulated entities make telephone contact with consumers. But it appears that these controls would not apply to a lead generator firm passing leads to a debt management firm. Therefore, should the additional requirement 2.2 be expanded to require debt management firms to satisfy themselves (and retain documented evidence) that a lead generator has not sourced client leads by telephone contacts that would otherwise be in breach of consumer code paragraphs 3.40 or 3.41 if carried out by a debt management firm.

**Question 4:** Do you think that these information requirements for improved transparency of charges are sufficient? If not, please outline any further measures you think are necessary in this area.

StepChange Debt Charity notes that the Central Bank of Ireland highlights research by the Office of Fair Trading on problems with fees charged by debt management firms. We would also point out that in the UK debt management market, approaches based on fee transparency have not been effective and we continue to see cases where the charging practices of debt management firms have caused consumer detriment.

As a result the Financial Conduct Authority (that takes over responsibility for regulating debt management providers in April 2014) have proposed draft rules to control the fees that debt management providers can charge. The FCA draft rules would require debt management firms to ensure that the obligation on customers to pay fees and charges:

- Do not have the effect that the customer pays all, or substantially all, of those fees in priority to making repayments to lenders
- Do not undermine the customer's ability to make significant repayments of a consistent amount to the customer's lenders throughout the duration of the debt management plan, starting with the first month of the plan.

We would ask the Central Bank of Ireland to consider whether similar fee controls would provide consumers in Ireland with a better standard of consumer protection than the current additional requirements for debt management firms.

**Question 5:** Do you think that there should be a prohibition on the payment by means of credit of fees or charges for debt management services?

StepChange Debt Charity agrees that the Central Bank of Ireland should prohibit payment by means of credit of fees and charges for debt management services. We have seen cases in the UK where debt management firms have encouraged consumers to pay for debt management services by using credit. The following case gives an example:

*A woman told StepChange Debt Charity that she had been cold called by a fee charging debt management company. The firm did not explain their fee structure and set up a recurring payment through her debit card, even though this account was one of her debts. They took an upfront payment that was just for their fees, with no money being passed onto creditors.*

As this case illustrates, where consumers can only afford payments for debt management services by using credit there is a clear potential risk that a fee charging debt management plan is likely to be an unsuitable option from the outset. Furthermore we believe that paying for debt management services by credit completely undermines the notion of price transparency, particularly if the credit agreement will itself become wrapped up in the plan.

While such a prohibition may leave some consumers without the means to pay for a fee charging debt management service, we would expect debt management providers to highlight alternative sources of free advice in compliance with the additional requirement 3.1.

**Question 6:** Do you agree that a standardised method of financial assessment is required for this sector? If not, please explain why?

**Question 7:** In respect of the potential options for a standardised method of financial assessment as outlined above, which is your preferred approach and please explain why?

**Question 8:** What alternative measures do you think we should consider to achieve a robust and holistic approach to financial assessment?

StepChange debt charity agrees with the Central Bank of Ireland that a robust and holistic financial assessment is at the heart of good debt advice and essential in ensuring that any debt solution recommended to a consumer will be suitable for their needs and circumstances. We also agree that some level of consistency and standardisation is necessary for consumer confidence, creditor confidence in the debt advice process and effective regulatory supervision of providers. As a result we would support the proposal to additionally require debt management firms to use a standardised tool for financial assessment.

The standard financial statement appears to be a reasonable format for a financial assessment, although we would suggest slightly amending the form to bring rent costs into a single housing costs section.

But that said, our experience suggests that the key good practice points rests not mainly on the use of a particular form of financial statement (though a standardised form is likely to be useful) but with the use of standardised budgeting expenditure guidelines. Agreed standard budget guidelines provide the basis for the sort of transparent and objective affordability assessments that are necessary for any valid

suitability assessment. Such guidelines also form the basis for regulatory oversight of the quality of providers' recommendations.

However it is not clear from the code of conduct on mortgage arrears that the standard financial statement is accompanied by such a set of budgeting guidelines. In this respect the Insolvency Service of Ireland has developed 'Guidelines on a reasonable standard of living and reasonable living expenses' for use in insolvency remedies. This might form the basis of agreed budget expenditure guidelines for debt management providers.

However, the Central Bank of Ireland might consider adapting the ISI guidelines specifically for debt management purposes. This amendment might be necessary to ensure that people seeking a debt repayment solution are not subjected to a tougher budget standard than people seeking a solution with debt relief (and we note here the ISI guidance suggesting that the standards might be applied more strictly in respect of a DRN application than a DSA or PIA application).

**Question 9:** Do you agree with the proposed requirements outlined at a), b, c) and d) and with the option outlined at e) above? If not, please outline why.

StepChange Debt Charity would broadly agree with the proposed requirements set out at a), b), c) and d). However we would ask the Central Bank of Ireland to consider how the risks of creditors not accepting offers set out in b) read over to creditors' responsibilities for arrears handling set out in Chapter 8) of the Consumer Protection Code. The code currently does not appear to require creditors to accept reasonable repayment offers made by consumers (or by debt advice / management providers on their behalf).

This places consumers in a double jeopardy situation: a consumer could pay fees to a debt management firm only to have an offer rejected by a creditor. A statement by the debt management firm pointing out this risk does not address the jeopardy. So while we would support the intention of requirement 4.4a on this point, we believe that this could be supported by a firmer requirement on creditors to accept reasonable repayment offers in chapter 8 of the consumer protection code. Indeed the need for such a requirement provides another good reason to introduce standardised budget guidelines for debt management providers, as these would allow creditors to quickly assess the reasonableness of a repayment proposal.

We would also support the requirement set out in e) to allow a consumer time to absorb information provided. However we would ask the Central Bank of Ireland to consider how the 5 day period suggested relates to other cooling off periods such as that provided for by European Communities (Distance Marketing of Consumer Financial Services) Regulations, which allow for a 14 day cooling off period.

**Question 10:** Do you think these protections are sufficient to address the potential conflicts of interest risks identified above? If not, please outline any further measures you think are necessary for this particular sector.

StepChange Debt Charity agrees that maintaining consumer confidence in the debt management sector requires some protection against any conflict of interest that could arise from third party payments. However we would ask the Central Bank of Ireland to provide a little more clarity on what debt management services would have to provide to consumers to comply with requirement 4.5 c).

The requirement currently describes 'any monetary benefit receivable from a third party'. Would this, for instance, require a charitable debt management provider to list any grants or donations received from third parties? This would arguably be disproportionate and of little real benefit to consumers.

Instead we would argue that it would seem reasonable to require debt management providers to disclose payments received from **creditors** and to accompany this with an explanation to consumers demonstrating that any such payments do not compromise the debt management providers' independence and impartiality.

We would also ask the Central Bank of Ireland to consider prohibiting fee charging debt management providers from making any payment to creditors in respect of client referrals from creditors. Such payments could distort the market and lead consumers to advice services that do not work in their best interest.

**Question 11:** Do you agree with the proposed approach relating to reviews of debt management arrangements as outlined above? If not, please explain why?

**Question 12:** Do you think that:

- i)** Such review should be allowed only at a consumer's request; or
- ii)** Such review should be allowed only when there is a change in a consumer's circumstances; or
- iii)** No limitations should be imposed on debt management firms in relation to undertaking reviews of debt management arrangements; or
- iv)** Should there be an obligation for periodic reviews without specifying the frequency of these?

StepChange Debt Charity broadly agrees with the proposals on reviews of debt management arrangements.

Firstly we believe that a requirement on debt management services to provide consumers with regular statements setting out information such as debt balances, payments, fees and charges is an essential consumer safeguard and a necessary condition for consumer protection.

Secondly we believe that debt management providers should be required to review the debt management arrangements on at least an annual basis to ensure that the advice and debt solution offered is still the most appropriate and suitable option for the client. For instance, this might be particularly important where a consumer's payments under a debt management plan are effectively 'token payments' designed to provide breathing space during a period of temporary difficulty. It would not be appropriate for such payments to continue for many years, particularly where a large proportion of a consumer's available money is taken in debt management fees rather than payments to creditors.

We also believe that debt management providers should be explicitly required to review debt management arrangements at a consumer's request, rather than just allowed.

We would urge the Central Bank of Ireland to specifically prohibit debt management providers from charging additional fees to carry out reviews of debt management arrangements as this is an essential part of an ongoing debt management service.