Appendix 1

"A reader has sent me copies of the documentation Debt Free Direct (DFD) are asking him to sign to change the terms of his IVA. This includes a Deed of Assignment, which relates to PPI reclaims and a Variation in IVA conditions to adopt the 2014 Protocol. This article comments on those documents."

DFD Response:

Please ensure in the first instance that this client and any other client is referred back to our offices to discuss the specific impact on the IVA they are bound into.

There are currently two very different variation proposals circulated to our client base and the advice you have given here could be mis-interpreted to relate to both variation types – especially with reference to specific clauses, which are not mirrored in each type of variation proposal. Without knowing which variation type you have been asked to review we are in a difficult position to comment but have made some assumptions based on the statements contained in this thread. For ease of reference we shall refer to these separate proposals as variation type 1 & 2. Please advise that each client's variation proposal may be different depending on which type they have received.

The first type of variations currently in circulation with thousands of clients deals only with cases pending closure and the terms and conditions encompassed in that proposal together with the Deed of Assignment ("DOA") and the specific numerous resolutions to be approved have far-reaching implications for clients who want the immediate closure of their case – the approval of these terms and the Deed of Assignment is required to discharge the IVA – the consequences for client's opting to not consent to the terms is discussed daily with enquiries from numerous clients by our customer support teams and agents assisting us with client enquiries.

As you may have seen in the news recently, some banks are taking a year or longer to process PPI claims. The investigation of PPI claims is an obligation due under every IVA, meaning the investigations required could hold up the closure of Arrangements. An IVA cannot complete until all obligations have been complied with. The DOA being proposed as part of the variation will enable these investigations to continue post closure, satisfying the obligation due, meaning the IVA can be closed satisfactorily and the client can be discharged.

I believe from your comments that you have had sight of variation type 2, which contains an exercise to deal with closure delays to avoid this situation happening again in the future but also seeks a number of changes to terms and this approach has multiple functions. The first iteration of this proposal was issued to a group of clients prior to the end of 2013 and reference was made to Protocol 2013 as a central set of terms and conditions providing a universal approach to administering all IVAs – this is only a partial section of the changes proposed in this variation and a number of other terms are also sought for approval and will affect IVAs in a number of different ways. These are all considered beneficial to the administration of matters for client and creditors. The advent of Protocol 2014 will be dealt with later in this document.

You will not be aware that the client base at DFD has a variety of different terms and conditions impacting on their case and not all clients benefit from the Protocol framework since its first introduction in 2008. We also have clients transferred to us from other companies who have their own conditions and we also have cases subject to non-Protocol terms – in addition, every IVA can

have numerous bespoke terms and over the entire casebook it makes sense to ask creditors and clients to adhere to one single set of general terms, which will benefit everyone. There are also a number of other issues which are not catered for at all, which we are seeking to include as general terms which will also benefit all cases – the approval of the standard terms, the application of the newly introduced terms and the deed are all required to proceed. The Deed of Assignment alone does not resolve the issues at hand and your comments are incorrect in this regard as a signed Deed only functions within the revised framework and terms – in short, this approach is not provided for within existing IVAs and multiple other conditions require amendment.

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Deed of Assignment

"At the moment DFD and other Insolvency Practioners are delaying issuing a completion certificate until PPI investigations are complete, which may take some time. This Deed of Assignment gives DFD the power to collect any PPI refunds resulting from your debts, even if they are paid after the completion of your IVA. So signing this documentation should mean that you get your completion certificate sooner.

The document appears straightforward Clause 3 (indemnity) means that you should not be left out-of-pocket at all, which would include any tax implications from a refund.

The Deed of Assignment says: "I advise you to seek independent legal advice before signing below". It is not clear why this is only on the Deed of Assignment, when the implications of the adoption of the 2014 Protocol (see below) may be considerably larger for some people. In my opinion, it is not reasonable to expect people in an IVA to be able to afford to take legal advice. If DFD thinks legal advice is required, then it should be offering to pay for this advice (in the same way that an employer pays for an employee to take legal advice before a compromise agreement is signed.)"

DFD Response:

As already mentioned above the reference to Clause 3 is incorrect in terms of the alternative variation proposal in circulation at present so this information should be amended. Clients should be referred to our offices to clarify the terms they require explanation on and particular clauses that are not understood.

The relationship between DFD, the IVA Supervisor and an IVA client is not comparable to that between an employer and employee. An IVA is an agreement between the client and their creditors administered under the Insolvency Act 1986, which re-structures the client's indebtedness. The roles of the Insolvency Practitioner (IP) are firstly as Nominee for the IVA and then as Supervisor. The terms of the IVA will govern the Supervisors responsibilities and their role is to act evenly between client and creditors to make sure that the terms of the Proposal are implemented.

The IP has a regulatory duty to ensure every client receives the appropriate advice with regards their options and the terms of their arrangement, both prior to and during the term and is duly licensed to advise impartially and act objectively in terms of all aspects of the voluntary arrangement. However, neither the IP nor the IVA firm have a responsibility to fund any independent advice the client may wish to acquire. It is the client's arrangement and their decision as to whether they wish to update the terms against which it will be managed – we advise all

clients from commencement that they are entitled to acquire 3rd party legal advice in relation to their IVA at any time during the term at their discretion.

Any client wishing to seek third party advice can liaise with DFD with regards to amendments to their payment plan to fund any ad-hoc costs they may incur however, we are not required to ensure that legal advice is taken or accommodated but simply applying good practise here in reminding clients that they can seek 3rd party legal advice on legal matters not included in their paperwork previously – such as a Deed of Assignment.

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Adoption of the 2014 Protocol/Additional explanations of the secured loan change are required

"In my previous article I speculated that DFD's main interest may be resolving PPI issues as efficiently as possible so it may not be intending to change the equity release provisions of the IVAs.

Having seen all the documents, it is clear that DFD are proposing that the full 2014 Protocol is adopted, including its change to the equity release clauses. This is highlighted in DFD's cover letter: "if you are a property owner, the terms of the equity release are changed" and the booklet setting out The Standard Conditions for IVAs states in Annex 6: "Remortgage includes other secured lending such as a secured loan".

This is the standard new provision that has been brought in with the 2014 IVA Protocol. By itself it doesn't mean that DFD intend to invoke the secured loan provision, but as DFD have highlighted the equity release changes and not said that they won't invoke the secured loan provision, my working assumption is that they will use this if possible.

My previous article on the 2014 Protocol pointed out that secured loans may for some people be both easier to obtain and more expensive than a remortgage, so this change has the potential to be a significant detriment to some people with IVAs.

In my opinion, summarising the effect of the equity release changes in the cover letter as "affordable and fair" is not helpful. Instead DFD should mention the secured loan provision in the cover letter and explain more about how it might be used:

- People who have not yet reached the equity release point in the 5th year of their IVA should be given comparisons of how a secured loan as compared to a remortgage might affect them.
- People who have been unable to remortgage (including those who have completed all IVA payments) need to be told if agreeing to the Variation means that this decision will be revisited."

DFD Response:

Adoption of the 2014 Protocol, including the update to annex 6, clarifies the position with regards the 'home equity' clause during the term of the arrangement. Where obligations in respect of property have been complied with before the variation to terms takes place, no further action is necessary. In other words, once dealt with, property obligations will not be re-opened.

The clarity provided by annex 6 makes it clear that a variety of products will be considered when reviewing property obligations. Whichever of these products is chosen, the same rules and restrictions will apply to ensure any additional borrowing is affordable for the client. These rules

are clearly outlined in annex 6 and ensure, amongst other things, that the client will always retain 15% of the equity in their property.

It is worth noting that some pre-Protocol cases (cases approved by creditors before 2010) do not include the limits applied by these revised rules. Additionally, some clients, as a result of creditor modifications implemented at the initial meeting of creditors, will under the bespoke terms of their arrangement be required to release a minimum of 85% of the equity in their property or indeed sell their home if failing to release equity so they will benefit from the change of terms as will all clients who can afford to re-finance their property as part of the terms of their IVA. The terminology update in the revised Protocol (which is accepted across the industry) is not interpreted as punitive but simply provides clarification that secured borrowing includes re-mortgage, secured loans and allows for other 3rd party contributions. The terms used in previous versions do not exclude alternative borrowings as a means to complying with agreed terms and the restrictions and agreed affordability tests are built in.

We agree that a re-mortgage can often be a very expensive and have a life-long impact on a client and the revised wording simply clarifies that secured borrowings of all types are permitted but previously would have also been considered anyway. A client who cannot afford to release equity by whatever means will not have detriment here and your comments regarding the expense of a secured loan Vs a re-mortgage are not based in facts provided by specialists in this area.

Every IVA is considered on its own merits and where equity release is an issue for some this is covered in DFD proposals through bespoke obligations in any case and specific wording in creditor modifications can also be applied to thousands of different cases so your generalisation that this is an 'unfair' change is somewhat misleading for clients who will undoubtedly benefit and we cannot provide a statement amending the terms of the 2014 Protocol in regards to one specific clause. The conditions are already in place to protect against affordability issues and rules govern the application of the equity release, there is no guarantee that secured loans under the rules of affordability will be a more available product than a re-mortgage as more specialist lenders are entering the market so multiple options are beneficial and we will always rely on the advice of an independent broker or specialist to appraise the circumstances.

Annex 6 also has caps around the amount by which secured borrowing repayments can increase, the maximum term a secured loan product can run to and outlines the alternatives that can be offered in the event a remortgage or alternative secured lending product is not possible. As such the update to 2014 terms and conditions provides a considerable benefit for some clients.

We strongly refute the comments on your website that we are involved in the provision of any lending secured or otherwise and we do not under any circumstances offer such services nor are we attempting to change the terms and conditions of thousands of IVAs for this purpose. We retain the services of 3rd party agents to carry out appraisals and property evaluations and to advise clients on products available and to assist them in dealing with this specialist area of lending at no cost to the client.

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"Some recipients are saying that the documents are difficult to understand. One document is out of date and a separate letter explains that "any references to 'Standard IVA Protocol 2013' should be read as Standard IVA Protocol 2104; any references to terms and conditions 2012' should be read as Protocol terms and Conditions 2014; Any references to 'Standard Terms and conditions issued in July

2012' should be read as Standard Terms and Conditions Issues in January 2014." As there are material differences between these documents, this seems to me to be confusing and undesirable.

DFD Response:

We are a little confused by your statement suggesting that multiple clients have asked for advice when the beginning of your article suggests that you have been asked to review these documents for one 'reader' who has submitted papers to you.

The misunderstanding regarding the update to terms and conditions is unfortunate and DFD extends its apologies for any confusion caused and has taken extensive steps to re-issue documentation and offer explanations on the revised Protocol 2014 terms. This came about as a result of the 2014 update to the Protocol terms and conditions being released to the industry in January 2014. Unfortunately our projects had already commenced and both types of variation proposals had been released to clients. The impact of this was beyond our control as it came after the first draft of notices had already been sent to a significant batch of clients indicating that the most recent version of the IVA Protocol would be recommended in variation proposal (type 2) in November 2013. Clearly when the revised version of terms was reviewed it was our decision that in the best interests of all we had to stop the project and re-issue documents to ensure that an explanation of changes was given to those who had received a copy of the previous Protocol terms. We do not agree that the covering letters are confusing and other explanatory measures have been taken to broaden attention to changed terms.

As the 2014 terms and conditions provided additional clarity and particularly with reference to the equity release clauses compared to the 2013 version, the decision was taken to notify all clients that the 2014 version was to be used, subject to creditor approval, to determine the standard frame of references for Supervision of the arrangements for the remainder of their term.

We note that you have not made reference to the other changes to technical terms in the 2014 version, which are also important for clients to note and understand and once again we encourage clients to contact us directly or speak to our agents about how these revised terms affect their case as the equity clause represents only one of the beneficial changes. We have made every effort to highlight and simplify how the client's attention can be drawn to such changes.

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Do you have to agree to these changes?

"No. You don't have to sign the Deed of Assignment nor agree to the Variation of IVA Terms. If you do not, your IVA will continue on the current terms. It may be that you will have to wait a while after making your last IVA payment to get your completion certificate, but you may feel that this isn't important for you."

DFD Response:

Given what we have said above it could be very misleading for clients who are party to variation type 1 or type 2 and must sign up to all terms and sign a Deed in other to complete their IVA expediently – as already stated the Deed alone is not sufficient. You are also not fully versed on

how these widespread changes in both versions impact the client's particular case so giving a narrow interpretation simply about the closure of IVAs and completion certificates being the only detriment here is inappropriate. There are multiple benefits and consequences of not consenting to the changes and we have proposed these changes with the interests of both creditors and clients in mind as is our duty.

"If I was asked to sign these documents, I would be happy to sign the Deed of Assignment. But if I had a house I would not agree to the variation of my IVA terms unless DFD were prepared to assure me in writing that I would not be required to take out a secured loan."

DFD Response:

As stated above you are not fully versed on the impact of changes to each person's case and being a property owner is not the only issue dealt with by the changes impacted in both sets of variations. You are not privy to terms and conditions affecting IVAs as they stand and you have commented on only one change brought about by Protocol 2014 rather than the multiple benefits this framework brings to thousands of clients. Additionally the other non–Protocol terms not mentioned at all to be changed will improve administration and give the clients and the Supervisor more flexibility whilst assuring creditors that their rights under the legal arrangement are not being infringed and encouraging wide-scale acceptance to a more universally accepted framework for all.

You have also inferred that the changes to the equity release clause are detrimental without any reference to the rules and restrictions on affordability built into the application of the clause and you are not sufficiently well informed on the aspect of equity terms in non- Protocol IVAs or specifically modified cases which affect property owners and those that will benefit from the change in terms, therefore your comments here could be damaging to those clients. We cannot issue a statement changing the terms of the Standard IVA Protocol as issued by the IVA Forum and where a client cannot afford to release equity under the terms of the equity clauses they are not required to do so – this is an 'equity release' term and not a 're-mortgage' term only.

"I cannot give you advice on whether to sign these documents: I am not a lawyer; the documents I am looking may not be identical to yours; I do not know the terms of your IVA; and I do not know anything about your financial circumstances. In other words, I hope you find this article informative but it is not legal advice and the conclusions that I draw may not be appropriate for you."

DFD Response:

We feel this disclaimer should be inserted at the top of your website or blog in reference to these variations and very specific attention should be drawn to lack of information at your disposal. We would also strongly encourage you to re-direct queries to our offices using the contact details given so we can ensure that clients are fully versed on changes and make informed decisions affecting their cases rather than relying on the advice and recommendations given here and then disclaimed in the final paragraph.

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