CONSUMER IVA
A REGULATORY GAP?

Presentation to MALG
26th September 2017
John Fairhurst

PayPlan®
live again

Current oversight

- Debt advice is regulated by the FCA
- Insolvency Practitioners are exempt from FCA regulation provided that the advice they give is in “reasonable contemplation” of being appointed by that consumer
- Insolvency practitioners are regulated by a professional body – usually the IPA or ICAEW
- “Lead Generators” don’t have to be regulated at all unless they give debt advice

What does this mean for the consumer?

There are different routes into debt advice:

- Via a “lead generator” who doesn’t give debt advice but could refer to an IP or to an FCA regulated firm
- Via a “lead generator” who gives regulated debt advice before then referring to an IP or an FCA regulated firm
- Directly to an FCA regulated firm
- Directly to an IP

Why does this matter?

- Consumers are unlikely to know the different oversight that applies via these various routes
- Different standards apply to advice requirements and to the conduct of firms
- The advice journey often starts with an organisation outside of the debt advice regulation framework

FCA thematic review of debt advice 2015 – some of the key findings

- The quality of advice provided …. was of an unacceptably low standard.
- Firms were not assessing customers’ financial circumstances reasonably and this could result in a solution being recommended that was not suitable.
- The various debt solutions available to customers were not adequately explored in the advice process. This was particularly the case where a potential solution would result in little, or no, remuneration for the firm

Key risks

- Advice based on inaccurate information can lead people choosing inappropriate solutions
- As well as accurate advice consumers need comprehensive advice – current regulation makes this difficult to bring about in some scenarios
- Poor visibility/trust may encourage adverse creditor decisions/additional questioning

What could be done to address this?

Harmonising regulation would provide a more consistent consumer experience

- FCA regulated firms are already responsible for the activities of any lead generators they use – and must satisfy themselves that these activities are consistent with FCA requirements
- IPs could agree to additional regulatory scrutiny on a voluntary basis – alternatively their FCA exemption could be removed.

A voluntary code for IPs

Main areas considered:

- IPs are regulated rather than the firms they work for – how can the wider firm/group structure be brought into scope?
- How can the firm be held more accountable for lead generation activities prior to referral?
- How can we improve confidence that advice is of good quality?

Progress so far

- Group of major IVA providers met over the summer – and engaged with main creditor agents
- Audit framework drafted
- IPA agreed development of supplementary monitoring model – Broad consensus to support, PayPlan to pilot

The future

- Will a voluntary code satisfy stakeholders and be sufficient to reliably improve consumer outcomes?
- Is FCA regulation of debt advice by IPs needed?
- Are there alternative measures that should be considered?