Money Advice Trust submission to the Economy, Energy and Fair Work Committee protected trust deeds inquiry

ECONOMY, ENERGY AND FAIR WORK COMMITTEE

ENERGY INQUIRY SUBMISSION FROM THE MONEY ADVICE TRUST

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Protected Trust Deeds

1. **What is your experience of Protected Trust Deeds (PTDs)?**
We run National Debtline and Business Debtline and offer our free debt advice services to people in Scotland. We give advice on all the Scottish debt options available to our clients and where suitable, will refer people on to insolvency practitioners in Scotland for a trust deed.

2. What are the benefits of PTDs?
Where suitable, a PTD can provide certainty that a consumer can make payments for a fixed period of 4 years (plus) and no further action will be taken and interest and charges will be frozen.

3. **What downside is there to PTDs?**
We believe there are a number of downsides to PTDs.

- We would highlight the dangers of being mis-sold a PTD where another debt option is more suitable but has not been offered.
- The misleading advertising identified below, is crucial. If an unsuspecting consumer contacts a lead generator online, they will be unlikely to receive the free, impartial holistic advice they need on all the available debt options. People may be getting poor quality or non-existent debt advice from these companies.

- If they are passed on for a trust deed without this happening at any stage, the PTD is more likely to be unsuitable and fail. There are alarmingly high failure rates for some firms.[1] There is a widespread concern that firms are setting up PTDs and IVAs where income and outgoings have been under-estimated to show more available income, where someone is on a very low income, or where other options would be more suitable.
- The consequences of a PTD failing can be severe, from the threat of bankruptcy, and loss of assets, to interest and charges being added back on, with debts still outstanding where only IP fees have been paid in practice.

4. **Are there issues with the way PTDs are marketed and promoted to debtors? What are they?**
We frequently see Google adverts suggesting that a trust deed or IVA is “government approved” alongside claims to “write off 90% of debt”.[2] We have raised our concerns about these misleading advertising practices with the FCA and the Insolvency Service. We understand that Google are in the process of implementing a new policy whereby they will restrict paid advertising to Google ‘certified accredited partners’ i.e. advertisers will have to be either IPs or be FCA authorised.[3]

Alongside Citizens Advice and StepChange Debt Charity, we have also raised concerns with regulators about lead generation companies who introduce leads to IPs to set up PTDs and IVAS. These firms advertise online and frequently masquerade as debt advice charities. The FCA has taken action by issuing a clone warning about one particular firm masquerading as National Debtline,[4] and taken similar action against a firm pretending to be StepChange. However, this does not appear to have had the desired impact as variations of the advert for national debt helpline still appear daily on search engines.

In November 2019, we were pleased to see the Advertising Standards Authority ruling against National Debt Help[5] whose website gave the impression that they provided free debt advice on options including trust deeds, when they were operating as a lead generator in return for commission from firms for passing on leads.

5. **Are there incentives for providers to offer PTDs – and, if so, are these appropriate?**
We believe that the high fees that IPs can charge for a PTD can provide an incentive to set up a PTD where this might not be the best option for that consumer.[6]

- Are fees being boosted by high fees being charged to IPs by lead introduction companies for a PTD or IVA referral?
- Is this serving to bump up other charges to compensate?
- Why are lead generators allowed to charge fees that are then borne by the consumer in debt as a cost of their PTD or IVA?

[1] https://www.gov.scot/publications/foi-19-01126/

[2] http://www.moneyadvicetrustblog.org/2018/06/14/why-are-we-letting-companies-pretend-to-be-debt-advice-charities-online/

[3] https://support.google.com/adspolicy/answer/9508775?hl=en&ref_topic=29265

https://support.google.com/adspolicy/answer/9520029.

[4] https://www.fca.org.uk/news/warnings/national-debt-helpline-clone-fca-authorised-firm-0
https://www.fca.org.uk/news/warnings/step-change-step-changing-clone-fca-authorised-firm

[5] https://www.asa.org.uk/rulings/money-tree-media-ltd-A19-563069.html

[6] https://www.gov.scot/publications/foi-19-01126/

- It would appear to us to be a very good idea for a single regulator to set a fee tariff that is clear, transparent and publicly available.

There are clearly commission incentives for lead generation companies to pass on as many leads as they can, to maximise their commission. These leads may not be suitable in the long run but once the lead has been passed on, there does not appear to be any liability or consequences for the lead generator.

6. Please provide any further comments you wish to provide on PTDs.

We want to see fundamental reforms put in place so that lead generators cannot:

- state they offer 'debt advice', unless they are authorised to do so;
- make overly positive or misleading claims about the solutions on offer, which could include promises about the ease, speed, terms or relative benefits of a solution;
- seek to pass themselves off as being a charity or providing government-supported advice.

Much of this requires action from regulatory bodies. The FCA, AiB, Scottish Government, Insolvency Service and the debt management and insolvency sectors need to work together. To start with, the AiB and the Insolvency Service could develop stronger rules for insolvency practitioners who accept referrals from lead generation companies. The Recognised Professional Bodies should enforce these rules. The AiB and the Insolvency Service could make it compulsory for all IPs to ensure that the initial debt advice is provided by an FCA regulated debt advice firm rather than by an IP firm or lead generator.

This would help to ensure that if people are going down this debt solution route, it is because it is the most suitable option for them.

The FCA should look at the actions of authorised debt management companies and whether they are accepting leads from lead generators that may be breaking their consumer credit rules or where lead generation firms are giving "debt advice" as an appointed representative of an authorised firm.

Ultimately, the government needs to take action to close the 'regulatory gap' in which the lead generation industry operates. FCA cannot take enforcement action against IPs due to the regulatory gap that allows IPs to avoid the requirement for FCA authorisation if they are acting in 'expectation' of an insolvency appointment. We believe that government should give the responsibility to the FCA to regulate the activities of lead generators in relation to debt advice, through the creation of a new regulated activity of "effecting introductions to debt advice".[7]

[7] http://www.moneyadvicetrustblog.org/2016/08/02/why-the-fca-must-regulate-insolvency-practitioners-and-lead-generators/