INSOLVENCY UPDATE

MESTON REID & Co
CHARTERED ACCOUNTANTS

Introduction

We seem to be facing price rises wherever we look and, whilst there are many reasons offered for today's inflationary conditions, the fact remains that if incomes do not rise accordingly, unwelcome lifestyle choices have to be made about how one spends money. Of course, there are some who find it difficult to reduce expenditure, providing many good reasons for this, but it will always result in either dipping into savings, or the creation of new debt e.g. credit card and loans. When debts cannot be paid, thoughts can turn to seeking personal insolvency advice.

The Financial Conduct Authority "FCA" recognise the challenges faced by many and have introduced guidance in order to try and ensure that those who require debt advice are properly advised : see below.

Don't promise what you can't deliver

At the end of June, the Committee of Advertising Practice "CAP", the organisation that writes the advertising rules which are enforced by the Advertising Standards Authority, issued an Enforcement Notice "EN" regarding debt management adverts placed by insolvency practitioners and companies who generate leads which are passed to insolvency practitioners.

In Scotland, the EN relates to the promotion of a protected trust deed, a mechanism for individuals to regularise their financial affairs, relieve stress, learn a lesson in financial management, and eliminate a proportion of their debts. In fairness, many protected trust deeds include assets e.g. a house or investments, which are sold, but for those who live in rented accommodation and have little in the way of realisable assets, a protected trust deed can offer a release from creditor pressure.

Over the last few years, concern has been expressed that adverts have been somewhat misleading in terms of offering consumers a method of writing-off virtually all of one's debts using a Government-approved scheme : the inference being that it is an easy process that makes all debts disappear. The old adage that " if it is too good to be true, it probably isn't true " is particularly apt but equally, the CAP understands that when a person is under severe anxiety and pressure, clear thought/action is not easy.

It is relevant to note that the type of advert being monitored by the CAP is not one placed by Financial Conduct Authority authorised debt advisors e.g. Meston Reid & Co, because the FCA has its own strict rules regarding advertising. Indeed, the FCA wrote to over 3,500 regulated firms recently in order to remind them of the standards to observe such that all those who find themselves in financial difficulty are treated fairly and correctly.

The EN became effective on 25 July 2022 and means that the CAP will start to monitor advertisers, with the threat of misleading advertisements being referred to either the advertiser's recognised professional body or the local trading standards office.

It is important to remember that the EN does not deal with adverts by those who promote bankruptcy advice services or other forms of debt advice/management, but are targeted towards those who CAP considers vulnerable customers who may find themselves drawn into a situation which does not achieve the desired outcome. The EN is fairly all-encompassing and includes adverts in traditional and digital forms, including social media, websites and influencer marketing.

It is now the case that an advert seeking to capture the attention of those in financial difficulty cannot reflect affiliation with, or approval by, a debt charity, nor imply that eligibility is guaranteed in terms of being able to write-off debts. For example, there are restrictions on a person's suitability for a protected trust deed and, as noted above, it is by no means guaranteed that creditors will accept a proposal. Using a lead company generator is frowned upon because, whilst such entity may say that the initial service is "free", the reality is that the lead generator will transfer a group of clients to an insolvency practitioner upon payment of a fee or act in a capacity which generates a fee such as preparing basic financial documentation.

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The Code of Ethics applicable to insolvency practice in Scotland for those regulated by the Institute of Chartered Accountants of Scotland, as well as the related legislative framework surrounding insolvency work, prohibits an insolvency practitioner from paying for introductions. Such Code provides additional protection to the public because it makes an insolvency practitioner responsible for their own advertisements and business promotion, and also makes them liable for any third party advertisement which results in an insolvency appointment arising therefrom.

The EN provides numerous examples of misleading terms such as " free service ", "60 second eligibility check ", "get rid of 85% of your debts", " we'll take care of everything " and frowns upon a quick quiz type of format to determine how easy, or otherwise, it is to access debt write-off.

The CAP interest in debt/insolvency advertising is consistent with the view that there is likely to be an increase in personal financial difficulties across the UK as challenges emerge for many people dealing with rising prices with consequent stress upon living costs. The CAP stance is to be welcomed because the Meston Reid & Co insolvency team regularly encounter individuals under financial pressure who are stressed and not sure how to react. Insensitive and inappropriate advertising does little to lower the level of anxiety, whereas a confidential chat with someone who can provide independent advice in a measured manner allows any financially challenged individual to make the correct choice that is most suitable for them.

Don't be scared to ask for advice from a known and trusted source.

Insolvency litigation : good news for the liquidator and creditors

In November 2021 a court judgement in the liquidation of PJD Limited sought to limit the recoveries in a court action to the amount required to discharge creditors and pay liquidation costs. The judgement created comment that this was unfair because, for example, what about statutory interest which is paid to creditors when there is sufficient money available, who pays the costs of pursuing the legal action, what about the various creditor claims can change over time e.g. a landlord's, and why can't one seek additional compensation and damages ?

The good news for liquidators was when an appeal judge ruled last month that the previous judgement was incorrect and hence, that an arbitrary cap on a liquidator's claim against an entity is inappropriate.

The positive upside for creditors is that future court action instigated by a liquidator is limited only to the legitimacy of the total sum sought, which may be well in excess of the deficiency reflected in the liquidated estate.

One might suggest that the ruling will focus the thinking of anyone being sued by a liquidator on the basis that an unsuccessful defence could be particularly costly, and perhaps introduce the possibility of more sensible negotiated settlements.

Another bounce-back loan fraudster jailed

Mr Zagroba, Manchester was sentenced to 24 months in prison in June 2022 because he applied to have his company dissolved in June 2022. However, less than two weeks later he applied for a bounce-back loan of £20,000. The standard bounce-back loan terms made it clear that monies should only be used for business purposes i.e. not personal benefit. Mr Zagroba admitted that he had no intention of using the bounce-back loan for business : using the money for travel, his family and to buy a car.

Also, as part of the court process Mr Zagroba was disqualified from acting as a director of a UK limited liability company for a period of seven years. Another example of someone exploiting the Covid-19 loan support mechanism and seeking to defraud the taxpayer. Quite a few more cases are being reported along similar lines as liquidation numbers increase and The Insolvency Service places a focus on those who tried to abuse both the system and taxpayers.

GDPR

The names and addresses contained on the Meston Reid & Co Insolvency Update database are used only for this communication. If you wish to be removed from such database, please e-mail ryriel@mestonreid.com.

If you wish to receive insolvency updates by email rather than post, please let Lesley Ryrie know.

Conclusion

This Update is provided for general interest purposes and does not purport to offer definitive advice. Thank you for taking the time to read this Update and feel free to pass it to anyone who you think might be interested in reading it.

Meston Reid & Co