PIBA submission on the Second Consultation on Additional Consumer Protection Requirements for Debt Management Firms Consultation Paper CP 82

JULY 2014

The Professional Insurance Brokers Association (PIBA) is the largest representative body for financial and insurance brokers with over 870 member firms throughout Ireland. This submission outlines a response to the questions posed in the consultation paper in relation to Section 2 of the second consultation paper on Additional Consumer Protection Requirements for Debt Management Firms, CP 82, on behalf of our members. Additionally, PIBA would like to raise the issue of excessive information being provided to consumers as outlined below.

PIBA has concerns that there may be an information overload on consumers with the requirement (under Provision 13.1) to provide the consumer with a standard information template on 'Using Debt Management Services – what you should know' as much of the required information such as the complaints process, fees and charges is already mandatorily included in the Terms of Business, which is to be required to be given to the client in the first instance. PIBA feels that this is an unnecessary duplication of specific information as the consumer will understand from the outset of the relationship with the debt management firm what services can be expected from the debt management firm.

Question 1: Do you agree with approach that we now propose taking with regard to client leads? If not, please explain why.

PIBA would request clarification from the Central Bank as to whether provision 13.6 will be aligned with the existing provision 3.25 in the Consumer Protection Code, i.e. that a regulated entity may pay a fee, commission, other reward or remuneration in respect of the provision of regulated activities only to a person that is (a) to (h) inclusive.

PIBA would not be in favour of a complete prohibition on the ability for a debt management firm to remunerate any person as it is an unnecessary restriction on regulated debt management firms receiving referrals. Given the small number of firms authorised as debt management firms, it is important that the benefits of services provided by debt management firms can be highlighted to distressed consumers by regulated intermediaries or Accountants or Solicitors and referrals made to suitably authorised debt management firms. It should be permissible for a referral fee to be made to these entities.

Question 2: Do you agree with the approach that we now propose taking with regard to credit as a means of paying fees for debt management services? If not, please explain why.

Yes, PIBA agrees that there should be no prohibition on the payment for debt management services by means of credit. Consumers who seek these advices will typically have no disposable cash and therefore will have no means to pay for debt management services despite the fact that they are in need of such advice. Payment as part of restructured credit or in the form of a percentage of the final write down of debt may be the only means by which the consumer can pay for these services. PIBA strongly believes that there should be no conditions surrounding the payment of debt management fees via this method i.e. within an overall settlement arrangement with creditors.

Question 3: Does the approach that we now propose provide sufficient protection for a consumer?

As per PIBA's initial submission, we do not agree with Provision 13.18 in relation to imposing a mandatory 5 day period for consumers to absorb the information provided in the 'statement of advice'. We feel that this is not required as again, it needs to be recognised that in practice for debt management issues, the process in itself is long and involves negotiations with lenders/creditors so the decision will not be made immediately. It takes some time for lenders/creditors to agree revised terms.

We feel it is excessive that a consumer may only waive the mandatory 5 day period in very exceptional circumstances where the consumer has provided a relevant and compelling reason to proceed within this timeframe and the consumer's written consent has been provided. It should not be compulsory for consumers to provide a compelling reason to waive the 5 day cooling off period in Provision 13.19 as consumers may want to progress the debt management negotiations immediately. Generally, various options will be outlined by the firm to the consumer in the 'statement of advice' and it is not likely that the consumer will simply be able to choose one particular option.

Question 4: Do you agree that the above protections are appropriate and adequate to ensure transparency and control for the consumer in relation to the progress being made to resolve their problems? If you disagree, please provide the reasons.

We note the Central Bank's comments in Section 1 that a debt management firm must ensure that the consumer is made aware at the outset of the relationship of the fees that the consumer is likely to incur or if the exact amount is not known at the outset the debt management firm must give an indication of the type of fees that will be charged, the precise service that will be provided for those fees and an indication of the likely charge.

It is our understanding from the above that it would be permissible for the debt management service fees to take the form of a percentage of the final write down of debt. This exact figure would not be determinable prior to providing debt management services but full disclosure would be made to the client of the exact percentage of the write down to be charged and this would be agreed with the client before the services would be provided. Therefore, PIBA suggests that provisions 13.2 and 13.17 should be reworded to make it clearer that it is acceptable to provide details of the 'likely' charges.

PIBA agrees with provision 13.21 which prevents a debt management firm from agreeing to a negotiated outcome with a creditor without first seeking the consent of the consumer.

PIBA believes it is not necessary to stipulate in provision 13.22 that a debt management firm must provide an update to the consumer on a monthly basis, at a minimum, on the status of the negotiations as this will naturally be part of the process. We do not believe set timeframes should be specified as the debt management firm will be in regular contact with their client as the negotiations with the lenders/creditors progress. An interactive process takes places between the consumer, the debt management firm and the relevant lenders/creditors; therefore clients will be at all times kept up-to-date with the negotiations with the frequency of contact depending on circumstances surrounding each individual case.