Kingston University London

Personal Insolvency Law in England and Wales: Debtor Advice, Debtor Education and the Credit Environment

Volume I

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ISBN No. 1-872058-19-1/ISBN-13: 978-1-872058-19-1
Date: July 2007

Kingston Business School
Kingston University
Occasional Paper Series No 62

Personal Insolvency Law in England and Wales:

Debtor Advice, Debtor Education and the Credit Environment

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‘The small minority of individuals who find themselves with a debt problem, should have access to a solution which best suits their circumstances. That solution should offer the debtor a fresh start whilst ensuring that those who can pay their creditors do so over a reasonable timeframe.’

Desmond Flynn, Inspector General and Agency Chief Executive of the Insolvency Service ‘Improving Individual Voluntary Arrangements’ (July 2005) Foreword.

Foreword

By the time I qualified as a solicitor I had received a basic training in the core subjects in which it was then thought a solicitor needed some grounding. Insolvency law was not included; nor, as far as I am aware, was insolvency taught as part of any undergraduate law degree. In common with many solicitors of my generation, my involvement with insolvency came as a result of having to do debt collection, work which led to judgments which went unsatisfied, which in turn led to execution and more often than not to petitioning for winding up or bankruptcy. And so one was led to the world of creditors' meetings, proxies, and ultimately to real insolvency work, the business of obtaining information about a debtor's affairs and realising assets for the benefit of creditors.

Things have moved on somewhat since then. The phenomenal growth in insolvency has given rise to a huge expansion in the numbers of lawyers, accountants and others engaged in a gamut of work which now includes a wide range of rescue procedures (formal and informal) as well as the more traditional kinds of work associated with the melancholy consequences of personal or business failure. Insolvency now aims not just to bury but, in deserving cases, also to resurrect.

The growth in the practice of insolvency law has been accompanied by a corresponding interest in insolvency in the academic world. As insolvency law grew in stature, universities began to offer courses at postgraduate level, and in some cases they now offer an insolvency option at undergraduate level.

At the same time, academic lawyers have begun to see insolvency as a fruitful area of research. At first the research tended to 'follow the money' and concentrated heavily on corporate and banking concerns. However, the recent, well publicised growth in individual insolvency has meant that bankruptcy (and its counterparts in what has become known as 'the rescue culture') has also begun to attract the attention of researchers, not just lawyers, but others too. This trend, at least in the English speaking world, as this study makes clear, can be traced back to the work of US researchers such as Westbrook, Warren and Sullivan[1] or of Jacob Ziegel in Canada.[2] (European research is catching up but is still not infrequently focussed on reforms which often lag behind our own).[3]

The University of Kingston has for some time been in the forefront of both teaching and research in the field of individual insolvency in its legal and social contexts. This major piece of research will be a significant contribution to our understanding of insolvency advice and education, coming, as it does, at a time when the debate on these issues is livelier than it has been for some time, prompted by the growth in consumer insolvency and the plethora of insolvency products intended to provide the means of coping with it.

Perceptions need to be challenged (or underpinned by hard evidence). The prevalent notion that bankruptcy in the UK has become an easy way out of financial problems was foreshadowed some time ago in the United States:

> ‘The bankrupt man dances. Perhaps, on other occasions, he sings. Certainly he spends money in restaurants and tips generously. In what sense, then, is he bankrupt?
>
> […]
>
> One is too shy to ask. Bankruptcy is a sacred state, a condition beyond conditions, as theologians might say, and attempts to investigate it are necessarily obscene, like spiritualism. One knows only that he has passed into it and lives beyond us, in a condition not ours.’ [4]

The reality may be such for some but, as practitioners know, it is quite otherwise for many.

John Tribe and Leyanda Cocks are to be commended for undertaking just the work needed to challenge or underpin widely held perceptions, *idées reçues*. Grant Thornton LLP and the Insolvency Service should be commended for commissioning it.

Michel Foucault traced a development in criminal law from punishment directed at the body to something more sophisticated that acted on the soul or personality of the wrongdoer, such that ‘the expiation that once rained down upon the body’ gave way to ‘a punishment that acts in depth on the heart, the thought, the will, the inclinations.’[5] We renounced the bodily punishment of bankrupts some time ago. There can be little doubt about the fact that the education of the insolvent (working on his or her inclinations, and perhaps those of lenders too) must be the next step. This study, it must be hoped, will provide the momentum for a move in that direction.

Chief Bankruptcy Registrar Stephen Baister

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July 2007

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[1] See, for example, the work cited on page 112 (n 223).
[2] For example, J Ziegel, *Comparative Consumer Insolvency: A Canadian Perspective* (Hart, 2003).
[3] See, for example, J Niemi-Kiesiläinen, ‘Changing Directions in Consumer Bankruptcy Law and Practice in Europe and USA’ (1997) 20(2) *Journal of Consumer Policy* 133.
[4] J Updike, ‘The Bankrupt Man’ in J Gross (ed), *The Oxford Book of Essays* (OUP, New York 1991) 660.
[5] A Sheridan (trs), *Discipline and Punish* (Harmondsworth, 1977) 16.

Acknowledgements

The authors would like to gratefully acknowledge the support of the Insolvency Service and Grant Thornton LLP, particularly Mr. Mike Norris, Director of Policy at the Insolvency Service, and Mr. Mark Allen, Head of Individual Voluntary Arrangements (IVAs) at Grant Thornton LLP for kindly agreeing to co-fund the project in the first instance and for their assistance and encouragement during the course of the research. We would also like to thank Ms. Margaret Sims, Statistician in the Policy Unit of the Insolvency Service, for her detailed critique of both the proposal and report.

The authors would also like to thank Mr. Peter Tutton and Ms. Lisa Colclough of the Citizens Advice Bureau, Mr. Jim Fearnley of Money Advice Trust, and Mr. Nick Pearson of AdviceUK for their advice and support in relation to the Financial Education and Awareness Workshops.

We would like to thank Chief Registrar Baister for writing the foreword to this report and for his continued support of CILP and the Muir Hunter Museum of Bankruptcy. The authors would like to acknowledge the helpful guidance and support of our Kingston University colleagues Ms. Fiona Tolmie, Professor Robert Blackburn, and Dr. Gregory Durston. We would also like to acknowledge the kind assistance of Ms. Cherie Spinks and Mr. Sean Purchase. We would like to thank Professor Ian F. Fletcher, Professor Jacob Ziegel, Professor David Milman, Professor Vanessa Finch, Professor Adrian Walters, Professor David Graham QC, Professor Muir Hunter QC, Mr. David Marks, Mr. Hamish Anderson, Ms. Susan Morgan, Mr. Pat Boyden, Mr. Sashi Rajani, Mr. Richard Astor, Mr. Michael Mulligan, Mrs. Rachel Mulligan, and Mr. Christopher Branson for their continuing support of CILP and the research undertaken at the Centre.

Finally and most importantly we would like to express our gratitude to the anonymous creditor and debt solution company participants and debtor respondents, without whose input this project could not have been completed.

Any errors or omissions are of course the responsibility of the authors. The statements, opinions, ideas, and conclusions reached in this report are those of the authors and <u>do not</u> reflect in any way the position of the Insolvency Service or Grant Thornton LLP.

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July 2007

Preface

In July 2006 the *Centre for Insolvency Law and Policy* (CILP),[6] Kingston Law School, Kingston University, received £20,000 research funding to undertake the current research project, *Personal Insolvency Law in England and Wales: Debtor Advice, Debtor Education and the Credit Environment.* The funding was provided by the Insolvency Service, an executive agency of the Department of Trade and Industry and Grant Thornton LLP, a leading accountancy firm.

The project was originally scheduled to report in February 2007. It now reports in July 2007, to take into account the logistical difficulties faced in corresponding and in arranging meetings with creditors and debt advice and solution providers. For workaday purposes the project was christened PIP, after Personal Insolvency Project. This acronym will be used throughout this report.

The project, as originally proposed consisted of three elements highlighted by the 'Bankruptcy Courts Survey 2005' (BCS)[7] as warranting further investigation. These consisted of: (1) an examination of the role of IVA firms in the insolvency advice market; (2) the holding of a number of free personal finance management workshops, the holding of three Credit Responsibility Days, the creating of a Credit Responsibility Pack, an examination of pre and post bankruptcy petition education; and (3) an examination of bank lending practices to consumer debtors.

Unfortunately, due to the poor uptake of the personal finance management workshops, it was decided that the Credit Responsibility Days would be postponed. The Centre is currently continuing the pilot workshops with a view to eventually into holding the proposed Credit Responsibility Days. As the main source of marketing for the Credit Responsibility Days, the Credit Responsibility Pack will not be trialled in local branches of high-street banks until suitable dates for the event have been finalised. A follow up report will be presented once completed in early 2008.

[6] www.kingston.ac.uk/cilp.
[7] J Tribe, 'Bankruptcy Courts Survey: 2005 - Final Report: A Pilot Study' (Kingston Business School Occasional Paper 59, 2006)<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/research/research.htm>.

Abstract

This Personal Insolvency Project (PIP) research report is divided into three parts and two volumes. The three substantive parts are set out in Volume I and relate to the research areas of: (1) debtor advice, (2) debtor education, and, (3) the credit environment. Volume II contains all of the appendices pertinent to the three sections and the bibliography.

The three areas that are examined in this report first came to the fore as points for consideration following the publication of the BCS. It was concluded following that report that a further investigation into areas impacting on personal insolvency should be investigated. This report is a further investigatory exercise. In essence, the major participants in the personal insolvency arena and the causes of the recent upsurge in personal insolvency usage were to be investigated, thus hopefully resolving the extremely important question of: what or who is responsible for the recent upsurge in insolvency procedure usage? This question, *inter alia*, has been addressed within this report.

The three report sections include, *inter alia,* an examination of the advice function and general practices of debt solution companies (Part I), and an examination of the attitudes, procedures and approach of major credit providers to the law of insolvency (Part III). A resounding theme from the BCS was the lack of financial literacy amongst the respondents. As there has hitherto been a lacuna in English insolvency scholarship regarding debtor education it was decided that this should be addressed (Part II). There are obvious synergies between the three parts of the report. These are discussed in the main body and conclusions.

The general abstracted conclusions of the PIP research can be seen in the following graphical representation of main findings.

Graphical Representation of Main Findings

- Personal Insolvency Project (PIP)
  - Debt Advice
    - Debt Solution Companies
      - Growth and Advertising
      - Systemically Sound
      - Licensing
    - Not-for-profit Providers
      - Main Advice Providers
      - Under-funded
      - Fee Charging?
  - Debtor Education
    - Financial Education
      - Extant Programmes
      - Continuing Developments
    - Debtor Workshops
      - Terminology
      - Advertising
      - Participation
    - Ongoing CILP Programme
      - Alternate Locations
      - Participation Incentives
      - Widening Initiatives
  - Credit Environment
    - Lending
      - Responsible Lending
      - Positive Data Sharing
      - Tightening Procedures
    - Responsibility
      - Debtor
      - Creditor
      - Regulation

Figure 1: Graphical Representation of Main Findings

Summary of Recommendations

Debtor Advice

1. Re-focus on the **insolvent** as the fundamentally paramount stakeholder.
2. **Tighter control** of marketing.
3. Recognition by insolvency practitioners that they, as professionals, must **monitor** any juristic person they are connected to.
4. **Review** the status of the not-for-profit debt advice providers.
5. **Standardisation** of practice and documentation across the industry.

Debtor Education

1. **Increase** financial awareness workshop promotion across all demographics of society.
2. Investigate **compulsory attendance** of such workshops as a pre-condition of discharge from personal insolvency procedures.
3. Introduce **early stage financial education** across the UK.

Credit Environment

1. Continued growth in collaboration between creditors, in terms of better positive and negative **data sharing**.
2. Give creditors the **additional financial information** necessary to make better informed lending decisions.
3. Recognition of **debtor responsibility**.
4. Introduction of **money management teams** within credit institutions, specifically targeting those individuals who are less financially literate than their peers and giving them advice without prejudice.

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Part I

Introduction and Background

‘In a consumer society there are inevitably two kinds of slaves: the prisoners of addiction and the prisoners of envy.’

Ivan Illich *Tools for Conviviality* (1973).

This Part of the report is intended to provide an introduction to the rationale and background to the research. It is also intended that the following chapters will lay the foundations for the remainder of the report.

Chapter 1

Introduction

'Home life ceases to be free and beautiful as soon as it is founded on borrowing and debt.'

Henrik Ibsen *A Doll's House* (1879).

1.1 Focus

PIP concentrates on the advice and education available to individuals who find themselves in financial difficulty, in addition to the credit environment in which this advice and education is being offered. PIP concentrates on three specific areas that were not fully explored by the BCS. Consequently, no examination of bankruptcy will be undertaken as such. This approach was decided upon in the alternative to the original conclusions in the BCS,[8] namely an expanded survey of more bankrupts in an expanded sample of bankruptcy courts. It was decided in consultation with the Insolvency Service that three areas were ripe for further research. These areas go beyond an analysis of bankruptcy as a procedure and stretch into the parallel, perhaps less severe procedure known as Individual Voluntary Arrangements (IVAs)[9] and debt management plans as provided by both licensed and unlicensed debt management advisors in addition to wider issues relating to debtor advice and education for debtors. PIP also includes an examination of the current credit climate and attempts to define the controversial concept of so called irresponsible lending.

1.2 Context

Whilst bankruptcy remains the most powerful formal response the law of England and Wales has to regulate the breakdown of the relationship between creditor and debtor, it must now be accepted that the IVA is fast becoming its equal in terms of volume.[10] It has been predicted that IVAs will soon out number bankruptcies as the most popular solution to over-indebtedness.[11] This may prove troublesome reading for some creditors given the recent research of the British Bankers' Association (BBA) revealing only three to four percent of over-indebted individuals being suited to an IVA.[12] It remains to be seen whether the IVA is an effective alternative to bankruptcy in deterring future delinquent behaviour,[13] indeed, this question goes beyond the scope of the current research. In addition to these statutory remedies there are a number of informal arrangements that are designed to 'mediate' between debtor and creditor.[14] For the purposes of the current research it will only be necessary to discuss the effectiveness of the solutions currently offered by the debt advice market. This form of third party intervention is often criticised by creditors,[15] despite being used increasingly as a means of restructuring debt into a more manageable form for debtors.

Due to the increasing number of individuals passing through personal insolvency proceedings, a day rarely passes without media attention being given to 'Britain's debt epidemic'.[16] Hard hitting headlines such as 'debt doomsday 'is coming'';[17] 'Britons' face 'lifetime of debts'';[18] 'more people going bust than in recession';[19] 'every four minutes personal debt in Britain increases by £1million';[20] and 'Insolvencies hit new record as debt crisis deepens'[21] do little to curb the growing belief that personal insolvency is spiralling out of control. Indeed, Mervyn King, the Governor of the Bank of England has recently opined that the increases in levels of bankruptcy are, 'a potentially large social problem.'[22] This view is shared by the press with one Sunday Telegraph journalist suggesting that 'because debt is now what living in Britain routinely demands: it is a Government-approved way of life.'[23] Societal change is fast becoming yet one more reason for the rise in consumer over-indebtedness.[24] Other popular causes cited for the upsurge in personal debt include creditors and the ease of accessing credit;[25] rising interest rates;[26] increased energy charges;[27] the reduction in discharge as introduced by the Enterprise Act 2002;[28] and of course, prolific debt solution advertising.[29]

There have been increasing numbers of reports and surveys being published attempting to identify demographic groups that are more likely to become over-indebted.[30] More recently figures were published by Experian revealing geographical trends in consumer debt.[31] Despite these attempts to identify the specific causes of over-indebtedness the latest Insolvency Service figures suggest current initiatives have not yet achieved their objective of reducing consumer debt.

1.3 Rationale

Whatever the reasons for the growth in consumer indebtedness, statutory and non-statutory solutions available to relieve the personally over-indebted individual are of paramount importance in this increasingly impecunious climate.[32] This is evidenced by the substantial growth seen in the debt advice market over the last ten years.[33] It is in response to the growing demand for solutions to consumer over-indebtedness that, to date, nine debt solutions companies have been able to list on the London Stock Exchange's Alternative Investments Market (AIM).[34]

The rise in personal insolvencies has caught the attention of the political parties who are keen to condemn Government initiatives aimed at targeting over-indebtedness as insufficient,[35] with the main criticism focusing on the failure to introduce adequate financial literacy classes in schools.[36] The BCS found that there was a pressing need to formulate an effective form of financial education for debtors.[37] Whilst there has been a commendable effort made by a number of UK organisations to address the problem of financial education, the re-education of debtors has failed to feature on the main agenda. A pilot debtor education programme was carried out as part of PIP in an attempt to address this lacuna in current financial education initiatives.

With the UK's debt problem failing to escape the sights of the world's media,[38] and reports that jurisdictions have curbed their own consumer debt problems,[39] it will be interesting to see if our own levels of personal indebtedness begin to decrease in line with the recent fall in corporate insolvency.[40] Until then, the objective of PIP is to examine and evaluate the current credit climate and establish why there is a lack of confidence in the much criticised debt advice sector: what is the driving force behind the upsurge in personal insolvency provision usage? It could be argued that debtor education is the key to both these objectives. If there is to be success in these aims Machiavelli's 1532 contention would need to be disproved:

> 'Men sooner forget the death of their father than the loss of their possessions.'
>
> Machiavelli, *The Prince* (1532).

References

[8] J Tribe, 'Bankruptcy Courts Survey: 2005 - Final Report: A Pilot Study' (Kingston Business School Occasional Paper 59, 2006)<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/research/research.htm> 188.

[9] IVAs have of course been closely examined recently by both Boydon (P Boydon, 'Living on Tick: The 21st Century Debtor' (PriceWaterhouseCoopers 2006) and Green (M Green, 'Individual Voluntary Arrangements, Over-indebtedness and the Insolvency Regime' (University of Wales 2002). See also: A Tonge, 'Individual voluntary arrangements: the changing scene - where are we now?' (2006) 19(4) Insolvency Intelligence 53.

[10] **Figure 2: 1999-2006 yearly statistics for personal insolvency:**

Year	1999	2000	2001	2002	2003	2004	2005	2006
Bankruptcy	21,611	21,550	23,477	24,292	28,021	35,898	47,291	62,956
IVAs	7,195	7,978	6,298	6,295	7,583	10,752	20,293	44,332
Totals	28,806	29,528	29,775	30,587	35,604	46,650	67,584	107,288

Figure 3: 2005-2007 quarterly statistics for personal insolvency:

Quarter	2005 – Q1	2005 – Q2	2005 – Q3	2005 – Q4	2006 – Q1	2006 – Q2	2006 – Q3	2006 – Q4	2007 – Q1
Bankruptcy	10,175	11,259	12,182	13,675	15,418	14,915	15,418	15,766	17,937
IVAs	3,292	4,386	5,611	7,004	8,235	11,105	12,418	12,778	11,299
Totals	13,467	15,645	17,793	20,679	23,653	26,021	28,083	28,544	29,236

Source: Insolvency Service: <http://www.insolvency.gov.uk/otherinformation/statistics/insolv.htm> accessed 16 May 2007.

[11] Prediction by Mark Allen of Grant Thornton LLP. See: — 'Overspending, unemployment and rising costs fuel personal insolvencies as more people choose IVAs to sort out their debts' (7 November 2006) <http://www.creditman.biz/uk>. See also: —— 'IVAs set to overtake bankruptcies in 2007 but there could be an easier solution' (15 December 2006) <http://www.moneyextra.com>.

[12] See E Ewing, 'IVA factories fuel insolvency boom' *The Guardian* (4 May 2007); and <http://www.bba.org.uk>.

[13] Questions have been raised over the efficacy of bankruptcy as a deterrent to delinquent behaviour especially in light of the fact that bankruptcy is now seen as an easy exit from financial responsibility. This is not a view shared by the authors of this report.

[14] For example debt management plans and deeds of arrangement.

[15] See Chapter 7.3 Dissemination of Results from Creditor Meetings below at page 61.

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Chapter 2

Main Objectives of the PIP Research

2.1 Debtor Advice

- To understand the current climate of debtor advice;
- To investigate the role of debt solutions companies in providing debtor advice;
- To visit debt solutions providers to evaluate their methods of delivering debtor advice;
- To explore current themes in the current debtor advice market;
- To acquire a nominal shareholding in AIM listed debt solutions companies; and
- To facilitate access to Companies Act 1985 information regarding the AIM listed companies using our shareholder status.

2.2 Debtor Education

- To understand the current climate of debtor education;
- To pilot debtor education workshops akin to those organised by Professor Gross in New York, USA;
- To evaluate the need for pre and post personal insolvency financial education; and
- To pilot credit responsibility days and credit responsibility packs.

2.3 Credit Environment

- To understand the current credit environment in relation to the extension of consumer credit and consumer insolvency;
- To investigate the role of creditors in relation to responsible lending and their relationship with debtors;

- To visit creditors to evaluate methods used to ensure responsible lending and their role in relation to debtor education and personal insolvency regulation generally;
- To investigate the role of credit referencing bureaus in the consumer credit cycle; and
- To explore current themes in relation to consumer credit.

Chapter 3

Methodological Overview

This chapter is intended to provide a broad overview of the methodologies used throughout the research. Area specific methodologies will be explored in more detail in the relevant chapters below.

PIP investigates the current practices of consumer credit providers and the practices of debtor advice organisations in England and Wales as well as debtor education. The research is focused on individuals who have already experienced some form of personal insolvency procedure. The research is divided into three sections to reflect the three separate areas of investigation. Consequently, each stage of the research has its own unique methodology.

Anonymity was guaranteed to all participants: debt solution companies, debtors and creditors. It was considered, not only best practice to do so, but that it would also encourage participation. The Faculty of Business and Law ethics committee was consulted in this regard. They concurred with this approach to ensure confidentiality.

3.1 Debtor Advice

The first part of the research looks at, *prima facie*, the businesses offering debtor advice currently extant for debtors in England and Wales. The primary focus in relation to the current climate of debtor advice concentrates around companies offering advice on IVAs and debt management plans. Bankruptcy advice is largely excluded, although it does occasionally occur as part of general debt management advice. Charitable organisations offering more general debt advice were also contacted, although this material was primarily used as a comparison and in relation to the debtor education section of the research.

A dossier was created of 117 debt solutions providers, primarily using the internet and hard copy sources for the information search. From the information collected, letters were sent to all 117 providers. Letters were sent on a further three occasions to non-respondents in an attempt to maximise participation. In some instances, insolvency practitioners were also contacted using the Insolvency Service online database in order to begin dialogue with unresponsive companies.

A researcher visited, where possible, debt solution providers' offices in order to obtain first hand experience of the climate within which the debt advice market operates. Fourteen companies were visited, and a further two companies were communicated with via telephone and email, over a seven month period. This represents **13.5 percent** of our original sample.

Out of the original 117 'companies', however, there were several trading styles identified and it is believed that many more are unaccounted for. The concept of trading styles will be explored more thoroughly in Chapter 10.

A stockbroker was contacted to organise the acquisition of the nominal shareholding in four of the nine AIM listed debt solutions providers to facilitate access to Companies Act 1985 information.

This phase of the research is attempting to investigate the advice giving function of these firms and to test the hypothesis: 'is debt solution company advice biased towards the IVA route?'

3.2 Debtor Education

The second part of the research considers the availability of debtor education in the UK. The main focus is to investigate the provisions available for debtors in need of 're-education' and not simply the broader area of general financial education.

Workshops were piloted in an attempt to mirror the pilot debtor education program trialled in New York by Professor Karen Gross. The Insolvency Service's online Individual Insolvency Register was used to create a database of 2,085 debtors living in the Kingston and Croydon catchments areas. Initial questionnaires were sent to all 2,085 debtors in order to gauge interest and to promote the workshops.

Unfortunately, there was a relatively low response rate (95 respondents, 4.5 percent), with the result that limited confidence can be placed on the conclusions drawn from the questionnaires. Whilst they are not representative of a significantly valid proportion of debtors, they can provide indicators as to likely conclusions and signal areas warranting further investigation.

3.3 Credit Environment

The final part of the research concentrates on provisions surrounding the consumer credit market with the aim of better understanding the role creditors' play in the consumer insolvency cycle.

An initial meeting with Mr. Eric Leenders, Director of the British Bankers' Association (BBA) took place in order to gain a fuller understanding of the consumer credit market. Following the meeting, letters were written to 14 creditors with initial responses from only two. A further two and in some instances three letters were then written in an attempt to encourage greater creditor participation. In some instances it was necessary to write to senior board members (Chief Executive Officers and Chairmen) to facilitate a response to our request for participation. In addition to the five creditors who simply failed to respond, despite repeated attempts to make contact, two creditors refused to take part. This lackadaisical response occurred despite the fact that the research was co-funded by a Government regulator. This is extremely disappointing.

We therefore communicated with and subsequently met five creditors, all of which are major personal credit providers.

In addition to the BBA and five major creditors, we contacted the three credit reference bureaus in order to ensure our examination of this area was relatively complete.

Chapter 4

Terminology

4.1 Terminology Use in PIP

During the investigative stages of PIP, numerous terms have been used that have not only proven to be very emotive, but which have also given rise to ambiguity when not properly defined. It was decided that terminological clarification should be given for a number of terms of art, and that this should feature before the substantive part of the report to remove any potential ambiguity.[41]

4.1.1 Creditor

For the purposes of PIP, a creditor is restricted to those mainstream lenders providing personal loans, credit cards, and overdrafts etc. and does not include the sub-prime market unless specifically mentioned.

4.1.2 Debt Management Company

Debt management companies means those companies offering non-statutory forms of third party intervention between debtors and creditors. A debt management company for the purposes of this research can be further divided into one of two categories of company: not-for-profit and private. The not-for-profit sector generally receives funding from creditors and other donors, whilst the private sector charge fees for their services. This distinction will be explored more thoroughly in Chapter 5.

4.1.3 Debt Solutions Companies

The phrase ‘debt solutions company’ or ‘debt solutions provider’ refers generically to companies that offer a variety of solutions for personal debt. This general term will be employed where there is reference to multiple companies that may offer different debt solution services.

4.1.4 Debtor

During the course of this report, debtor will always refer to a consumer debtor whose potential over-indebtedness stems from personal over expenditure and will not relate to entrepreneurial activity unless specifically mentioned. A debtor is someone who owes money to their creditor(s) but may still be able to repay what is owed.

The word 'debtor' can provoke strong emotive feeling from those labelled as such in a similar way to those labelled as 'bankrupts'. It appears that the stigma attached to being labelled a 'bankrupt' could also attach to those labelled 'debtors'. Closer examination of this theory will be considered in Chapter 7.

4.1.5 Delinquent

Delinquent or delinquency is a term often used by creditors to describe individuals who have failed to keep up with repayments. In a similar way to debtors, delinquents, for the purposes of this report refer to consumer delinquents, unless otherwise stated. It is not intended that delinquent and debtor are to become interchangeable, but rather that an individual described as delinquent is more specifically associated with those who have failed to make repayments in the past.

4.1.6 Irresponsible Lending

Irresponsible lending, just as over-indebtedness is widely used in the press without adequate definition.[42] The term is largely used to support the contention that creditors share the blame for the rising levels of consumer insolvency in the United Kingdom.[43]

Irresponsible, taken in isolation, can be defined as 'not thinking carefully enough or not caring about what might result from actions taken'.[44] Taking this definition literally would result in irresponsible lending indicating the lending of money with disregard for the consequences.

This is not proposed as an accurate description for the media usage of irresponsible lending and further investigation into an accurate definition will be explored in Chapter 13, partly through the results of our invitation to creditor participants to offer their definition of this controversial term.

4.1.7 IVA Factory

An IVA Factory is so-called because it is a company that offers statutory relief to the debtor where there is a breakdown in the relationship between debtor and creditor through the use of IVAs. The use of the term 'factory' is indicative of the high number of IVAs organised each month by these companies despite employing a limited number of insolvency practitioners. The idea of an IVA Factory will be explored more thoroughly in Chapter 6. This term has tended to be used in a pejorative sense. We will only use it when quoting secondary sources.

4.1.8 Over-Indebtedness

Despite heavy media usage during the last few years, the term 'over-indebtedness' remains subject to interpretation due to its relative immaturity.[45]

The fifth edition of the Shorter Oxford English Dictionary lists 'indebtedness' as a derivative of 'indebted' describing it as '(a) the condition of being under obligation for services etc.

rendered; (b) the condition of being in debt; the sum owed.'[46] The earliest recorded date given for indebtedness is between 1630 and 1669 with 'indebted' meaning '2 Under obligation on account of money borrowed, owing money, in debt (to).' recorded as early as 1350.

Despite this clear and accepted definition for 'indebtedness', over-indebtedness is not currently widely defined.

Even the Department for Trade and Industry (DTI, recently renamed the Department for Business, Enterprise and Regulatory Reform) recognise the lack of a universally agreed definition for over-indebtedness.[47] They do however offer their definition of over-indebtedness in the consumer finance section of their website by stating: 'The term over-indebtedness is used to describe debt which has become a major burden for the borrower. Over-indebtedness can be caused by, and contributes to, social exclusion, financial exclusion and poverty.' [48] This is consistent with one accepted meaning of 'over' being excess.[49]

The DTI definition does, however, contrast to that given by both the Citizens Advice Bureau (CAB) and Oxera. The CAB considers individuals as over-indebted when they are 'unable to pay their current credit repayments and other commitments without reducing other expenditure below normal minimum levels.' Similarly, Oxera define over-indebtedness as 'those households or individuals who are in arrears on a structural basis, or are at a significant risk of getting into arrears on a structural basis.'[50]

For the purposes of PIP, it is sufficient to state that over-indebtedness can be defined as where an individual is over-committed, having more debt than they are able to service in their current financial position. The wider implications of over-indebtedness will be discussed during an exploration of emerging themes in Part III of the report.

4.2 The Insolvency Lexicon: An Embarrassment of Riches?

The terminology of insolvency law is voluminous. There are at least eight terms of art describing the different species of insolvency practitioner (e.g. officeholder, administrator, nominee, supervisor, trustee in bankruptcy, liquidator, provisional liquidator, receiver, and, administrative receiver). In addition to this superabundance of titles there is also a second important issue regarding terminology and insolvency law, namely, negativity. Insolvency and its associated terms of art have a long history of negative use and perception that continue to percolate through into modern insolvency practice. It could be argued that the seepage of negative terminology from the position of factual insolvency across into the system of legal rules designed to deal with that insolvent estate, namely the law of insolvency, is itself corrosive. For well over 500 years terms of art associated with the legal state of insolvency and what we would now call the law of insolvency have given rise to at best notions of wrongdoing and ill-usage and at worst presumptions of criminal intent.[51] What is it about the law and practice of insolvency that gives rise to such negative perceptions? Does the failure of the financial estate simply carry through to the management, pursuant to the insolvency laws, of that insolvent estate, i.e. is the administering law somehow tainted with what has passed before?

The law of insolvency and terms associated with the legal state of impecuniosity have long provided a fruitful source for comment and sometimes derision. These have ranged from negative, such as Lord Mishcon opining that, 'insolvency is not a very thrilling or amusing subject'[52] to the more amusing, such as Oscar Wilde observing, 'one must have some sort of occupation nowadays. If I hadn't my debts I shouldn't have anything to think about.'[53] The damaging baggage of bankruptcy in contemporary thought can conceivably be traced to the work of Charles Dickens and his expositions of imprisonment for debt throughout the 19th century.[54] These separate jurisdictions certainly seem to have been muddled into one in popular perception. However, the negative perception goes much further back to the reign of James I, for in 1624 it was opined that, 'the trade of bankrupting is the worm that eateth out the heart of all commerce and trade. Without casual loss, it is a wilful wrong.' Although perhaps, 'allowance must be made for the extravagant language of the time.'[55]

Attempts have been made to move away from the negative perceptions. This is most obviously evidenced by the seminal Cork Report's[56] huge impact on the underlying purpose of corporate insolvency. The mantra to be repeated following the enactment of the Insolvency Act 1986 would henceforth be: rescue, rescue, rescue. Indeed, the leading professional body that regulates insolvency practitioners changed its name from the 'Society of Practitioners of Insolvency' to the 'Association of Business Recovery Professionals' with a symbol of 'R3' signifying the three new great virtues of insolvency law: rescue, renewal, and recovery. We no longer have insolvency departments, but corporate recovery specialists, who curiously have personal insolvency work within their ambit. This new approach to insolvency law has brought with it a change in judicial attitudes to the administration of insolvent estates. We now have much more emphasis in the corporate sphere on the so called, 'rescue culture', that 'seeks to preserve viable businesses [which] is fundamental to much of the Act of 1986'.[57]

American use of bankruptcy as a term for both personal and corporate procedures has also muddied the waters on this side of the Atlantic. To the annoyance of many an insolvency practitioner and lawyer, the media use the term frequently in a non-technical sense, i.e. applying it erroneously to companies. This term first entered the legal lexicon in the 1530s and until the late 19th century applied strictly to traders. It has since its genesis perhaps been misused. The judiciary have even been guilty of such misuse - 'it is not as if bankruptcy leads to the debtor's incarceration as it might have done 150 years ago. That is not to underplay the unpleasantness, seriousness and stigma of bankruptcy.'[58] Learned commentators have also been guilty, in his new layman's text, Professor Muir Hunter QC notes, 'Winding up or liquidation, is the process by which a limited company or a partnership is made bankrupt.'[59] Perhaps this usage sits with the author's intention to explain the processes in a clear, understandable manner and this brings us to the very crux of the language issue within insolvency law and practice. We might not perhaps want to go as far as Bentham and sweep all of these terms of art away and start afresh; but is the advice giving function of insolvency professionals unduly hampered by our verbose insolvency vocabulary? Perhaps however the technical minutiae and chicanery of this chancery subject may encourage and indeed cause a growing canon of terms to be deployed.

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[43] Although this research is predominantly concerned with the consumer insolvency of debtors in England and Wales, the contention that creditors have leant irresponsibly extends much further into the jurisdictions of Scotland and Northern Ireland.
[44] Cambridge Advanced Learners Dictionary (3rd edn).
[45] It has not yet for example made it into the Oxford English Dictionary.
[46] Shorter Oxford English Dictionary on Historical Terms, (5th edn OUP, London 2002) 1352.
[47] See Department for Trade and Industry 'Tackling Over-Indebtedness: Annual Report 2006' <http://www.dti.gov.uk/consumers/consumer-finance/over-indebtedness/index.html> accessed 1 May 2007
[48] ibid at p24.
[49] Shorter Oxford English Dictionary on Historical Terms, (5th edn OUP, London 2002) 2044.
[50] Oxera "Are UK households over-indebted?" April 2004.
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[52] Hansard HL vol 458 col 917 (15 January 1985).
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Part II

The PIP Research

> 'All decent people live beyond their incomes nowadays, and those who aren't respectable live beyond other people's. A few gifted individuals manage to do both.'
>
> Saki (HH Munro) *The Chronicles of Clovis* (1911).

To reflect the tripartite nature of the research, each section is discussed separately in Part II. Overlapping themes will be explored during general conclusions and recommendations in Part IV. The three areas for discussion will now be discussed *seriatim*.

Chapter 5

Debtor Advice

'Advice is seldom welcome; and those who want it the most, always like it the least.'

In a letter to his son, *per* Lord Chesterfield (1748).

5.1 Introduction

The law of insolvency, and in particular the law of personal insolvency, has for some time been seen in rather negative terms, at least by the popular press.[60] It could be argued that this is as a result of the perceived negativity of the individual's financial position impacting or cross contaminating the system which is used to administer the after effects of credit misuse. In the alternative it could be argued that negativity or bad perception is due to the fact that the system known as the insolvency law of England and Wales is itself flawed. This wider question is for another study.[61] The results of the BCS seem to indicate dissatisfaction with options available to the personally over-indebted individual in terms of routes out of over-indebtedness and advice regarding those routes. In particular the BCS results, i.e. responses from 955 bankrupts who had actually been advised (or not as some suggested), seem to indicate that the level and quality of advice in relation to procedure choice and procedure outcome is lacking for consumer debtors.[62]

This dissatisfaction lays primarily with the so-called IVA factories[63] and in particular the appropriateness of their IVA[64] procedural advice as compared to alternative, perhaps more suitable procedures.[65] This part of the research concentrates on an analysis of services provided by both licensed and unlicensed debt solutions providers.[66] The work of charitable organisations such as the Citizens Advice Bureau (CAB) in this area and the more traditional insolvency practitioner will largely fall without the parameters of this research.

The research originally focused on IVA procedures, advisors and providers; however, this was quickly expanded to include debt management and the consideration of unlicensed debt advisors. It was decided that both IVA and debt management providers should be grouped together resulting in the generic term 'debt solutions providers' being introduced into the lexicon of this report. It was suggested that these companies should be looked at separately due to the unregulated nature of debt management plans.[67] This suggestion was not taken up for two primary reasons. Firstly, it has been found that many of the IVA providers visited also offer a form of debt management plan which would have resulted in the company either being looked at twice or being placed in a different category altogether; and secondly due to the fact that advisors for both debt management plans and IVAs are equally unregulated,[68] unless, and on the rare occasion that the insolvency practitioner themselves are providing the advice.

There has been a flourish of criticism in recent years over the plethora of television and radio advertisements promising to make you debt free.[69] Such concerns have strengthened calls for tighter regulation in the debt advisory market. In August 2006, Michael Geoghegan, HSBC's chief executive, expressed concern that there were 'non-regulated advisers who are advising people, and charging for this advice, to suggest that people should file for bankruptcy'.[70] Despite this, there has been much talk in the media regarding regulation for the debt solutions industry[71] with varying estimations as to the proposed regulatory measures and when they will be enforced.[72]

Much of the criticism aimed towards these debt solutions providers has also made reference to the rapid growth in the debt market, with critics pointing to the profiteering of these companies as a primary reason for the rise in IVAs. This area, although not strictly within the remits of the original proposal, features in more detail in Part III of the research as one of the five emerging theses warranting further examination as part of PIP.[73]

'At present, it's only the individual that proposes the IVA who is regulated, but we have seen entrepreneurs move into the market because they have seen the demand. Where as an individual would have been handled by a firm of accountants or insolvency practitioners in the past, now they are targeted by a company specifically set up to process IVAs that employs one or two insolvency practitioners.'

M Clarke, 'Banks blast debt relief claims' *The Daily Mail* (5 September 2006).

With political parties also voicing concerns that consumers are being pushed into IVAs when they are not the right solution,[74] it is clear that this is an area requiring serious consideration.

In 1901 Blake Odgers and Polland observed that bankruptcy was, 'the state of things which exists when, a man being unable to pay his debts, his solicitor and an accountant divide all his property between them.'[75] If true this position would of course be untenable. This profiting from an insolvent estate is perhaps the key issue which insolvency law, insolvency practitioners and the debt management industry have to balance. The crux of this part of the research is to attempt to determine if that profiteering is to the detriment of the effective, objective advice to the debtor. The examination focuses primarily on the role of the IVA and debt management firms in the debt advice market, as opposed to the traditional insolvency practitioner. It was decided that anonymity should be guaranteed for all contributing companies in order to maximise participation.

5.2 Methodology

5.2.1 Creation of a dossier

A dossier was created on many well-known debt solutions companies operating in England and Wales.[76] This was achieved primarily through internet based searches and online resources including company websites. It was decided that an internet search would be the fastest and most comprehensive way of discovering how the individual debt solutions company held themselves out to consumers. The internet was used in preference to other methods of data collection due to the high volume of information available, and due to the ever increasing reliance consumers are placing on the internet as their main source of information.[77]

When creating the dossiers we were interested to note, *inter alia:* what services were being provided; how information regarding personal insolvency is presented; and what information is available online. One of the principle drivers behind creating the dossier was to find out as much information about each of the companies that researchers would eventually be visiting.

A dossier was created based on 117 websites. It soon became clear however, that many of these websites, despite appearing to represent separate debt solutions companies, were in fact marketing resources or trading styles of larger debt solutions providers.[78] It was from this dossier that contact details were taken and communication with the companies could begin.

5.2.2 Communication

Communication with the debt solutions companies was, at times, extremely difficult. Several problems were encountered when trying to make initial contact including the difficulty in identifying separate companies. In order to ensure all possible companies were contacted, it was decided at the outset that all 'companies' would be written to regardless of associations or trading styles, as this was not always clear when we originally sent out the first round of letters. Another problem encountered at the initial stage was identifying the appropriate person and address to send the letters to. Addresses were not always featured on the website, requiring additional searches at Companies House which were not always fruitful. Many of the websites were trading styles or marketing tools with the result that their names did not feature on the Companies House Register. Where no one person could be easily identified as a result of initial searches, companies were telephoned. Some companies were reluctant to give this information, with only eight providing a name when telephoned.[79] Consequently, letters were initially addressed to the Managing Director if no name had been provided, or, where no one person was readily identifiable as the most appropriate individual to contact.

The initial response to the first round of letters was not encouraging, with only three companies responding. A second and third round of letters was sent, after further efforts to find a name behind individual companies were made.

Due to the extremely disappointing initial response rate, the second letter had much stronger wording than the first.[80] This did receive a higher response rate; however, this was not altogether as positive as hoped. It was clear that some companies simply did not want to participate in the Government funded research and were not inclined to hide their feelings.

As a result of the delays in communication and funding limitations, a number of debt solution companies that agreed, albeit latterly, to participate in the research were not visited.

5.2.3 Meetings

Added to the difficulties experienced in arranging meetings has been the difficulty in actually making them happen. Meetings have had to be rescheduled on a number of occasions for a number of participant companies, adding to overall frustration in this particular phase of the research.

The meetings typically lasted between two and three hours. An agenda was prepared in advance listing areas for discussion.[81] These included: company procedures, advice, company profile, services provided, IVAs, complaints, debtor education, credit environment, and government initiatives. Although these areas were highlighted as areas for discussion during the meetings, it was decided that meetings should be kept as fluid as possible in order to encourage a wider discussion. Meetings were generally conducted with senior level managers or directors and insolvency practitioners, where applicable. All meetings were relaxed and friendly although the dynamics did vary. In some instances researchers were permitted to listen in on advice being given over the phone, speak with those giving advice, tour the offices, and speak with senior level management.

5.3 Dissemination of Results from Debt Solutions Company Meetings

It should be stressed that the results from this investigation cannot be classified as representative of the debt solutions industry due to the limited response rate as described above (i.e. 13.5 percent). In order to maintain the anonymity of our participants they will be known as Debt Solution Company (DSC) A, B, C, D, E, F, G, H, I, J, K, L, M and N. The companies that took part in the research are wide ranging in size, in terms of the solutions they provide and also the way in which they are funded.

Coding	Size	Main Function	In House IP?	Fee Charger?	Outsourcing?
A	Small	Multi	No	No	IVAs
B	Small	IVA only	Yes	Yes	All but IVAs
C	Medium	Multi	Yes	No	No
D	Medium	Multi	Yes	Yes	No
E	Small	Multi	No	Yes	IVAs
F	Small	IVA only	Yes	Yes	All but IVAs
G	Medium	Multi	Yes	Yes	No
H	Medium	Multi	No	Yes	IVAs
I	Large	Multi	Yes	Yes	No
J	Large	Multi	Yes	Yes	No
K	Large	Multi	Yes	Yes	No
L	Large	Multi	Yes	Yes	No
M	Large	Multi	Yes	Yes	No
N	Medium	Multi	Yes	Yes	All

The debt solutions companies were asked several questions, *inter alia,* concerning company procedures, advice, company profile, services provided, complaints, debtor education, the credit industry, government intervention, and the role of charities and not-for-profit companies. Companies with in-house insolvency practitioners were also asked questions regarding their involvement with IVAs.

5.3.1 Company procedures

Models used for collecting data varied from company to company. DSC C uses call centre staff to take down personal information when an enquiry comes in which will then be passed to an advisor who will call the enquirer back. A similar procedure is in operation in other companies including DSC D. This model is contrasted in companies where they rely heavily on referrals such as DSC B.

DSCs vary in their approach to deciding what is the 'best advice model'. Some companies rely on sophisticated computer software to decide which option is best for the client, whilst others use trained employees to analyse the client's circumstances. Those favouring the computer software cite consistency of advice as a key driver, whilst those favouring the more personal touch feel debt management is more than just numbers, requiring analysis of the debtor's overall situation and propensity to remain on the plan. DSC D stated that a client may be advised towards one solution over another, not based on their financial situation, but their attitude towards the procedure, citing bankruptcy as a prime example. DSC N uses a hybrid of the two systems, fully training their advisors to give advice with prompts to ensure case workers do not forget to mention any important details.

DSC D employs two quality controllers whose sole function it is to monitor both incoming and outgoing calls. This is rare amongst participating DSCs, with the majority carrying out less formal or sophisticated quality control measures.

Whilst some DSCs will use more traditional marketing techniques such as advertisements in the Yellow Pages, others buy information and make calls to individuals they believe may need a debt management solution. This may be because they have applied for a large amount of credit, or because they have just been refused a consolidation loan.

5.3.2 Advice

Almost all participating debt solution companies trained all their staff internally, the only real exception being where the employee is an insolvency practitioner or where they had a financial services background prior to joining the company. There was no independent externally validated training extant in any of the sampled providers. There was a division in the participant companies attitude towards advisors, with some companies preferring not to even use the title of 'advisor'. DSC I stated that the words 'advisor' and 'advice' are avoided, with emphasis placed on giving the client information and options.

It was clear from visits to the DSC offices that for some DSCs advisors and advice were the essence of the company whereas others were much more sales orientated.

Whilst some DSCs preferred the personal touch of one case manager looking after a particular client, others had teams that looked after a number of clients, and for some it could be a different company representative each time they called. Each DSC gave predictable responses for their reasons for operating in this way: clients like the personal touch; allows flexibility; or is impractical and unnecessary.

Staff at DSC D are encouraged to make maintenance calls to clients in debt management plans by linking this function with the company bonus scheme.

The director from DSC C stated that in his experience there are many debtors who do not want to be made bankrupt because they do not want to lose their home, lose their job or because they do not want the stigma attached with bankruptcy. DSC G added to this sentiment, indicating that there are a percentage of debtors who elect an IVA or debt management plan over bankruptcy because they feel they have a responsibility to pay back what they can.

New clients contacting DSC C are more over-indebted than ever before due, according to the director of DSC C, to heavy advertising of both credit and IVAs. Most debtors having had no benefit of the money borrowed, especially since most debt appears to comprise large amounts of accrued interest and charges.

5.3.3 Services Provided

DSC G likes clients to enter a debt management plan before signing up to an IVA as it provides immediate relief and does not have the same rigidity as IVAs. It is thought that in the early stages flexibility is important due to the possibility of circumstantial change. There are internal discussions currently ongoing concerning debt management clients making better IVA clients, potentially due to the level of commitment already shown.

Some DSCs will put forward proposals which they believe might fail, if the client is insistent that they want to take the IVA route. In this situation, DSC D stated that they would only make the proposal if the client signed a statement to the effect that this was not the route they had advised. This contrasts to the position put forward by DSC H who claims that consumers who push for IVAs will generally be refused. They suggest that probably less than three percent of clients are actually suitable for an IVA and that there are even less that would be able to continue payments for five years. DSC H also believes there is an insufficient number of insolvency practitioners to meet the current demand.[82]

5.3.4 Fees

The way in which fees are calculated vary from one provider to another. For debt management plans some DSCs have fixed figures or percentages and some have figures dependent on the number of creditors.

IVA fees can also differ. It has been reported that whilst many firms still charge 40 percent of the overall debt, the level at which these fees are capped varies and in some cases the fees are not capped.[83]

5.3.5 IVA Specific

In a recent article for the Independent, Malcolm Hurlston, Chairman of the CCCS stated that the debt solutions companies have industrialised 'what had been a simple process. … Our experience suggests that an IVA is suitable for about 3 per cent of people who come to us with debt problems. Our concern is that with these companies it is usually 4 or 5 per cent and some of those people would probably be much better off going bankrupt.'[84]

The director of DSC C thinks that whilst the regulatory function played by insolvency practitioners is important, their presence in a consumer IVA is not necessary. He stated that these pure consumer IVAs are extremely simple and not worthy of the high fees incurred by involving insolvency practitioners. The role of the insolvency practitioner is one of pure compliance and not supervisory in terms of advice or the work carried out by case officers. It is interesting to note that the recent changes in both SIP 3 and 3A appear to be relaxing the required level of involvement necessary, although this is not currently being reflected in the legislation.

The insolvency practitioner at DSC B sees his role as overseeing the IVAs managed by his staff.

The director of DSC A stated that out of the thousands of people he has encountered in terms of debt problems, it is the smallest percent that use personal insolvency tools abusively. In his opinion, malpractice amongst insolvency practitioners is higher.[85]

One insolvency practitioner at DSC G commented that there is a real need for standardisation throughout the industry in relation to insolvency practitioner advice, proposals and documentation.

Elements of SIP 3 (pre-amendment)[86] were dealt with in varying ways by the participating IVA providers. Some IVA providers state that a face to face meeting is essential, whilst others contend it is unnecessary and a waste of resources. For example DSC D claims to see around 85 percent of their IVA clients face to face and DSC F stated they see 96 percent of clients face to face despite industry practice dictating otherwise, whereas DSC G only saw two IVA clients out of fifty in the twelve months leading up to our meeting. DSC G commented that they were, however, looking to introduce home visits for debtors who wanted face to face contact, despite the fact they estimated a very limited take up. DSC G's insolvency practitioner added that the compulsory requirement to have a face to face meeting for an IVA was illogical when you can be approved for a personal loan with one telephone call to India.

The insolvency practitioner at DSC D commented that the Recognised Professional Bodies (RPBs) do not require IVA failure rates if the overall figure is less than 5 percent of cases.[87]

One of the insolvency practitioners at DSC I suggested that if the industry went straight to the voting house instead of the creditor a lot of time and resources would be saved, especially where the same voting house represented multiple creditors. He stated that a move towards email would be even better.

5.3.6 Complaints

Unsurprisingly, most participant DSCs reported very low complaint rates. Some DSCs did state that they receive 'complaints' as a result of non-communication between spouses, or a misunderstanding of information given to them.

DSC G uses customer feedback questionnaires to monitor client satisfaction with the service they provide. They stated that they have yet to receive a wholly negative feedback questionnaire, and they believe one reason for this is the sheer relief someone feels when they have sorted out their finances.

5.3.7 Debtor Education

The director of DSC C believes that the upward trend in IVAs is due to the heavy advertising of debt solutions providers. He believes that most people do not know where to get the best advice from and the result is that they contact the first company whose advertisement they see.

Whilst education needs to have a 'prevention rather that cure' attitude, it cannot curb the attitude of 'borrowing because I need to' alone, since the 'need' will remain whether it is perceived or genuine.[88]

The director of DSC F describes a degree of generational shift in three levels: the older generation who generally want to pay their debts back; the middle generation who do not really want to pay the money back as they feel the banks are to blame; and the university generation who simply will not pay the money back as they do not feel they have to.[89]

One director of DSC N commented that one of the problems in relation to debtor education is that as a society we are more aware of our options, making it easier to rack up debt. It has now become socially acceptable to be in debt, whereas twenty to thirty years ago you would have been considered an outcast if you were seriously over-indebted or declared bankrupt.

Many DSCs commented on a lack of financial awareness of the debtors who come to them for debt management solutions. In particular, DSC G highlighted a lack of understanding when it comes to consumer awareness of what constitutes debt. In their experience some consumers think that you are only in debt if you miss a repayment, whereas overdrafts and credit limits are money in the bank.

5.3.8 The Credit Industry

The director of DSC E believes that too many debt solutions companies are failing to strike a balance between debtor clients and creditors, resulting in the alienation of creditors to the detriment of the debtor. He goes on to state that creditors will criticise both DSCs and insolvency practitioners for charging extortionate fees, whilst profiteering by levying inappropriate bank charges and selling inappropriate Payment Protection Insurance. DSC E claims that this attitude has helped to create the insolvency situation we have today since creditors refuse to accept the fact that third party debt advisors have an important role to play when financial difficulty strikes. He commented that they are now slowly starting to 'wise up'.

Many debt solution companies have commented that some creditors impose minimum returns that are unrealistically high for debtors to meet. As a result some debtors may be pushed into bankruptcy when an IVA is the most suitable solution. DSC C stated that it is important to get more consistent voting since the current arguments for rejection are very unsophisticated and do not make financial sense. DSC G added that because there is no standardisation regarding what amount is reasonable or whether an item is essential, decisions are made by call centre staff with the result of disparity within the same institution.

According to DSC G, creditors are becoming increasingly cooperative with fee chargers since they realised that this would have a positive effect on their bad debt losses. It was stated that creditors are no longer debating the process by which companies are providing solutions to personal insolvency: they are debating the fees.

From personal experience, DSC E does not believe that the common financial statement in its current format works.

There have been claims that certain creditors approve credit card applications without checking the applicants credit file in order to save money. It is claimed that bad credit decisions of the past are now being felt by today's consumer in the form of much higher interest rates. Further problems include the miss-selling of payment protection insurance for consumer credit. DSC E stated that many of their clients do not even qualifying for the cover they are paying for.

The director of DSC I believes that creditors are happy to see people muddle through as this makes them more money than identifying potential delinquents before it is too late. He also believes the criticism of creditors aimed at IVA factories is a criticism of the insolvency practitioner and resultantly a criticism of the RPBs, intimating that they are not doing their job.

DSC H believes that creditors that deny basic banking facilities to debtors are short sighted and thereby compounding the debt problem. If clients are unable to pay in their wages or benefits, they are not going to be able to write a cheque that will service their IVA repayments.

The director of DSC F believes creditors are trying to shift the blame onto DSCs when their own advertising has been more aggressive than that currently seen by some DSCs. He claims the advertising by the company costs the equivalent of ten percent of the advertising budget of the creditors. Creditors have no reason to moan as they cover bad debt losses through higher interest rates.

5.3.9 Government Intervention

The director of DSC F suggests that consumer debt moved too quickly for the Enterprise Act 2002 to have any significant effect. He stated that consumer debt should be dealt with separately to business debt.

DSC E stated that 'the problem with Departmental Ministers is that they generally do not stay in the job for long. Moreover, they pass an opinion or take action, typically prompted by their inner circle of advisors who have clearly either little experience of dealing with day to day over-indebted consumers or who have an idealistic view of how things should work.'

5.3.10 The Role of Charities and Not-For-Profit Organisations

The director of DSC D stated that he thought volunteers did not fully understand the real issues and that people do not mind paying for a service. He also stated that not-for-profit organisations funded by creditors did not necessarily offer the best advice to debtors as they were too focused on creditor interests. DSC F suggested that there is a lack of consistency offered by charities and that in reality they cannot cope with the level of enquiries.

The insolvency practitioner at DSC I thinks that the not-for-profit sector actually make as much money as the profit sector. He adds that returns in the profit sector are generally higher and that this is because those in the not-for-profit sector do not have the incentive to streamline their business model. One director contended that the not-for-profit sector simply net out their profits in order to maintain their status. This sentiment was echoed by DSC H who stated that if an organisation is not-for-profit then they should be not-for-profit as it is fraudulent to secure creditor funding when this is not the case.

DSC G highlighted the lack of financial expertise on offer at charitable organisations due to a form of postcode lottery and the delay in face to face contact. They also raise the question of whether the free sector is in fact free when a percentage is creamed from the dividend paid to creditors, the corollary rising interest rates, and meetings with face to face advisors where many Councils are forced to foot the bill with money raised from Council Tax. As a result, DSC G feels that the fees charged by the profit sector are justified because they are limited to the parties involved. They added that in reality the difference in the fees charged are not that disparate, claiming that CCCS charge 11 percent compared to their 16 percent for the administration of a debt management plan.

DSC G commented that the not-for-profit sector has large databases that can help with policy decisions, but they struggle when it comes to providing advice as very often it is not them that will be providing the solution.

5.3.11 Current Problems

DSC E commented that one of the problems with the changes introduced by the Enterprise Act 2002 is that the provisions do not specifically target consumer debtors with regard to penalties for abusing debt solution tools. The majority of the penalties relate specifically to entrepreneurial debtors.

DSC D blames aggressive advertising by some of their competitors for the increase in IVA numbers. Their director also cites a move towards consumer apathy towards high levels of debt and a lack of creditor responsibility as further reasons for the increase. A further reason for the increase in IVA and bankruptcy figures, according to DSC G, is over-zealous collection provisions as people in debt are too easily abused through their own lack of knowledge about their rights.

DSC H suggests that aggressive marketing has led consumers to believe that they can write off their total debts. The free market is not free as someone always pays whether it is the creditor, debtor or tax payer. DSC H also predicts claims for the miss-selling of IVAs as there has been with endowment policies.

One DSC participant highlighted what they termed a 'loophole in the debt management industry'. They explained that taking cases from a lender via referral requires express consent from the debtor. However, consumer consent is not required for the sale of their contact details. Upon discovery of one debt solution company buying lots of low value debt, a competitor went to the OFT who indicated they were unaware of any issues with purchased data.

Claims have been made that some of the more charitable debt solutions companies are not as ethical as they may like to appear.

It has been commented by several participating DSCs that the acceptance or rejection of an IVA proposal can be as dependant on the individual reviewing it as the creditor or voting house to whom it is being sent. This is a real problem and creates huge inconsistencies.

5.3.12 General Observations

It seems that many of the more recent debt solution companies have been created by past employees of the larger debt solutions providers. The high concentration of companies in the North-West may be indicative of this phenomenon.

One insolvency practitioner commented that the whole insolvency industry was perverse. He stated that IVAs should be a government run initiative with insolvency practitioners paid a set annual salary, with no fees dependent on the amount of debt owed. He was not confident that this position would be adopted.

Many of the participating DSCs have noticed a rise in the number of consumers trying to play one provider off against the other in an attempt to get a higher percentage of debt written off. This was noted by both DSC F and N. According to DSC A, there has also been an increase in debt caused by gambling.

DSC G commented that unsecured lending is currently going through its own cycle, just as secured lending did fifteen years ago. It was suggested that since then there has been a significant cultural shift with the likely result that unsecured lending will become secured leading once again to an increase in mass property repossession.

With the claim that the not-for-profit sector charge rates are not significantly lower than their fee charging counterparts, it would be interesting to work out whether in fact they charge more due to the nature of their funding. If creditors are already pouring large amounts of money into these providers, but at the same time having to pay a percentage on top, it has to be questioned whether creditors are really getting value for money or how efficient these providers are for them to remain not-for-profit.

The director of DSC F believes bankruptcy should have stigma attached to it and that automatic discharge should be increased to three years as the reduction to twelve months has caused more problems than it has solved. He does not think the Enterprise Act 2002 affected IVA numbers: this is due to the aggressive marketing of IVAs as the total level of debt is not that different to what it was two to three years ago.

One participating DSC stated that another non-participating DSC was currently working with a large bank in an agreement providing debtors with basic banking facilities with a failsafe. For £8.00 per month staff at the bank monitor the accounts and inform the client if, for example, a direct debit is due to go out in a few days time but there is currently insufficient funds to cover the payment. Unfortunately, it is impossible to expand on the detail relating to this particular service as the bank in question refused to participate in the research.

5.3.13 Some Figures

During the meetings many of the DSCs were very willing to provide information that could be considered commercially sensitive. The following figures were considered to be of interest and provide insight into the current debt solution market. To protect the identity of participants, this data has been further anonymised through the removal of DSC coding.

- 13% of IVAs have failed with the remaining 87% either completed or ongoing where the average dividend payment for creditors is 44 pence.
- Approximately 8-9% of debt management plans and IVAs fail in the first year with 70-80% of IVAs going full term.
- Between July 2006 and December 2006 one DSC had a 92% approval rate for IVAs and of all the callers they identify as suitable for one of their products, approximately 25% become clients.
- In the year ending September 2006, 2,085 IVAs were entered into and 27 IVAs failed within the first twelve months.
- Each IVA is estimated to take approximately 16.75 hours to complete.
- One DSC gets in between £2.2 and £2.7 million worth of gross debt per day in new customers.
- The average IVA dividend seen is 33 pence with 15% of IVAs having failed; 20% having been paid in full; and 65% ongoing.
- Since 1999 there has been 470 failed IVAs where a certificate of non-compliance had to be issued and 718 completions.
- 4-5% of calls result in an IVA; 6-7% of calls result in debt management; and 4-5% of calls result in a homeowner loan.
- 5-10% of calls result in an IVA; 15-20% of calls result in debt management.

These figures are intended to provide some further background to the companies visited and are not to be considered indicative of the industry as a whole.

5.3.14 Conclusions

DSCs appear to be in agreement on a number of issues. One such issue is the increasing acceptance of the use of credit for daily activities. It is generally agreed that getting into debt no longer carries the social stigma it did twenty to thirty years ago.

There were suggestions made by certain debt solution providers that a move towards electronic communication and direct liaising with voting houses would reduce costs and time in relation to IVAs. Both these suggestions are welcomed as sensible alternatives to the current paper based system.

Problems surrounding the content of IVA proposals were highlighted by many DSCs. The main theme that emerged was the varying requirements demanded by creditors prior to accepting IVA proposals. It seems uniform definitions of 'reasonable' and 'essential' in relation to the terms of these proposals would not only be welcomed but should be a necessary part of the process.

One concern highlighted, was the sale of referral data. This is a very sensitive issue given that data protection legislation regards the commission or payment for referrals as inappropriate, whilst there is the appearance of a more relaxed attitude from the regulatory authorities towards such practice.

5.4 The Acquisition of Shares

In order to gain access to information restricted to shareholders, CILP bought nominal shareholdings in four of the AIM listed debt solutions companies through a Kingston University investment vehicle called Kingston University Enterprises Limited (KUEL). Shares were bought in Accuma Group Plc, Debt Free Direct Group Plc, DebtMatters Group Plc and Debts.Co.UK Plc. The decision to invest in these companies was not in any way reflective of participation in the research, but was the result of a random selection of the available AIM listed debt solution companies.

A nominal shareholding was purchased in these companies in order to gain access to the information restricted to shareholders. According to the Companies Act 1985, nominal shareholders have a number of rights including, *inter alia*:

- The right to vote;[90]
- The right to receive notice of general meetings;[91]
- The right to a dividend if one is declared;[92]
- The right to a share certificate;[93]
- The right to have their name entered on the Register of Members;[94]
- The right to a copy of the Annual Accounts;[95]
- The right to an Annual General Meeting;[96]
- The right to inspect Minutes of General Meetings;[97]
- The right to inspect the register of members and index of members' names without charge;[98]
- The right to require a copy of the register of shareholders;[99] and
- The right to inspect the register of directors service contracts without charge.[100]

The Companies (Inspection and Copying of Registers, Indices and Documents) Regulations 1991 also states that:

'The Company shall make the register, index or document available for inspection for not less than 2 hours during the period between 9am and 5pm on each business day and permit a person inspecting the register, index or document to copy any information made available for inspection by means of taking notes or transcription of the information.'[101]

Shares were acquired on CILP's behalf through KUEL on 14th December 2006. In total, twenty-one shares were bought in Debt Free Direct Group Plc; thirty shares were bought in DebtMatters Group Plc; sixty shares were bought in Debts.co.uk Plc; and forty shares were bought in Accuma Group Plc. Copies of all four share certificates can be found in Appendices IV to VII in Volume II.

The shares were bought in the name of KUEL in an attempt to distance CILP from the acquisition. CILP wanted to gauge the cooperation of these companies both with academic researchers and with their shareholders. Due to the time it has taken to acquire the share certificates, CILP are currently awaiting the results of this experiment.[102]

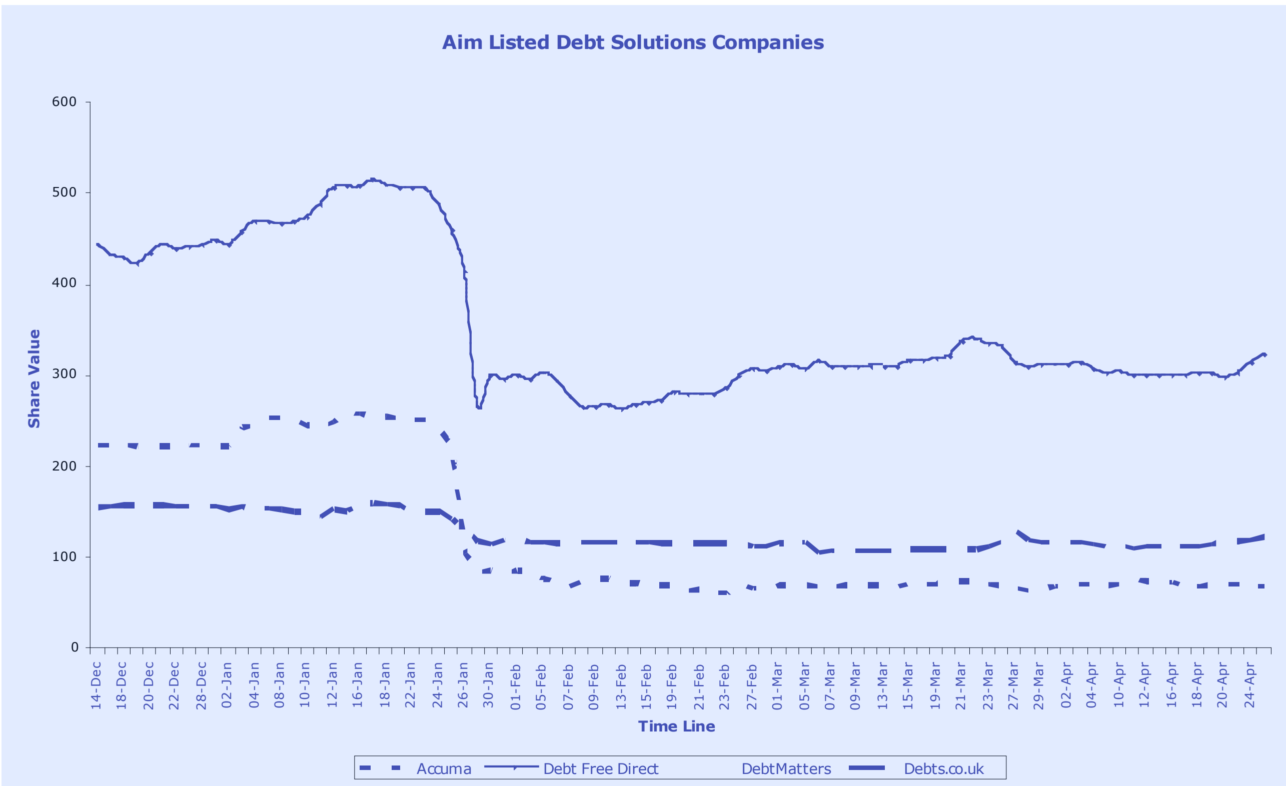

Figure 4: AIM Listed Debt Solution Companies

5.5 Summary of Main Findings

The meetings with the debt solution companies provided an invaluable insight into how the numerous companies operate. It would be impossible to say with any degree of certainty that all debt solution companies are operating in accordance with OFT guidelines. Indeed, RPBs are entrusted to regulate insolvency practitioners. But this was not the purpose of the investigatory exercise. The results are limited to the debt solutions companies that communicated with us.

There is a clear disparity in the approach taken by debt solution companies in terms of delivery, not only in relation to advice but also to the product itself. In accordance with this distinction between a more 'sales' oriented approach, and the more traditional advisor approach, there is a marked variation in the dynamic make up of staff. Due to the limits of this research, no conclusions can be drawn in relation to benefit to the consumer, efficacy of service provided or even profitability with regard to the very different models observed during the course of the investigation. One comment that can be made with confidence is that all participating debt solution companies visited were well structured and organised with a clear hierarchal chain.

The debt solution companies share a dissatisfaction of creditors that place unrealistic hurdles in the way of their clients' need for a structured solution to their over-indebtedness. It was also made clear that many of the debt solution company participants would welcome a more pro-active approach from creditors to the problem of personal insolvency.

According to our investigations, private sector debt solution companies are discontent with the current bad press they receive compared to their not-for-profit charitable counterparts. It has been suggested that the charitable status of some of these companies is highly questionable. They intimate that these companies offer essentially the same service as the fee chargers, are not as efficient, and in fact charge fees, albeit that they are skimmed from creditor returns in addition to the funding they receive from the very same creditors. In addition, private sector debt solution companies defend their fees as fair and proportionate to the level of professional service provided. It should be remembered that there is a danger of response bias, in that those most discontented with competitors and or creditors may have agreed to participate in order to voice their concerns.

References

[60] ——— 'More people seeking help on debt (13 January 2005) <http://news.bbc.co.uk>; G Seargeant, 'Credit-card junkies turn to the bankruptcy court to clear debt' *The Times* (5 February 2005); B Gleeson, 'Bankruptcy is on the rise' *The Cheshire Daily Post* (7 February 2005); ——— 'Bankruptcy strikes young debtors' (14 February 2005) <http://news.bbc.co.uk>; ——— 'NI bankruptcy rates double' (17 February 2005) <http://news.bbc.co.uk>; and J Stuart, 'Bankruptcy "It's an easy way out. I can start afresh" *The Independent* (16 February 2005).

[61] See further: J Tribe, 'The Rhetoric of Insolvency Law' (2007) IL&P (forthcoming).

[62] J Tribe, 'Bankruptcy Courts Survey: 2005 - Final Report: A Pilot Study' (Kingston Business School Occasional Paper 59, 2006) <http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/research/research.htm> pp79, 85, 159, and 165-169.

[63] On IVAs generally see: E Bailey, *Voluntary Arrangements* (Butterworths, London 2003); D Milman, *Personal Insolvency Law, Regulation and Policy* (Ashgate, London 2005); and IF Fletcher, *The Law of Insolvency* (Sweet & Maxwell, London 2002) 4-002.

[64] For recent negative coverage of such firms see: R Murray-West, *The Daily Telegraph* 'Preying on the Gullible' (24 May 2006).

[65] These companies have also been referred to as "ambulance chasers" (Insolvency Practices Council 'Influencing the standards of the insolvency profession: *Annual Report 2000*: Market Deeping' (2000) 4); "dressed-up debt sharks" (S Davies, (ed) *Insolvency and the Enterprise Act 2002* (Jordans, London 2003) 14.16); and as "the bottom feeders in the murky pond of the financial services industry" (Paul Flynn MP, Hansard HC vol 386 col 208WH (11 June 2002). Although it is acknowledged that the debtors surveyed in the BCS all ultimately went down the bankruptcy route, it is presumed, and in many of the instances, evidenced, that a significant proportion of these debtors considered a number of other options before filing their petition.

[66] After all as Lord Lucas of Chilworth observed during the reading of the Insolvency Bill, "…the intention of the Government is to strengthen the body of insolvency law so that insolvency is handled by properly qualified and experienced people." (Hansard HL vol 458 col 925 (15 January 1985)). Is this intention still reflected by current practice?

[67] Suggestion made by one of the funding bodies.

[68] Whilst insolvency practitioners are regulated, the advisors are not directly regulated whether they are advising consumers on IVAs or debt management plans, however, it is acknowledged that those who advise where there is an in-house insolvency practitioner could be said to be regulated. For further analysis of insolvency practitioner regulation see: A Walters, 'Complaints Handling in the Insolvency Practitioner Profession' Insolvency Practices Council Commissioned Report (forthcoming).

[69] N Neveling, N. 'HSBC blames bad debts on insolvency firms' *Accountancy Age* (1 August 2006).

[70] See: J Croft, 'Banks upset by reluctance to rein in insolvency deals' *The Financial Times* (12 October 2006).

[71] ——— 'BBA welcomes IVA advertising changes' (11 April 2007) <http://www.londonstockexchange.com>.

[72] According to ——— 'British Bankers' Association, IVA industry work to create industry standards' (4 January 2007) <http://www.hemscott.com/news> a date of Easter 2007 was postulated for a code to regulate a register of responsible insolvency practitioners. In K Reed, 'IVA factories to thrash out regulation by February' *Accountancy Age* (28 November 2006) it was hoped that the Debt Resolution Forum would be fully operational by February 2007.

[73] See: Chapter 10 below at page 89.

[74] G Osborne, 'An economy built on borrowed money is an economy built on borrowed time' (11 November 2006) <http://www.theconservatives.com>.

[75] W Blake Odgers and H Poland (eds), *A Century of Law Reform* (Macmillan, London 1901) 14.

[76] It cannot be said that a dossier was created for all debt solutions providers, due to the multitude of new companies (see below) although every effort was made to include all known providers.

[77] According to the Office for National Statistics, 60 percent of adults in Great Britain used the internet in 2006, with searching for information ranking as the most common online activity.
See: <http://www.statistics.gov.uk/CCI/nugget.asp?ID=1711&Pos=1&ColRank=1&Rank=176> accessed 1 May 2007.

[78] For example Direct Debt Solutions is a trading style of Blair Endersby Ltd.

[79] Not all companies were telephoned for this information due to the very poor initial cooperation rate.

[80] Both letters can be found in Volume II: Appendices and Bibliography.

[81] See: Volume II Appendices and Bibliography.

[82] It is to be noted that the number of insolvency practitioners is currently controlled and kept below 100 each year.

[83] Anecdotal account of one insolvency practitioner bragging about fees of £28,000.

[84] J Moore, 'Boom time for debt firms after insolvency law change' *The Independent* (3 November 2006).

[85] No evidence to support this opinion was provided.

[86] Statement of Insolvency Practice 3 (E&W): Voluntary Arrangements England and Wales (1 October 2003).

[87] S Morgan, 'Early Failures in IVAs' (Kingston Business School Occasional Paper – forthcoming).

[88] DSC E.

[89] This is especially interesting given the shift away from means testing parents towards subsequent earning capacity of the students in consideration of some student financing methods.

[90] The Companies Act 1985 s370.

[91] ibid s370.

[92] ibid Table A Article 104.
[93] ibid s185.
[94] ibid s352.
[95] ibid s240.
[96] ibid s366.
[97] ibid s382, s382A and s383.
[98] ibid s356(1).
[99] ibid s356(3).
[100] ibid s318(7).
[101] The Companies (Inspection and Copying of Registers, Indices and Documents) Regulations 1991 SI 1991 No 1998 3(2).
[102] A supplementary release will be made in due course.

Chapter 6

Debtor Education

'One must have some sort of occupation nowadays. If I hadn't my debts I shouldn't have anything to think about.'

Oscar Wilde, *A Woman of No Importance* (1893).

6.1 Introduction

There has been a large amount of scholarship in relation to debtor education undertaken in America and Canada.[103] Deplorably, this close examination has not occurred in English personal insolvency law scholarship.[104] Whilst is it accepted that the idea of debtor education has not been popular in England and Wales,[105] it must be examined more closely in the English context before definite judgments can be made in this regard.

In 'Bankruptcy – A Fresh Start', financial counselling for bankrupts was mooted as a possible reform initiative.[106] In 'Productivity and Enterprise' it was noted that this proposal (as well as a number of others), 'received little support and are not being taken forward at this time.'[107] It was noted in the BCS that in order to combat the rise in consumer debt one solution could be to facilitate a programme of debtor education or compulsory financial counselling. This could be undertaken both before problems arise in terms of more general personal over-indebtedness and post-bankruptcy discharge to help reduce the risk of a second bankruptcy.[108]

It would appear from the plethora of information currently being published that many consumers lack the basic skills necessary to successfully manage credit,[109] with increasing articles on debt management and ways to reduce debt.[110] In this regard the UK is sadly not alone. In Australia a partner at a national accountancy firm has been reported as saying 'One of the life skills that does not seen to be taught widely enough, if at all, is basic personal financial management.'[111] This comment was made in connection with the growing rate of personal insolvency in the 18-30 year old bracket. In the UK there has been growing concern that teenagers are not leaving school with the necessary knowledge to manage their finances successfully. With research finding that 90 percent of under 17s regarding overdrafts and credit cards an easy way to spend more money than they can actually earn[112] it is important that there are educational initiatives in place should the worst happen so that the government's fresh start approach might finally be brought into action. It can be argued that today's teenagers do not see getting into debt as a serious problem with many parents bailing out their offspring without teaching them the value of money.[113] They are encouraged to get into debt in order to continue with their education, and bombarded with advertisements that tell them they can write off their debt at the drop of a hat. The Government is not incentivising this generation to learn the value of money or education with Education Maintenance Allowances giving out £30 per week to teenagers just for attending post 16 education.

With this in mind it is easy to see the importance of introducing effective financial management classes into secondary schools. With many initiatives already underway,[114] it must surely be hoped that eventually these classes will remove the need for debtor education. Until then, higher emphasis must be placed on educating the current generation of debtors in order to combat poor financial management being learnt by example.

With ten percent of households in the United Kingdom stating that over-commitment was the primary cause of their over-indebtedness, financial education for those already in difficulty should be key.[115] These people, however, have yet to be targeted as requiring financial education by those bodies offering such services. To say that the over-indebted do not need financial education is a paradoxical example of societal acceptance of consumer debt. If these individuals did not have the required financial knowledge to successfully manage credit before they experienced difficulty, it is unlikely that they will have better financial skills post discharge or IVA. Instead, past delinquents are restricted from using credit for a period of time, after which they are expected to have learnt from their mistakes without ever having them corrected. This is especially worrying in a climate where IVAs and debt management plans are on the increase. Avoiding IVAs or debt management plans ending in bankruptcy demands a much higher degree of financial awareness and budgeting. It cannot be easy to maintain creditor payments for five or more years when you are already on a stretched budget. Perhaps the numbers of failed IVAs and debt management plans would be reduced if the individuals on them were provided with financial education?

In order to begin testing this theory two free three hour personal financial management workshops were held at Kingston University. The workshops were for debtors who have either been declared bankrupt in the Croydon and Kingston County courts or who are currently engaged in an IVA.[116] These workshops were very much aping those run by the American Coalition for Consumer Bankruptcy Debtor Education free three hour personal financial management courses provided to bankrupts in the Eastern and Southern Districts of New York.[117]

It was originally proposed that three Credit Responsibility Days were to be held at Kingston University for un-discharged and discharged bankrupts and for individuals in or post an IVA. Unfortunately, as was intimated in the preface, these events have been postponed, and will be discussed below.

According to the BCS it was thought necessary to carry out an examination of the efficacy of both pre and post bankruptcy petition education in order to determine whether educational initiatives beyond those currently extant would encourage responsible credit usage. In order to do this comprehensively a much longer study of both forms of education would have to be carried out. Unlike other initiatives currently in operation in the UK, the pilot Financial Education and Awareness Workshops, forming part of PIP, concentrate on the much neglected area of debtor education. A full evaluation of the workshops will follow below, although it is intended that this evaluation continue long after the report.[118]

But why do we need financial education and more specifically debtor education? One answer could be the increase in the number and complexity of consumer credit products that have become available during the last ten to fifteen years.[119] Another, the fact that more and more consumers are taking on higher levels of debt than ever before.[120] Or is it simply the case that the area of financial education has been neglected in both home and school for far too long? Regardless of the reason, it is clearly essential that consumers no longer continue to borrow irresponsibly due to a lack of financial literacy.

6.2 State of the Art Review

There are a number of financial education programmes currently being piloted in the United Kingdom. A brief consideration of the main initiatives will hopefully provide the background to the Financial Education and Awareness Workshops piloted as part of PIP. Over-indebtedness and financial education have become much debated subjects in recent years with more and more studies surrounding financial literacy[121] and over-indebtedness.[122]

The Financial Services Authority (FSA), an independent non-governmental body, which regulates the financial services industry in the UK,[123] has been the driving force behind many of the financial education initiatives being trialled today. Programmes have included helping young adults become financially capable,[124] the introduction of workplace based presentations, offering advice to new parents and more recently the development of a new scheme aimed at financial capability in further education.[125] Its main initiative, however, continues to be its commitment to the introduction of financial education in secondary schools. Together with the Personal Finance Education Group (pfeg), the FSA introduced the Learning Money Matters scheme in April 2005. The program has grown to include 620 schools across the country with the aim of increasing the quality and profile of personal finance education in secondary schools in England.[126]

Similar secondary school level education programmes include the introduction of an Institute of Financial Services (***ifs***) School of Finance Certificate in Financial Studies.[127] A recent report on the progress of this initiative has provided some encouraging results. The Briefing Report carried out by the University of Manchester has indicated that financial management as a stand alone subject in schools could be one successful way of improving financial literacy among the younger generation.[128]

There are many other financial education schemes currently taking place across the UK's secondary schools including those in association with creditors such as the Royal Bank of Scotland,[129] HBOS,[130] and the Alliance and Leicester.[131]

Despite the apparent success of these commendable initiatives, it is questionable whether concentrating on the education of school children is going to help tackle the financial problems faced by individuals in the here and now. It is accepted that building a solid foundation of knowledge for future generations is essential to the longevity of developing a country with good financial literacy. What is not accepted is the lack of commitment shown to the education of delinquents. They are a group that is easily identifiable and that are clearly in need of financial education.

> 'But bankruptcy isn't going to affect me, because it only lasts for a year. There aren't any consequences, if you don't own a house or business. Why cripple myself with the minimum repayments when I don't have to?'
>
> R Clark and K Miller, 'Buy now, pay never' *The Daily Telegraph* (14 August 2006).

The statement above is from a 27 year old single mother waiting to go into court. Her attitude towards debt could be passed on to her children regardless of how much financial education goes on in school. For the majority of individuals attitudinal behaviour is learnt from home and not school. In this regard, the financial education of current delinquents is paramount to prevent such attitudes being passed on to the future generations.

It also has to be questioned whether the financial education delivered to our children is sufficient to better equip them with the tools necessary to prevent future financial problems or whether entrenched attitudes of the buy-now society will prevail.[132]

A further argument for educating the current generation of borrowers was provided by the FSA's own research that found that less than a quarter of secondary school teachers felt very confident in delivering financial education.[133] Are we educating the future generation at the expense of the current? What happens to the thousands of individuals facing personal insolvency every month after their bankruptcy or IVA has come to an end? Where is the re-education and how do we prevent them making the same mistakes twice?

The focus when considering the development of the PIP pilot personal financial management courses was not the education of individuals with no concept of financial difficulty, but the re-education of those who had already experienced a statutory personal insolvency procedure. With the government's long-term aim being '…to ensure that everyone, including people on the lowest incomes, can get easy and simple access to good quality generic financial advice'[134] coupled with its paper 'Bankruptcy – A Fresh Start'[135] it is difficult to understand why more focus on debtors as a target group for financial re-education have thus far been over-looked.

It was important to create a workshop that delivered results not just in the short term but for the debtors' financial future as well. We considered many financial education programs currently in operation in order to understand how this could be best achieved. Using the original inspiration for the pilot PIP personal financial management course: the work of the Coalition for Consumer Bankruptcy Debtor Education in New York under the guidance of Professor Karen Gross,[136] it was hoped this aim would be achieved. Despite the much larger scale of the Coalition's pilot debtor education program, it was considered the best model on which to base our own pilot workshops due to a lack of similar projects in the United Kingdom.

6.3 Methodology

6.3.1 Creation of the database

The database used for the questionnaire mail merge was created over an approximate two week period in October 2006. The names and addresses of 2085 non-discharged bankrupts and individuals in IVAs were taken from the Insolvency Service's online Individual Insolvency Register[137] for the Kingston-upon-Thames and Croydon courts. The original purpose of creating the database was to facilitate marketing of the Financial Education and Awareness Workshops. For this reason, the online search was limited to the county courts of Kingston-upon-Thames and Croydon.

The names and addresses of all 1133 individuals on the register for the Kingston-upon-Thames court (excluding any individuals listed with Bankruptcy Restriction Orders (BROs) or Bankruptcy Restriction Undertakings (BRUs)) were added to the database. Due to the higher number of individuals on the Croydon court list, individuals with a surname that began with the letters A, B, C, D, R, U, V, W, Y and Z were also added to the database. The reason for choosing these letters was quite simple. There were two research assistants compiling the list and to avoid duplicating data, they were instructed to start at either end of the alphabet. It was estimated that approximately 2000 individuals would be an appropriate number to contact in consideration of previous low response rates of postal questionnaires.[138] The Kingston data had already provided names and addresses of 1133 individuals resulting in the need for a further 867. Once the research assistants reported that this number had been surpassed, they were instructed to terminate the further collection of data from the Croydon court list.

During the creation of the database it was decided that a questionnaire should accompany the covering letter, asking debtors a number of questions concerning financial education and gauging their interest in attending the proposed workshops. It was intended that this questionnaire would provide supplementary information to that gained during the workshops and assist in the identification of the need for financial education amongst past delinquents.

6.3.2 Creation of the questionnaires

Instead of using the database as a mere marketing tool, it was resolved that respondents should be asked for their opinions regarding the workshops through the formulation of a questionnaire that would ask them additional specific questions.

In order to maximise the response rate, the questionnaire was limited to one side of A4 and originally consisted of only nineteen questions. This questionnaire was sent to the first batch of 500 Kingston debtors. An additional two questions were added to questionnaire regarding fees charged by debt solutions companies. This second version of the questionnaire was sent to the remaining 1586 debtors.

Following advice from, *inter alia*, Jim Fearnley of the Money Advice Trust, the name of the workshop was changed from Debtor Education Workshops to Financial Education and Awareness Workshops. As the covering letters and questionnaires had already been sent to all Kingston debtors with the original title 'Debtor Education Workshop' we changed the title to 'Financial Education and Awareness Workshops' on the Croydon correspondence. We wondered whether this would make a difference in the response rate of the two areas. It did not. Perhaps if the test were carried out on a much larger scale there would be a noticeable difference, but in our small pilot study there was no significant difference. The term 'debtor' was eventually expunged because it was felt necessary to reduce any stigma that might attach to attendance at such a workshop.[139]

The final version of the questionnaire is included at Appendix IX, although a full breakdown of the questions will follow in the dissemination of the questionnaire responses. Participants were instructed to circle the option that applied to them where appropriate and given space to write individual responses where necessary. For ease of reference, where options were given to participants the answers have been emboldened although this was not the case on the actual questionnaire.

It was during the creation and analysis of the questionnaires that a move away from Microsoft Excel towards the Statistical Package for the Social Sciences (SPSS) was first established. It became apparent after the completion of the BCS that Excel was simply inferior to the potential for variation and examination of data provided by SPSS.

6.3.3 Creation of the syllabus

In order to create the syllabus a number of charitable debt advice organisations were contacted for suggestions.[140] A variety of publications and websites were also used for guidance.[141] A full discussion of the syllabus creation is given below.

6.3.4 Promotion of the workshops

The primary tool used in the promotion of the workshops was the Financial Education and Awareness Questionnaires and covering letters sent to the 2085 debtors in the Kingston – Croydon area. In addition, promotional posters were created by the Kingston University Marketing Department and dispatched to CAB offices in the surrounding area.

6.4 Summary of the Financial Education and Awareness Questionnaire Responses[142]

The full dissemination of the Financial Education and Awareness Questionnaires can be found in Volume II: Appendices and Bibliography. What follows is a summary of the main findings from this questionnaire which can also be found in Volume II.

6.4.1 Response rate

The following table represents the response rate achieved from the Financial Education and Awareness Questionnaire. The results are expressed first in number and then as a percentage of the total sent out for that office and or procedure.

	Kingston	Croydon	Total
Bankruptcy	40 (6.3%)	20 (4.1%)	60 (5.4%)
IVA	23 (4.6%)	12 (2.6%)	35 (3.6%)
Total	63 (5.6%)	32 (3.7%)	95 (4.5%)

Figure 5: Financial Education and Awareness Questionnaire Response Rate Analysis

Due to the small number and percentage of responses, and the added possibility of non-response bias, the results that follow should only be considered indicative, and not to provide robust evidence of the experience and opinions of the debtor population more generally.

6.4.2 Respondent analysis

The following table details the dynamics of the debtor respondents, broken down by gender, age and procedure. Unfortunately not all respondents included full information: the missing data has not been included in the table. It can therefore be seen that the majority of respondents were female aged between 41 and 60 who had experience of bankruptcy.

		Number							
		Gender		Age				Procedure♦	
		M	F	16-24	25-40	41-60	60+	B	IVA
Percentage♠ – Gender	M	43 (45%)	×	1	20	19	3	30	19
	F	×	48 (51%)	1	20	26	1	28	22
Percentage♠ – Age	16-24	1%	1%	2 (2%)	×	×	×	1	1
	25-40	22%	22%	×	40 (42%)	×	×	19	21
	41-60	21%	29%	×	×	46 (49%)	×	35	19
	60+	3%	1%	×	×	×	5 (5%)	5	0
Percentage♠ – Procedure♦	B	31%	28%	1%	19%	34%	5%	53 (56%)	×
	IVA	19%	22%	1%	21%	19%	0%	×	35 (37%)

♦Counts for procedure include those where the individual had experienced both procedures and have therefore counted twice.
♠Percentages in the table have been rounded to the nearest whole number.

Figure 6: Financial Education and Awareness Questionnaire Demographic Breakdown

6.4.3 Main findings

- Data received concerning the discharge status and year of the proceeding start date are consistent with the data released and held by the Insolvency Service.
- 90 percent of respondent bankrupts who had already been discharged were discharged in twelve months or less.
- The majority of respondents listed 'personal overspending' as the primary reason for their overindebtedness.
- Almost 17 percent of respondents claimed to have known they were in financial difficulty two years prior, and a further 20 percent, twelve months prior to their bankruptcy or IVA commenced.
- Respondents were divided as to whether there was sufficient advice available at the time when they realised they were in financial difficulty.
- 75 percent of respondents contacted a charity or debt solution company regarding their finances with only 57 percent finding the information they received useful.
- The top five organisations contacted for advice amongst respondents were:

  1. *Citizens Advice Bureau (24%)*

2. *Debt Free Direct (8%)*

3. *Consumer Credit Counselling Service (7%)*

4. *PayPlan (4%)*

5. *National Debt Line (3%)*

- Almost 80 percent of respondents wished they had sought debt management advice sooner.

- 75 percent of respondents thought that financial responsibility should be taught between the ages of 15 and 18 with almost 50 percent stipulating an age range on 15-16.

- 87 percent of respondents considered themselves to be more financially aware post insolvency.

- Respondents' suggestions for improving financial awareness and increasing consumer responsibility were primarily focused on better education and tighter controls on credit facilities.

6.4.4 Fees

Respondents were asked two questions in relation to fees: if you contacted a charity or debt solution company did they charge a fee?; if so, how much was it?

In relation to the first question respondents appeared to be confused as to whether certain debt solution companies charged fees or not. For example, out of the 6 respondents who contacted Debt Free Direct, 4 claimed not to have been charged a fee whilst 2 stated that they had been charged. Equally, 2 PayPlan clients claimed not to have been charged a fee whilst another stated that he or she had been charged.

The sample of debtors who responded is very small and not of statistical significance, but it is indicative that a degree of confusion exists. It is suggested that it would prove useful to creditors and potential regulators alike to investigate whether this confusion is more widespread.

In relation to the second question, the results were very small in number and cannot be used in the main report as there was no stipulation as to the frequency of the charges. Respondent answers are included however in the full dissemination of results contained in Volume II: Appendices and Bibliography at Appendix X.

6.5 The Workshops

> 'Individuals need to understand budgeting, and the downside of credit and its consequences.'
>
> P Boyden, 'Living on Tick: The 21st Century Debtor' PriceWaterhouseCoopers (2006).

6.5.1 Creation of a workshop syllabus

The object of the workshops was to give participants the tools necessary to better understand their financial situation, and make more informed choices as a result. To do this we divided the workshops into seven units that would enable participants to assess their current attitude towards their finances, teach participants the essential skills required to successfully plan and manage their finances and also help them maintain their financial awareness.

The seven units are discussed below.

Unit 1: Financial Personality Test

The Financial Personality test was designed to help debtors identify their strengths and weaknesses when it comes to financial awareness and management.

It is important to identify attitudes towards debt in order to focus on the areas that need most attention. It may be that individuals have very good knowledge of financial terms and issues, but lack the skills to implement these to their best advantage.

Unit 2: Financial Planning

This unit highlighted the importance of effective financial planning and management by discussing the importance of prioritising purchases and bill paying. It also introduced the effective use of goal setting.

Unit 3: Creating Personal Plans

Attendees were introduced to the importance of creating personal plans that are tailored to the financial needs of their family taking into account income and essential outgoings.

Two versions of a budget calculator were included in the workbooks: one simple, and one more complex.

Unit 4: Financial Pitfalls

This unit dealt with how to understand interest rates and warned of potential misleading information and manipulation by some creditors. Participants examined their own emotional ties to spending.

Unit 5: The Cost of Credit

Technical language and products were explained including APR, credit cards, interest free credit, car finance deals, store cards, in-store credit, hire purchase, bank loans, and 'buy now pay later' deals. The real cost of credit is often much higher than a lot of people expect, which can cause unexpected financial difficulties and unnecessary pressure on an already stretched budget.

Unit 6: Financial Future

This unit looked at credit rating and scoring, personal insolvency solutions and re-establishing your relationship with credit.

Unit 7: Financial Resources

This final unit provided general advice and highlighted the importance of continuing to maintain their financial literacy. It also provided a comprehensive list of useful contacts.

6.5.2 Presentation of the syllabus

The workshops were held between 6.00pm and 9.00pm on Tuesday 23rd January 2007 and Thursday 25th January 2007. Both workshops were presented by John Tribe and Leyanda Cocks and featured guest speaker, CILP Fellow Susan Morgan.[143]

Each participant received a free copy of the handbook, additional handouts and a certificate of completion. Copies of the Money Advice Trust's publication '*Dealing with your debts*'[144] 15th Edition March 2006 were handed out in addition to numerous Insolvency Service leaflets being available for attendees to take home.

After introducing the workshops and the speakers, participants were invited to complete a financial personality test, the results of which can be seen below. Each section of the syllabus was presented separately. It was decided in the second workshop that speakers should alternate units in order to help keep the attention of the attendees. The workshops were presented using a PowerPoint presentation that included additional information to that contained in the handbooks in an attempt to keep the workshops a forum for lively debate and interaction.[145] A refreshment break was served part way through the workshops due to their length in an effort to make participants more comfortable. Certificates were awarded at the end of the evening to all participants in the hope they would enhance the feeling of accomplishment of each attendee and reinforce the need for financial education.

At the end of each workshop, attendees were asked to fill out an evaluation questionnaire. These questionnaires were used to learn from the experiences of participants so that future workshops could be improved upon. Suggestions from the first workshop were put into practice in the second workshop with good results. These questionnaires have also helped shape the content of future workshops that will continue after the completion of the current research. The results of the evaluation questionnaire can be seen below.

Unlike the Coalition for Consumer Bankruptcy Debtor Education’s pilot program, attendance gifts were not provided during the workshops. It was decided that whilst this may encourage participation, the small scale of this pilot and the cost implications for the overall research budget did not allow for such incentives.

6.5.3 Summary of the financial personality test results

Debtors who participated in the Financial Education and Awareness Workshops were invited to submit their Financial Personality Tests for inclusion in this final report. A copy of the Financial Personality Test used in the workshops can be found at appendix IV. The following is a breakdown of the responses.

It must be noted that only five participants submitted their Financial Personality Tests for inclusion in the report. Consequently, it is doubtful that these results can be said to definitively represent a cross-section of debtors, they do provide a tentative indication as to the likely responses from a wider population of past delinquents.

The Financial Personality Test was modelled on similar web-based tests or quizzes such as those designed by the FSA[146] and MyVesta.[147]

Part 1: Financial Awareness

The majority of workshop participants had good financial awareness with the only disappointing results occurring in relation to the number of credit reference agencies and the period of time information is kept on individual credit files.

Part 2: Financial Management

The majority of workshop participants spent less than one hour per week maintaining their finances. Most participants thought their financial management was in need of improvement despite rating it as very important. The most interesting result was that the majority of participants were not prepared for an unexpected bill of more than £100.00. If this position is found to be more widespread it could have implications for IVA failures. Of course, this contention cannot be formed based on the result of five debtors, but it would be interesting to investigate this point further to establish whether unrealistically high dividend payments are a cause of IVA failures.

From the Financial Personality Test it is clear that debtor participants have a better knowledge of personal insolvency remedies than financial management techniques and savings products. It is doubtful whether the knowledge of these personal insolvency procedures will assist debtors in their future financial management.

There may be a real danger that most of those who need financial re-education the most are not getting it, either because of a misguided self-belief or because they simply do not realise the importance of financial education. It may therefore be necessary to impose some form of compulsion into the re-education of debtors post insolvency.

6.5.4 Summary of evaluation questionnaire responses

Despite the disappointingly low attendance levels, it was encouraging that participants were unanimous in their support for the workshops, with all participants finding the workshops useful. A full dissemination of the responses to the evaluation questionnaire can be found in Volume II: Appendices and Bibliography at Appendix XVI.

6.6 Creditor Responsibility Days and Packs

The original concept for the Creditor Responsibility Days and Creditor Responsibility Packs emerged from the findings of the BCS. The intention was to distribute Credit Responsibility Packs in branches of participant creditors. The effect of these packs would be monitored through the use of questionnaires placed in amongst the literature provided. Credit Responsibility Days would run in conjunction with these packs in a similar way to the education workshops with a focus on credit responsibility.

Due to the late retraction of support for the PIP research by one of the original three funding bodies, these pilot projects were no longer able to proceed. This examination will therefore be postponed to any relevant future work on personal insolvency.

6.7 Summary of Main Findings

Education for individuals whilst on debt management plans and in IVAs is paramount as skills learned by parents can be passed down to future generations. Research by Experian has shown a difference in the types of people opting for IVAs and bankruptcy.[148] According to its research young families in financial difficulty are 60% more likely to opt for an IVA. If these families were targeted not only would bankruptcy be less likely, there would be a better chance of them passing on financial skills to their children.

Despite the interesting conclusions that can be drawn from this phase of the research, the findings are in no way complete. Not only did this area raise many further questions which will be explored in Chapters 14 and 15, it is also impossible to predict the future impact of the pilot programme implemented. It would be necessary to revisit this area with a view to re-contacting those participants in order to establish the benefit, if any, that the workshops had on their financial capability. It is, however, maintained that this is an extremely important area of research and potentially neglected area of education with the suggestion that many debtors already engaged in debt management plans and IVAs do not have enough information about their rights, obligations and options whilst on the plan or in the arrangement.[149]

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[103] S Block-Lieb and others 'The Coalition for Consumer Bankruptcy Debtor Education: A Report on its Pilot Programme' (2005) 21 Emory Bankruptcy Developments Journal 233; K Gross, 'Taking community interests into account in bankruptcy: an essay (1994) 72 Wash ULQ 1031; K Gross, 'Establishing Financial Literacy Programmes for Consumer Debtors: Complex Issues on the Platter' in I Ramsay and others (eds), *Consumer Bankruptcy in Global Perspective* (Hart, 2003); K Gross and others 'Lessons from the Trenches: Debtor Education in Theory and Practice' (2002) 7 Fordham Journal of Corporate and Financial Law 503; K Gross and S Bloc-Lieb, 'Debtor Education: Making Sure a Good Idea Does Not Go Awry' (January 2000) Norton Bankruptcy Law Adviser 6; K Gross, 'Debtor Education Matters: Both Prospective and Current Creditors Will Be Helped by Productive, Informed Consumers in the Credit Marketplace' (1997) 218 New York Law Journal 8; K Gross, 'Preliminary Proposal on Debtor Education Program Options' (1997) 51 Consumer Finance Law Quarterly Report 23; and CA Curnock, 'Insolvency Counselling – Innovation based on the fourteenth century' (1999) 37 Osgoode Hall LJ 387.

[104] This state of affairs would somewhat bolster Professor Ziegel's recent comments that United Kingdom academics have for too long neglected the serious study of the personal side of the subject within the United Kingdom. See: J Ziegel, *Comparative Consumer Insolvency Regimes – A Canadian Perspective* (Hart, Oxford 2003) 8, where he notes, "In the United Kingdom, until quite recently, consumer insolvencies were not regarded as a major legal and social issue and this perception is reflected in the very modest volume of legal and non-legal literature." See also J Ziegel, 'Consumer Insolvencies: A Neglected Area of Study in English Insolvency Law?' (Society of Legal Scholars Conference, Oxford 2003) (unpublished). See J Tribe, 'Personal Insolvency Law: Debtor Education, Debtor Advice and the Credit Environment (Part I)' (2007) 20(2) Insolvency Intelligence 23.

[105] It is also not new. The 1969 Payne Committee report: 'Report of the Committee on the Enforcement of Judgment Debts' (Cmnd 6909, 1969) unsuccessfully recommended a form of debt counselling.

[106] Insolvency Service 'Bankruptcy – A Fresh Start' (April 2000) 7.19-7.21, noting the Canadian position where compulsory financial counselling is a condition of discharge (see also 4.8).

[107] Insolvency Service 'Productivity and Enterprise: Insolvency – A Second Chance' (Cm 5234, 2001) 1.5.

[108] Bankruptcy itself is seen as a learning process by some bankrupts. For example, one Birmingham respondent to the BCS (J Tribe, 'Bankruptcy Courts Survey: 2005 - Final Report: A Pilot Study' (Kingston Business School Occasional Paper 59, 2006) <http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/research/research.htm>) noted, "I would say that it [the bankruptcy process] certainly got me back on my feet, enabling me to re-build my life and it has also tought (sic) me many valuable lessons." (*Birmingham ref: IH*).

[109] See: —— 'Changing utility supplier may aid debt management' (23 February 2007); —— 'Broadband may help debt management' (16 February 2007); —— 'Giving up smoking may aid debt management' (27 February 2007); —— 'Poor debt management leading to problems' (7 February 2007); —— 'Billions lost through tax may affect debt management' (5 March 2007); —— 'Students "in the dark" over finances' (15 August 2006); and —— 'Financial education "can aid debt management"' (8 March 2007). All <http://www.1stopfinanceshopuk.biz>.

[110] D Smith, 'Suddenly I was £16,000 in debt' *Metro* (7 November 2006); J Steele, 'The debt avalanche' *Metro* (7 November 2006); —— 'IVAs set to overtake bankruptcies in 2007 but there could be an easier solution' (15 December 2006) <http://www.moneyextra.com>; and J Brown, 'Best ways to overcome your financial apathy' *The Sunday Times* (13 November 2006).

[111] See: Paul Leroy of Hall Chadwick in C Adam, '20pc of bankrupts under age 30' *The Australian* (22 September 2006). See also: —— 'CreditLearningCentre.com Launches Debt Relief Centre for Consumers' (6 March 2007) <http://www.prweb.com> for a description of debt education classes in the United States.

[112] —— 'Teens experience debt problems' (13 February 2007) <http://www.1stopfinanceshopuk.biz>.

[113] —— 'Young people "careless" about debt' (5 January 2007) <http://www.moneynews.co.uk>; —— 'Grown-up children look to parents for debt management aid' (5 March 2007) <http://www.1stopfinanceshopuk.biz>; —— 'Parents slide into debt to help kids' *Hemel Today* (4 January 2007); and —— 'Parents "need to teach debt management"' (8 March 2007) <http://www.1stopfinanceshopuk.biz>.

[114] See: —— 'Leading UK professional association supports ifs School of Finance initiatives on educating youngsters on personal finance' (25 August 2006) <http://www.creditman.biz/uk>; E Perryman, 'R3 launches PF scheme for students' (25 August 2006) <http://www.ifaonline.co.uk>; —— 'Government "should increase" debt management awareness' (17 August 2006) <http://www.1stopfinanceshopuk.biz); and —— 'Financial education should be "compulsory"' (15 February 2007) <http://www.1stopfinanceshopuk.biz>.

[115] E Kempson, 'Over-Indebtedness in Britain: A Report to the Department of Trade and Industry' (September 2002) <http://www.pfrc.bris.ac.uk/Reports/Overindebtedness_Britain.pdf>. This has been confirmed by research commissioned by the Bank of England in 2003: M Tudela and G Young, 'The distribution of unsecured debt in the United Kingdom: survey evidence' Bank of England Quarterly Bulletin (2003).

[116] Professor Karen Gross, the leading American exponent of debtor education, is President of the 'Coalition for Consumer Bankruptcy Debtor Education' (see the organisations website at www.nyls.edu/pages/103.asp). This organisation provides a free three hour personal financial management course to bankrupts in the Eastern and Southern Districts of New York.

[117] See: S Block-Lieb and others (n 99).

[118] This will form a supplementary report in due course.
[119] A discussion of the increased products available was made by Ms. Barbara Smith during the Consumer Financial Capability Workshop held by the European Credit Research Institute on November 8, 2005.
[120] It is becoming increasingly common for debtors to have accrued more than £100,000 in debt. In some cases debt management companies are seeing consumer debt break the £200,000 barrier. This information was provided during meetings with participating debt solution providers although it is not currently known how much of the £200,000 relates to interest and debt collection charges.
[121] See: E Kempson and others 'Measuring Financial Capability: An exploratory Study for the Financial Services Authority' <http://www.ecri.be/ecri/public/FinCap_Workshop_I_papers.pdf>.
[122] See: J Leskinen, 'Consumer Financial Capability – A Life Cycle Approach' (Consumer Financial Capability Workshop, 2005) <http://www.ecri.be/ecri/public/FinCap_Workshop_I_papers.pdf> (unpublished); and Observatorio do Endividamento dos Consumidores, 'The Psychological Determinants of Consumer Financial Profiles' (Consumer Financial Capability Workshop, 2005) <http://www.ecri.be/ecri/public/FinCap_Workshop_I_papers.pdf> (unpublished).
[123] Given statutory powers by the Financial Services and Markets Act 2000.
[124] See: FSA, 'Helping Young Adults Become Financially Capable' (2006).
[125] For all three initiatives see: FSA, 'Financial Capability in the UK: Delivering Change' (March 2006).
[126] See: FSA, 'Financial Capability in the UK: Creating a Step Change in Schools' (June 2006).
[127] <http://www.ifslearning.com/home/default.cfm>.
[128] See: P Davis and others, 'The Influence of financial literacy education on students' personal financial management and aspirations: Briefing Report" (2006) <http://www.ifslearning.com/financial_capability/14_-_19/cefs/pdf/uom_study.pdf>.
[129] See: RBS Press Release from 2002: <http://www.rbs.com/media03.asp?id=MEDIA_CENTRE/PRESS_RELEASES/2002/FEBRUARY/20_KELSO_HIGH>.
[130] See: HBOS Community web pages: <http://www.hbosplc.com/community/local_communities.asp>.
[131] See: Alliance and Leicester CSR and Governance Policy web pages: <http://www.alliance-leicester-group.co.uk/html/csr/policies.asp>.
[132] See: B Barrow, 'Britons are mortgaged to the hilt' *The Daily Mail* (4 August 2006): "The number of bankrupts found guilty of 'reckless' spending has risen by 3,732 per cent to 843. These are people who are made insolvent because they are living an extravagant lifestyle." See also: Pat Boyden of PricewaterhouseCoopers in G Duncan, 'Record numbers go bankrupt as debt mountain builds up' *The Times* (6 May 2006): "We are paying the price of a spend-now, worry-later culture. Record personal insolvencies are the result of a debt culture which has become endemic in the UK".
[133] See: FSA, 'Financial Capability in the UK: Creating a Step Change in Schools' (June 2006) 5.
[134] This aim was delivered by Economic Secretary to the Treasury, Ed Balls MP during a visit to a London Children's Centre on January 15, 2007. See: FSA 'Financial Capability Newsletter' Issue 8 (April 2007).
[135] Insolvency Service, 'Bankruptcy – A Fresh Start' (April 2000).
[136] S Block-Lieb and others 'Survey: The Coalition for Consumer Bankruptcy Debtor Education: A Report on its Pilot Program' (2004) 21 Emory Bankruptcy Developments Journal 233.
[137] <http://www.insolvency.gov.uk/eiir/>.
[138] See: BCS (no 108) 27.
[139] See: BCS (no 108) 188.
[140] Including Money Advice Trust, Citizens Advice Bureau and AdviceUK.
[141] There is a Select Bibliography at the end of the Financial Education and Awareness Workshops Handbook which can be found in Volume II: Appendices and Bibliography.
[142] On SPSS usage generally see: A Field, *Discovering Statistics using SPSS* (Sage Publishing 2005).
[143] The authors would like to thank KPMG LLP for funding the printing costs associated with the continuation of the Financial Education and Awareness Workshops.
[144] National Debtline and Money Advice Trust 'Dealing with your debts' (15th edn 2006).
[145] Copies of the PowerPoint slides can be found in Volume II: Appendices and Bibliography.
[146] <http://www.moneymadeclear.fsa.gov.uk/tools/debt_test.html>.
[147] <http://myvesta.org.uk/resources/moneypersonality/>.
[148] ——— 'Experian Sheds New Light on the Dramatic Rise in Insolvencies' (16 October 2006) <http://www.prnewswire.co.uk>.
[149] ——— 'Credit card charges and debt plans' (29 March 2007) <http://www.thisismoney.co.uk>.

Chapter 7

Credit Environment

'Those who have made the laws, have apparently supposed, that every deficiency of payment is the crime of the debtor. But the truth is that the creditor always shares the act, and often more than not shares the guilt of improper trust. It seldom happens that any man imprisons another but for debts which he suffered to be contracted in hope of advantage to himself, and for bargains in which he proportioned his profit to his own opinion of the hazard; and there is no reason why one should punish the other for a contract in which both concurred.'

Dr. Johnson in B Montagu, *Enquiries respecting the insolvent debtors bill, with opinions of Dr. Paley, Mr. Burke and Dr. Johnson* (London 1815) 520.

7.1 Introduction

It could be argued that the current growth in personal insolvency levels has been caused by, at worst irresponsible lending practices, and at best over generous lending practices of credit providers. Indeed, it is no exaggeration to say that this is the key question facing personal insolvency scholarship today. In addition, of course, it must be ensured that debtors are borrowing responsibly. Furthermore, are the recent Enterprise Act 2002 changes responsible for the growth in bankruptcy levels, allowing debtors to expunge their debts, or is an increase in the provision of consumer credit with the corollary rise in personal debtor failure responsible?[150] If an expansion in credit provision is the answer, is this credit being lent responsibly?

Personal insolvency procedures and their effect must be viewed in the wider context of the whole credit system. Consumer debt has risen demonstrably in the last few years.[151] As Roger Oldfield observed in the 'R3 9th Survey of Personal Insolvency', the Enterprise Act 2002 reform provisions were perhaps biased towards failed entrepreneurs, whereas the greatest area for concern lies with consumer debtors.[152] The BCS shows that this is still a truism. Just as society is concerned that if individual debtors become insolvent their culpability for putting themselves in that position should be investigated and in some cases punished, society is also concerned with the conduct of other parties (e.g. creditors) whose actions contribute to the creation of that insolvent estate. This need was of course recognised by the Cork committee when it stated that society needs to be satisfied, 'whether and to what extent the responsibility for the insolvency is attributable to someone other than the insolvent.'[153] It is of course within the public interest to ensure that any such behaviour is identified and prohibited thus reducing the incidence of bankruptcy.

Johnson's creditor responsibility point (*op cit*) was revisited in 1972 when Ziegel observed; 'the consumer bankrupt is not the sole author of his own misfortune. As often as not his creditors have substantially contributed to his difficulties by creating an environment in which the buy now, pay later syndrome has created the dominant characteristic of our consumer age.'[154] This is an extremely important point. Are irresponsible lending practices partly responsible for the position of consumer insolvents?[155] It is an axiom of modern society that we have markets in both consumer and commercial credit.[156] As noted above, the market in consumer credit has grown manifestly over the past 25 years, but has this been matched by similar growth in the regulation or temperance of lending practices?[157] The respondents qualifying statements to questions 7 and 18 of the BCS both strongly suggest that individuals are being extended credit which they are financially in no position to repay.[158]

The banks, as primary lending institutions are addressing the need to use ever more sophisticated credit scoring and behavioural information to assist them in coming to lending decisions.[159] Currently there is evidence of both credit score rating and behavioural rating being used by both banks and credit reference agencies.[160] This information can be both positive and negative in terms of debtor behaviour, whereas historically we have only seen negative information being shared. It is currently being voluntarily shared by banking institutions.[161] This reciprocity of information usage can only aid the lending decision process and the evaluation of the debtor's true ability to repay. This should be contrasted to past negative only data sharing that in some cases resulted in the rapid increase in credit available to individuals regularly servicing their debt, albeit that only minimum payments were met. It should now be questioned, therefore, whether the scoring systems are sufficiently or acceptably comprehensive.

This information use is of the up most importance. In the credit market what affect do the non-current account[162] operating transactors have on the banks in terms of placing individuals further into personal over-commitment? If banks, for various reasons (e.g. material non-disclosure by the borrower) do not have access to the full range of financial information how can they make fully informed decisions as to the appropriateness of a lending decision? If tools exist to enable institutions to assess debtor capability, is it acceptable for institutions to decide not to use these mechanisms simply because they will reap no financial benefit from doing so? Do banks as part of the corporate social responsibility function have a responsibility to ensure that their debtor customers are not over-committed? i.e. should they invest in the tools even though they may not benefit the shareholders ?[163]

The Consumer Credit Act 2006, which is currently passing through the implementation stage, features a number of interesting provisions that will impact heavily on the idea of responsible lending. Sections 19 through to 22 relate to unfair relationships between creditors and debtors. These sections insert a new provision into the Consumer Credit Act 1974 that enables a consumer credit agreement to be declared unfair by the court. This may occur if the agreement is unfair to the debtor because of, *inter alia*, 'any other thing done (*or not done*) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement)' (*emphasis added*).[164] It will be interesting to observe if these 'things' extend to the idea of unsatisfactory credit checks regarding the debtor's past and current gearing. Does the debtor have the capacity to repay and should the bank have made themselves aware of this capability more fully 'before' the lending decision is made? The 2006 Act, of course, also removes the £25,000 cap for the regulation of credit agreements.[165]

More recently a number of banks and building societies have been piloting initiatives in connection with credit reference bureaus in addition to providing consumers with information on managing personal finances. HBOS has created a booklet entitled 'Managing your Money: Advice on what to do if you have problems with debt'. The information included in the booklet includes ways of identifying debt problems, how to regain control, and options available when things become unmanageable. The language is reassuring and encourages clients to contact the HBOS Money Management Team if they need additional help or advice. Obviously it is difficult to know when to send such information to clients, but it is a step in the right direction in the maintenance of the debtor-creditor relationship.

In light of these observations it will be interesting to examine creditor perspectives and initiatives aimed at reducing personal over-indebtedness, if indeed they exist. It will be of particular significance to investigate the creditor position with regard IVAs given the recent downward trend in acceptance of proposals being experienced by IVA providers. As one author observed, however, 'the general experience is, however, that creditors are more likely to accept a plan if it promises to repay a considerable part of the debt.'[166]

7.2 Methodology

7.2.1 Communication

Letters were written to 14 creditors with initial responses from only 2.[167] A further 2 and in some instances 3 letters were then written in an attempt to encourage greater creditor participation. In some cases it was necessary to write to senior board members (Chief Executive Officers and Chairmen) to facilitate a response to our request for participation. In addition to the 5 creditors who simply failed to respond, despite repeated attempts to make contact, 2 creditors refused to take part. This lamentable response rate was despite the fact that this research is co-funded by a Government regulator.

Meetings were held with five creditors. Despite repeated attempts to arrange meetings with a sixth creditor, it did not come to fruition.

7.2.2 Meetings

In addition to the five meetings with creditors, a preliminary meeting with Mr. Eric Leenders, a Director of the BBA took place in order to asses the overall picture and to illicit this industry body's approach to the area. The primary sources were then contacted.

Each meeting lasted between two to three hours with the exception of the first meeting with Creditor A which took one hour. It was realised during this first meeting that additional time was necessary in order to cover all areas. Meetings were relaxed and fluid, conducted in a similar style to those with debt solution companies. Generally meetings were conducted with heads of consumer credit and members from their policy unit.

7.3 Dissemination of Results from Creditor Meetings

It was once said that 'a banker is a person who lends you his umbrella when the sun is shining and wants it back the minute it rains.'[168] This is not the thesis being tested in relation to this phase of the research, but it will be interesting to note the perspective of creditors in light of the report thus far. The thesis that is being tested is: are creditor lending activities responsible for the upsurge in personal insolvency procedure usage?

7.3.1 British Bankers' Association

The first meeting conducted in relation to the credit environment was with Mr. Eric Leenders, a Director of the BBA. During the meeting, Mr. Leenders made some interesting comments and general observations concerning the current UK credit environment.

He explained certain scoring systems currently used by the majority of creditors. On a basic level, credit scoring looks at the propensity to repay whilst behavioural scoring, used by those who also hold the current account of the debtor, can provide a more accurate picture regarding the maintainance of accounts. Unfortunately, behavioural scoring is not used as widely as the industry would like due to the large number of transactors (i.e. credit providers who do not run the current account).

He stated that the saturated market we are currently experiencing has never been seen before and he is predicting the beginning of a consolidation phase. The saturation of the market has resulted in a higher need to identify individuals to whom it is 'safe' to lend.

Mr. Leenders identified a need for a more comprehensive transparent data sharing system where there is full data sharing and analysis of the high risk accounts. He also commended recent pilot initiatives by credit reference bureaus whereby data is shared to transactors in an attempt to bolster their behavioural scoring capabilities.

7.3.2 Creditor Meetings

A number of questions were put to the participating creditors on areas that included, *inter alia*: the creditor view of the insolvency industry; consumer lending practices; internal policy; social responsibility; financial education; bad debt and IVAs; and future changes.[169] All creditors were assured anonymity and informed of the intended method of ensuring this.

7.3.3 View of the Insolvency Industry

Creditor participants were almost identical in their answer to the question regarding changes in internal practice since the Enterprise Act 2002. Whilst they confirmed that changes had occurred since the introduction of the Act, those changes were influenced by changes in market trends and in some cases by the higher levels of IVAs.[170] Creditor B stated that internal mechanisms had changed in the last 18 to 24 months in relation to the tightening of the credit position which has meant a decline in their debt portfolio. Creditor B also added that this change was not in reaction to the Enterprise Act 2002 but rather looking towards long term solutions.

7.3.4 Consumer Lending Practices

Irresponsible Lending

All creditor participants were asked to define 'irresponsible lending' with the following results.

Creditor A admitted to 'getting complacent' stating that more credit was lent than should have been. They maintain, however, that since lending practices have been tightened there is no evidence of irresponsible lending, although there is definitely irresponsible borrowing.

Creditor B suggested that irresponsible lending is where creditors lend ignoring the indicators and against targets: lending where there is a reasonable chance that the money will not be recovered.

Creditor C felt the definition that should be applied was that used for mortgages. In the FSA's 'The Draft Mortgage Sourcebook, including Policy Statement on CP70'[171] indicates that irresponsible lending practices 'exploit vulnerable consumers by encouraging over-indebtedness and the subsequent loss of the mortgaged property.'[172]

Irresponsible lending was defined by creditor D as lending where there is no prospect, possibility or propensity that the money would be paid back or where the customer is obviously unable to manage their finances.

> '[Creditors have] a responsibility to have an understanding of the basic position of the industry. Traditionally if you borrow money it was up to you to pay it back and the bank would only lend if they thought you could pay it back. Ultimately, the customer was responsible even if the bank was wrong to lend the money. Whilst this view is too extreme it seems that it went in the other direction to the point where if something was not the customer's fault they would not have to pay it back. This is also too far and it seems to be coming back to a healthier position and away from the victim culture that's developed.'
>
> Creditor E (2007).

'The initial decision to lend is clearly an important decision, however, […] the risk decisioning [sic] doesn't stop there. The customers' circumstances need to be continually assessed to ensure that the credit facilities that we extend to them remain appropriate throughout their relationship with us.'

Creditor E (2007).

Furthermore the sub-prime market are 'not necessarily lending irresponsibly as they are giving people access to credit that would not normally have access. Without them there would be massive social credit exclusion. Whilst critics condemn high rates as profiteering, they are accepting a level of risk that other lenders will simply not accept.'

Creditor E (2007).

Consumer Lending

Despite the developments in credit scoring algorithms, the problem presented by the rise in over-indebtedness is not so simple to overcome.

'Over-indebtedness is different to the traditional credit view of 'is someone going to pay?'. It is readily recognised that it is possible to predict the probability that someone will pay through using traditional scoring processes. But willingness to pay is a different question from ability to pay.'

Creditor E (2007).

Creditor B also shared this sentiment stating that turning people down where there was no indication of a problem would be to gaze into a crystal ball.

Some creditors use a form of affordability test that helps to determine whether or not to approve the credit application. Creditor D tries to find out as much as possible about the potential customer using indicators such as family size and location in their matrix.

In recent years there has been increasing importance placed on the use of credit reference information and the sharing of white data,[173] or positive account information. This includes the use of data that a few years ago would not have entered into the algorithm that now determines whether or not a person will be extended credit, either at the initial stage or as a variation to an existing product. Creditor B commented that the reason for the fairly recent introduction of white data sharing is not necessarily a reflection of the banks' reluctance to do so, but more that there is now the will to do so and that it is now considered a good idea and good practice.

There have also been a number of new initiatives including, *inter alia*, Experian's Consumer Indebtedness Index (CII) and CallCredit's Over-Indebtedness Index (OII).

The CII will flag consumers that it thinks will become delinquent. Credit E has found that in some instances the CII has predicted delinquency that they would have otherwise missed because there had been no sign of strain in relation to their products. Creditor E stated that this can be helpful, although from a customer care perspective it can be difficult to coordinate due to the sensitive nature of the information.

The OII shares income data of current account customers with CallCredit. CallCredit use this and other data to formulate an income to debt ratio for the client. The files of clients who feature in the creditors' top ten percent of clients likely to become delinquent are then forwarded to creditor members of the Index. Creditor E commented that 50 percent of clients who feature on this index show no signs of strain at the time the file is presented. They are, however, seeing an increasing number of customers showing signs of strain six months after they have been highlighted which presents a commercial challenge in terms of how creditors should be dealing with this information. Would it be fair to consumers if their credit limits were suddenly reduced or taken away as a result of this predictive technology? Creditor E is currently piloting a scheme whereby a money management team will make contact with clients on this list to discuss their finances as part of a customer care call. At present they cannot measure the success of the pilot, but hope it will allow them to begin a dialogue with their customers and give them the ability to provide basic financial and living advice. Creditor E stated that they hope 'this service will help those clients who would otherwise be lost to the likes of [xxxxxxxxxx] and their marketing pulls of writing off large amounts of debt.'[174]

In line with the Association for Payment Clearing Services' (APACS) guidelines, behavioural analysis is part of an ongoing maintenance assessment of revolving products such as credit cards that is essential to the increases placed on credit card limits. The availability of white data is therefore invaluable.

Most customers are now given instant decisions on whether they are approved for credit unless they fall into the grey area of 'maybe'. In cases where further checks need to be carried out potential customers are forwarded to a centralised underwriting department for individual assessment. Whilst this method of approval is favoured by all creditor participants the underwriting stage did vary slightly from bank to bank with some providing what appeared to be more robust guidelines for underwriters to follow in contrast to other creditors who appeared happy to leave the decision up to the fully trained underwriter.

With more use of a wider range of data than before, creditors are in the best position they have been in to make responsible lending decisions. Consumers who continually make only the minimum repayments on a large number of credit products would no longer be considered the good risk they may have a few years ago due to the greater usage of positive data.

7.3.5 Internal Policy

The most important matter for Creditor A is the protection of the brand which, if damaged by adverse publicity, could have a detrimental effect on share price. It admitted that two years ago there was a link between remuneration and sales figures for personal credit products. There is now a focus on objectivity, removing incentives to approve a certain number of applications. This move towards a centralised process is confirmed by the company's decision to remove all localised decisions. Despite this almost altruistic position it must be questioned whether sales targets really have been abandoned altogether.

Creditors varied in their handling of customers once they have become delinquent. Whilst some creditors have created departments dedicated to consumer insolvency, others use their collections areas to deal with insolvency related issues.

It was made clear by all creditor participants that it is not in the interest of creditors to lend to people who will not be able to pay the money back. The more information there is the better the risk assessment that can be made.

On the issue of basic banking facilities for discharged bankrupts Creditor A stated that it were not willing to extend basic even banking facilities, as they feel to do so would be sanctioning bankruptcy. Creditor D similarly was not willing to extend banking facilities although for a different reason. It stated that the risk was still too high, due to possibility of money being drawn against a cheque that was rejected. Creditor E rejected this risk as being first party fraud and therefore not a risk associated with the status of being a bankrupt. It added that it would continue to offer basic banking facilities to discharged bankrupts due to the mechanisms that can be initiated to limit any associated risk.

7.3.6 Social Responsibility

Creditor A stated that they had a social responsibility to their customers but a bigger responsibility to their shareholders. It acknowledged a responsibility to the country in terms of the corporations tax they pay but feel that the government does not honour the responsibility it has to creditors. The representative from Creditor A stated that this was the most bank unfriendly government he had seen in 25 years.

Creditor D commented that social responsibility included identifying applicants that were not suitable for their products. It acknowledged that some of their advertising will fall on a percentage of people for whom it would be inappropriate to lend to, but that this is not irresponsible as it does everything it can to ensure these people do not get approved. It added that over half of all applicants are refused credit.

7.3.7 Financial Education

A number of the creditor participants have been or are currently involved with secondary school level financial education initiatives specifically targeting money management. There were no creditor views on this area, only personal opinions from their representatives. These views were largely generic and in agreement with the current contention that education in schools is essential and should have a more dominant position in the curriculum.

7.3.8 Bad Debt and IVAs

Creditor participants had varying views on the industry although it was commonly felt that change was necessary.

Creditor D criticised the IVA industry by stating that on too many occasions the insolvency practitioner is making more money than the creditor due to poor returns and the propensity for early failure. Creditor E considered that it generally receives better returns from commercial operations due to the need for its clients to continue to make payments. Conversely, Creditor B stated that higher returns were seen from the not-for-profit sector but that it was not worth the hassle of prising its customers away from the fee chargers for the extra £10.00. Many of the participating creditors, however, have said that they would not recommend one of the fee charges on principle.

In relation to the quality of advice being given, Creditor A stated that it was extremely disappointed with the level of advice being given to consumers by one of the charitable organisations it funds, stating that despite bankruptcy being highlighted as the best option in the consumer's circumstances, the advisor failed to go through any of the consequences.

Creditor D said that it would like to see a fairer payment scheme put in place whereby the supervisor fees are paid according to the same schedule as creditor payments. It also commented that whilst the IVA provider is chosen by the debtor the fees are paid by the creditor. Creditor E shared this sentiment adding that with debt management plans there is no incentive for the third party to get the client off the plan as it does not make for a good business model.

Creditor D approves approximately 80 percent of IVA proposals in which they have an interest. One reason for challenging proposals for example, would be if it felt returns could be improved by a reduction in supervisory fees. The average promised dividend returns are 39 percent, although this is not always met.

Creditor D has two main concerns in relation to the prolific debt solutions advertising. One concern is that it will encourage more people into personal insolvency than would otherwise have entered into it, purely because it thinks they can escape its contractual obligations to service the debt. One creditor even commented on an IVA proposal that came in before the first payment of a personal loan had been made. It is very unlikely that a life changing event will have happened in this time. As a result loans taken out in the six months prior to the IVA proposal being drafted may result in creditors being less disposed to consider acceptance. We are assured, however, that customers for whom IVAs are appropriate would not be turned down on this basis.

In terms of introducing legislation to restrict the availability of credit, Creditor E stated that 90 percent of its clients do not have a problem with credit and that legislative guidance would probably damage the majority because of a few delinquents.

7.3.9 Future Changes.

It has been noted by several of the participating creditors that without the current level of consumer borrowing, the economy would not be where it currently is.

Both Creditor D and E would like to see the introduction of access to additional information including data on student loans, unpaid council tax and the HM Revenue and Customs database in order to get an accurate picture of applicant earnings. Currently, there is no way of verifying earnings unless the credit is manually underwritten. Creditor E commented that even when you hold the current account of the applicant it is not always possible to have an accurate account of all earnings and deductions.

Creditors are also beginning to develop so-called 'intelligent targeting'[175] as a means of marketing products to existing 'low risk - high quality customers'[176] and increasing their participation in pilot initiatives in conjunction with credit reference bureaus as discussed above.

> 'To argue that [personal] insolvency is the creditor's fault does not create the right atmosphere and creates unspoken antagonism, although it is fair to say that they had not been involved sufficiently in the past.'
>
> Creditor E (2007).

It is hoped that the wider credit industry will acknowledge this sentiment and realise that its involvement in policy formation and research is both valued and necessary.

7.4 The Role of Credit Referencing[177]

> 'Data is shared for the prevention of over-commitment, bad debt, fraud and money laundering, and to support debt recovery and debtor tracing, with the aim of promoting responsible lending.'
>
> Experian.

Although not part of the original proposal or methodology, during the course of the research it became clear that a more thorough exploration of credit referencing procedures was necessary. This was reinforced through the meetings with creditors and from the feedback we received as a result of the Financial Education and Awareness Workshops.[178]

Credit scoring is almost always used to determine the eligibility of a potential customer when an application for credit is made. It is used to reduce the need for supportive documentation and provide a fuller picture of the individual applicant's financial position. Data is collected from a variety of public and private sources including the Electoral Register, County Court judgments, bankruptcies and IVAs, and closed user group data, either by default or in full. This last data set is provided in a reciprocal agreement between each of the bureau and individual creditors who must sign up to certain terms. Full data is often referred to as positive data and was not traditionally shared by creditors, although recent moves towards the sharing of positive data can have a significant impact on reducing bad debts.[179]

In England and Wales there are three credit referencing bureaus: CallCredit, Equifax and Experian. All three essentially provide the same service to consumers; although creditor based services do vary between the three, as seen above.

In a meeting with Ms. Gillian Vice-Key, Director of Regulatory Affairs at Experian UK, the role of the credit reference bureaus was explained in more detail. The presence of credit reference bureaus in the UK financial market:

- 'allows lenders to more accurately evaluate risks and improve portfolio quality'; and
- 'increases credit volume / improves access to credit'.

In support of this contention the World Bank states that 'the best way to help borrowers is to improve credit information and make it easier to take and enforce collateral.'[180]

Creditors in the closed user groups are part of a reciprocal agreement whereby they get what they give. If a creditor only provides data on defaulting clients they only receive information relating to defaults. Accordingly, if a creditor provides full white data they are entitled to see the same.

In accordance with the Information Commissioner, credit referencing bureaus retain certain information on their records for certain periods of time, as illustrated by the table below.

Type of Data	Availability
CCJs and Defaults	6 years
Performance Data (e.g. all credit agreements including limits and balances and payments made)	3 years
Search 'Footprints' (e.g. credit card applications, quotations and consumer file requests)	2 years
Account Information	Lifespan of the account and 6 years thereafter
Derived Data (e.g. associations (joint accounts), aliases and previous address links)	Indefinitely or informed of invalidity

Figure 7: Credit Reference Agency Data Availability

According to Ms. Key-Vice the information available is extremely accurate at predicting delinquency giving creditors no reason for making an overtly bad decision. She did also state, however, that more could be done by government to assist in the verification of information available to creditors such as providing access to data regarding unpaid utilities, maintenance payments, unpaid council tax, outstanding student loans, and access to HM Revenue and Customs income data.

7.5 Summary of Main Findings

'In considering which of the two relatively innocent parties should bear the greater loss, it is much easier for the business creditor to do so than the individual debtor. The former can, in the light of the business experience, take account of certain loss risks in his charges and thus spread the burden over the public at large. The impact of one item of loss upon an individual debtor may be extremely severe.'

Report of the Committee on Consumer Credit (Cmnd 4596, 1971) 6.1.16(I).

It was at first considered by the PIP team that the bank respondents were being deliberately obstreperous. It seems more likely however, that the scale and complexity of their respective structures hampered communication with the research team.

Having successfully conducted five meetings with leading UK creditors, it is suggested that past lending practices may have been capable of improvement with current procedures generally appearing sufficiently robust. It could and will be argued that there is still room for improvement. In support of Kenneth Cork's sentiments in 1982, one author has recently commented that: 'as regards the lender, the degree of prudence and vigilance expected is relatively high in view of the greater technical skills that its business requires, trust and in parallel, the increasingly higher demands the public makes on it.'[181] As a result it is suggested that in order to successfully manage the client-creditor relationship at all times, including those of financial difficulty, creditors need to take additional care and responsibility.

It is acknowledged that the past relationship between the debtor and creditor has been somewhat violated by a powerful third party intervention. Creditors are concerned that their clients are not being given the correct advice and are being shoehorned into a debt solution that is not suitable. They are also wary of over-prolific debt solution advertising which could have the potential of enticing individuals into a form of debt restructuring unnecessarily.

From our investigations creditors appear to be making a concerted effort to implement more reliable models of predicting delinquency and safeguarding against bad debt loss. As a result creditors are largely disinclined to offer basic banking facilities to bankrupts. This, it is suggested is short sighted and an unnecessary reaction to the suggested level of risk. It also manifestly hampers the objectives of a fresh start policy.

Whilst creditors have shared a consistent level of bad debt it remains unclear what percentage of bad debt losses are 'pure debt' and what percentage is profit, i.e. charges and interest. It is not thought likely that figures relating to this breakdown would be particularly forthcoming.

References

[150] See further: Department for Trade and Industry 'Fair, Clear and Competitive: The Consumer Credit Market in the 21st Century' (Cm 6040, 2003).
[151] See Figure 22 at page 99.
[152] R3 – Association of Business Recovery Professionals, '9th Survey of Personal Insolvency' (London, 2000).
[153] The Cork Report: Secretary of State for Trade 'Report of the Review Committee: Insolvency Law and Practice' (Cmnd 8558, 1982) 1735 (d).
[154] J Ziegel, 'Consumer Bankruptcies' (1972) 20(10) Chitty's Law Journal 325, 330.
[155] See further: P Hosking and J Morgan, 'Report accuses Lloyds TSB over lending practices' *The Times* (10 May 2005), where it is reported that, "an audit report written by the bank's own officials accuses many branch staff of being motivated mainly to maximise their bonuses by giving loans, and of paying little attention to their customers' circumstances."
[156] D Milman, *Personal Insolvency Law, Regulation and Policy* (Ashgate 2005) xxxiii.
[157] See The Cork Report (no 153) ch 1.
[158] See J Tribe, 'Bankruptcy Courts Survey: 2005 - Final Report: A Pilot Study' (Kingston Business School Occasional Paper 59, 2006) <http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/research/research.htm> 58 et al and 108 et al.
[159] Banks are increasingly using software analytics combined with stability factors to determine the likelihood of repayment.
[160] The three credit reference agencies are: Equifax Plc (<http://www.equifax.co.uk/>); Experian Ltd (<http://www.experian.co.uk/>); and Callcredit Plc (<http://www.callcredit.co.uk/home>).
[161] The authors are grateful to Mr. Eric Leenders of the British Bankers' Association for this information. See also: A Elliot, 'Not waving but drowning: Over-indebtedness by misjudgment' (Centre for the Study of Financial Innovation, 2005).
[162] The operation of a current account by a debtor enables the creditor to ascertain information of a higher quality than a single loan providing transactor could ascertain.
[163] On creditor borrower relationship theories generally see K Pond, 'Administration of recoveries in individual insolvency: case studies of two UK banks' (2002) 8 European Journal of Finance 206.
[164] Consumer Credit Act 2006 s 19. See further: Consumer Credit Act 1974 (as amended) and The Crowther Report: 'Report of the Committee on Consumer Credit' (Cmnd 4596, 1971). See also: E Lomnicka and P Dobson (eds), *Encyclopedia of Consumer Credit* (Sweet and Maxwell, 2006).
[165] Consumer Credit Act 2006 s 2.
[166] J Nieme-Kiesiläinen, 'The Role of Consumer Counselling as part of the Bankruptcy Process in Europe' (1999) 37 Osgoode Hall LJ 409, 411.
[167] Research budget constraints did not enable an analysis of sub-prime lenders and credit card providers.
[168] Attributed to Mark Twain (1835 – 1910).
[169] A copy of the 'Areas of Discussion' document forwarded to creditors is included at in Volume II: Appendices and Bibliography.
[170] Creditor D.
[171] (June 2001). See: <http://www.fsa.gov.uk/pubs/cp/cp98.pdf>.
[172] ibid 400.
[173] White data is the same as positive data and relates to information concerning accounts that are not in arrears. Benefits relating to positive data sharing can be seen by the experiences in Hong Kong. See: Hong Kong Monetary Authority Quarterly Bulletin, 'Benefits of sharing positive consumer credit data' (March 2006). <http://www.info.gov.hk/hkma/eng/public/qb200603/fa1.pdf>.
[174] Name of DSC anonymised.
[175] Creditor C.
[176] ibid.
[177] Credit reference bureaus were created in the early 1980s (although there is evidence of traders sharing information on the credit standing of local customers in London coffee shops in the early 17th century) gathering information that was publicly accessible such as that contained on the electoral register and county court judgments. Today they collect data from a wide range of non-public sources including, *inter alia*: building societies, banks, finance houses, telecoms providers, high street retailers, credit card issuers, utilities providers, and home shopping companies.
[178] See Chapter 6 Debtor Education above.
[179] See comments of creditors above.
[180] <http://www.worldbank.org/>.
[181] N Didier, 'Evaluation of the consumer's Financial Capacity: The Criteria, Liability or Method' (Consumer Financial Capability Workshop, 2005) <http://www.ecri.be/ecri/public/FinCap_Workshop_I_papers.pdf>.

Part III

Analysis of Emerging Themes

'Neither a borrower or a lender be; For loan oft loses both itself and friend, And borrowing dulls the edge of husbandry.'

William Shakespeare *Hamlet* (1623).

The following chapters build on and highlight themes investigated during the completion of the research and are pervasive accross the three areas already presented.

Chapter 8

Introduction

As a result of research meetings and further investigations a number of themes and ideas emerged which required a degree of additional examination. Whilst these areas were not specifically discussed at the proposal stage of PIP, they were considered to be so closely linked with the overall aims and objectives of the research, that not to include them would be to the detriment of the final report.

As the flow chart below details, the emerging themes explored in the following five chapters are the direct result of the original research.

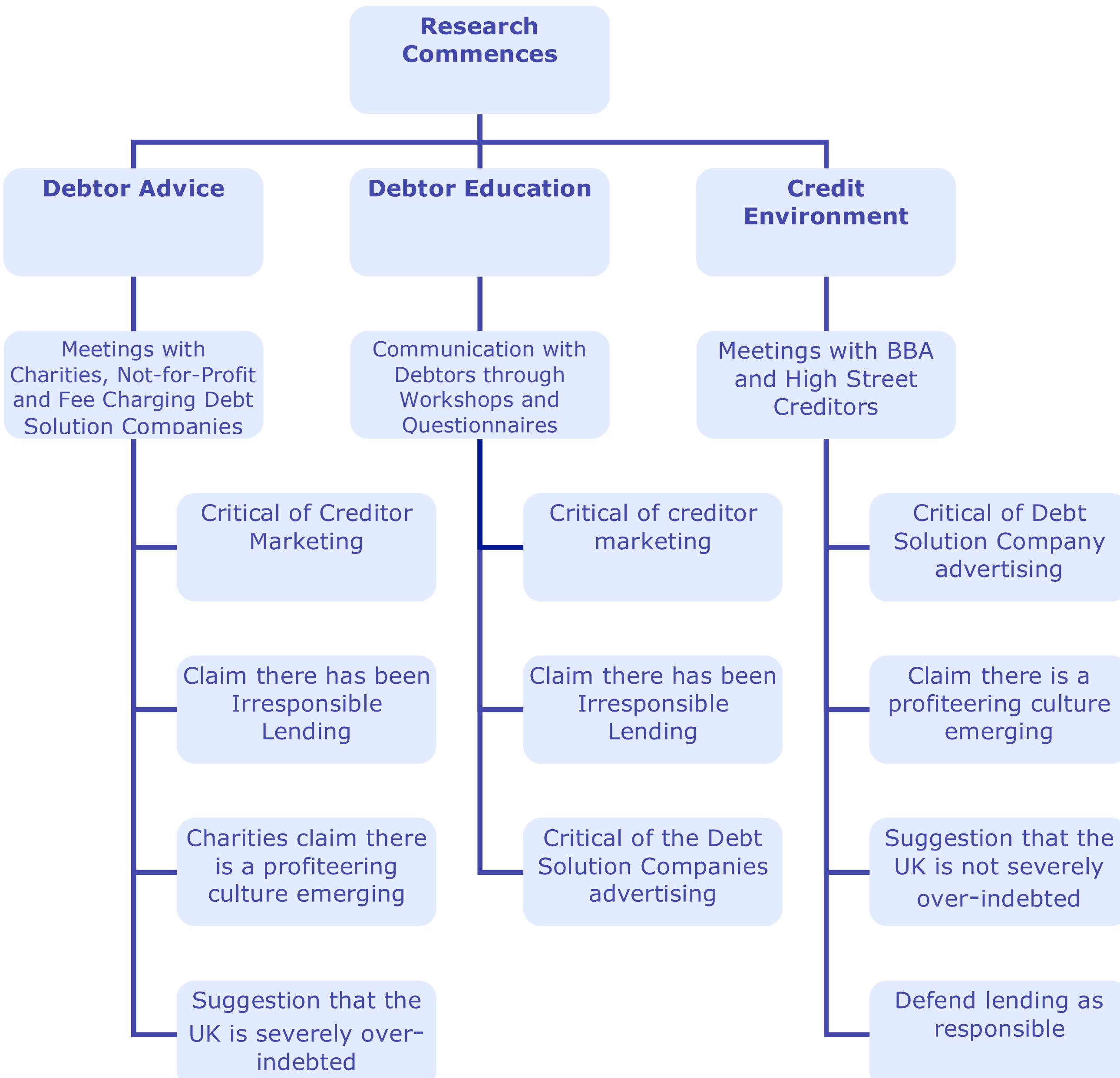

Figure 8: Research Tree

The first area for closer examination is debt solutions marketing, where it will be questioned whether the current methods of advertising are misleading or necessary. Secondly, and due to comments made by participating creditors (see above) it will be asked whether the growing number of debt associated companies is the result of growing demand for those services or whether it is simply a case of venture capitalist profiteering. In response to creditor condemnation of debt solutions advertising it has been suggested that the creditors themselves are guilty of proliferating personal over-indebtedness through aggressive creditor marketing. In relation to the previous theme, a more thorough discussion of lending practices will take place in an attempt to qualify the oft misused phrase 'irresponsible lending'. Lastly, the scale of the UK's over-indebtedness problem will be examined and put into perspective against the backdrop of sensationalist headlines.

Chapter 9

Debt Solutions Marketing: Misleading or Necessary?

'IVAs may have increased because of the proliferation of companies offering them to individuals through extensive television and internet advertising.'

P Boyden 'Living on Tick: The 21st Century Debtor' PriceWaterhouseCoopers (2006).

Mr. Eric Leenders, a Director of the BBA, has been quoted in the press as stating that 'advertising is not right and each week it is getting bolder.'[182] Mr. Leenders does not have to look far for support in his contention. The number of Advertising Standards Authority (ASA) adjudications condemning debt solutions companies for their use of misleading advertisements is growing on a weekly basis.[183]

There are also concerns that some debt solutions companies are targeting young debtors in an attempt to make them believe they can walk away from debts which would otherwise be serviceable.[184] This fear was raised by Ian Mullen, former Chief Executive of the BBA in relation to the call for a meeting between the BBA and debt solutions companies in November 2006.

It is interesting that in a market where companies are coming under continual criticism, especially over concerns of misleading and aggressive marketing, there are a select number of debt solutions companies that have been more vociferous than others when it comes to distancing themselves from their competitors. Notably, Debt Free Direct's Paul Latham and Thomas Charles Director James Falla have spent a significant amount of time under the gaze of the media spotlight.[185]

In this vein, Debt Free Direct has refused to join the Debt Resolution Forum since 'the DRF hasn't defined its standards',[186] and 'shopped' competitors to the ASA over misleading advertising.[187] This is despite a recent ASA adjudication, which found one of Debt Free Direct's own television advertisements to be misleading.[188]

The figure below was taken from the Debt Free Direct website in April 2007.[189] The table is clearly designed to promote IVAs and encourage debtors to consider it as a 'solution' to over-indebtedness.

Most interestingly, however, is Debt Free Direct's own use of alleged misleading information given its very public attempt to call into question advertising techniques employed by competitors. The table states the IVA will avoid 'having to sell my house to release any equity.' In fact, the vast majority of IVAs do include property equity unless there is some third party contribution of a similar sum. The idea that equity in a property would not be used is unrealistic since the dividend achieved through IVAs must surely be greater than that achieved in bankruptcy.

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Debt Solutions | IVAs | Debt management | Bankruptcy | Remortgage | Consolidation

Different debt solutions

There are five main approaches to dealing with debts over £15,000. For very serious debt problems, the three most common ways are shown in red.

An IVA is often the fairest way forward for both you and your creditors if you owe more than £15,000 and are struggling to meet your repayments. This page is only a summary and when we know more we will be able to identity the right solution for you.

- IVAs
- Debt Management Scheme
- Bankruptcy
- Remortgage A *
- Remortgage B *
- Consolidation Loans

* Remortgage A – Provided via Debt Free Direct
** Remortgage B – Provided by some other companies. Assumes not all unsecured debts are covered via the remortgage

Which one suits you best?	IVAs	Debt Management Scheme	Bankruptcy	Remortgage A*	Remortgage B**	Consolidation Loan
Protects me from all my unsecured creditors	✓		✓	✓	✓	
Avoids having to sell my house to release any equity	✓	✓		✓	✓	✓
Stops interest building up	✓		✓			
Creditors are obliged to write off the debt	✓		✓			
Creditors are obliged to help	✓		✓			
The arrangement runs for a fixed period	✓		✓	✓	✓	✓
Creditors will stop chasing me	✓		✓	✓		
It avoids the stigma of bankruptcy	✓	✓		✓	✓	✓
My problem is kept out of the local newspaper	✓	✓		✓	✓	✓
The people arranging it have to be qualified and licensed	✓		✓	✓	✓	

Careers | Sitemap | Copyright notice

Figure 9: Debt Free Direct Print Screen Web Page Extract

The table also states that in the case of IVAs the debt 'problem is kept out of the local newspaper'. Whilst this is correct, the implication that an IVA is kept out of the public domain is completely false. There are a number of debtors[190] who do not realise that going into an IVA will result in their information being held on a publicly accessible database.[191] Money Debt and Credit take this point even further by stating that the debtor's financial situation will be kept out of the public domain.

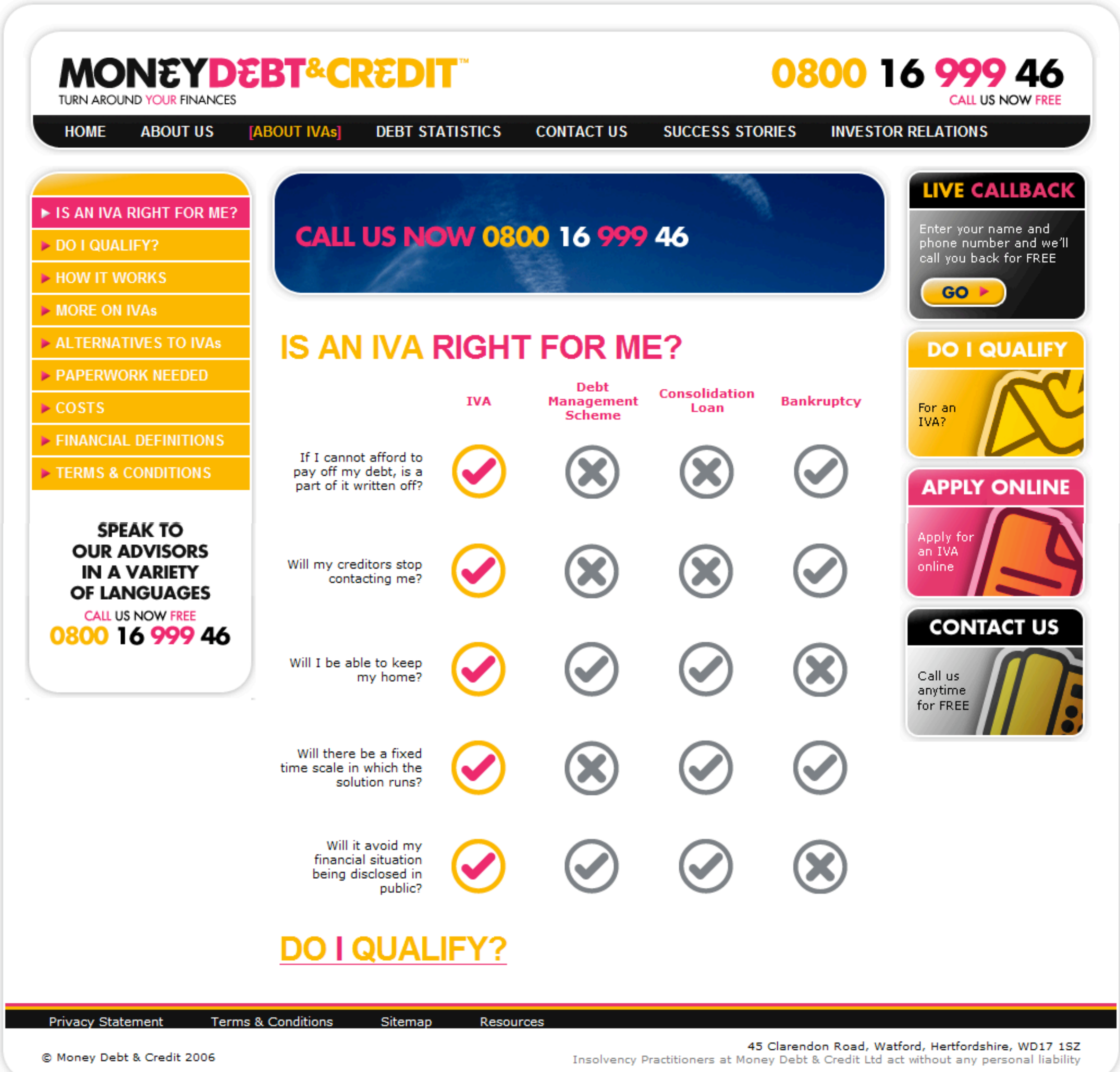

Figure 10: Money Debt and Credit Print Screen Web Page Extract

This sentiment is echoed on the Ostrich website where they state: 'If you are living in rented accommodation, your home and property will not be affected because an IVA will not be made public. The landlord will be unaware of the IVA and you can continue to remain in the property without any problems.'[192] This statement is simply erroneous. Whilst it may be unlikely that landlords check the Individual Insolvency Register, future commercial landlords would almost certainly carry out a credit reference search that would reveal the existence of an IVA.

One of the OFT rulings following its investigation into advertisements promoting IVAs was that they should no longer be allowed to use overtly misleading statements such as 'write off 90% of your debt'.[193] Despite this, Spectrum has been subject to a similar adjudication following complaints from HSBC and a member of the public over marketing, claiming a huge 90 percent of consumer's debt could be wiped out. The complaint was made following a national press advertisement and a commercial radio broadcast.[194] The ASA concluded that both advertisements 'were misleading and exaggerated the amount of debt consumers would be able to write off.' This adjudication was made on 28th March 2007. It is therefore surprising that the following webpage was found on 26th April 2007 advertising the possibility of writing off up to 90 percent of your debt.[195]

Figure 11: Best Solution Print Screen Web Page Extract

A further worrying fact about this website is that whilst it may be being used as a marketing tool, it is not clear which company is in fact behind these claims of being able to write off up to 90 percent of an individual's debt. This must surely be in breach of the Companies Act 1985.[196]

Despite this clear disregard for ASA standards, it is still common to find examples of debt solutions websites claiming they can write off 85 percent of a consumer's debt. Consolidation Helpline (<http://www.consolidationhelpline.com>) is in fact a trading style of Byrom and Keeley who were in fact bought by Accuma Group plc on 27th July 2006.[197] None of this information is made clear by the webpage itself but through the usage of identical testimonials and contact numbers on other promotional sites.[198]

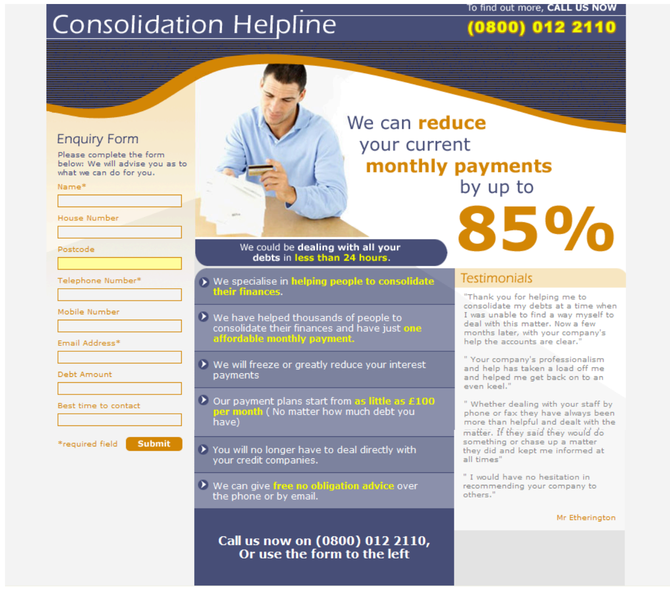

Figure 12: Consolidation Helpline Webpage Extract

Whilst this use of multiple trading names is not in breach of any form of regulation, and makes perfectly sound marketing sense, it does little to endear this already highly criticised industry to those who believe there is a pressing need for independent regulation.

The transparency that is vital to so many other industries does not seem to have been incorporated, thus far, into the debt solution providers' business ethos.

The use of multiple trading names is far from uncommon, with most marketing sites failing to include the names of the companies behind the marketing site. In fact the websites for Fresh Finance (<http://www.freshfinance.net>) and Debt Ready (<http://www.debtready.com>), both one page sites, are practically identical with much of their wording duplicated from a third site: <http://www.debtspecialists.co.uk>.

It could be argued that multiple sites providing essentially identical information automatically arouses a certain level of suspicion regardless of how legitimate the information provided or the company itself is. When the Debt Specialists site was first visited in August 2006, it looked very similar to the print screen version copied in May 2007 that is shown in Figure 13 and was accessed using the following address: <http://www.debt-specialists.co.uk/>.

The claims of 70 percent debt reduction are far from uncommon and in line with recent OFT rulings.[199]

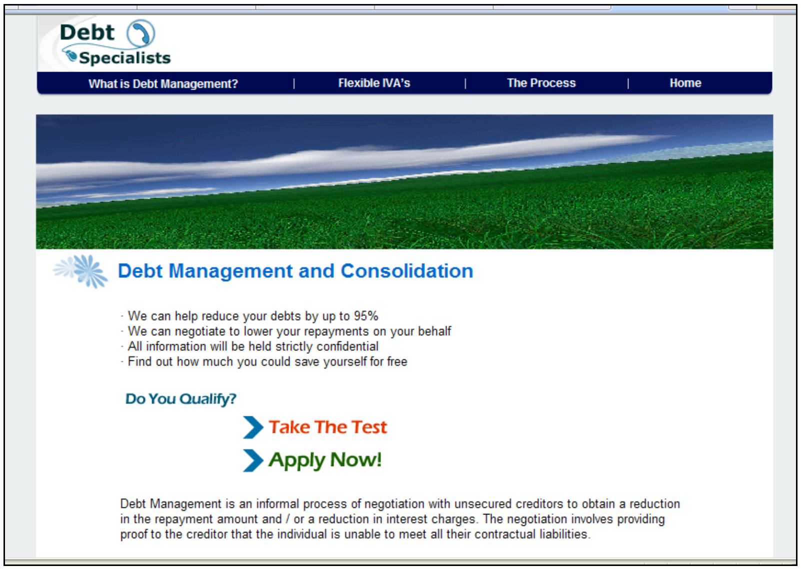

Figure 13: Debt Specialists Web Page 70%

During separate investigations of sponsored Google searches,[200] however, attention was drawn to a site promising to let you know if they could reduce your debt by 95 percent after taking a sixty second test.

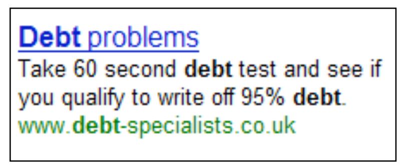

Figure 14: Google Sponsored Link

The company making this promise was in fact Debt Specialists. Clicking on the link (<http://www.debt-specialists.co.uk/debthelp/index.htm>) took you to what essentially looked like an identical webpage to that in Figure 13 with one noticeable difference: 'We can help reduce your debts by up to 95%'.

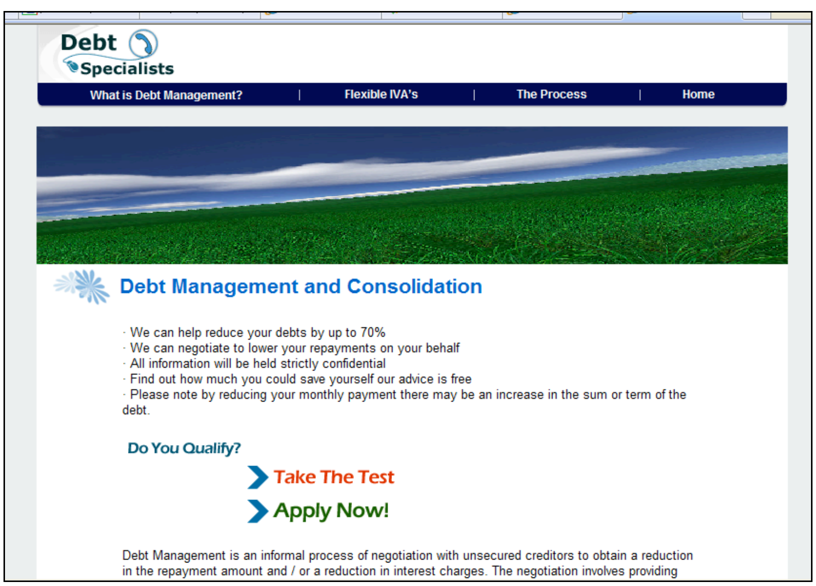

Figure 15: Debt Specialists Web Page 95%

Taking the test, however, does not give you an answer as to whether you can write off 95 percent of your debt unless you submit your telephone number, email address and residential address. Despite requiring all this information from prospective clients, Debt Specialists fail to provide an address or telephone number on which to contact them. It appears that the only way to contact Debt Specialists is it to fill in their online form or send them an email.

Interestingly, Debt Specialists have a different address listed on the Companies House WebCHeck Service[201] than they do on their email footers.

Figure 16: Companies House print screen extract for Debt Specialists.

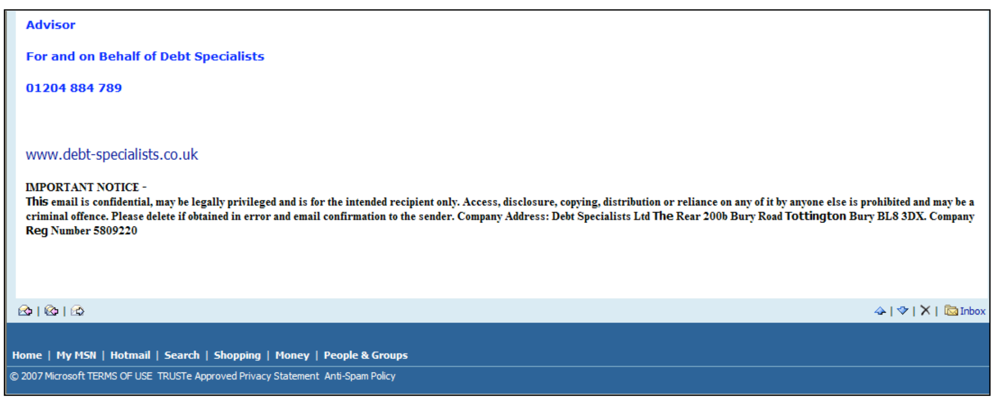

Figure 17: Email footer from Debt Specialists.

There appears to be a clear intention on the part of the debt solutions companies to make IVAs sound more attractive than other, perhaps more appropriate procedures.

This is certainly the impression given by First Debt Rescue with the heading on its home page telling debtors: 'Cancel your debts with an IVA'.[202] This message sends the wrong impression to those who might not necessarily need any form of personal insolvency solution.

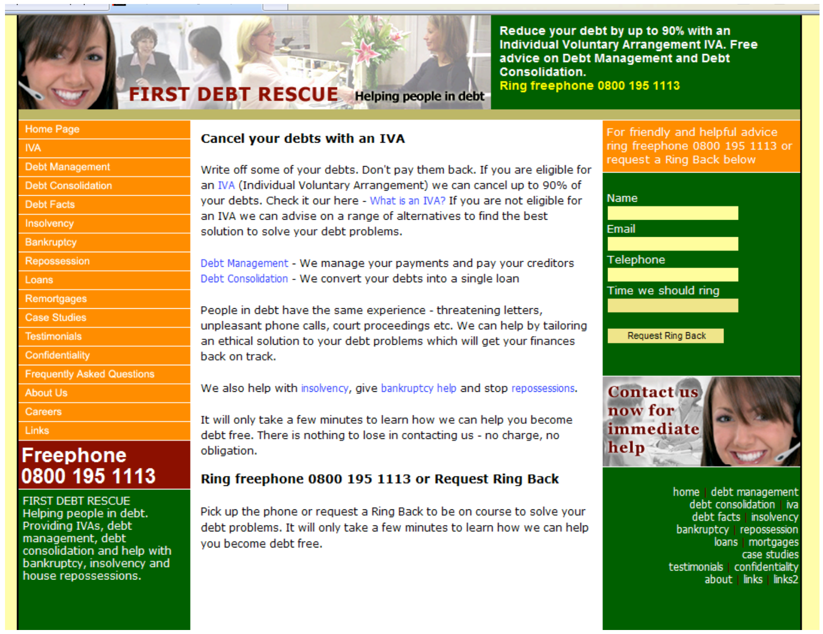

Figure 18: First Debt Rescue Webpage Extract

Despite this, one of the most surprising internet websites found as a result of the current research, remains that of Debtstruction.[203] This site allows debtors to put in the amount of debt owed and the monthly payments currently needed to service that debt.

Figure 19: Debtstruction Webpage Extract

The debt calculator then works out how much money the debtor could write off either through monthly payments or through a one off full and final settlement payment. Whilst there is no reason to question the quality of advice given by Debtstruction, it is believed that this could be a very dangerous tool for those who would not necessarily require a personal insolvency solution.

It could very easily encourage people to try and 'write off' their debts when they are capable of repaying them.

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[182] See: J Croft, 'Banks upset by reluctance to rein in insolvency deals' *The Financial Times* (12 October 2006)
[183] See below: (n 188 and 193).
[184] See: K Reed, 'Pressure grows on IVA factories' *Accountancy Age* (21 November 2006).
[185] **Paul Latham:** See: K Reed, Debt Free Direct declines to join new body, throwing its standards into doubt' *Accountancy Age* (23 November 2006); J Moore, 'Boom time for debt firms after insolvency law change' *The Independent* (3 November 2006); S Slater, 'Banks brace for bad debt pain to continue' *The Scotsman* (7 August 2006); S Watkins, 'My way out of debt nightmare' *The Mail on Sunday* (6 August 2006); B O'Connor, 'Profit by helping the victims of debt trap' *The Daily Mail* (19 September 2005); S Slater, 'Rate rise adds to hangover for indebted Britons' *International Business Times* (12 January 2007); N Caine, 'Can going bust solve the debt crisis' <http://uk.biz.yahoo.com>; and —— 'Advertising for growing debt' (28 December 2006) <http://www.moneynews.co.uk>.

James Falla: See: J Falla, 'Comment: Debt expert, James Falla's view on KPMG's predictions' (4 January 2007); —— 'Insolvencies on the rise; 1 in 3 women struggling with debt repayments' <http://www.firstrung.co.uk>; —— 'People Facing Bankruptcy "Leaps By A Third"' (2 November 2006) <http://www.lse.co.uk>; C Bennion-Pedley, 'Personal debt hits travel and hospitality workers" (11 December 2006) <http://www.catersearch.com>; M Plowright, 'Britain, are we becoming a nation of bankrupts?' <http://www.firstrung.co.uk>; —— 'New Book: "IVA, Bankruptcy and Other Debt Solutions"' (16 August 2006) <http://www.creditman.biz/uk>; L Elliott, 'Problem of personal debt spiralling out of control, say insolvency experts' *The Guardian* (5 August 2006); J Boyd, 'Debt a problem, but consumers still partying' (1 February 2007) <http://www.ifaonline.co.uk>; —— '1.1 million could face personal insolvency' (3 August 2006) <http://www.creditman.biz/uk>; —— 'More than a million Brits face insolvency' (3 August 2006) <http://www.myfinances.co.uk>; A Ellson, 'One million on brink of insolvency' *The Times* (22 May 2006); —— 'Young people "careless" about debt' (5 January 2007) <http://www.moneynews.co.uk>.
[186] See K Reed, 'Debt Free Direct declines to join new body, throwing its standards into doubt' *Accountancy Age* (23 November 2006).
[187] See: —— 'Debt Free Direct calls competitors to account over advertising' (11 November 2006) <http://www.fairinvestment.co.uk>.
[188] On 16 May 2007, Debt Free Direct's television advertisement stating: 'There is a little known piece of government legislation that could write off what you cant afford to repay, stop creditor hassle, cut your monthly repayments by hundreds of pounds and set you debt-free in just 60 months. And it wont cost you a penny.' has been deemed misleading by ASA since the claim that 'it won't cost you a penny' implied there were no costs associated with an IVA. ASA noted that, in an IVA, debtors did not pay fees separately but that, typically, fees of around £8,000-£9,000, including VAT, would be taken from the fund and that therefore the IVA was not free. For more information see: <http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_42567.htm>.
[189] This page can be accessed at <http://www.debtfreedirect.co.uk/debtsolutions.php>.
[190] After sending out the Financial Education and Awareness Questionnaires, a number of debtors phoned CILP to find out where their information had been accessed from.
[191] The Individual Insolvency Register held on the Insolvency Service website: <http://www.insolvency.gov.uk/eiir/>.
[192] <http://www.ostrichfs.co.uk/IVA/homeprotection.html>.
[193] See the OFT press release 'OFT warns IVA providers over misleading adverts' (17 January 2007): <http://www.oft.gov.uk/news/press/2007/8-07>. See also, the recent ASA recommendations for television adverts: <http://www.asa.org.uk/asa/adjudications/non_broadcast/Adjudication+Details.htm?Adjudication_id=42434>.
[194] The national press advertisement was headlined 'Debt Help! We can help you ...' Text in the advertisement stated: 'Write off up to 90% of your debts and repay the balance over 5 years without a loan or interest. In the past 5 years Spectrum have helped tens of thousands of people break free from debt ... Call now for FREE no obligation advice.' The radio advertisement claimed: 'It doesn't matter how you got into debt. It doesn't matter why you got into debt. What does matter is how you get out of debt. If you're like thousands of other people who dread the sound of the letterbox, maybe you should call Spectrum. Government legislation means that Spectrum could write off up to 90% of your debts, leaving you debt free with no interest and no more loans in just five years. Thousands of people are already on their way to being debt free - you could be too. Just call Spectrum free ... subject to acceptance.' See: <http://www.asa.org.uk/asa/adjudications/non_ broadcast/Adjudication+Details.htm?Adjudication_id=42374>.
[195] <http://www.debthelpandadvice.com/index.htm> accessed 14 May 2007. See also <http://www.cutyourdebt.co.uk> and <http://www.debtserve.co.uk/> for continued usage of claims that 85 percent of your debt can be written off.
[196] See: s349 and s351 of the Companies Act 1985 as amended by the Companies Act 2006. From 1 January 2007 disclosure has been required regarding the registered name, number, place of registration, registered office and address, which is to be included on all correspondence (including emails), order forms and websites.
[197]See: <http://www.accumair.com/acg/rns/rns_item?id=1153980212nRNSa8063G>.
[198] The testimonial of Mr Etherington linked both the Consolidation Helpline and Zengo Finance: <http://www.zengofinance.co.uk>. Similarly, the Consolidation Helpline was only linked to Debt 1 (<http://www.debt1.com>) due to their identical contact telephone numbers. Without this final connection to Debt 1,

where Byrom and Keeley is named as the company behind the website, the origins of these other two websites would not have been known.
[199] See: (no 193).
[200] This particular Google search was originally conducted on 26 April 2007 using the key words 'debt trouble'. The search was checked on 14 May 2007 with the exact sponsored link still running, although slightly further down the order.
[201] See: <http://wck2.companieshouse.gov.uk/3b0266121e9815a92ee3b66e3ce387b0/wcframe?name=accessCompanyInfo>.
[202] <http://www.1stdebtrescue.co.uk/>.
[203] <http://www.wecanwriteitoff.com/>.

Chapter 10

Profiteering From a Growing Debt Industry?

'Ms. Mulkerrins… has been shamefully ill served by her former advisers, by the law of insolvency, and by the civil justice system.'

Lord Millett in *Mulkerrins v PriceWaterhouseCoopers (a firm)* [2003] UKHL 41.

Some creditors have expressed concern over the growing number of companies that appear to be making money out of the UK's growing debt problem.[204] In order to try and understand the scale of this problem it was decided that a search should be undertaken regarding the year of incorporation for some of these personal debt related companies by company activity. Due to the difficulties in compiling a definitive list of debt solutions companies, it was decided that a pilot search be undertaken in the form of a search of the Companies House online register for companies whose name began with 'debt'.[205] Between 1959 and 2007, 316 companies have been registered at Companies House with 'debt' as the first word in their name. Although at first glance this may appear a considerably long period of time in which to consider the incorporation of these companies, on closer inspection it is clear that it is only since 2003 that numbers have started to significantly increase. In fact companies incorporated pre-2003 only account for 22 percent of the total 'debt' companies registered.[206]

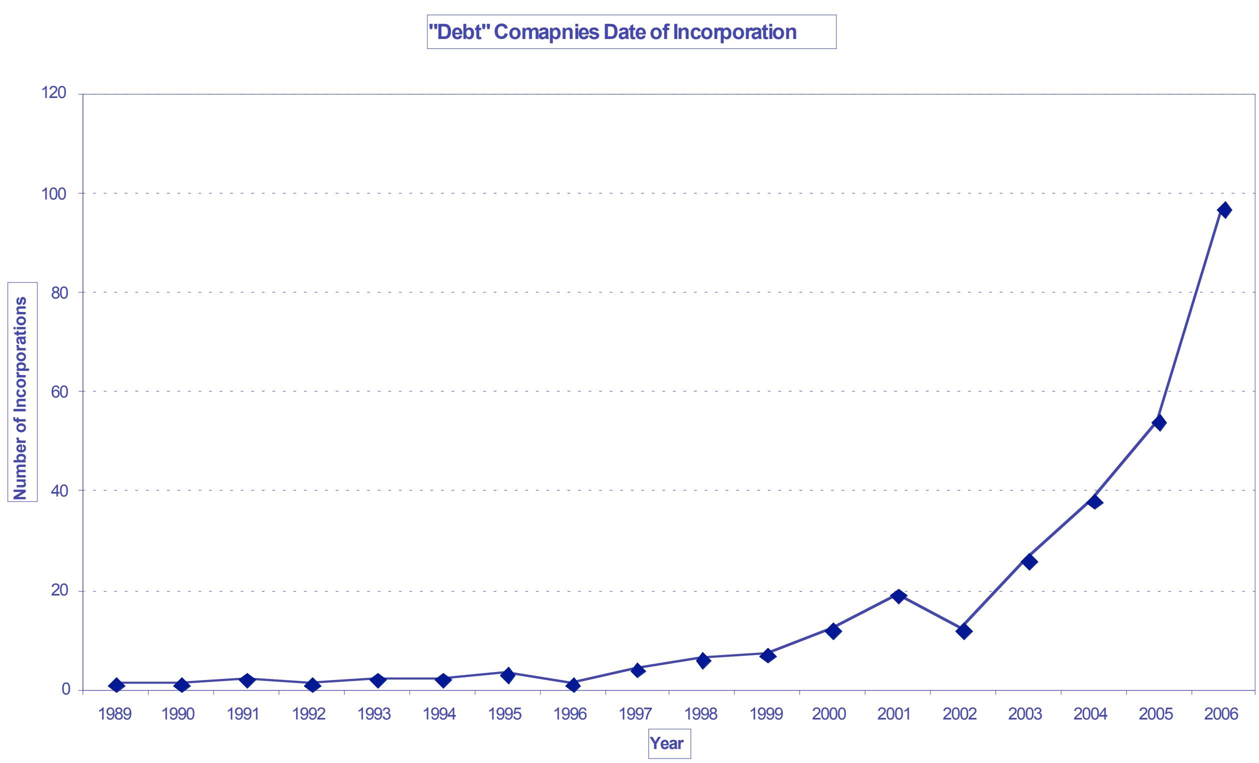

Figure 20: 'Debt' Companies Date of Incorporation Graph Analysis

In addition to the active 'debt' associated companies, 95 other companies, created as a result of the growing debt market, were incorporated between 1997 and 2006 that have now been dissolved. The average lifespan of these companies was less than three years.[207]

The fast pace of the industry is further highlighted by the fact that many of the sites originally considered at the beginning of the research in July 2006 are no longer operative. These include: <http://www.debtcall.co.uk>; <http://www.debt-free-advice.co.uk/>; <http://www.debts.tv>; <http://www.freepay.org>; and <http://www.ivauk.com>.

It is clear from some of the web addresses that the name of the website is all important in determining where that website comes after an engine search such as Google or Yahoo. It is interesting to note that one of the sites originally discovered at the beginning of the research is now for sale: <http://www.solvedebt.co.uk/>.

Figure 21: Solve Debt Web Page Extract

Whilst this does not confirm or refute the contention that companies are profiteering from a growing debt industry, it does go some way to support the idea. It would be especially interesting to undertake the same data search in a further five or ten years in order to see if this trend continues.

References

[204] See Chapter 7 above.

[205] We chose to adopt this methodology in preference to Companies House SIC classifications, which on closer inspection tended to show that these ‘Nature of Business’ specifications were disparate or not supplied for debt solution companies.

[206] See: Volume II Appendices and Bibliography.

[207] See: Volume II Appendices and Bibliography.

Chapter 11

Aggressive Creditor Marketing?

'The borrower shall be a slave to the lender.'
Proverbs 22:7.

It was suggested by a number of respondents to the Financial Education Questionnaire that credit is made too glamorous by clever creditor marketing, and that in general credit is too easy to get hold of. It was also intimated by participating debt solution companies that creditors were not in a position to criticise IVA advertising when their own marketing of credit products was in need of evaluation.

The marketing of credit comes in various guises. As with Debt Solution Company marketing, the marketing of credit products occurs on creditor websites and in newspapers. Creditors, however, will also target existing customers. This was explained by Creditor E as bringing certain products to the attention of existing customers where that product may be of interest.

A supporter of CILP provided information regarding Halifax who had sent them information regarding personal loans. This individual only held a savings account with Halifax that was opened some years ago. Therefore it would be impossible for Halifax to have had a true picture of the customer's current financial situation before sending out the literature. Furthermore, the letter stated 'A Halifax Personal Loan could give you the means to 'buy now and pay later' – spreading the cost of your spending with affordable, monthly repayments …' This wording is surprising given the general tone of creditor meetings that appeared to indicate creditor dissatisfaction with this apathy towards responsible borrowing.

Another supporter of CILP provided information regarding MBNA. This anonymous individual held a credit card with the creditor who sent them the email below:


Don't Forget Your
great rate on card purchases
MBNA
EUROPE

[redacted]

We contacted you recently to let you know that you have a great promotional rate of interest of only 0.0% per annum until your DECEMBER statement.

As this applies to all purchases, even your day to day purchases will be at this great low rate.

You still have time to treat yourself. Just think what you could do:

• Book that dream holiday
• Do those home improvements you have been planning
• Get that new car you want

Don't forget you can keep track of your transactions online at www.mbna.co.uk. Just log on to see your last six months statements and all your recent transactions.

So make the most of this fantastic rate, and let your MBNA Credit Card help you live your dreams!

Figure 22: MBNA Electronic Marketing Material

It could be argued that this is a prime example of creditors trying to entice consumers to borrow more money than they would have otherwise borrowed. If this is the case, there is a high probability that at least some of these consumers will become over-indebted.

Despite this, it must be questioned whether there can ever be irresponsible or aggressive marketing so long as it is honest? But can this really compensate for the enticing tactics used by large corporations?

Chapter 12

What is Irresponsible Lending?

'While the idea of debtor irresponsibility may serve the interests of creditors in proposing restrictions on the availability of bankruptcy, there is a danger in this strategy since the obvious questions then become 'who is creating and servicing the credit junkie?' and 'what responsibility does the industry have for being responsible lenders?'

I Ramsay, 'Models of Consumer Bankruptcy: Implications for Research and Policy' (1997) 20 Journal of Consumer Policy 269, 272.

There has been a lot of media attention surrounding the idea of irresponsible lending.[208] Indeed, the BCS alluded to the possibility of irresponsible lending being one of the possible causes for the rise in personal insolvency.[209] Creditor views as to the definition of irresponsible and responsible lending have been seen in Chapter 8 above, although it proves necessary to repeat some of these comments.

PayPlan, a not-for-profit debt management company funded by creditors, lists four examples of when irresponsible lending can occur: 'Extending credit or overdraft limits without permission; Loan and credit card offers sent through the post; Misleading advertising and complex credit agreements; and Lending to people who just can't afford it.'[210]

When asked about this first situation, Creditor E stated that 'the customer can ask the bank to put it back down or just not use it. Ninety percent of our customers do not go bad and want the facility and do not cause a problem.'

In relation to the second situation Creditor C stated that creditors are also beginning to develop so-called 'intelligent targeting' as a means of marketing products to existing 'low risk - high quality customers'. Does this form of marketing always find out those individuals who are low risk or is there a danger that creditors will market unsuitable products to certain customers? If they do, can this be considered irresponsible lending?

Creditor A stated that they had 'tightened' lending procedures in recent years and that borrowers were guilty of irresponsible borrowing. It must be questioned however whether these measures were introduced as a result of lessons learned from the previous financial crisis in the early 1990s. It should also be asked to what extent irresponsible borrowing can exist without irresponsible lending? If borrowers are requesting credit in the knowledge that they cannot afford to pay it back then it is presumed that the information contained at the credit reference agencies would be sufficient to expose this fact. But if irresponsible borrowing can be construed as financial mismanagement or recklessness, it is suggested that this form of activity cannot be construed as irresponsible in its purest form.

Taken literally, irresponsible lending could mean the lending of money without 'thinking carefully enough or not caring about what might result from actions taken'[211] although this is not considered a satisfactory definition.

When asked to define irresponsible lending, creditors had differing views. Creditors B and D held similar views that irresponsible lending is where indicators are ignored, where there is a reasonable chance that the money will not be recovered, or where the customer is already having difficulty managing their finances. Creditor C felt the exploitation of vulnerable consumers as applied to mortgages could be extended to cover irresponsible lending in the context of unsecured debt.

> Creditors have 'a responsibility to have an understanding of the basic position of the industry. Traditionally if you borrow money it was up to you to pay it back and the bank would only lend if they thought you could pay it back. Ultimately, the customer was responsible even if the bank was wrong to lend the money. Whilst this view is too extreme it seems that it went in the other direction to the point where if something was not the customer's fault they would not have to pay it back. This is also too far and it seems to be coming back to a healthier position and away from the victim culture that's developed.'
>
> Creditor E (2007).

INSOL International has recently reported that 'as a result of the economic conditions, credit is not just more easily available, but consumers have access to proportionately larger amounts of credit.'[212] The definition of irresponsible lending must therefore be construed with this in mind.

It is suggested that irresponsible lending is multi-faceted and is not capable of a one line definition. Irresponsible lending, it is argued, could occur when creditors do not use all available mechanisms to ensure the consumer is not only providing accurate information, but that based on this information there is strong predictive evidence to suggest they have the ability to repay what they have borrowed. Irresponsible lending, it could be argued, also occurs where creditors do not provide enough information to consumers during the application process and continue to monitor the account after they have secured the business.

References

[208] J Prynn, 'Barclays staff are caught boasting of illegal profits' *London Lite* (21 March 2007); H Connon, 'Banks living on borrowed time' *The Observer* (4 February 2007); M Collins, 'Consumer watchdog hits out at banks' *Investor Daily (Australia)* (13 April 2007); ——— 'Unlimited credit is living on borrowed time' *The Observer* (5 November 2006); and ———'Sore cards "need rate warning"' (21 December 2005) <http://news.bbc.co.uk>.

[209] J Tribe, 'Bankruptcy Courts Survey: 2005 - Final Report: A Pilot Study' (Kingston Business School Occasional Paper 59, 2006)<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/research/research.htm> 194.

[210] <http://www.payplan.com/reasons-for-debt/irresponsible-lending.php> accessed 1 May 2007.

[211] See: Cambridge Advanced Learners Dictionary (3rd edn).

[212] INSOL International 'Consumer Debt Report: Report of the Findings and Recommendations' (2001) 1.

Chapter 13

UK Over-indebtedness: Critical or Hyperbole?

'There are as many opinions as there are people: each has his own point of view.'

Terence *Phormio* (c.190-159 BC).

Whilst UK personal insolvency figures have been continuing to rise steadily since 2003, it is important to keep these figures in perspective. The 107,228 people that became insolvent in England and Wales in 2006 represent a mere 0.27 percent of the population likely to become insolvent.[213]

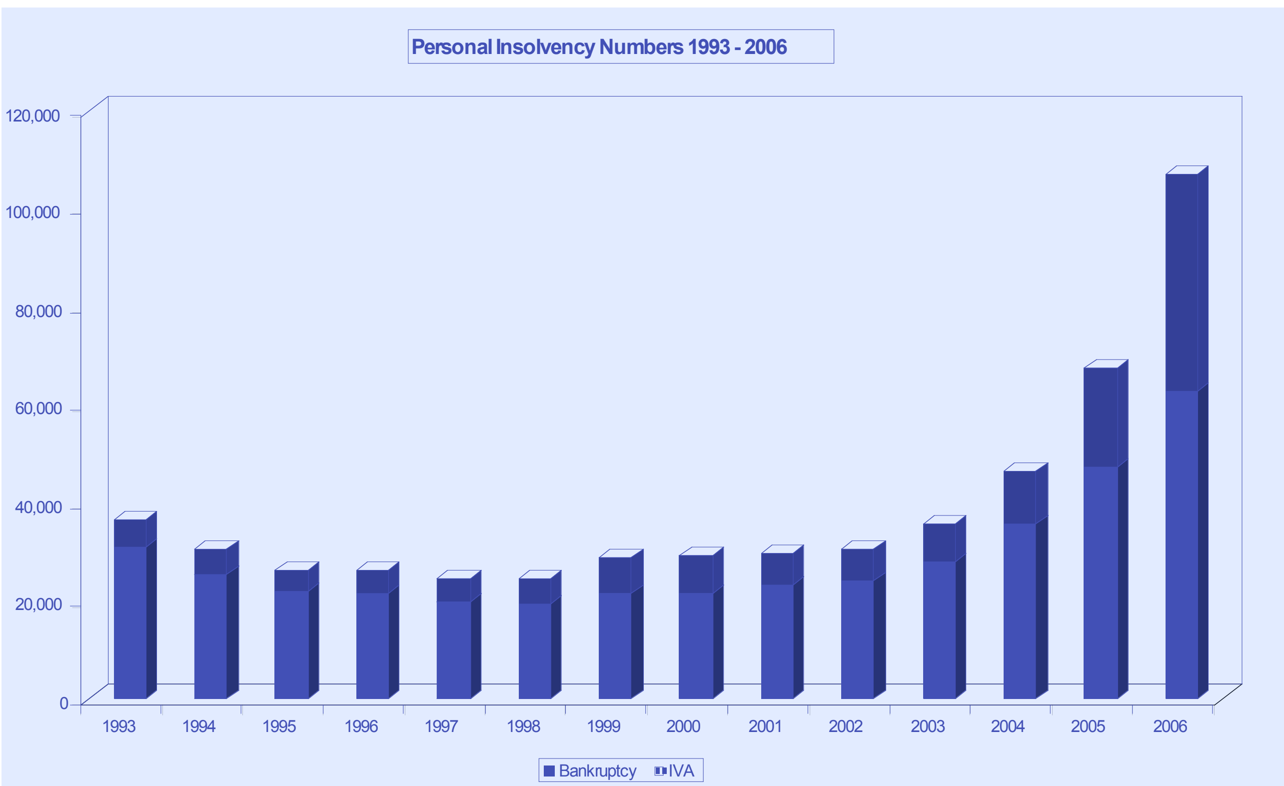

Figure 23: Personal Insolvency Graph 1993-2006

The media sensationalism of over-indebtedness has fuelled concerns that the UK is drowning in debt, with statistics splashed across news items. Claims that 'one in five of adults now owe more than £10,000 in unsecured debts' are designed to shock those with financial difficulty into action, but is this level of debt really unacceptable?

Creditor C commented that due to the extremely low base from which personal insolvency started, it may be said that insolvency percentage growth has outstripped bad debt loss growth.

Figure 24: Personal Insolvency and Bank Write-offs Graph
Source: Insolvency Service and Bank of England

This graph would certainly support that supposition given the percentage variance between the two figures. The graph could also indicate that creditors have had problems controlling bad debt write offs in the past, but that they now appear to have the situation under control.

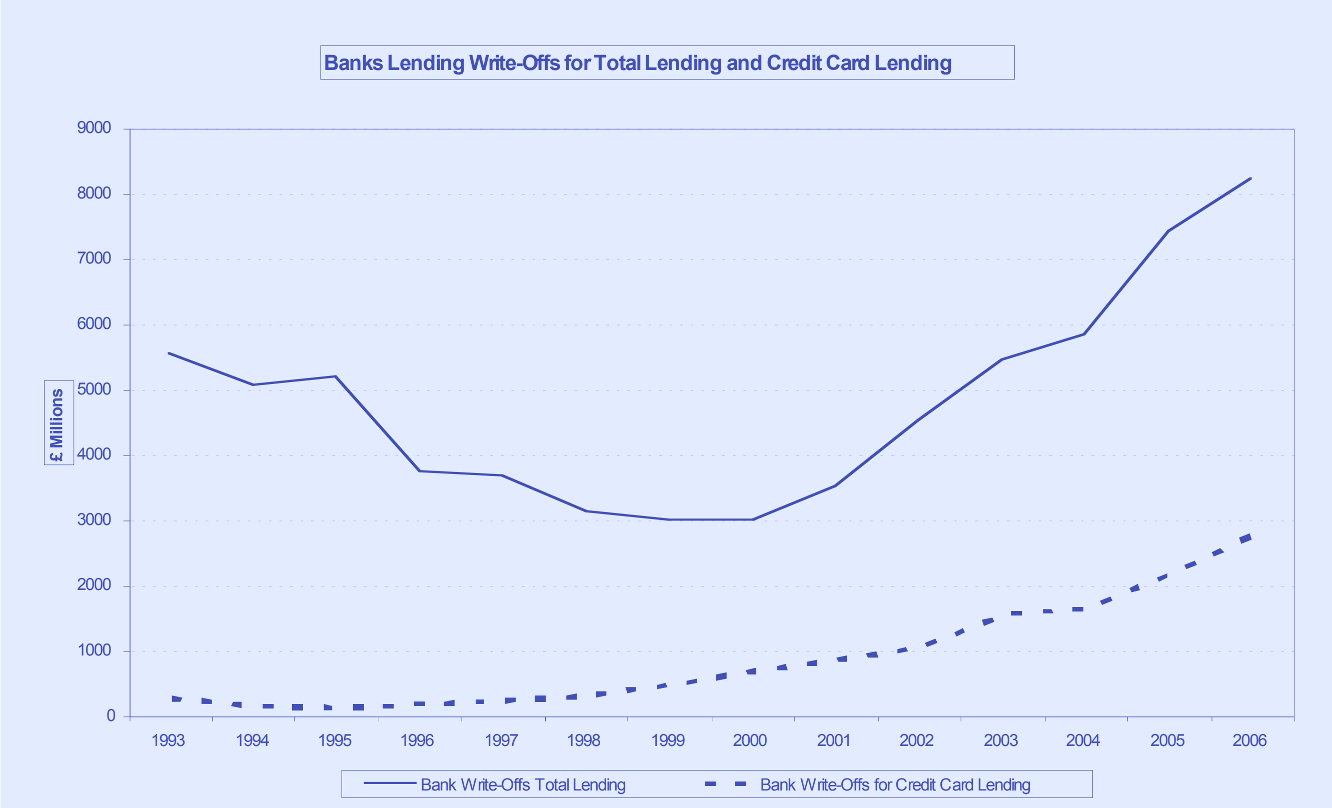

Figure 25: Bank Lending Write-Offs for Total Lending and Credit Card Lending
Source: Bank of England

The graph above clearly shows the rise in bad debt write-offs that are hitting the profit margins of the UK's consumer banking sector. The solid line indicates total lending write off, including any secured credit whereas the dashed line shows credit card debt write-offs. It is interesting that whilst total write-offs dipped at the end of the nineties, credit card debt write-off has been steadily increasing with a greater rise between 2002 and 2003.

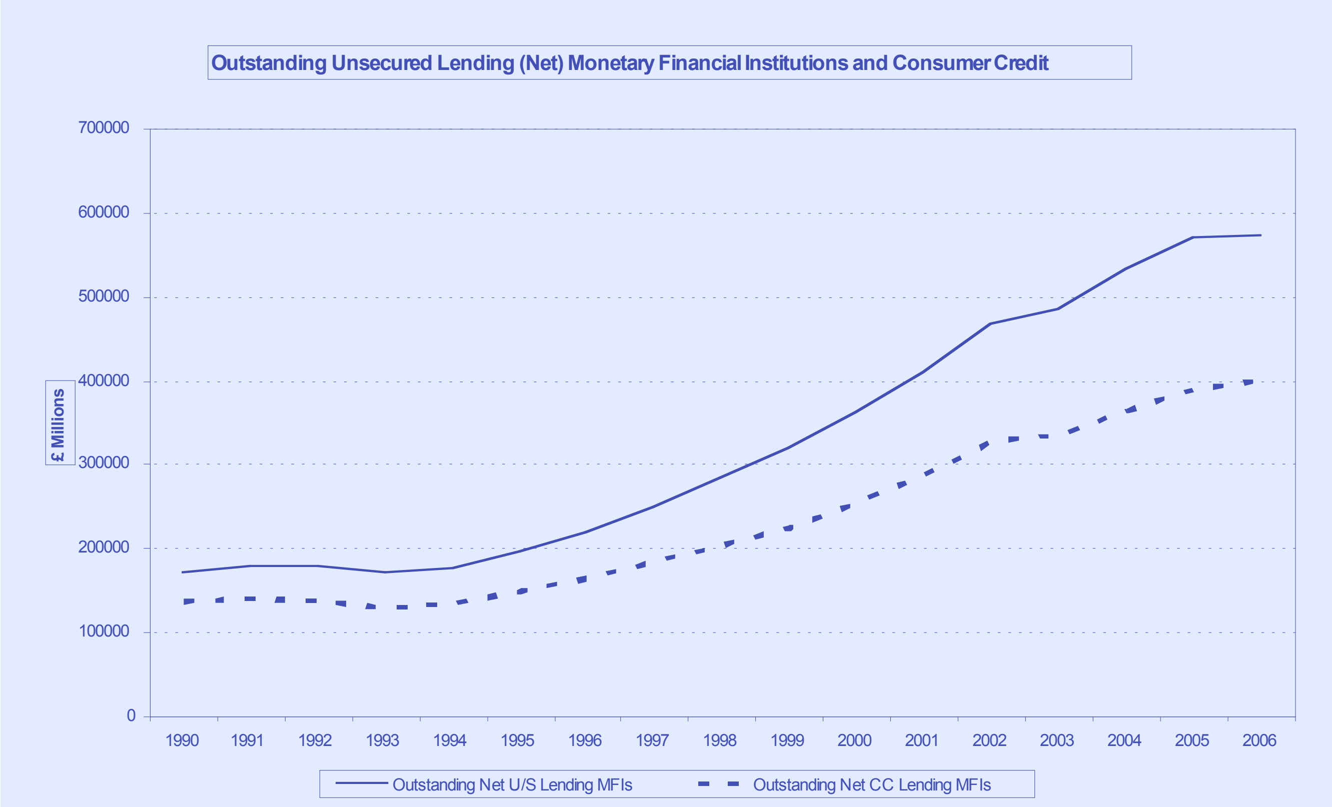

Figure 26: Outstanding Unsecured (Net) Monetary Financial Institutions and Consumer Credit
Source: Bank of England

It is clear from the graph above that the amount of outstanding unsecured lending has steadily increased since 1994 with sharper increases noticeable from 2003 onwards. This may be contrasted with the recent dip in the gross amount of unsecured lending by UK resident banks.

From these figures it could be argued that serious debt affects a relatively small percentage of the population and that creditors largely have the problem under control. This does not mean that over-indebtedness should not be taken seriously, but rather that a small number of people have a serious problem with debt. To say that the Britain is in the midst of a 'debt epidemic'[214] is sensationalist and unnecessarily bleak.

References

[213] Of the mid year 2005 estimates for population size in England and Wales were 53,390,000. Of this, an estimated 19.3% of the population were under 16 and 7.7% were over 75.
[214] J Hill, 'Britain's debt epidemic worsens' *The Scotsman* (2 November 2006).

Part IV

Conclusions and Recommendations

> ‘Debt is like any other trap, easy enough to get into, but hard enough to get out of.’
> Henry Wheeler Shaw (1818 - 1885).

Chapter 14

Conclusions

'I can get no remedy against this consumption of the purse; borrowing only lingers and lingers it out, but the disease is incurable.'

William Shakespeare, *Henry IV* (1599).

The tripartite nature of this report requires three distinct conclusions.

14.1 Debt Advice

The activities of debt solution companies have provided much copy over the last three years or so. They have been labelled by some quarters as the main driving force behind the recent upsurge in personal insolvency usage. This perceived negativity has also perhaps given rise to questions about the ability of such firms to proffer independent, impartial, objective advice. This research attempted to investigate the advice giving function of those firms to investigate the hypothesis: 'is debt solution company advice biased towards the IVA route?' We also wanted to test whether the advice function was being provided by appropriately trained and qualified professionals, using that term in its full correct sense, i.e. an individual who is regulated and who has passed the professional examinations of a regulatory body.

The demand for the services provided by the debt solution companies has perhaps caused a reduction in the direct involvement of insolvency practitioners in close management of IVA cases. This appeared to be the case in 15 of the 16 companies that made up our sample. That is to say that on a day-to-day basis it seems as if insolvency practitioners are removed from the close administration of the IVA case administration. They do however sign off each and every file. Their capacity is wholly supervisory. It is something more than titular involvement, but not as close as the legislature perhaps had in mind when the procedure first received Royal assent. This day-to-day management is instead being undertaken by staff who are not professional (using this term in its correct sense). The administrative staff are not regulated. Whilst the Insolvency Service and RPBs do regulate the insolvency practitioners,[215] this does not sit well with notions of competency even if *in fact* the administrators are competent. Moves are afoot to address this issue, with firm wide (or entity) licensing reform proposals and calls for licensing of debt solution companies being mooted.

Our investigations have shown that contrary to the derision and low estimation levelled at the debt solution companies, that they are in fact offering their services in a well-structured, organised manner. This appeared to be the case in all of the 16 companies sampled. All had clear, well thought through, procedure structures. Over-indebted individuals demand or need a service to relieve them from their impecunity. These firms are addressing a need; they are not the cause of a debtors' unwillingness to pay necessarily. That is to say from our investigations, it appears that our hypothesis: 'is debt solution company advice biased towards the IVA route?' is not fully borne out.

The question of debt avoidance and influences over that avoidance, as with so many questions in this area, gets back to the questions of education and obligation – a simple matter of private contract. An individual can receive advice from an advisor, but that individual does not have to act on that advice. Questions regarding the competency, regulation, professionalism and so forth of that advisor must however be examined closely. This is perhaps for a different, more specific enquiry that could investigate the licensing proposals and suggestions that have recently been mooted. It should perhaps be an axiom that providers of insolvency advice are licensed. The evidence as presented to the research team on our visits to 16 debt solution providers indicated that high levels of advice monitoring were extant. The progression to a licensed debt solution environment should therefore be relatively pain free.

The CAB report 'In Too Deep' looked at the experiences of their clients seeking debt advice in 2002. One of the recommendations was the development of free advice with a key concern being the lack of funding available to provide the level of debt advice necessary. Whilst there is generous support from both government and creditors there is still a vast discrepancy between the demand and ability to supply. The development of the free debt advice sector is key to helping those on low incomes with their financial difficulties. The costs associated with bankruptcy and with IVAs and debt management plans often mean low earning individuals are not getting the help they need.

The Insolvency Service is the ultimate regulator of insolvency practitioners and their activities. If, as a regulator it is countenancing the use of the IVA provisions for consumer debtors, whereas the legislature envisaged the procedure as being for entrepreneurial use, then objection cannot be legitimately raised against what is perceived to be profiteering activity. It is the regulator, not the regulated, that maintains the *status quo* (or not) and who is therefore responsible for such a positions continuation. One cannot have credit extension without release mechanisms for certain circumstances. If the types of circumstance are being widened to include participation in procedures that were not intended as original recipients, then it is perhaps the procedure, not the circumstance that should be reformed. This is occurring with the ongoing SIVA reforms. It will be interesting to note how these provisions bed down and how the old style IVA will subsequently be used.

The maintenance of the *status quo* and the profiteering activity it gives rise to, brings us to the next, perhaps controversial, point; namely that it must be wrong to profit from insolvent estate management. This is a very fundamental point to the maintenance and running of an insolvency system. Mechanisms must exist to, *inter alia*, facilitate the orderly distribution, management and so forth of insolvent estates, but should it be countenanced that this management function reaps such large rewards? A labourer is worthy of his hire, but should that labourer be undertaking the task at hand? This point will be critiqued by debt advice solution providers and their lobbyists as erroneous. Vested interests will perhaps skew over-arching objectivity. They may even postulate that as compared with bank write offs their profits are miniscule. But this is to miss the very fundamental essence of this point, namely, it is the insolvent that the system should hold as paramount. The relationships and treatment of creditors, who are *prima facie* better placed to defray losses, and insolvency provisions providers, whilst important, should not be allowed to displace the key actor in the matrix.

Benthamite system abolition is not advocated, merely a re-focusing on the interests of the insolvent in this non-bankruptcy solution area. Perhaps DSC I's insolvency practitioner's promulgation that IVAs should be government run procedures with salaried insolvency practitioners warrants more serious consideration.

14.2 Debtor Education

The overwhelming feedback from the attendees of the Financial Education and Awareness Workshops was that they were of great utility. It is perhaps an axiom that such workshops are beneficial. They are after all, simply an example of education and awareness building amongst a certain tranche of society. The workshops were however also overwhelmingly poorly attended. This was despite wide and sustained marketing activity. This is an extremely concerning point that takes us back to the credit bargain issue and the private contractual nature of the credit relationship as noted above. If consumer debtors are wilfully rejecting their contractual obligations this is one issue that obviously must be addressed. If they are however also withdrawing from, or simply not engaging in, or availing themselves of exercises that enable greater enfranchisement in relation to that credit relationships, then that is a wholly different, much more concerning issue. A free opportunity was given to 2,085 debtors to attend the workshop in the Kingston and Croydon areas. 95 returned the invite questionnaire. Six individuals attended the session. This is lamentable in the extreme. The remaining 2,079 individuals have already proved their financial incapability by passing through an insolvency procedure. This is perhaps the key point. The individuals may have already chosen to withdraw from the credit environment. Rehabilitation objectives are therefore clearly not being achieved if this lack of engagement in the workshops in indicative of general responsible approaches to credit use.

The lack of debtor engagement coupled with the American experience of firms profiteering from the debtor education sector may prove to be too much for any embryonic future programmes. The low uptake is perhaps indicating that other more pervasive methods should be adopted. The Financial Education Awareness Workshops are continuing at CILP, but early response rates to a London wide newspaper and leaflet campaign have not been hopeful. A free paternal approach is perhaps not the way forward on this issue.

It could be argued that credit responsibility should be taught at a much earlier stage than at the onset of insolvency or immediately after the consequences have come to fruition. Perhaps the incorporation of credit management awareness within general studies or citizenship qualifications undertaken during secondary education would provide one barrier to credit-misuse.[216]

At the adult stage credit providers could be given a duty to supply to potential debtors a 'Credit Responsibility Pack' or a 'Code of Good Financial Behaviour' that outlined the problems of personal over-indebtedness and the possible outcomes of default. If the debtor does not read and sign the same and submit to a central register then their automatic discharge period could be delayed to take into account their earlier irresponsible approach to credit usage. Bankrupt debtors upon discharge could also be given the option of attending a 'Credit Responsibility Day' at which they are given education and advice to ensure that they do not repeat past financial mistakes. Scotland of course has used discharge fetters in the past.[217]

Some form of educational initiative that helps bankrupts post-discharge would help them re-enter the credit market by, for example, helping them obtain very necessary simple banking facilities. This educational initiative could focus on the debtor, creditors or both parties.

Debtors should have the opportunity to attend a financial literacy course post insolvency.[218] Creditors could offer basic banking facilities to such individuals once they have successfully completed the course. It is thought that this form of arrangement could operate in a similar way to the current provisions for driving offences. It is suggested that this course should be paid for by the debtor.

14.3 Credit Environment

The meetings with the anonymous bank respondents have been extremely useful. Whilst it was highly disappointing that a number of major providers refused to participate, it was encouraging that those who did were full and frank in our discussions. The recurrent theme or refrain from this part of the research is that there is a bank acceptance that credit provision in the past has been perhaps not as well managed as it might have been. That is to say that credit was extended too easily. The corollary being that procedures are now sufficiently exacting to ensure that 'irresponsible lending' does not occur. This is perhaps an indolent excuse. The position in which defaulting consumer debtors now find themselves in cannot be so easily dismissed. Technological advances have given rise to great change in this area

But what of 'irresponsible borrowing.' This feature of the credit relationship is seldom discussed. It is instead usual to cast the creditor in the guise of the miscreant party. The debtor is however surely better placed to know if they are capable of satisfying the repayment schedule. The private contractual nature of the bargain must not be overlooked. The state provides an exit mechanism, but is that mechanism now too liberally available to the consumer debtor? Would other private contractual relationship breaches be countenanced in such a manner?

It should be remembered that government initiatives have encouraged consumer borrowing in order to maintain buoyancy in the market and to meet their own growth targets. Creditors, consumers and government are all party to the current insolvency process and should share in the responsibility for the fall out. The third party intervention by debt solution companies has not been a welcome one for many, but in reality they would not be extant if there was not a need that required servicing. The question is whether the continuing need is real and the result of excessive credit extension, or an illusion maintained through the clever advertising and marketing pulls of debt solution companies.

14.4 Breaking records

A new record has been set. The number of people using personal insolvency procedures has exceeded the 30,000 level for a yearly quarter. This is in fact a second new statistics record because at the end of 2006 the 100,000 level was surpassed. The number of people using personal insolvency procedures in that year was 107,122. Should these statistical leaps give cause for concern, or are they instead indicative of a success story for the insolvency laws?[219] The Oxera report suggests that whilst there are cases of over-indebtedness in the United Kingdom that certainly need addressing, the problem is not as grave as the media and debt solutions companies would like to make out. The number of people who actually have a debt problem is still relatively stable when put in perspective.

The effect of the Enterprise Act 2002 personal discharge provisions has been hotly debated, with camp one arguing that the statistics cited above show that the reduction in the automatic discharge period from three years to a maximum of one year has given rise to an increase in redress to the insolvency laws. Camp two offers a counterblast based on the premise that the figures are indicative of sustained and heavy credit usage coming home to roost, coincidentally at around the same time as the legislative change. Whether the change in the discharge provisions has encouraged indebted individuals to seek redress to the insolvency laws is a matter for debate, the credit increase figures are however clearly demonstrable. If the change has encouraged anybody, it is not the legislature's intended recipients, namely entrepreneurs, but consumer debtors. Whether or not the consumer debtor actually chooses to become indebted because of a perceived liberal discharge regime is also a moot point. The other changes encompassed in the Enterprise Act 2002 and elsewhere regarding, inter alia, Income Payment Orders, Bankruptcy Restriction Orders, and so forth must also be factored into the discussion. The total bankruptcy figures for the last three years (2004:35,898, 2005:47,291, 2006:62,812) do seem to support the camp one thesis, especially when compared with the three years prior to the enactment of the Enterprise Act 2002 (2001:23,477, 2002: 24,292, 2003: 28,021). But camp two will take solace in the Bank of England overall personal credit level increases for the last ten years.[220]

The second main point on the large increase in personal insolvency statistics must focus on the manifest swelling of the IVA figures. Total IVA usage for the whole of 1999 (7,195) was just over half that for the first quarter of 2007 (13,233) alone. What has driven this voluminous increase? Is it the camp two credit thesis as outlined above, i.e. credit growth, or something else? It has been argued in some quarters that this increase has been driven by the marketing activity of the IVA specialist firms, giving rise to greater awareness of insolvency procedures amongst the wider public. This in turn, so the argument goes, has also had an effect on the bankruptcy increases. Whilst the legislature in enacting the IVA did not have consumer debtors in mind when they enacted the regime, it could be argued that consumer use is not misuse, but a necessary corollary of lending practices, i.e. a pressure valve is needed to relieve the casualties of over-indebtedness and IVAs seem to be answering the call.[221]

According to the latest figures IVAs are still increasing but the rate is slowing. Following the 4 May 2007 statistics release, learned commentators observed that this slowdown was due to the banks tightening up on their IVA approval criteria and that the exponential growth will decrease. This may be true with the full IVA, i.e. the procedure that the 1986 legislation promotes as an alternative to bankruptcy for entrepreneurs, pursuant to the legislature's original intention. However, with the introduction of a new little brother regime in the coming year or so, i.e. SIVA, the two arrangement regimes taken together might even surpass bankruptcy as the predominant personal insolvency choice.

What is the practical effect of these increases? The first issue to consider must be the re-sourcing of the administrative machinery that has to deal with these insolvent estates, be that the courts, Insolvency Service or insolvency practitioners. Are the courts and the Insolvency Service going to continue to be adequately financed to manage with paperwork volume and such like? Should different forms of financing be mooted? For example, would a levy on the burgeoning IVA specialists be acceptable? The levy could be used to spread the costs of overall personal insolvent estate administration.

Insolvency statistics make interesting reading for a multiplicity of reasons, not least as a marker to determine administration costs as outlined above. However, they also give rise to wider social and economic issues. Are the figures moving us towards a position where we might conclude that personal insolvency is not just a social problem but on a macro-economic level, a full blown economic issue? The recent increases in creditors' bad debt provision may lead us to such a tentative conclusion.

This point also brings us to the final conclusion. Admirable and important work is now being undertaken in English personal insolvency scholarship. Professor Ziegel's concerns have been somewhat placated.[222] Mr. Green, Ms. Morgan, Professor Walters, and Dr. McKenzie-Skene, amongst others, are all currently engaged in ongoing research projects on the personal side of our subject. This momentum must not be lost. But most importantly, the path trod by Professors Westbrook, Warren and Sullivan[223] must be now be embarked upon on this side of the Atlantic. That is the path to inter-disciplinary analysis. Moves are already afoot in this regard with sociologists, economists and statisticians being contacted to cast the practice of insolvency in a more thorough, comprehensive light. This research project would have been bolstered by the early stage involvement of a sociologist for the debtor education section, an economist for the credit environment section and a statistician generally. The Insolvency Practices Council has commissioned research that will perhaps be the first full inter-disciplinary study on the personal side of the subject.[224] The result of that research and any future inter-disciplinary research proposals is eagerly awaited.

References

[215] A side issue, is of course the RPBs approach to insolvency practitioner marketing activity. Recent activity has shown this to be most prominent in bulk IVA work. Would RPBs sanction large accountancy firms producing similar marketing materials as discussed in Part III of this research?

[216] R3 has recently announced a new scheme to help educate schoolchildren on the importance of managing finances. The scheme is based on R3's School of Finance qualifications. See further: <http://www.r3.org.uk/news/?p=4&s=0&id=77> accessed 25 August 2006.

[217] DW McKenzie Skene, *Insolvency Law in Scotland* (T&T Clark, Edinburgh 1999). See also: DW McKenzie Skene, 'Morally Bankrupt? Apportioning Blame in Bankruptcy' [2004] JBL 171.

[218] On this point see further: DW McKenzie Skene, 'Morally Bankrupt? Apportioning Blame in Bankruptcy' [2004] JBL 171,193

[219] The figures for 1999-2006 and 2007 quarter one are reproduced at page 6 (n 10).

[220] See Part III.

[221] It might now seem inconceivable that in 2004 both industry experts and government were suggesting that IVAs needed to be encouraged through more media coverage.

[222] See: J Ziegel 'Consumer Insolvencies: A Neglected Area of Study in English Insolvency Law?' (Society of Legal Scholars, Oxford 2003) (unpublished), where he notes the 'paucity of English legal writing' on personal insolvency. See also: J Ziegel, *Comparative Consumer Insolvency Regimes – A Canadian Perspective* (Hart, Oxford 2003) 8, where he notes: 'In the United Kingdom, until quite recently, consumer insolvencies were not regarded as a major legal and social issue and this perception is reflected in the very modest volume of legal and non-legal literature'. See also: J Tribe, 'Personal Insolvency Law: Debtor Education, Debtor Advice and the Credit Environment (Part 1)' (2007) 20(2) Insolvency Intelligence 23; J Tribe, 'Personal Insolvency Law: Debtor Education, Debtor Advice and the Credit Environment (Part 2)' (2007) Insolvency Intelligence (forthcoming).

[223] TA Sullivan and others *As We Forgive our Debtors: Bankruptcy and Consumer Credit in America* (BeardBooks, Washington DC 1999); TA Sullivan and others *As We Forgive our Debtors: Bankruptcy and Consumer Credit in America* (OUP, Oxford 1989); TA Sullivan and others *The Fragile Middle Class: Americans in Debt* (Yale University Press, 2000).

[224] See A Walters, 'Complaints Handling in the Insolvency Practitioner Profession' (IPC Commissioned Report) (forthcoming).

Chapter 15

Recommendations

Debtor Advice

6. Re-focus on the **insolvent** as the fundamentally paramount stakeholder.
7. **Tighter control** of marketing.
8. Recognition by insolvency practitioners that they, as professionals, must **monitor** any juristic person they are connected to.
9. **Review** the status of the not-for-profit debt advice providers.
10. **Standardisation** of practice and documentation across the industry.

Debtor Education

4. **Increase** financial awareness workshop promotion across all demographics of society.
5. Investigate **compulsory attendance** of such workshops as a pre-condition of discharge from personal insolvency procedures.
6. Introduce **early stage financial education** across the UK.

Credit Environment

5. Continued growth in collaboration between creditors, in terms of better positive and negative **data sharing**.
6. Give creditors the **additional financial information** necessary to make better informed lending decisions.
7. Recognition of **debtor responsibility**.
8. Introduction of **money management teams** within credit institutions, specifically targeting those individuals who are less financially literate than their peers and giving them advice without prejudice.

‘The unluckiest insolvent in the world is the man whose expenditure is too great for his income of ideas.’

Christopher Darlington Morely (1890 – 1957)