

Debt management guidance compliance review

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1 EXECUTIVE SUMMARY

Debt management

- 1.1 The market for debt management services is large and growing, with the total cost to consumers in fees paid for debt management services expected to hit the £250 million mark by the end of 2010.¹ It has the potential to play an important role in helping consumers, many of whom are very vulnerable, deal with complex and harmful financial problems.
- 1.2 Consumers in difficulty often seek immediate debt advice in desperation. As well as commercial debt management firms, a number of government and charitable organisations provide free debt advice and solutions. Regardless of what type of advisor a consumer turns to it is important that they receive the advice and solution most suitable to their particular circumstances. However the potential for large amounts of profit to be generated by the commercial sector creates a risk of abuse.
- 1.3 The choices that consumers make to tackle their debt problems can have serious consequences both in terms of immediate financial cost, and long-term knock-on consequences on availability and cost of future credit. Furthermore, when problems do arise, for example where consumers are mis-sold an IVA or a debt management plan, there can be a significant long term financial and stressful impact which is difficult to resolve.

The compliance review

- 1.4 The Consumer Credit Act 1974 (the Act) requires most businesses that offer goods or services on credit or for hire, or that lend money to consumers, to be licensed by the Office of Fair Trading (OFT), which can refuse or revoke a licence if it decides a trader is not fit to

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¹ Payplan research paper into the debt management industry, April 2010

hold one. Debt management firms are required to hold such a licence, and as part of this to observe the OFT's Debt Management Guidance which sets out the minimum standards expected.

- 1.5 We employ a risk-based approach to monitoring businesses' behaviour, such that those carrying on high risk licensable activities are placed under greater levels of scrutiny than those considered low risk. Debt management is prioritised as a high-risk activity by the OFT because of the risk of real, significant and long-term harm to vulnerable consumers when poor advice is given and inappropriate solutions are adopted.
- 1.6 New powers came into force in April 2008² enabling the OFT to take a proactive and intrusive regulatory approach, and this has allowed us to undertake a programme of enforcement action to tackle the worst abuses identified in the sector. This action took place against a background of rising complaints and a rapid growth in new entrants into the fee charging debt management sector, operating mainly from internet-based websites.
- 1.7 We have already taken licensing enforcement action and shut down websites, addressing issues such as companies masquerading as charities, systemic cold-calling, and the mis-selling of IVAs. In total, between April 2008 and June 2010, the OFT undertook 37 formal actions to accept undertakings, impose requirements or refuse or revoke licences held or applied for. We have also worked alongside local authority Trading Standards Services (LATSS) to take injunctive action under the Consumer Protection from Unfair Trading Regulations 2008 to tackle debt sale scams.
- 1.8 Despite taking this action we were concerned that the industry was not responding as we had hoped, with overall standards appearing to remain low. We therefore launched this review to take an in-depth look into the sector as a whole, and specifically to:

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² Powers received under the Consumer Credit Act 2006

- inform our strategy for achieving compliance in the sector and identify future enforcement action
- gain a deeper insight into the evolving practices of debt management firms
- investigate levels of industry adherence to the standards set out in the OFT's Debt Management Guidance (the Guidance), and
- assess whether updates were needed to the Guidance.

1.9 The review identified widespread problems in the sector, which are a significant cause for concern to the OFT. It has led to the urgent implementation of an action plan and to 129 firms being warned to take immediate action to change their practices or face losing their credit licence.

1.10 The detailed findings of the review are set out in this document, along with the action which we are already taking and which we intend to take as part of our compliance strategy. The industry should be fully aware that we will be taking robust enforcement action necessary to ensure that standards improve dramatically.

The OFT's findings

1.11 The OFT expects debt management businesses to have the right levels of integrity and competence to ensure that they operate with high standards of transparency and fairness, giving consumers the right individual advice and the right solutions, and that they offer fully effective redress if things do go wrong.

1.12 It is important that businesses and their owners and managers see consumer protection not as an arbitrary set of rules or conditions imposed by others, but rather as necessary standards set from within to ensure a culture of responsibility in an industry which deals with very vulnerable consumers.

1.13 Instead the findings from this review shine a spotlight on a market where poor practices appear to be widespread. While degrees of non-compliance range from very serious matters to matters of less direct concern, it is clear that standards across this market are not as high as should be the case.

1.14 The key findings to emerge from the review are that:

- there is widespread non-compliance with the Guidance by debt advice and debt management licensees, with most debt management firms audited failing to some extent in at least three areas
- misleading advertising is the most significant area of non-compliance, in particular misrepresenting debt management services as being free when they are not
- frontline advisers working for debt management companies generally lack sufficient competence and are providing consumers with poor advice based on inadequate information
- industry awareness of the Financial Ombudsman Service scheme for resolving consumer complaints is low and there is widespread non-compliance with the Financial Ombudsman Service's rules³
- the two main trade associations, the Debt Managers Standards Association ('DEMSA') and the Debt Resolution Forum ('DRF'), could do more to lead the way by introducing more robust compliance monitoring and auditing systems for their members
- the Guidance was generally found to be clear and understandable but it needs to be updated to cover new emerging practices, and to give greater clarity on expected competence levels, advertising

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³ Under the Consumer Credit Act 2006, the Financial Ombudsman Service set detailed rules for complaints handling

standards, transparency of fees, and the 'best advice' principle, and

- there is a strong expectation and desire for the OFT to continue with its programme of pro-active compliance monitoring and strong action to remove unfit traders from the market.

Major consumer protection concerns identified

1.15 Given the sizeable impact of debt problems, the restricted options vulnerable consumers have, and the potential conflict of incentives debt management companies have, it is vital that high levels of consumer protection exist to ensure that firms act with **transparency** and **fairness** in their dealings with individuals and that suitable and effective **redress** mechanisms exist when things go wrong. However these were three areas in which we identified particularly significant problems within the industry.

Transparency

- 1.16 The review found a significant lack of transparency for consumers seeking debt advice and debt solutions. Websites often do not make clear the commercial nature of the businesses and the fees they charge, making it difficult for consumers to distinguish between fee charging debt management businesses and charitable or free-to-client advice providers. In the worst cases there are firms using misleading or look-alike trading names explicitly purporting to be charitable or government organisations.
- 1.17 The OFT has also identified evidence of some businesses actively seeking to discredit or misrepresent the services provided by the free advice sector in both advertising and marketing materials used and in the initial advice provided to our mystery shoppers.
- 1.18 Where information about fees and charges or the commercial nature of the business is provided this is generally found to be accorded a much lower prominence than statements such as 'free advice'.

1.19 Nearly all debt advisers surveyed during the mystery shopping exercise failed to give information on the full range of debt remedy solutions available. None of the businesses involved in the mystery shopping exercise tried to help by sign-posting consumers to the Insolvency Service's booklet 'In Debt? - dealing with your creditors'⁴ or any other comparable impartial alternatives that lay out the full range of options. In addition the majority of traders subject to a compliance visit also failed to do so.

Fairness

- 1.20 The review found significant and widespread examples of unfair and improper business practices. Firms are not giving the advice or offering the solution that is in the best interests of the consumer but instead that which is most profitable to them. In most cases, initial advice to pursue a particular solution was provided without a full and proper assessment of the consumer's individual financial circumstances. In general the quality of the information and initial advice provided to consumers is often very poor, raising concerns about the competence and training of frontline staff.
- 1.21 In some cases, it appears that business models may be set up to take the maximum amount of money from a consumer regardless of their circumstances.
- 1.22 The practice of front loading fees for setting up debt remedy solutions is widespread amongst the fee-charging sector (nearly 75 per cent of businesses inspected operate this model for debt management plans). This practice involves a debt management company recouping all or most of its costs using the initial consumer

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⁴ The Insolvency Service's publication for consumers in England and Wales '*In Debt? Dealing with your Creditors*' 09/1078 June 2009. Whilst the Guidance does not specifically reference this booklet, it is the OFT's view that licensees should provide consumers with impartial information on all debt remedy solutions available and this publication is a recognised way of doing this.

payments, thereby minimising its own risks whilst not immediately dealing fully with the consumer difficulties.

- 1.23 Further fees and charges are sometimes later added when a consumer is later 'flipped' onto an alternative debt solution – for example moving from a debt management plan to an IVA – there are cases when this may be appropriate due to a change in circumstances but it is also clear that some businesses may be deliberately seeking to recycle customers and extract maximum profit.

Redress

- 1.24 None of the websites assessed had upfront information about the Financial Ombudsman Service's role in handling complaints and requiring redress. This is compounded by the finding that the complaints handling procedures of one third of businesses audited failed to comply with the Financial Ombudsman Service's rules. In fact we found that among providers awareness of the alternative dispute resolution process operated by the Financial Ombudsman Service and the requirement to comply with it is patchy.

Self regulation

- 1.25 DEMSA and the DRF were set up in order to raise standards across the industry and have a vital role to play in ensuring that their members develop a culture of compliance within their businesses. DEMSA is a current code sponsor under the OFT's Consumer Codes Approval Scheme (CCAS). Between them the two trade associations cover the large majority of the debt management market.
- 1.26 DEMSA members have co-operated fully throughout this process and its members have already taken corrective action to address identified issues of non-compliance. We have reminded DEMSA that non-compliance by its members is inconsistent with DEMSA's status as a CCAS code sponsor and the standards the OFT expects from a sponsor's members, and that future evidence of non-compliance will

have serious implications for the continued OFT approval of DEMSA's code.

- 1.27 The DRF has also made some progress in remedying the highlighted non-compliances by its members, including issuing best practice guidelines and introducing an independent complaints system.
- 1.28 It is our view that both DEMSA and the DRF must take a stronger role in driving up industry standards and we will expect them to deliver quickly on the commitments they have each made to the OFT and to take action to expel members who do not comply.

Positive changes already secured

- 1.29 The review has raised awareness of the importance of complying with the OFT's Guidance and we have also used it as an opportunity to tackle the non-compliance identified. During the course of the review we have secured changes in industry behaviour including:
- action from the main trade associations to improve professionalism and standards across the industry, as above, and commitments to introduce robust compliance monitoring systems for members, to develop accredited training programmes and to operate independent consumer complaints panels, as well as taking more active steps to address members' non-compliance
 - over a third of traders (50) that were found to have non-compliance issues during the onsite compliance visits have since positively agreed to make changes to their business practices to address the identified non-compliances, and
 - half of the traders we warned about unlicensed trading have responded positively either by taking down unlicensed websites or by applying for a licence or to vary existing licences. In the remaining cases we are in discussions with internet service providers to remove unlicensed websites.

Next steps

- 1.30 We have used the findings of this review to inform the OFT's longer-term compliance strategy which encourages voluntary compliance while taking robust action against those who do not comply. The details of this strategy are set out in the conclusion of this report.
- 1.31 However, given the gravity of some of the issues identified, we have produced a plan for immediate action as set out at paragraph 1.33.
- 1.32 Finally, we welcome the recent announcement by BIS and HM Treasury of a joint review of consumer credit and debt. We will play an active role in influencing and informing policy in this area to achieve a more effective debt management market for consumers, especially the most vulnerable.

OFT's Action Plan for improving compliance

- 1.33 Our immediate priorities are to:

- **take targeted enforcement action against individual licensees to tackle priority areas of consumer harm:** we will target in particular those businesses who have failed to amend their business practices following breaches being notified to them following the advertising sweep, mystery shopping or a compliance visit
- **revise the Guidance:** we will tighten the rules for this sector by extending the scope of the Guidance to include the new unfair practices identified by the review. We will launch a formal consultation on a revised version later in the year
- **continue pro-active monitoring of compliance:** we will continue to carry out our programme of on-site compliance visits and advertising-monitoring

- **continue to target misleading advertising and look-alike websites:** we will work with print media, internet service providers, search engines and domain name registrars to tackle the use of websites designed to mislead vulnerable and distressed consumers
- **promote business compliance:** alongside enforcement, we will promote business compliance by working closely with the two main industry bodies to ensure messages are communicated clearly and quickly to businesses
- **empower consumers:** by improving awareness of the Guidance so they are clear about their rights.

2 BACKGROUND AND METHODOLOGY

- 2.1 The Consumer Credit Act 1974 (the Act) established a licensing system to protect the interests of consumers. All traders who provide debt management services are required under the Act to hold a consumer credit licence covering debt counselling, debt adjusting and credit-repair as appropriate.
- 2.2 Between 6 April 2008 and 9 July 2010 the OFT has issued or renewed 3,697 licences which included the debt adjusting and debt counselling categories (11.04 per cent of the 33,497 licences issued in this period). The OFT does not directly regulate debt management plans (DMPs), only the businesses who provide them.
- 2.3 The OFT has a duty under Section 1 of the Act to monitor, as it sees fit, the activities being carried on by licensees and to generally superintend the working and enforcement of the Act. In cases of dissatisfaction with a licensee's activities the OFT has a range of investigatory tools and enforcement options available to it. Action could take the form of a notice that the OFT is minded to refuse or revoke the credit licence of those concerned, the imposition of requirements on licensees to secure compliance, a financial penalty for breach of such a requirement or a warning letter. In addition to this, the OFT also has enforcement powers under other consumer protection legislation including the Enterprise Act 2002 and the Consumer Protection from Unfair Trading Regulations 2008 which it may use against licensees where appropriate.
- 2.4 Sections 4, 25A and 26 of the Act gives the OFT authority to issue guidance to debt management providers. In December 2001 (updated September 2008) the OFT issued the Debt Management Guidance (the Guidance) setting out the minimum standards we expect of licence holders who provide debt counselling services (including free-to-client) and/or seek to re-schedule consumers' repayment of debt and charge for doing. Licensees were warned by the OFT that they were not only expected to comply, but to adhere to the spirit as well as the letter of the Guidance.

High risk nature of the debt management industry

- 2.5 Well before the current economic downturn the OFT had identified debt management activities, including debt advice, as a high-risk area where vulnerable consumers can suffer detriment as a result of receiving poor quality debt advice or being subject to aggressive and misleading marketing and advertising.
- 2.6 Debt management services are a classic 'distress' purchase; consumers contacting debt management companies tend to be over-indebted, vulnerable and desperate for help with managing their financial difficulties. Consequently, consumers tend to make quick decisions about debt solutions and research from the Money Advice Trust has shown that consumers do not shop around for debt management services.⁵
- 2.7 Consumers making the decision to engage the services of a debt management company are potentially committing themselves to a debt solution which can affect their lives for years. The risks involved if things go wrong can be disastrous for consumers who can be left in a worse, rather than a better financial position, and in the worst cases can include the loss of the consumer's home.
- 2.8 It is therefore imperative that businesses offering debt management services exercise due diligence when dealing with over-indebted and vulnerable consumers.

Aims

- 2.9 As part of the OFT's wider compliance strategy and against a background of rising complaints, increased enforcement action and a rapid growth in new entrants into the fee charging debt management sector operating mainly from internet-based websites, the OFT formally launched this compliance review on 3 November 2009.

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⁵ An independent review of the fee-charging debt management industry, June 2009

2.10 The main aims of the review are:

- to assess compliance levels across the industry and identify any areas where standards had slipped below the minimum level set out in the Guidance
- to gain a deeper insight into the evolving practices of the industry
- to use the findings to inform the OFT's future enforcement and compliance strategy, and
- to inform a future revision of the Guidance which we will issue for consultation later in 2010.

Methodology

2.11 In undertaking the review evidence was obtained from:

- conducting an internet advertising compliance sweep: reviewing a sample of 100 debt advice and debt management websites to assess compliance with the Guidance
- tailored questionnaires sent to 1545 stakeholders including trade associations, licensees, consumer representative organisations, LATSS and free independent advice agencies. We received 437 responses to these questionnaires representing a 28 per cent response rate
- follow up meetings with consumer representative bodies, trade associations and government departments to clarify points made and seek further information and feedback - presentations on initial findings were also given at two industry conferences and to a Money Advice Liaison Group⁶ meeting

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⁶ The Money Advice Liaison Group (known as MALG) is a discussion forum which works to achieve greater communication, understanding and professionalism amongst creditors and money advice sectors

- commissioning LATSS to carry out onsite compliance visits to debt management businesses to assess compliance with the Guidance and to report findings to the OFT and deadlines agreed with licensees for addressing these. As at end of June 2010 168 visits have been conducted with 148 having been completed fully and a further 20 where discussions with licensees are ongoing or outcomes have not been confirmed
- commissioning a mystery shopping study of 172 commercial and free-to-client providers of debt management services.⁷ This was designed to obtain a picture of the average consumer's experience by testing the level of information provided about debt solutions and quality of debt advice given over the telephone by advisers. The mystery shopping exercise consisted of 202 telephone calls and 14 call backs following completion of an online form, and
- using the OFT's own experience of enforcing compliance with the Guidance to underpin the findings. This includes an analysis of complaint data and enforcement action taken against debt management businesses since April 2008. A complaint form was also made available on the OFT website for consumers who wished to complain about debt management practices. However, few consumers actually completed and returned this form.

2.12 We would like to thank all of those who have contributed to this review.

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⁷ Findings for commercial and free-to-client providers have been presented together given that only a small sample of shops (4 shops) were undertaken to free-to-client providers

3 ADVERTISING SWEEP

3.1 Prior to the launch of the compliance review, we assessed a sample of 100 debt advice and debt management websites. This sample included members of DEMSA and the DRF, new entrants to the industry and licensees against whom we have previously taken enforcement action. We also included websites identified using search-engine terms such as 'debt advice', 'debt help' and 'debt free' as well as the names of free-to-client national advice organisations to check whether commercial businesses were misleadingly trading under 'lookalike' names.

3.2 Based on our own experience of enforcing compliance with the advertising provisions of the Guidance we developed a set of core criteria against which we assessed the content of each site for compliance.⁸ The key finding from this sweep was that no websites complied fully with the Guidance. All failed on a number of the core criteria⁹ against which we assessed each site, though the levels and severity of non-compliance varied significantly.

3.3 Common breaches included:

- stating or implying all services provided were free or impartial
- a lack of balanced information about all debt remedy solutions
- no clear information about fees payable or, where this was provided, the information was not prominently displayed
- failure to provide warnings about the likely effect of debt solutions on credit ratings, and

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⁸ See Annex A for the core criteria against which we assessed each website

⁹ See Annex A for the compliance levels of core criteria

- making claims to be able to guarantee a favourable outcome to the consumer including 'interest frozen', 'write off debts', 'creditor action stopped'.

3.4 Other misleading or unfair business practices identified included:

- widespread use of sponsored links by commercial entities to promote themselves as free-to-client, charitable or government organisations on search engines, and
- use of unsubstantiated negative statements about free-to-client organisations.

3.5 We found that a majority of firms stated or implied that the advice given was provided on an independent or impartial basis with widespread misleading use of terms such as 'free' and 'impartial'. Of the websites surveyed, 73 described their services as free with the majority emphasising this over the fact that they charge for their debt management services. Several also made unsubstantiated claims to be the leading providers of debt advice in the UK.

3.6 The internet search-engine searches confirmed the extensive practice by businesses of using keywords to promote themselves on results pages as free advice, charitable or government organisations, despite the publicised action we have taken in this area.¹⁰ 87 per cent of the sponsored links returned during our searches for Citizens Advice, National Debtline, the Consumer Credit Counselling Service and Money Advice Scotland were for fee charging debt management companies.

3.7 We also found that some businesses had used misleading domain names and/or adverts that implied they were affiliated to these

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¹⁰ The OFT issued a press notice on 7 March 2009 about its action to close a number of 'look alike' websites, advising consumers to take care when searching on the internet to ensure they are dealing with genuine organisations. www.of.gov.uk/news/press/2009/26-09

organisations or were acting under some official sanction from the Government. Of the 14 websites identified 50 per cent were operating without a consumer credit licence, with most presumed to be engaged in lead generation as the content was misleading, biased and contained no business or contact information, instead gathering consumer data through online forms.

- 3.8 There was a widespread lack of balanced information about the full range of debt remedy solutions available to consumers, with no clear signposting to publicly available impartial information such as the Insolvency Service's guide 'In Debt? Dealing with your Creditors'.¹¹ Advertising was generally focused on the more profitable services, with evidence of clear bias in some cases.
- 3.9 A common theme was to advertise to consumers across the UK but not to include information about debt solutions applicable to consumers living in different jurisdictions. Most businesses failed to include details about County Court Administration Orders (England and Wales), Debt Relief Orders (England and Wales) or Debt Arrangement Schemes (in Scotland), all of which can be important lower cost options.
- 3.10 Seven per cent of websites marketed claims management services for unenforceable agreements with the majority doing so as a debt management solution when it is clearly not.
- 3.11 Only seven per cent of businesses provided sufficient upfront details of the fees charged to consumers, and none of this minority had done so on the homepage. All failed to give clear upfront warnings to consumers that where the first payment(s) into a DMP are retained as upfront fees and not paid to creditors, this would cause consumers to go into arrears or further into arrears, extending the repayment period or resulting in an increase in the amount to be

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¹¹ The Insolvency Service's publication for consumers in England and Wales 'In Debt? Dealing with your Creditors' 09/1078 June 2009.

repaid. Common practices observed were to either include no details of the fees or to conceal them in subsidiary pages such as those setting out terms and conditions or frequently asked questions (FAQs).

- 3.12 The transparency of the front ended fee-based business model of IVAs and PTDs was particularly poor. None of the websites assessed contained details or estimates of the costs involved. Common tactics used to obscure this included implying creditors are liable for the costs or will readily agree to the fees. Other poor practices included stating or implying that IVAs and PTDs are generically endorsed by the Government. Only one licensee clearly warned that debtors would be liable for IVA costs.
- 3.13 No websites provided a sufficiently prominent upfront warning to consumers of the risks of debt management plans. In particular, the potential negative effects of entering into any form of debt management arrangement was not explained. Whilst some sites did contain abbreviated warnings, there was a general lack of accurate information about the potential effects of each debt remedy solution on consumers' credit ratings, their ability to obtain credit or about the details that credit reference agencies hold.
- 3.14 We identified that there was a clear emphasis placed on the advantages of debt management services without equally explaining the relative disadvantages, with widespread omissions of the warnings and caveats the Guidance requires. In the vast majority of cases where these were given they were not accorded equal prominence or had been relegated to places a consumer is less likely to look such as the foot of the page, or buried in the sections covering terms and conditions and frequently asked questions (FAQs). Common breaches included bold upfront claims such as 'write off debt', 'freeze interest', 'stop creditor action' and 'reduce your payments'.
- 3.15 All but three websites contained misleading incentives or inducements, with some sites relying heavily on false or misleading

statements to attract debtors. A particularly misleading practice was to use generic headlines that can confuse consumers as to what service they apply to, but act as a hook to draw consumers in, such as 'We stop interest' and 'Debt free in 5 years guaranteed'. There was a common use of phrases that state or imply the service is an immediate solution or will free the consumer of the need to meet their debts such as 'escape debt', 'wipe out debt' and 'solve your debt problems today'.

- 3.16 Less widespread but potentially very detrimental to consumers was the unfair business practice of using unsubstantiated negative statements about free-to-client providers, with some websites implying or even stating directly that they work in the interests of creditors rather than the debtors.
- 3.17 A large amount of misleading content was found to be identical across different websites indicating there is a significant proportion of businesses who are not actively aware of the Guidance and of expected standards, and would instead copy-and-paste content from other companies rather than integrate standards into their own business models.
- 3.18 There was no clear upfront information on a consumer's right to a cooling off period or on the Financial Ombudsman's Alternative Dispute Resolution scheme, though some sites did include this information elsewhere on the website. This is particularly concerning as the findings from the sweep suggest consumers may be receiving inappropriate advice and may not be aware that they are entering into a contract for a paid for service with a commercial entity, and are therefore less likely to appreciate the cancellation periods or their ability and right to seek redress if something goes wrong.
- 3.19 Non-compliant websites of members of the two main trade bodies have been brought to the attention of DEMSA and the DRF. Both bodies have committed to raise standards by instructing their membership to change their advertising content. DEMSA members have already taken action to do so.

Consumer Protection from Unfair Trading Regulations 2008 – the CPRs

- 3.20 Making misleading claims or failing to include appropriate warnings and caveats in debt advice and debt management advertising is not only non-compliant with the Guidance but may also be a misleading action or omission for the purposes of the CPRs. Debt management firms that use misleading advertising may therefore not only face licensing action but could also be subject to action under the CPRs forcing them to immediately stop using such advertising.

Breaches of wider provisions of the Act – unlicensed trading

- 3.21 A total of 14 websites were found to be operating without an appropriate consumer credit licence, 15 licensees were trading using an unlicensed trading/domain name and seven were engaged in debt management without the required debt counselling and debt adjusting licence categories. Unlicensed trading and using unlicensed trading names is an offence under the Act. Where we have identified unlicensed trading we have sent appropriate warnings to traders and will follow this up.

4 QUESTIONNAIRE SURVEY

- 4.1 The consensus view was that all stakeholder groups (industry, consumer advice and LATSS) found the Guidance to be clear and understandable. Most respondents said that the Guidance has already helped a lot to raise standards across the industry. Majority also said that the Guidance had clarified well the different types of practices which the OFT considers to be unfair. No respondents found the Guidance to be onerous or difficult to understand. Very few respondents claimed to be unaware of the Guidance.
- 4.2 Some respondents suggested that the scope of the Guidance could be extended to make it clear that it also applied to some activities of certain claims management companies. Other respondents believed that there are areas where the rules need to be tightened and the Guidance updated to include emerging unfair practices such as excessive fees and 'flipping' clients between debt solutions. This is discussed in more detail below. Finally, there was a call for the OFT to continue with its programme of pro-active compliance monitoring and to step up action to remove incompetent and unfit traders from the market.
- 4.3 A detailed summary of the views expressed by respondents to the questionnaires is at Annex B.

Industry views

- 4.4 The majority of licensee respondents said the Guidance is embedded within their business practices and procedures, with 75 per cent stating that they conducted regular compliance audits to identify breaches of the Guidance. Some licensees said the Guidance was integral to all their business procedures. One respondent indicated that following the introduction of the Guidance they had looked afresh at their business processes and had made extensive changes to achieve compliance. Another suggested that the Guidance had changed the whole ethos of their company. Others suggested the Guidance had helped facilitate greater co-operation between fee-

charging debt management companies and creditors because of the clarity it provided on standards.

- 4.5 One of the main debt management trade bodies, DEMSA, who state its membership has a combined market share of over 50 per cent, said its Code of Practice was an extension of the Guidance. Other credit and debt trade associations such as R3 and the British Bankers Association (BBA) said that the principles of the Guidance are referred to in their codes of practice.
- 4.6 Just over half of licensee respondents said that they had received training on the Guidance, with slightly more (55 per cent) stating that they provided staff training on the Guidance. Several respondents praised the BTEC Advanced Certificate in Debt Resolution, an accredited qualification that has recently been launched by the DRF. The OFT welcomes and supports all initiatives that are designed to increase professionalism within the industry.
- 4.7 Three quarters of licensees told the OFT that all areas of the Guidance were being complied with. The minimum standards governing debt management advertising and the requirement on licensees to provide consumers with appropriate advice were said to have had the most impact on the way the respondents operate their businesses. One respondent told us that 'advising clients of the duration and cost of a DMP took a while to get used to. Clients are sometimes shocked and frightened at how long it will take them to be debt free.'
- 4.8 Very few licensees indicated that the Guidance had posed difficulties in compliance terms. The OFT has received anecdotal evidence that some licensees are finding it difficult to adhere to the principle that client monies must be disbursed to creditors within five working days of cleared funds, particularly where consumers get paid on a weekly basis as the debt management business would be required to send multiple payments in a month to ensure compliance. However this difficulty was not raised by our survey.

- 4.9 Of those respondents who identified areas of non-compliance, some indicated that licensees were most likely to be non-compliant in areas covering the handling of client monies.¹² But no other common themes emerged.
- 4.10 All but two licensee respondents were aware of the best advice principle with the Guidance.¹³ Several licensees suggested that they have developed mechanisms such as decision trees to capture key information from consumers in order to arrive at the most appropriate solution.
- 4.11 The majority of licensees stated that they signpost consumers to publicly available impartial information about debt solutions including referring consumers to free advice organisations such as Citizens Advice, Consumer Credit Counselling Service, National Debtline, Payplan as well as Government websites.
- 4.12 In contrast R3 told us that 84 per cent of insolvency practitioners (IPs) it surveyed and who work on personal insolvency said that they have seen debtors who have agreed to a DMP without having received impartial advice about the alternative options available to them.¹⁴
- 4.13 Consumer complaints volumes were said to be low, with the majority of licensees advising that they have received on average less than ten complaints alleging breaches of the Guidance in the last year. Reported action taken as a result of these complaints ranged from retraining staff to revising their internal processes accordingly.

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¹² Clauses 2.23 – 2.24 of the Guidance

¹³ Clause 2.27 of the Guidance

¹⁴ Research published by R3 in March 2010

Adviser views

- 4.14 One of the key messages to emerge from consumer advice organisations and individual advice agencies was that the Guidance needed to be revised to clarify which provisions applied specifically to the not-for-profit advice sector. One individual advice agency said that there are some advisers 'who think the guidance only applies to fee chargers'. Another respondent claimed that advisers within the not-for-profit sector were unaware of the Guidance though no evidence was provided in support.
- 4.15 Three quarters of respondents said that advisers use the Guidance, with just under half stating that their agencies had provided them with training on the Guidance. Several respondents cited the 'Wiser-adviser' training provided by the Money Advice Trust for money advisers across the UK which includes modules on the Guidance. The majority of respondents also confirmed that advisers have access to paper and electronic copies of the Guidance via agency offices and information systems and intranet sites.
- 4.16 Just under half of adviser respondents stated that they have dealt with consumers who had already previously sought advice from, or actually entered into a debt management arrangement with, a fee charging debt management business. Aside from the fact that this advice is free of charge to the consumer and recommended by Government, some of the reasons for these referrals are outlined below:
- the consumer was not made aware of the fact that the debt management business retains a proportion of the payment as part of their fees
 - changes in the consumer's circumstances, such as unemployment, meant they were no longer able to meet their monthly payments
 - the payment plan developed by the debt management business was unaffordable and/or unrealistic

- the debt management business was not disbursing payments to creditors or the payments were delayed
- the debt management business had failed to deal with priority debts
- the consumer was still receiving contact from creditors in spite of guarantees from the debt management business that creditor contact would cease
- there was a general lack of support from the debt management business.

4.17 Over half of adviser respondents said there were areas of the Guidance not being complied with by licensees, with advertising being identified as the most common non-compliant area. Several respondents made reference to misleading promises being made in advertising such as implying liabilities can be made to go away and the use of the term 'free advice' without explaining that there are charges.

4.18 Whilst some respondents welcomed the enforcement action taken by the OFT against look-alike websites in March 2009,¹⁵ it was suggested that more needed to be done to address this issue and that of non-compliant internet advertising by debt management businesses in general. Money Advice Trust urged the OFT to meet with internet search engine companies to ensure that the paid-for advertising on their sites does not breach the Guidance.

4.19 Whilst most advisor respondents stated that the Guidance had raised standards, real evidence of improvements made by the industry was said to be limited to the well established businesses who were also trade association members, rather than new entrants or the smaller

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¹⁵ The OFT issued a press notice on 7 March 2009 about its action to close a number of 'look alike' websites, advising consumers to take care when searching on the internet to ensure they are dealing with genuine organisations. www.of.gov.uk/news/press/2009/26-09

players. In its response Citizens Advice stated: 'Prior to the introduction of the guidance in 2001, we were receiving great numbers of complaints about the large debt management firms which made up a significant share of the market. Since then, the proportion of reports we receive about these larger, well-known companies has declined relative to those about smaller, more recently established firms that are frequently web-based. Our evidence indicates that although the guidance has had some positive impact upon the practices of the well-established debt management firms, there has been a proliferation of smaller firms which fail to adhere to the guidance.'

- 4.20 AdviceUK also said that they 'would like to see it become compulsory [for fee-charging debt management businesses] to be a member of an approved trade association and to abide by their code of practice. We would also like to see sufficient resources allocated to the OFT to allow comprehensive and robust monitoring to take place.'

The LATSS view

- 4.21 LATSS respondents said that they use the Guidance mainly to undertake compliance inspections to debt management businesses on behalf of the OFT and that it was an extremely useful tool when advising businesses. Just over a third of departments which responded said that where they had used the Guidance in discussions with licensees they had received positive responses, with compliance said to have been achieved in the majority of cases. Advertising and the quality of initial advice were the two most common areas of non-compliance, with several citing the misleading nature of advertising claims and an absence of caveats as key issues.
- 4.22 The majority of respondents praised the Guidance saying that it had made it easier for them to submit complaints to the OFT or to take enforcement action.
- 4.23 Just under half of those departments we surveyed confirmed that they had dealt with complaints from consumers due to inadequate

information provided about fee levels by the debt management business and poor standards of service generally.

- 4.24 Overall, complaint volumes were said to be low, with one respondent stating 'A major issue of concern is the fact that agencies likely to deal with clients of DMCs do not necessarily make complaints to either TSS or OFT.'

Revising the Guidance

- 4.25 Respondents to the questionnaire highlighted a number of areas where amendment to the Guidance was needed, including:
- requiring debt management businesses to be explicitly clear in their advertising about the fact that they charge fees, the level of fees charged and the methodology for calculating fees,¹⁶ with one respondent saying that they 'believe that promotional materials should follow a standardised format, in which certain key elements of the plan must be presented in a specified manner.'
 - introducing clear criteria on what constitutes 'best advice'. For example, requiring debt advisers and debt management businesses to provide full information to the consumer on all debt remedy solutions, with an explanation of their key features such as their advantages, disadvantages and duration. Another respondent suggested that the OFT introduce a requirement for advisers to complete and retain a questionnaire for each client demonstrating what solutions have been considered and why they recommended a particular option

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¹⁶ The Advertising Standards Authority has published its revised CAP Code which bans such omissions

- making an explicit requirement around the use of the Common Financial Statement as a recognised industry standard for assessing a consumer's financial circumstances
- requiring debt management businesses to have active compliance monitoring and auditing procedures in place
- extending the scope of the Guidance to include claims management companies that are engaged in debt counselling or debt adjusting activities, and
- clarifying how the Guidance relates and applies to IPs and free-to-client debt advisers.

Emerging unfair business practices not covered by the Guidance

4.26 The review also revealed new or emerging unfair business practices in the debt management sector that are not currently covered by the current Guidance such as:

- charging excessive fees disproportionate to the work undertaken. Some businesses were said to charge the equivalent of multiple monthly payments as initial set-up fees. Such practices can be severely detrimental to a consumer who may end up even more over-indebted if creditors continue to apply interest and charges or if the plan fails because they cannot keep up with the payments. Some respondents called for an explicit cap on fees. One industry respondent said '[the Guidance] is weak in relation to the regulation of the amount of fees and whether high up-front fees are consistent with the principle of delivering advice in the best interest of the client'. As a competition authority the OFT is not proposing to introduce a fees cap but we will require licensees to be more transparent on this issue in any revised version of the Guidance
- encouraging consumers to pay up front fees using credit cards or other means of credit leading to further over-indebtedness

- 'flipping' consumers between different debt repayment options and charging consumers multiple fees for doing so. It is apparent that this is often linked to inappropriate advice. Some creditors were also said to favour and encourage DMPs even in cases where they may not be the most appropriate solution. This is supported by research conducted by R3 which found that 52 per cent of IPs had seen debtors pushed into DMPs by their creditors with just over half of IPs claiming that they had come across creditors refusing an IVA even though it may be a viable and appropriate option¹⁷
- engaging in unsolicited and misleading cold calling. Despite the action taken by the OFT against debt management companies engaging in misleading and unlawful cold calling practices in 2009,¹⁸ a number of respondents called for the Guidance to be strengthened to tackle this issue. Others suggested that the OFT should consider banning cold calling by both telephone and text message, as consumers are confused by the misleading information contained in such communications, and
- holding onto client funds in the hope of agreeing a full and final settlement with creditors. The OFT has been told that some fee charging debt management businesses are operating hybrid business models whereby consumers make monthly payments to the company who will then pay creditors as little as £1 per month whilst saving the balance to make full and final settlement offers in future. Sometimes this 'service' is combined with claims and/or debt management activities. The OFT considers this business model to be completely unacceptable and is investigating further.

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¹⁷ Research published by R3 in March 2010

¹⁸ The OFT issued a press release in May 2009 about its action to warn debt management businesses about misleading and unlawful cold calling practices www.of.gov.uk/news-and-updates/press/2009/60-09

4.27 The OFT will consider the feedback provided by respondents and all the suggestions for amending the Guidance. Revised draft guidance will be issued for formal consultation and the OFT will also consult further with key stakeholders prior to issuing the consultation draft.

5 COMPLIANCE VISITS

- 5.1 To underpin the largely anecdotal evidence obtained via the questionnaire survey the OFT arranged for nearly 200 debt management businesses to be inspected by LATSS. The results of the visits provided the OFT with a unique insight into the operating procedures of those businesses which were tested and assessed for compliance.
- 5.2 This inspection process is part of a wider monitoring exercise which is still ongoing but by the end of June 2010, 148 onsite compliance visits to licensed traders operating in the debt management industry had been completed fully by LATSS on behalf of the OFT.¹⁹ Eighty-four per cent of the traders were identified as being non-compliant with some aspects of the Guidance and 64 per cent were found to be non-compliant to some degree with provisions of the Act or other consumer protection legislation. In total, 136 licensed traders were found to have non-compliances and 12 traders were identified as being compliant.

Advertising, marketing and promotion

- 5.3 Backing up the results of the advertising sweep, the highest recorded area of non-compliance related to online advertising content. Websites operated by just over half of all traders visited were found to be non-compliant. Specific issues mirrored those findings from the OFT's earlier advertising sweep.
- 5.4 Nearly half of all traders visited were also found to be relying on the same misleading content in other media advertising such as newspaper adverts, leaflets, directories, and radio and television adverts.

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¹⁹ 168 visits have been conducted in total to the end of June but in 20 cases negotiations with licensees are ongoing/ outcome of the visit has not yet been confirmed

Fees

- 5.5 Nearly half of all traders visited failed to disclose fee structures – the same proportion also failed to provide information upfront and/or in writing at the pre-contractual stage that fees are payable.
- 5.6 Further analysis found that the practice of front loading fees is prevalent throughout the industry. For example, three quarters of the traders visited typically charged the consumer an upfront fee followed by monthly management fees. These fees were often found to be disproportionate to the level of work carried out.

Contract terms

- 5.7 Contract terms used by 48 per cent of traders visited were found to be incorrect or to give insufficient information on the nature of the services being supplied, the total cost to the consumer, the amount to be repaid or the duration of the contract. Some visiting officers commenting that contracts did not in fact refer to the debt solution the consumer had signed up for.

Advice

- 5.8 Thirty-nine per cent of traders visited were found to be publishing or providing consumers with inadequate levels of information about available debt solutions or were providing advice that was not in the best interest of the consumer.

Debtor's Guide

- 5.9 Awareness of the IS guide 'In Debt – Dealing with your Creditors'²⁰ or alternative sources of impartial advice was poor, with more than half of traders (59 per cent) failing to provide copies to consumers or

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²⁰ The Insolvency Service's publication for consumers in England and Wales '*In Debt? Dealing with your Creditors*' 09/1078 June 2009.

to make consumers aware of the existence of impartial information. Whilst the IS booklet is not directly referenced within the Guidance it is the OFT's view that signposting consumers to it is indicative of best advice.

Evidence of mis-selling

- 5.10 The OFT has received anecdotal evidence that inappropriate incentivisation of advisers/ sale targets is commonplace in the fee-charging sector. However this issue was not sufficiently probed during the visits for the OFT to reach a definitive view. In at least two instances, visiting officers identified that front end staff received commission or bonuses directly relative to the number of consumers they signed up to a specific debt solution, thereby indicating potential evidence of mis-selling.
- 5.11 One visiting officer has commented 'There is concern that the interaction with the client does not make it clear that the companies are commercial providers who are obtaining payment from the client. While advice is provided, it is not comprehensive and is by the commercial nature of the business involved not totally impartial.'

Handling of client monies

- 5.12 Any failure to comply with the rules surrounding the handling of clients' monies is of serious concern to the OFT and will always merit follow-up enforcement action. Of the 148 traders visited: five traders were found not to be passing payments to creditors within five working days of receipt of cleared funds; four traders were not keeping monies held on behalf of consumers in a separate client account; and two traders were failing to accrue interest earned on clients' accounts to the benefit of the consumer. Follow up action will be taken in all of these areas.

Transparency

- 5.13 Almost a quarter of traders failed to clearly explain their business model to consumers. There was a lack of transparency in the traders'

relationships with associated businesses, particularly with those to whom client referrals were made. A key area of non-compliance was not clearly explaining to the consumer who they are being transferred to and why. Approximately 70 per cent of traders visited received or made referrals to other businesses.

Staff competence

5.14 Approximately 20 per cent of traders visited had employees with insufficient knowledge of all debt solutions or whose training materials were inadequate. This lack of competence of key personnel was attributed to infrequent and poor staff training. Evidence was also found of a lack of compliance monitoring of staff beyond the initial training received.

Other unfair practices

5.15 Other unfair business practices identified during the compliance visits, but not specified in our existing Guidance, included:

- evidence of licensees accepting payment for debt management services by way of credit card and/or credit agreements but this was not as widespread as previously suggested by our complaints, and
- the fact that some licensed traders were not robust in checking the identity of debtor clients which could raise issues around identity fraud.

5.16 Wider compliance issues relating to the Act as well as other consumer protection legislation were also identified, as follows:

- not keeping the OFT informed of changes relevant to their consumer credit licences (47 per cent of traders) for example, changes of directors or addresses and/or failing to apply to add additional trading names (including domain names) to the licence

- failing to have in place complaint handling procedures that are compliant with the Financial Ombudsman's rules (36 per cent of traders) as required by the Act, and
- examples of potential breaches of other legislation (apart from the Act) such as the Consumer Protection (Distance Selling) Regulations 2000, The Cancellation of Contracts made in a consumers home or place of work, etc Regulations 2008, The Data Protection Act 1998 and The Privacy and Electronic Communications Regulations 2003 which were identified in 33 per cent of cases.

Next steps

- 5.17 Given the levels of non-compliance identified we have taken action to ensure that 129²¹ companies improve their business practices and provide clear, compelling and comprehensive evidence that they have done so within three months.
- 5.18 Any evidence indicating that a trader has failed to co-operate with the regulator by not addressing the issues brought to his/her attention is highly relevant to their continuing fitness to hold a licence and will lead the OFT to act immediately and instigate licensing action.

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²¹ In total 136 traders were identified as having non-compliance as part of the visits, two traders have subsequently surrendered their consumer credit licences and we are considering other action in the remaining cases

6 MYSTERY SHOPPING

- 6.1 The OFT has also published the results of a mystery shopping survey available at: www.of.gov.uk/about-the-of/legal-powers/legal/cca/debt-management which we commissioned as part of the review.
- 6.2 The survey was carried out by FDS International (FDS) who were tasked with undertaking a mystery shopping study of commercial and free-to-client providers of debt management services. The objectives were twofold. Firstly, to test the typical consumer's experience of dealing with a debt management provider by assessing the accuracy and completeness of the information provided at the initial telephone contact stage, secondly to assess the overall quality of debt advice provided.

Methodology

- 6.3 The OFT and FDS developed a typical scenario for mystery shoppers to use and the brief given was to make telephone calls to a sample of debt management providers, or to initiate call backs from introductory websites, seeking advice and information about the company's debt management services on behalf of a family member. The mystery shoppers were not required to enter into a debt management arrangement. All shoppers used the same basic scenario with a few variables such as a post code differentiator and different levels of disposable income.
- 6.4 FDS carried out a total of 216 telephone mystery shops (202 telephone calls and 14 call backs following completion of an online form) between 4 and 17 March 2010. Mystery shops were made to 172 individual entities with multiple mystery shops being made to some businesses. Trade association member businesses made up a quarter of all entities shopped and 38 per cent of the total number of shops conducted. Four mystery shops were conducted to free-to-client organisations and, given this small sample shopped, FDS have

not distinguished between commercial and free-to-client entities in its report.

Main Findings

6.5 The key findings to emerge from our mystery shopping survey are:

- the majority of debt advisers failed to provide information about the full range of available debt repayment options, with most focusing on just two options
- most debt advisers tended to focus on the advantages of individual debt solutions and did not explain the disadvantages
- nearly half of all debt advisers misleadingly claimed or implied that they could guarantee outcomes favourable to the consumer when discussing DMPs. Claims included 'interest frozen' and 'creditor contact stopped'
- no debt adviser provided a full explanation of the main features of each individual debt repayment option they discussed
- few debt advisers voluntarily provided details of the costs of debt repayment options discussed, and where this was provided information was not complete
- nearly half of all debt advisers failed to mention consumers' cancellation rights, even after being asked
- most debt advisers were willing to give advice without making a full assessment of the debtor's circumstances – over half gave advice without asking for details of disposable income levels first
- no debt adviser sign-posted consumers to the IS booklet 'In Debt? Dealing with your creditors', and
- the majority of debt advisers failed to volunteer that debt advice was freely available from charitable organisations, and when

asked a significant proportion sought to discredit or misrepresent the services provided by such organisations.

Level of information provided

- 6.6 Of those surveyed, the majority or 94 per cent of all debt advisers failed to provide the shopper with details of the full range of available debt repayment options. To meet the requirements of the Guidance debt management businesses must ensure that all information and advice given is transparent and in the best interests of the consumer. Given the seriousness of the issues, and the potential for consumer detriment, the OFT would expect businesses to provide balanced information on the full range of debt solutions available, even if they do not offer that particular solution, to enable the consumer to make an informed decision.
- 6.7 Most advisers mentioned two options only. Typically DMPs and IVAs were the most frequently mentioned options. Even where a Scottish postcode was employed 61 per cent mentioned IVAs even though Scottish consumers are not eligible for IVAs, suggesting that advisers lacked knowledge of debt solutions applicable to consumers living in different jurisdictions.
- 6.8 Advisers were identified as having a tendency to focus more on the advantages of individual debt repayment options than the disadvantages, with 78 per cent volunteering advantages compared to 47 per cent that volunteered disadvantages. Many of the proposed advantages discussed with shoppers were found to be misleading, with some advisers claiming or implying to be able to guarantee an outcome favourable to the consumer. For example, when discussing DMPs, 49 per cent of advisers suggested that interest is guaranteed to be frozen, 42 per cent implied all contact from creditors will stop, and 32 per cent implied that creditors are guaranteed to accept the DMP proposal.
- 6.9 More than half of all advisers failed to volunteer information about the disadvantages of the individual debt repayment options discussed. Of these, a significant proportion continued to fail to

provide information about the disadvantages of the various options when prompted by the shopper, however information was generally more forthcoming following further questioning.

Quality of advice

- 6.10 The quality of advice provided inevitably suffered as a result of the lack of clarity and completeness of the information given to the debt management businesses by the shoppers, however there were some actual issues of concern.
- 6.11 Prior to giving advice on the most appropriate debt remedy solution it is vital that the adviser establishes the consumer's income and expenditure levels. This important information was not sought in the majority of cases with most advisers found to be willing to provide advice without first making a full assessment of the debtor's financial standing.
- 6.12 64 per cent of advisers gave advice without asking about the debtor's disposable income. Only three advisers declined to give full advice without more detailed information about the debtor's circumstances. Most advisers however did request information from the shopper about the level of debt (89 per cent) and types of debt (69 per cent).
- 6.13 At the end of the exercise, shoppers asked advisers which debt repayment solution might be the 'best' one if this information had not already been forthcoming. Just under half of advisers declined to make a recommendation on the grounds that they had insufficient information to do so.
- 6.14 Of most concern is the high number of advisers that were prepared to make a recommendation. Definitive recommendations to opt for DMPs or IVAs were made by 42 and 17 per cent of advisers respectively.

Other issues

Signposting of consumers

- 6.15 The mystery shopping exercise found that signposting consumers to sources of impartial information about debt repayment option was poor with none of the debt advisors mentioning the IS booklet 'In Debt? Dealing with your creditors'.
- 6.16 Furthermore debt advisers were not upfront about the availability of free advice from organisations such as the Citizens Advice Bureau – only eight per cent volunteered this information. Following prompting from the shopper this increased but a significant proportion (19 per cent) of those advisers sought to discredit or misrepresent services provided by free-to-client organisations suggesting for example that they could not cope with demand, lacked expertise or were not on the side of the debtor.
- 6.17 Research from the Money Advice Trust²² has shown that consumers do not shop around for debt management services and vulnerable consumers could therefore be unduly influenced by such misleading statements when advice from a charitable organisation, which may include holistic advice not provided by the commercial entity such as income maximisation and benefit entitlements, may be more appropriate.
- 6.18 The OFT considers such misrepresentation to be an unfair or deceitful practice. Such misleading statements would also amount to unfair business practices under Regulations 5 and 6 of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

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²² An independent review of the fee-charging debt management industry, June 2009

Transparency of fees

- 6.19 Very few advisers – four per cent in the case of DMPs and one per cent in the case of IVAs - voluntarily provided details of the fees that they charge. These figures increased dramatically following further prompting by the shopper (70 per cent for DMPs and 34 per cent for IVAs) but there were also a significant number of advisers who failed to provide these details at all. On a positive note, only a very small proportion of advisers actually implied that the arrangement of DMPs are free (one per cent), though this was higher for IVAs (11 per cent).
- 6.20 Very few advisers explained to the shopper how the fees are calculated. After prompting this figure rose to 55 per cent for DMPs, with a sizeable proportion still failing to give a breakdown. The result was much worse for IVAs which saw 79 per cent of advisers failing to provide this information.

Duration of debt repayment options

- 6.21 Information given to the shoppers about the duration of the various debt repayment options was limited, particularly when discussing DMPs. However, it should be noted that a third of all advisers said they were unable to clarify this point without further information, and information about the duration of IVAs and PTDs was much better.

Cancellation rights

- 6.22 Only three per cent of advisers mentioned consumers' cancellation rights without being asked. When prompted, this figure rose to 50 per cent. This leaves a significant proportion who, even after being asked, did not explain that the consumer had a right to cancel his/her contract within a specified period.

Pressurised selling techniques

- 6.23 No significant evidence of pressurised selling emerged from the review. In only six per cent of the calls did the shopper assess that

they were put under any pressure. None of the advisers tried to force the shopper into making a decision, however this may be due to the scenario that was used with the shopper stating that they were calling on behalf of the debtor.

Overall

- 6.24 The findings from the mystery shopping exercise generally indicate that front line debt advisers are providing inadequate information and advice to consumers. Knowledge of debt repayment options was found to be incomplete, reinforcing the findings from the compliance visits that some advisers are not being adequately trained.
- 6.25 Full details of the findings and a copy of the Mystery Shopping Report, has been published on the OFT's website at www.of.gov.uk/about-the-of/legal-powers/legal/cca/debt-management.

7 THE OFT'S ACTION TO DATE

7.1 Tackling problems in this sector is a key priority for the OFT. Since the introduction of the new licensing regime in April 2008, the OFT has been pro-actively using its new regulatory powers to focus on the worst practices and abuses.

7.2 Debt management businesses account for over half of the licensed businesses against whom the OFT has used its 'requirements' powers²³ since their introduction in April 2008.²⁴ Requirements that the OFT has imposed on debt management businesses to change their behaviour and secure future compliance have typically addressed:

- misleading advertising
- failure to provide consumers with adequate information about fees and/ or the nature of the service in a clear or transparent manner before entering into an agreement
- lack of training and/or skills, knowledge and experience to engage in debt management activities
- lack of auditing procedures for ensuring compliance with the Guidance, and
- failure to have complaints handling processes that comply with the Financial Ombudsman Service's rules.

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²³ Powers under section 36(E) of the Act to impose conditional requirements on a licence

²⁴ 53 per cent of total requirements action

Enforcement action against individual traders

7.3 Between 1 April 2008 and 30 June 2010 the OFT has taken licensing action against a total of 37²⁵ debt management businesses, including:

- action against six established businesses to revoke their licences²⁶
- action against seven new applicants seeking to enter the market to refuse their application
- the imposition of conduct requirements on 21 licensees to secure compliance with the Guidance and relevant consumer legislation, and
- accepted undertakings from three established businesses

7.4 We have also taken the following non-licensing actions against debt management businesses:

- the issue of 154 warning letters. Of this total, 52 related to various breaches of the Guidance with 37 of these warning traders about the use of misleading statements in their advertising. Over half of all traders (92 or 59 per cent) we wrote to were warned about unlicensed trading (either not having a licence or not having the appropriate categories on their licence or trading under a name not on a licence), and
- the issue of 823 advisory letters to new entrants providing detailed advice and assistance on the minimum standards outlined in the Guidance.

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²⁵ In total, since April 2008 the OFT has been 'minded to' take licensing action against 49 licensees engaged in debt management activities

²⁶ In four instances the determination to revoke is subject an appeal

Market facing enforcement action

- 7.5 A key information source for assessing compliance is the intelligence received from individual consumer complaints and third party organisations (including advice organisations, creditor, competitor firms, other regulators and FOS) about emerging unfair practices.
- 7.6 We always aim to optimise our use of intelligence by working cooperatively and in coordination with other regulatory partners such as LATSS, IS, the Information Commissioner's Office, and the Ministry of Justice to ensure effective interventions in problem areas.
- 7.7 Consequently, we have undertaken a number of successful high impact interventions aimed at dealing with market-wide issues quickly, preventing further consumer detriment and reinforcing compliance with the Guidance. These include tackling businesses responsible for:
- misleading IVA mailings: misleading promotional materials sent directly to over-indebted consumers encouraging them to terminate their IVAs and go bankrupt without explaining the adverse implications
 - look-alike websites: commercial businesses operating from websites which are designed to mislead consumers into believing that they are dealing with a free to client, charitable or government sanctioned organisation
 - cold calling: misleading or unlawful telephone cold calling by debt management businesses promoting their products and services, and
 - debt sale scams: misleading claims to be able to buy or sell on consumer's debts without creditor permission
- 7.8 Outcomes from these market facing actions are outlined at table 1.1 overleaf.

1.1 Outcomes from market facing enforcement actions

Enforcement actions	Misleading IVA Mailings	Look-alike websites	Cold Calling	Debt sale scams
Initial action	<p>OFT Press release dated 5 June 2008</p> <p>Warning letters issued to 12 licensees</p>	<p>OFT Press release dated 7 March 2009</p> <p>Warning letters issued to 11 licensees</p> <p>27 associated websites closed down</p>	<p>OFT Press release dated 25 May 2009</p> <p>Warning letters issued to 10 licensees</p>	<p>OFT Press release dated 23 June 2009</p> <p>Alert to consumers not to respond to misleading claims from companies offering to 'buy' their debts</p>
<p>Follow-up formal enforcement action</p> <p>(as at 30 June 2010)</p>	<p>6 minded to refuse/ revoke notices issued</p> <p>6 determinations to refuse/ revoke – 2 now subject to appeal</p> <p>4 traders ceased trading following initial action</p>	<p>6 minded to refuse/ revoke notices issued – resulted in 3 determinations favourable to the trader, 1 withdrawal, 1 licence surrendered, 1 determination to revoke now subject to appeal</p> <p>1 trader ceased trading following initial action</p> <p>Approximately 40 websites closed down subsequently</p>	<p>3 traders have had conduct requirements imposed on their licences</p> <p>2 minded to revoke notices issued, resulted in 1 determination to revoke – subject to appeal and 1 withdrawal</p> <p>3 traders ceased trading following initial action</p>	<p>Interim injunction under the CPRs obtained by OFT enforcement partners, Birmingham Illegal Money Lending Team to stop practices. 1 trader ceased trading following exercise of OFT 36C powers of inspection</p>

Complaint trends

7.9 Our compliance review has taken place during a period of economic recession which has seen unprecedented demand for debt advice. As part of the review, we encouraged consumers to complain to the OFT directly and posted a complaint form on our website for this purpose. Few consumers downloaded and returned completed forms.

7.10 Of the 206 complaint forms forwarded to consumers who had complained directly to the OFT's enquiries unit between November 2009 and June 2010, only 15 of these were returned completed.

7.11 We have analysed these and the other complaints received during this period to identify the following most complained about unfair practices, which were:

- provision of poor advice - including failure to offer/advise on the full range of debt solutions available
- advertising - giving the misleading impression that the services offered were free and/or impartial
- failure to provide details of fees/charges for services offered
- failure to provide consumers with terms and conditions in writing
- lack of transparency as to which entity the consumer was dealing with
- failure to provide caveats/disadvantages regarding the debt solutions offered (for example the effect on a consumer's credit rating)
- use of unsolicited cold calling
- failure to pass on fees to creditors
- failure to communicate with debtor once they have paid the required upfront fee

- no cooling off period given, and
- taking money from the debtor's bank account without authorisation.

Complaints received between January 2003 and June 2010

7.12 Prior to the compliance review the OFT had seen a steep increase in the number of complaints/ enquiries made to it during 2009/10. This should be viewed against the backdrop of statistics published by the Consumer Credit Counselling Service in its 2009 Statistical Yearbook which show that the level of UK consumer credit outstanding has risen from £54.4 billion in 1991 to £226.8 billion in 2009.

7.13 Income shocks caused by reduced hours or unemployment can have a serious knock-on effect on a consumer's ability to pay their debts increasing demand for help in managing their debts. In 2004 UK unemployment levels stood at approximately 1.5 million²⁷ compared to approximately 2.5 million²⁸ in April 2010. This has coincided with an increased demand for debt management services caused by the current economic downturn.

7.14 Of the 446 complaints or enquiries received during the period 1 January 2009 to 30 June 2010, 143 were formally investigated.²⁹ Complaints are vital to the OFT in its role of monitoring a trader's fitness to hold a credit licence, and assist in providing the evidence base we require to take enforcement action. Investigations are initiated by the OFT when we have significant evidence that brings into question a licensee's fitness to hold a licence. In some circumstances one or two complaints about a trader may be

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²⁷ Source: Department for Work and Pensions

²⁸ Source: Office for National Statistics

²⁹ 98 complaints of the 446 complaints received did not name a specific trader and therefore no further action could be considered

sufficient evidence to demonstrate a lack of fitness, particularly if they involve issues alleging misappropriation of client funds. The action we take is dependant upon the evidence we obtain.

Sources of complaints

- 7.15 It is important that we encourage all stakeholders, and consumers in particular, to inform us when they believe a trader is not complying with the Guidance. Of the 533 complaints received during the period 1 April 2008 to 30 June 2010, 386 (72 per cent) were received from consumers and 52 (9 per cent) were submitted by competitor businesses. Complaints from the advice sector accounted for 7.5 per cent or a total of 40 of all complaints.
- 7.16 These trends are reflected in data provided by Consumer Direct, which is administered by the OFT. This shows significant year on year increases in complaints/enquiries received from consumers from a start point of 15 in 2004-5, to 1,783 in 2009-10. The data provided in table 1.2 below indicates that the 2010-11 figures are likely to exceed those for 2009-10.

1.2 Consumer Direct complaints/ enquiries relating to Debt Adjusting (2004-5 to June 2010)

Year Range	Total number of complaints
2004-2005	15
2005-2006	67
2006-2007	323
2007-2008	453
2008-2009	863
2009- 2010	1783
Jan 2010 - June 2010	1438
Total Number	4942

Financial Ombudsman Service complaint data

7.17 During the financial year to March 2010 the Financial Ombudsman Service saw a three-fold increase in the number of complaints received about fee charging debt management companies. Typical complaints included failure to pass on monies to creditors and poor administration of debt management plans, delayed payments or payments for incorrect amounts to creditors with serious consequences for the consumer.³⁰ These complaints mirror some of the issues brought to the OFT's attention.

7.18 A memorandum of understanding exists between the OFT and the Financial Ombudsman Service to facilitate the exchange of information on complaint data. Where debt management businesses fail to co-operate with the Financial Ombudsman's rulings, it will refer

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³⁰ Financial Ombudsman Service: Annual Review 2009/10

this matter to the OFT to consider whether it would be appropriate to take licensing enforcement action. We are currently investigating a number of referrals from the Financial Ombudsman regarding non co-operation by debt management businesses, an issue which the OFT considers to be highly relevant to a licensee's continuing fitness to hold a licence.

8 CONCLUSIONS

- 8.1 The impact of the economic downturn and the rise of UK household debt has resulted in significant increase in demand from over-indebted consumers for debt advice and debt management services. The National Audit Office identified that demand for free face to face debt advice is out stripping capacity and that a quarter of all advice agencies are either refusing new clients or have a waiting list of over one month.³¹
- 8.2 Against this background it is likely that more over-indebted consumers will turn to fee-charging debt management businesses for advice and help in managing their debts. In addition, any Government cut backs in support for free debt advice will also drive greater numbers of vulnerable consumers into the fee charging sector. Regardless of what type of adviser a consumer turns to, the availability of good debt advice and suitable solutions is vital for consumers who cannot cope with their existing debt levels.
- 8.3 The new powers conferred upon the OFT in April 2008 has allowed us to pro-actively look at behaviours across the debt management sector in detail and in depth, and has given the OFT a critical insight into compliance levels across the debt management industry. This compliance review is unprecedented in that we were able for the first time to use our new powers to inspect a large number of business premises and use the evidence to underpin our findings.
- 8.4 Prior to the launch of the review we had serious concerns based on rising complaint levels and our own enforcement experience that bad practice may be endemic in the debt management sector. The results of the review lead us to believe that there is widespread incompetence in the debt management sector, and that in significant

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³¹ NAO report for BIS – 'Helping over-indebted consumers' published 4 February 2010

areas of the market there is a blatant disregard for the Guidance and for the needs of vulnerable consumers.

- 8.5 The review has not shown that the non-compliance can be attributed to the content of the Guidance. The consensus of opinion is that the Guidance is clear and easy to use. Awareness levels amongst licensees are also reported as being high. However, feedback from the review suggests that there are areas where the Guidance is left too open to interpretation and where more specific detail and clarity is needed.
- 8.6 The emergence of new unfair business practices means that an update of existing Guidance is essential. Plans to produce draft Guidance for consultation later in the year are already well underway and will be treated as a priority.
- 8.7 The severity of some of the examples of non-compliance identified does vary widely across the market. However, whilst the review does include some technical breaches of the legislation, the OFT is very concerned about the evidence of systemic non-compliance. This is particularly evident in the scale of identified non-compliances relating to misleading advertising, poor quality advice and information, lack of transparency about the chargeable nature of the service being offered as well as a failure to disclose fee structures, together with a failure to comply with the Financial Ombudsman's rules on consumer redress.
- 8.8 Consequently, we have taken action to ensure that 129 audited non-compliant companies improve their business practices and provide clear, compelling and comprehensive evidence that they have done so. The companies have been warned that failure properly to address matters identified will lead the OFT to act immediately and instigate licensing action. We will also consider naming those companies who do not comply.
- 8.9 We have worked closely with both industry bodies, DEMSA and the DRF, to support their efforts to raise standards across the industry. Both organisations have assured us that they are fully committed to

making the industry more professional and more responsible. These commitments include plans to introduce robust compliance monitoring systems for their members, to develop accredited training programmes and to operate independent consumer complaint panels, as well as taking more active steps to address members' non-compliance.

- 8.10 Many of these commitments have very recently begun to be put into effect. We will continue to support DEMSA and the DRF in their initiatives to improve compliance, training and complaint handling and believe these can provide a focus for improvement going forward.

Next steps

Future compliance strategy

- 8.11 The OFT's action plan (detailed in the Executive Summary of this report) forms part of the OFT's wider and longer-term enforcement and compliance strategy based on the following key elements:
- **continuing to investigate fitness cases and to take enforcement action to prevent and remove unfit traders from operating in the debt management industry**
 - **targeted enforcement action against those licensees who were identified as non-compliant during the review:**
 - i. targeted enforcement action against non-compliant traders identified during the compliance visits, in particular where the trader has failed to or has refused to address any non-compliances within agreed timescales, and evaluating the impact of such action
 - ii. robustly enforcing compliance with the misleading advertising provisions of the Guidance by taking appropriate and proportionate enforcement action against non-compliant traders identified in the advertising compliance sweep, and

evaluating the impact of such interventions in reducing consumer detriment

- **revising the Guidance:**
 - i. preparing a revised draft version of the Guidance for consultation. In particular the Guidance will be revised to give greater clarity on the OFT's views on the developing unfair business practices
 - ii. the scope of the Guidance will also be extended to make it clearer that it applies to the free advice sector, certain claims management companies and IVA providers – and also which sections of the Guidance apply.

- **pro-active monitoring of compliance with the Guidance:**
 - i. putting in place a rolling programme of on-site compliance visits with a particular focus on new entrants to the industry as well as established businesses found to be seriously non-compliant
 - ii. improving existing information sharing mechanisms to make it easier for third parties to alert the OFT to emerging bad practices. In particular we will explore the possibility of establishing a dedicated whistleblower email address or telephone line as well as making improvements to the OFT's complaint form for advisers, third party organisations and consumers
 - iii. warning consumers at an early stage about new or emerging unfair business practices
 - iv. putting in place regular compliance sweeps of all medias of advertising and marketing materials including evaluating the impact of such sweeps to ensure that bad practice does not creep back in

- v. undertaking mystery shopping exercises as appropriate and at periodic times in order to assess compliance with the quality of advice provision of the Guidance
- vi. optimising the use made of our intelligence sources including but not limited to complaints information, such as data from the Financial Ombudsman Service, Consumer Direct, and Citizens Advice, National Debtline and AdviceUK in order to identify emerging trends and amend our enforcement strategy accordingly. We will also explore the scope for improving the way that such information is captured
- vii. undertaking further reviews of industry compliance with the Guidance at regular intervals
- **working closely with the industry to support compliance with the Guidance:**
 - i. we will continue to support the industry's efforts to increase the professionalism of its members by ensuring that management commitment to compliance and raising standards is clear and unambiguous. This could include providing advice and support on required standards, participating at industry conferences, regular meetings and (as far as possible in line with our disclosure obligations) exchanging intelligence about members' compliance to assist their own monitoring
 - ii. seeking to develop mechanisms for reaching non trade association members within the industry by identifying organisations to work with such as small business enterprises and LATSS
 - iii. promoting increased competence and professionalism within the industry by raising awareness about the availability of debt adviser training from recognised professional bodies including but not limited to the DRF, Money Advice Scotland,

Institute of Credit Management, Institute of Money Advice and the Money Advice Trust.

- **raising awareness of existing Guidance:**
 - i. giving talks at appropriate conferences and workshops about the Guidance and using such venues to distribute guidance material
 - ii. encouraging traders and advisers to make colleagues and associates aware of the Guidance and to spread the word on our behalf
 - iii. using information sources for businesses and consumers to disseminate information about the Guidance. This could include further developing and refining information for OFT, DirectGov and Business Link websites

- **working in partnership with other stakeholders and regulators to improve standards:**
 - i. working closely with the Financial Ombudsman Service to improve awareness of its alternative dispute resolution role amongst businesses and consumers and making efficient use of its data to inform our enforcement work
 - ii. partnership working with LATSS to improve awareness of the Guidance, to carry out competence visits to and ongoing compliance audits of debt management businesses on the OFT's behalf in order to improve standards
 - iii. working closely with the Insolvency Service to improve awareness of the guide 'In Debt – Dealing with Your Creditors' amongst businesses and consumers in England and Wales and with the Accountant in Bankruptcy in Scotland

- iv. working closely with the Advertising Standards Authority to monitor debt advice/debt management advertising and to share intelligence about traders breaching its code
- v. working closely with the Ministry of Justice (MoJ) to improve standards amongst claims management companies offering to assess the unenforceability of consumer credit agreements, and
- vi. working with consumer bodies to increase consumer knowledge and awareness of debt advice and debt solutions and to encourage consumers to shop around when seeking help with their debts

8.12 We would like to thank all of those who have contributed to this review. This report and annexes, along with the results of the mystery shopping exercise, are available on the OFT's website. The address is: www.offt.gov.uk/about-the-offt/legal-powers/legal/cca/debt-management.

A ONLINE ADVERTISING SWEEP COMPLIANCE AGAINST CORE CRITERIA

Core assessment criteria and compliance levels based on 100 websites identified between 21 September 2009 and 9 October 2010.

Assessment Criteria	Percentage of traders identified
Promoting services as free when this was not the case	73%
Clear information on Debt Management Plan fees provided upfront	7%
Clear information on Individual Voluntary Arrangements fees provided upfront	0%
Clear and upfront information on the potential effects of Debt Management Plans and Individual Voluntary Arrangements on consumers' credit rating	0%
Clear and upfront information on a statutory cooling off period	0%
Balanced information about the full range of debt options available and signposting to the Insolvency Services guide 'In Debt? Dealing with your Creditors'	0%
Presence of misleading statements	97%
Operating without a Consumer Credit Licence	14%
Trading name not on Consumer Credit Licence	15%
Engaged in licensable activities without the correct licence categories	13%
Engaged in unlicensed debt counselling/adjusting	7%

B ANALYSIS OF QUESTIONNAIRES

This annex provides a detailed analysis of responses to the questions detailed in our questionnaires. We have assessed separately responses by licence holders, free and independent advice agencies, LATSS, trade associations and consumer advice organisations. The results of the completed questionnaires are set out below.

A. CONSUMER CREDIT LICENCE HOLDERS

We sent out 829 questionnaires to licence holders and received 276 responses giving us a response rate of 33 per cent. The responses consisted of 242 completed questionnaires and two licensees responded by email or submitted a report. There were 32 nil returned questionnaires. A breakdown of responses to the individual questions is set out below.

	Valid responses	Range
Annual turnover (if known) £	74	£2 – £56 million
Number of staff employed (if applicable)	83	1 – 480
Market share as % (if known)	10	1 - 18

1. Do you operate solely as a debt management business?

A large number of consumer credit licences cover all categories of business. We asked this question because we wanted to clarify the number of respondents who engaged solely in debt management activities. Responses were as follows and full details of these are set out in **Table A below**.

Table A

Response	Actual Number	Percentage of those completing the question
Yes	78	33%
No	158	67%
No answer given	4	

2. What are the main activities of your business or associated business?

We asked this question because we wanted to clarify the main activities of each licensee. Responses were as follows and full details of these are set out in **Table A2 below**. Respondents were allowed to select more than one option.

Table A2

Response	Actual Number	Percentage of those completing the question
Debt management plans	118	50%
IVAs (Protected Trust Deeds)	62	26%
Bankruptcy (Sequestration)	45	19%
Debt consolidation loans	28	12%
Credit information services (including credit repair)	12	5%
Lead generation	12	5%

Introducer	51	21%
Claims management services	21	9%
Creditor	7	3%
None	1	0%
Other, please state business activity	28	12%

3. If you are a debt management provider or creditor, have you used the Debt Management Guidance?

We asked this question to determine the extent to which licensees use the Guidance. Responses were as follows and full details of these are set out in **Table A3** below.

Table A3

Response	Actual Number	Percentage of those completing the question
Yes	155	76%
No	50	24%
No answer given	32	

4. Have you received training on the Debt Management Guidance?

We asked this question to determine how many licensees have received training on the Guidance. Responses were as follows and full details of these are set out in **Table A4** below.

Table A4

Response	Actual Number	Percentage of those completing the question
Yes	117	53%
No	102	47%
No answer given	16	

5. Do you provide staff training on the Debt Management Guidance?

We asked this question to determine how many licensees provide training to key personnel on the Guidance. This will help to inform our knowledge on how well trained advisers are on the Guidance. Responses were as follows and full details of these are set out in **Table A5 below**.

Table A5

Response	Actual Number	Percentage of those completing the question
Yes	110	55%
No	90	45%
No answer given	35	

6. Does each of your employees have access to copies of the Debt Management Guidance?

We asked this question to determine the ease with which advisers can obtain copies of the Guidance. Responses were as follows and full details of these are set out in **Table A6** below.

Table A6

Response	Actual Number	Percentage of those completing the question
Yes	129	69%
No	59	31%
No answer given	47	

7. Is the Debt Management Guidance incorporated into your business practices and procedures?

We asked this question to determine the extent to which the Guidance is embedded within licensees practices and procedures. Responses were as follows and full details of these are set out in **Table A7** below.

Table A7

Response	Actual Number	Percentage of those completing the question
Yes	173	81%
No	40	19%
No answer given	20	

8. Do you actively and regularly audit your business to ensure compliance with the Debt Management Guidance?

We asked this question to determine the extent to which licensees actively and regularly assess and test compliance with the Guidance. Responses were as follows and full details of these are set out in **Table A8 below**.

Table A8

Response	Actual Number	Percentage of those completing the question
Yes	150	71%
No	61	29%
No answer given	22	

9. Do you have procedures in place to alert you to actual or potential breaches of the Debt Management Guidance?

We asked this question to determine the extent to which licensees have procedures in place to alert them to actual or potential breaches of the Guidance and how these are addressed. Responses were as follows and full details of these are set out in **Table A9 below**.

Table A9

Response	Actual Number	Percentage of those completing the question
Yes	159	75%
No	54	25%
No answer given	19	

10. Do you find the Debt Management Guidance clear and understandable?

We asked this question to determine whether licensees find the Guidance clear and understandable. This information will also help inform any subsequent revision of the Guidance. Responses were as follows and full details of these are set out in **Table A10** below.

Table A10

Response	Actual Number	Percentage of those completing the question
Yes	188	91%
No	18	9%
No answer given	26	

11. Has the Debt Management Guidance been useful in clarifying what we would regard as unfair business practices?

We asked this question to determine whether licensees find the Guidance easy to understand and whether it is clear on what the OFT's views are on

what is considered to be an unfair business practice. This information will also help inform any subsequent revision of the Guidance. Responses were as follows and full details of these are set out in **Table A11 below**.

Table A11

Response	Actual Number	Percentage of those completing the question
Yes	183	91%
No	18	9%
No answer given	30	

12. Are there any new or emerging unfair business practices that are not currently covered by the Debt Management Guidance?

We asked this question to determine whether there are any new or emerging unfair business practices that are not currently covered by the Guidance. This information will also help inform any subsequent revision of the Guidance. Responses were as follows and full details of these are set out in **Table A12 below**.

Table A12

Response	Actual Number	Percentage of those completing the question
Yes	60	31%
No	134	69%
No answer given	36	

13. In your experience has the Debt Management Guidance raised standards across the industry?

We asked this question to determine the extent to which licensees believe that the Guidance has changed behaviour. Responses were as follows and full details of these are set out in **Table A13 below**.

Table A13

Response	Actual Number	Percentage of those completing the question
Yes	162	84%
No	30	16%
No answer given	38	

14. If you answered yes to Q13, which areas would these be?

We asked this question to determine which specific areas of the Guidance have led to positive changes in behaviour. Responses were as follows and full details of these are set out in **Table A14 below**. Respondents were allowed to select more than one option.

Table A14

Response	Actual Number	Percentage of those answering yes
Advertising, marketing and promotion	107	66%
Pre and post-contract information	80	49%
Contract terms	63	39%

Handling money	56	35%
Fee structures	39	24%
Quality of initial advice	83	51%
Debt management services (for example ongoing contact with consumers)	54	33%
Other	2	1%
Don't know	6	4%
No Answer	28	

15. In your experience are there any areas of the Debt Management Guidance not being complied with by licensees?

We asked this question to identify areas of non-compliance with the Guidance. Responses were as follows and full details of these are set out in **Table A15** below.

Table A15

Response	Actual Number	Percentage of those completing the question
Yes	47	25%
No	143	75%
No answer given	39	

16. Which parts of the Debt Management Guidance have had the most impact upon your business and the way it operates?

We asked this question to determine what parts of the Guidance have changed the way licensees' operate their business. Responses were as follows and full details of these are set out in **Table A16 below**. Respondents were allowed to select more than one option.

Table A16

Response	Actual Number	Percentage of those completing the question
Advertising, marketing and promotion	73	32%
Pre and post-contract information	66	29%
Contract terms	51	22%
Handling money	54	24%
Fee structures	31	14%
Quality of initial advice	86	38%
Debt management services (for example ongoing contact with consumers)	45	20%
Other	8	3%
Don't know	24	10%
No Answer	55	

17. Please indicate if any parts of the Debt Management Guidance have posed particular difficulties in compliance terms:

We asked this question to determine if any areas of the Guidance have posed any particular difficulties in terms of compliance. This information will also help inform any subsequent revision of the Guidance. Responses were as follows and full details of these are set out in **Table A17 below**. Respondents were allowed to select more than one option.

Table A17

Response	Actual Number	Percentage of those completing the question
Advertising, marketing and promotion	9	4%
Pre and post-contract information	3	1%
Contract terms	5	2%
Handling money	6	3%
Fee structures	1	0%
Quality of initial advice	2	1%
Debt management services (for example ongoing contact with consumers)	4	2%
Other	17	7%
Don't know	50	22%
No Answer	137	

18. Are you aware of the principle in the Debt Management Guidance that all advice given should be in the best interests of the client?

We asked this question to test licensees' awareness of the best advice principle of the Guidance. Responses were as follows and full details of these are set out in **Table A18** below.

Table A18

Response	Actual Number	Percentage of those completing the question
Yes	197	99%
No	2	1%
No answer given	28	

19. Do you signpost consumers to publicly available impartial information about debt solutions?

We asked this question to determine the extent to which licensees signpost consumers to the Insolvency Service's booklet – 'In Debt? Dealing with your creditors'. Responses were as follows and full details of these are set out in **Table A19** below.

Table A19

Response	Actual Number	Percentage of those completing the question
Yes	175	87%
No	27	13%
No answer given	25	

20. How many complaints have you received in the last year alleging breaches of the Debt Management Guidance by your business?

We asked this question to determine how many complaints licensees have received complaints in the last year alleging breaches of the Guidance. Responses were as follows and full details of these are set out in **Table A20** below.

Table A20

Response	Actual Number	Percentage of those completing the question
0 – 9	181	96%
10 – 49	2	1%
50 – 99	2	1%
100 – 199	0	0%
200 +	3	2%
No Answer	39	

21. Please clarify the nature and type of these complaints

We asked this question to determine what were the most complained about practices. Responses were as follows and full details of these are set out in **Table A21 below**. Respondents were allowed to select more than one option.

Table A21

Response	Actual Number	Percentage of those completing the question
Advertising, marketing and promotion	5	2%
Pre and post-contract information	6	3%
Contract terms	4	2%
Handling money	6	3%
Fee structures	9	4%
Quality of initial advice	10	4%
Debt management services (for example ongoing contact with consumers)	10	4%
Other	20	9%
Don't know	8	4%
No Answer	178	

22. Do you signpost complainants to the Financial Ombudsman Service?

We asked this question to determine the extent to which licensees signpost complainants to the Financial Ombudsman Service. Responses were as follows and full details of these are set out in **Table A22 below**.

Table A22

Response	Actual Number	Percentage of those completing the question
Yes	129	84%
No	24	16%
No answer given	73	

23. If your business administers debt management plans what is their average duration?

We asked this question to gain a better understanding of the length of debt management plans. Responses were as follows and full details of these are set out in **Table A23 below**.

Table A23

Response	Actual Number	Percentage of those completing the question
0 – 11 months	18	20%
12 – 23 months	15	17%
24 – 35 months	27	30%
36 months +	29	33%
No Answer	137	

24. What is the average client fee charged by your business?

We asked this question to determine the average fee levels charged by debt management providers. Responses were as follows and full details of these are set out in **Table A24** below.

Table A24

Fees	Valid responses	Range £
Upfront: Debt management plan	68	2 – 1014
Administration: Debt management plan	55	10 – 1500
Nominee : IVA	41	20 – 4000
Supervisory : IVA	19	30 – 3902
Upfront/Nominee : Protected Trust Deeds	7	185 – 4511
Administration/Supervisory : Protected Trust Deeds	2	2400 – 4200

25. What are the average annual failure rates of debt management plans administered by your business?

We asked this question to find out how many plans fail on an average annual basis. Responses were as follows and full details of these are set out in **Table A25** below.

Table A25

Failure rates	Actual Number	Percentage of those completing the question
0 - 19%	90	86%
20% - 39%	15	14%
40% - 59%	0	0%
60% - 79%	0	0%
80% +	0	0%
No Answer	121	

26. If you are a creditor or act on behalf of a creditor do you deal with debt management providers?

We asked this question to gauge creditors experience of dealing with debt management providers. Responses were as follows and full details of these are set out in **Table A26** below.

Table A26

Response	Actual Number	Percentage of those completing the question
Yes	10	21%
No	38	79%
No answer given	178	

27. If you are a creditor do you arrange informal debt repayment agreements with consumers?

We asked this question to determine the extent to which creditors arrange informal debt repayment agreements with consumers. Responses were as follows and full details of these are set out in **Table A27** below.

Table A27

Response	Actual Number	Percentage of those completing the question
Yes	6	14%
No	37	86%
No answer given	182	

28. If you are a creditor is it your policy to apply interest and charges after a debt management plan has been agreed?

We asked this question to determine the extent to which creditors continue applying interest and charges after a debt management plan has been agreed. Responses were as follows and full details of these are set out in **Table A28** below.

Table A28

Response	Actual Number	Percentage of those completing the question
Yes	1	3%
No	36	97%
No answer given	188	

29. If you provide credit information services (including credit repair) do you signpost consumers to publicly available impartial information?

We asked this question to determine the extent to which credit information service providers (including those that offer credit repair) signpost consumers to the Information Commissioners Office booklet 'Credit explained'.

Responses were as follows and full details of these are set out in **Table A29** below.

Table A29

Response	Actual Number	Percentage of those completing the question
Yes	22	48%
No	24	52%
No answer given	179	

B. FREE AND INDEPENDENT ADVICE AGENCIES

We sent out 428 questionnaires to free and independent advice agencies and received 70 responses giving us a response rate of 16 per cent. The responses consisted of 67 completed questionnaires and 2 respondents responded by email or submitted a report. There was 1 nil returned questionnaire. A breakdown of responses to the individual questions is set out below.

1. Do your advisers use the Debt Management Guidance?

We asked this question to determine the extent to which individual advisers use the Guidance. Responses were as follows and full details of these are set out in **Table B** below.

Table B

Response	Actual Number	Percentage of those completing the question
Yes	51	76%
No	16	24%
No answer given	0	

2. Does your agency provide training for advisers on the Debt Management Guidance?

We asked this question to determine how many advice agencies train advisers on the Guidance. Responses were as follows and full details of these are set out in **Table B2** below.

Table B2

Response	Actual Number	Percentage of those completing the question
Yes	30	46%
No	35	54%
No answer given	1	

3. Do your advisers have access to a copy of the Debt Management Guidance?

See A6 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table B3 below**.

Table B3

Response	Actual Number	Percentage of those completing the question
Yes	55	83%
No	11	17%
No answer given	0	

4. Do your advisers find the Debt Management Guidance clear and understandable?

See A10 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table B4 below**.

Table B4

Response	Actual Number	Percentage of those completing the question
Yes	53	91%
No	5	9%
No answer given	5	

5. Has the Debt Management Guidance been useful in clarifying what we would regard as unfair business practices?

See A11 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table B5** below.

Table B5

Response	Actual Number	Percentage of those completing the question
Yes	49	88%
No	7	12%
No answer given	5	

6. Are there any new or emerging unfair business practices that are not currently covered by the Debt Management Guidance?

See A12 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table B6** below.

Table B6

Response	Actual Number	Percentage of those completing the question
Yes	14	27%
No	37	73%
No answer given	8	

7. In your agency's experience has the Debt Management Guidance raised standards across the industry?

See A13 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table B7 below**.

Table B7

Response	Actual Number	Percentage of those completing the question
Yes	26	59%
No	18	41%
No answer given	14	

8. If you answered yes to question 7, which areas would these be?

Responses were as follows and full details of these are set out in **Table B8 below**. Respondents were allowed to select more than one option.

Table B8

Response	Actual Number	Percentage of those answering yes
Advertising, marketing and promotion	5	19%
Pre and post-contract information	9	35%
Contract terms	13	50%
Handling money	5	19%
Fee structures	1	4%
Quality of initial advice	11	42%
Debt management services (for example ongoing contact with consumers)	14	54%
Other	1	4%
Don't know	0	0%
No Answer	17	

9. Has your agency worked with clients who had previously sought advice from or entered into debt management arrangements with a fee charging debt management business?

We asked this question to understand why consumers would contact free independent advice agencies after they have already sought advice from, or entered into a debt management arrangement with a fee charging debt management business. Responses were as follows and full details of these are set out in **Table B9** below.

Table B9

Response	Actual Number	Percentage of those completing the question
Yes	46	87%
No	7	13%
No answer given	3	

10. Where your agency has used the Debt Management Guidance in discussions with licensees what was the overall response?

We asked this question to determine whether advisers are able to change behaviour as a result of using the Guidance in discussions with licensees. Responses were as follows and full details of these are set out in **Table B10** below.

Table B10

Response	Actual Number	Percentage of those completing the question
No response	7	25%
Positive response	9	32%
Negative response	0	0%
Other	3	11%
Don't know	9	32%

11. If positive, in what percentage of cases was compliance achieved?

We asked this question to determine whether advisers are able to change behaviour as a result of using the Guidance in discussions with licensees. Responses were as follows and full details of these are set out in **Table B11** below.

Table B11

Response	Actual Number	Percentage of those completing the question
0 - 24%	2	22%
25% - 49%	1	11%
50% - 74%	3	33%
75% +	3	33%

12. In your agency's experience are there any areas of the Debt Management Guidance not being complied with by licensees?

See A15 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table B12** below.

Table B12

Response	Actual Number	Percentage of those completing the question
Yes	24	59%
No	17	41%
No answer given	15	

13. If you answered yes to Question 12, what are the most common areas of non-compliance?

Responses were as follows and full details of these are set out in **Table B13 below**. Respondents were given the option of more than one response.

Table B13

Response	Actual Number	Percentage of those answering yes
Advertising, marketing and promotion	12	50%
Pre and post-contract information	8	33%
Contract terms	4	17%
Handling money	6	25%
Fee structures	8	33%
Quality of initial advice	9	38%
Debt management services (for example ongoing contact with consumers)	11	46%
Other	1	4%
Don't know	0	0%
No Answer	15	

14. Has the Debt Management Guidance made it easier for your agency to submit complaints to the OFT on behalf of clients?

We asked this question to determine if the Guidance has made it easier for free independent advice agencies to submit complaints to the OFT. Responses were as follows and full details of these are set out in **Table B14** below.

Table B14

Response	Actual Number	Percentage of those completing the question
Yes	28	65%
No	15	35%
No answer given	12	

15. How many complaints about the debt management providers has your agency dealt with in the last year and how many of these have been satisfactorily resolved?

We asked these questions to determine how many complaints free independent advice agencies have received in the last year that relate to debt management providers and how many of these complaints have been satisfactorily resolved. Responses were as follows and full details of these are set out in **Table B15 below**.

Table B15

	Valid responses	Range
How many complaints about debt management providers have you dealt with in the last year?	16	0 – 50
How many of these have been satisfactorily resolved?	16	0 – 5

16. Has your agency referred any client complaints to the Financial Ombudsman Service?

We asked this question to determine the extent to which free independent advice agencies refer client complaints to the Financial Ombudsman Service. Responses were as follows and full details of these are set out in **Table B16** below.

Table B16

Response	Actual Number	Percentage of those completing the question
Yes	18	38%
No	30	62%
No answer given	5	

C. TRADING STANDARDS SERVICES

We sent out 227 questionnaires to Local Authority Trading Standards Services (LATSS) and received 65 responses giving us a response rate of 29 per cent. The responses consisted of 64 completed questionnaires and 1 nil returned questionnaire. A breakdown of responses to the individual questions is set out below.

1. Do you and your officers use the Debt Management Guidance?

We asked this question to determine the extent to which Trading Standards Officers (TSOs) use the Guidance. Responses were as follows and full details of these are set out in **Table C1** below.

Table C1

Response	Actual Number	Percentage of those completing the question
Yes	30	47%
No	34	53%
No answer given	0	

2. Do you offer debt or financial advice to consumers?

We asked this question to determine the extent to which LATSS offer specialist debt or financial advice to consumers. Responses were as follows and full details of these are set out in **Table C2 below**.

Table C2

Response	Actual Number	Percentage of those completing the question
Yes	12	19%
No	50	81%
No answer given	1	

3. Have you received training on the Debt Management Guidance?

Responses were as follows and full details of these are set out in **Table C3 below**.

Table C3

Response	Actual Number	Percentage of those completing the question
Yes	6	10%
No	56	90%
No answer given	1	

4. Do you provide staff training on the Debt Management Guidance?

Responses were as follows and full details of these are set out in **Table C4** below.

Table C4

Response	Actual Number	Percentage of those completing the question
Yes	2	3%
No	60	97%
No answer given	1	

5. Do you have access to a copy of the Debt Management Guidance?

See A6 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table C5** below.

Table C5

Response	Actual Number	Percentage of those completing the question
Yes	54	87%
No	8	13%
No answer given	1	

6. Do you find the Debt Management Guidance clear and understandable?

See A10 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table C6 below**.

Table C6

Response	Actual Number	Percentage of those completing the question
Yes	46	88%
No	6	12%
No answer given	11	

7. Has the Debt Management Guidance been useful in clarifying what we would regard as unfair business practices?

See A11 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table C7 below**.

Table C7

Response	Actual Number	Percentage of those completing the question
Yes	36	73%
No	13	27%
No answer given	14	

8. Are there any new or emerging unfair business practices that are not currently covered by the Debt Management Guidance?

See A12 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table C8 below**.

Table C8

Response	Actual Number	Percentage of those completing the question
Yes	4	10%
No	38	90%
No answer given	19	

9. In your experience has the Debt Management Guidance raised standards across the industry?

See A13 for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table C9 below**.

Table C9

Response	Actual Number	Percentage of those completing the question
Yes	20	57%
No	15	43%
No answer given	26	

10. If you answered yes to question 9, which areas would these be?

Responses were as follows and full details of these are set out in **Table C10 below**. Respondents were allowed to select more than one option.

Table C10

Response	Actual Number	Percentage of those answering yes
Advertising, marketing and promotion	7	35%
Pre and post-contract information	12	60%
Contract terms	7	35%
Handling money	3	15%
Fee structures	4	20%
Quality of initial advice	4	20%
Debt management services (for example ongoing contact with consumers)	4	20%

Other	0	0%
Don't know	4	20%
No Answer	27	

11. Have you dealt with consumers who previously sought advice from, or entered into a debt management arrangement with a fee charging debt management business?

See B9 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table C11 below**.

Table C11

Response	Actual Number	Percentage of those completing the question
Yes	26	46%
No	30	54%
No answer given	5	

12. Where you have used the Debt Management Guidance in discussions with licensees what was the overall response?

See B10 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table C12 below**.

Table C12

Response	Actual Number	Percentage of those completing the question
No response	3	11%
Positive response	10	36%
Negative response	0	0%
Other	6	21%
Don't know	9	32%

13. If positive, in what percentage of cases was compliance achieved?

Responses were as follows and full details of these are set out in **Table C13** below.

Table C13

Response	Actual Number	Percentage of those completing the question
0 - 24%	1	13%
25% - 49%	1	13%
50% - 74%	0	0%
75% +	6	75%

14. In your experience are there any areas of the Debt Management Guidance not being complied with by licensees?

See A15 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table C14** below.

Table C14

Response	Actual Number	Percentage of those completing the question
Yes	14	35%
No	26	65%
No answer given	21	

15. If you answered yes to question 14, what are the most common areas of non-compliance?

Responses were as follows and full details of these are set out in **Table C15** below. Respondents were allowed to select more than one option.

Table C15

Response	Actual Number	Percentage of those answering yes
Advertising, marketing and promotion	6	43%
Pre and post-contract information	5	36%
Contract terms	3	21%
Handling money	5	36%

Fee structures	4	29%
Quality of initial advice	6	43%
Debt management services (for example ongoing contact with consumers)	5	36%
Other	1	7%
Don't know	0	0%
No Answer	21	

16. Has the Debt Management Guidance made it easier for you to submit complaints to the OFT or to take your own enforcement action?

We asked this question to determine if the Guidance has made it easier for LATSS to submit complaints to the OFT or to take their own enforcement action. Responses were as follows and full details of these are set out in **Table C16** below.

Table C16

Response	Actual Number	Percentage of those completing the question
Yes	28	76%
No	9	24%
No answer given	24	

17. How many complaints about debt management providers have you dealt with in the last year and how many of these have been satisfactorily resolved?

See B15 above for reasons why we asked this question. Responses were as follows and full details of these are set out in **Table C17 below**.

Table C17

	Valid responses	Range
How many complaints about debt management providers have you dealt with in the last year?	15	0 – 165
How many of these have been satisfactorily resolved?	15	0 – 58

D. TRADE ASSOCIATIONS

We sent out 27 questionnaires to trade associations and received eight responses giving us a response rate of 30 per cent. Five completed questionnaires were received and three organisations submitted a report or an email instead of a questionnaire. Due to the low level of response we have decided to provide an overview of the comments received rather than a breakdown of responses to individual questions.

The trade bodies were asked if creditors continue to apply interest and charges after a debt management plan has been agreed. Whilst some respondents were not in a position to answer this question one respondent said that 'some of our members do freeze interest and charges, this depends on the circumstances of each case and that where possible, default interest charges would be waived and/or concessions applied as appropriate'.

The majority of respondents stated that the Guidance is clear and understandable. One respondent said that it has been particularly useful in

relation to advertising. However, one respondent said that 'the fact that IVAs are essentially a bolt on to the guidance does not aid clarity' and that 'much of the guidance is irrelevant to IVAs'. Another respondent said that 'its confusing what applies to IVAs and that there are parts that are already covered by regulations'. One respondent said that the Guidance still needs more clarification on the use of introducers 'to help those providing debt management and consumer credit services to be certain they are representing the best interests of their clients'.

In respect of any new or emerging business practices, some respondents highlighted an issue with excessive fees being charged by some debt management companies. One respondent said that 'members are seeing that clients are being approached by debt elimination companies, who promise but rarely succeed, to write off debts'. Another respondent said that claims management companies have a 'practice of presenting standardised claims, on standard pro-forma letters, which include a wide range of generic allegations that are not particularised to that specific case or always supported to any evidence. The same approach is adopted in initial complaints to lenders, making it time consuming and difficult to establish the precise nature of the complaint or claim, whether it is justified and how to address it'. A couple of respondents expressed concerns about practices such as 'flipping between debt management plans and Individual Voluntary Arrangements'. Another respondent said that 'companies are increasingly cold calling consumers' and that 'this is preying on people when they are at their most vulnerable'.

There was no consensus on whether the Guidance has raised standards across the industry. One respondent said that the Guidance 'clearly sends a strong message'. Another respondent said that the Guidance has raised standards 'to a certain extent, though we believe that the Debt Management Guidance should set minimum standards, which are backed up by proactive monitoring and supervision of these requirements'. Another respondent said that there are specific areas of the Guidance that need further improvements these were the 'quality of initial advice, greater transparency and disclosure of fee structures and ongoing debt management services, such as ongoing reviews'.

Most respondents felt that there are areas of the Guidance that are not being complied with by licensees. Some respondents expressed concerns over the transparency of fee structures and that consumers are not always aware that a proportion of payments are retained by the debt management company as fees. Some respondents also expressed concerns about the advertising of debt management services where consumers are misled about the debt repayment options and how these will affect them. One respondent also said that quality of the advice and ongoing administration areas of the Guidance are not complied with.

Respondents were asked if they undertake compliance sweeps of members' websites and other advertising. One respondent said that they carry out sweeps of members' websites and other advertising 'on a quarterly basis'. Another respondent said that they do this as part of their monitoring process.

Within the additional space provided for further comments one respondent said that they 'welcome this review by the OFT of its Debt Management Guidance and hope that it will be enhanced to take into consideration new and emerging practices adopted by Debt Management Companies, as well as Claims Management Companies'. Another respondent said that they 'hope that the revised Debt Management Guidance will also bolster areas, which may have found to be lacking, such as the transparency around fee structures, quality of the advice provided and ongoing administration and processing of DMPs'. Another respondent said that they think it should be compulsory for debt management companies to provide copies of the Insolvency Service's 'In debt? Dealing with your creditors' to consumers.

E. CONSUMER REPRESENTATIVE ORGANISATIONS

We sent out 11 questionnaires to consumer advice representative organisations and received 1 response giving us a response rate of nine per cent. Comments received from this respondent are reflected in the main body of this report.

C TABLE OF FINDINGS FROM COMPLIANCE VISITS

Table showing incidents of non-compliance with the Debt Management Guidance and other legislation, identified as a result of compliance visits		
	Number	%
Total number of visits completed (as of end June 2010)	148	
Total number of non compliant traders identified	136	92%
Total number of traders not compliant with the Guidance	124	84%
Total number of traders not compliant with the wider provisions of the Consumer Credit Act (CCA) or other legislation (incl. CPRs)	95	64%
Area of Non Compliance with the Guidance		
Website issues (including advertising on a trader's website). This includes:	76	51%
(a) Terms and Conditions insufficiently emphasised or incorrect	71	48%
(b) Fees amount and transparency	61	41%
(c) Best advice given/provided to consumer	57	39%
(d) Transparency of business model	36	24%
Other advertising issues (including printed materials)	62	42%
Failure to disburse client funds within 5 days	5	3%
Client monies not kept in a separate account	4	3%
Interest in a separate interest bearing account not	2	1%

accrued to the benefit of consumer		
Non Compliance in other areas		
Incorrect Consumer Credit Licence (CCL) information	69	47%
Complaints procedure inadequate	54	36%
Regulatory breaches not arising from Consumer Credit Act breaches	49	33%
Employee knowledge/training	31	21%