ICAS Response to Financial Conduct Authority Consultation “Our Future Mission”
**Background to ICAS**

ICAS received its Royal Charter in 1854 and is the oldest professional body of accountants in the world. We were the first body to adopt the designation “Chartered Accountant” and the designatory letters “CA” are the exclusive privilege of Members of ICAS in the UK.

ICAS is a professional body for over 21,000 members who work in the UK and in more than 100 countries around the world. Our CA qualification is internationally recognised and respected.

ICAS hold a number of statutory recognitions in the United Kingdom. We are recognised as:-

- a Designated Professional Body for incidental investment business and consumer credit regulation,
- a Recognised Supervisory Body for statutory audit in UK and Ireland and local public audit in England;
- a Recognised Professional Body for insolvency licensing and regulation;
- An Approved Professional Body for the ATOL supervisory regime.

As the ICAS Charter requires, we act in the public interest and our proactive projects, and responses to consultation documents, are therefore intended to place the general public interest first, notwithstanding our Charter requirements to represent and protect our Members’ interests.

We consider the public interest in this instance to be ensuring that the Financial Conduct Authority's ('the FCA's') mission is clear and focusses resources and priorities to achieve its three objectives of:

- protecting consumers;
- protecting the integrity of UK markets; and
- enhancing competition.

This consultation is of particular relevance to ICAS given the role our accountancy firms and insolvency practitioners have in providing financial services and consumer credit-related services respectively to members of the public.

**Executive summary**

We have limited our consultation response to focus on a small number of issues that are of particular concern to our firms, and which directly impact their clients, these are:

(a) **Consumer Credit Regulation: The Insolvency Exclusion**

We consider that the FCA, in considering its mission, should take the opportunity to re-consider, in conjunction with the Government, its approach to consumer credit regulation in relation to Insolvency Practitioners (“IPs”) and specifically, the Insolvency Exclusion. This is of particular importance in Scotland in relation to Debt Arrangement Schemes (DAS), as explained later in our response, and to bankruptcies in England and Wales (and to a lesser extent also in Scotland). Failure to address this issue will result in IPs being ‘dual or triple-regulated’, and possibly relinquishing their authorisations, leading to the following unintended consequences:-

- a reduction in the availability of holistic debt advice from qualified and already highly regulated debt professionals, and will therefore be to the consumer detriment; and
- a reduction the choice in the market place;
- limited FCA resources being used in regulating firms which do not pose a regulatory risk.

(b) **Wider implications: entity based regulation**

We consider that the FCA, in considering its mission, should take the opportunity to re-consider the entity based approach to financial services and consumer credit regulation whereby a professional firm requiring FCA authorisation for one regulated activity cannot avail of their professional membership body’s DPB regime, as explained later in our response.

The FCA should take the opportunity to address any undue regulation, so that professional firms should not be brought within FCA scope for incidental activities where they are otherwise appropriately regulated by their professional body. Any other approach is not a good use of the FCA's resources, and may result in firm’s giving up such activities, thus limiting consumer choice.
The issues in a) and b) are related.

Whilst these issues may not fit directly into the questions raised in the consultation they are closely related to a number of points raised more widely in the consultation paper. We consider that they directly impact on two of the FCA’s main objectives of consumer protection and enhancing competition.

Whilst we realise that the population of accountancy firms and insolvency practitioners affected is small in comparison to the overall regulated population we consider, nevertheless, the FCA has an opportunity to positively deliver two of its objectives of consumer protection or encouraging competition in relation to our profession. Added regulation is not delivering on this objective.

**Detailed Response**

**Q7:** Do you think our intervention framework is the correct one?

**(a) Insolvency Exclusion**

**Key issue:** We consider that the FCA, in considering its mission, should take the opportunity to re-consider, in conjunction with the Government, its approach to consumer credit regulation in relation to Insolvency Practitioners (“IPs”) and specifically, the Insolvency Exclusion. This is of particular importance in Scotland in relation to Debt Arrangement Schemes (DAS), and in England and Wales in relation to bankruptcy, as explained below. Failure to do so will continue to result in IPs being ‘double or triple-regulated’ which is already pushing a number of IPs out of the market, similar to what happened to accountancy firms involved in financial services post N2. Failure to address this issue will result in

- a reduction in the availability of holistic debt advice from qualified and already highly regulated debt professionals, and will therefore be to the consumer detriment; and
- a reduction the choice in the market place;
- limited FCA resources being used in regulating firms which do not pose a regulatory risk.

When consumer credit regulation was transferred to the FCA from the OFT on 1 April 2014, a regime change took place for Insolvency Practitioners. Whilst there was previously an insolvency licence which allowed IPs to conduct a wide range of consumer credit activities, this was replaced by a more limited insolvency exclusion, with any IPs conducting work outside this exclusion potentially needing to consider full FCA authorisation.

The insolvency exclusion allows an IP to conduct debt adjusting, debt counselling, debt administration and debt collecting when formally appointed as an Insolvency Practitioner under S 388 of Insolvency Act 1986, or conduct debt counselling, debt adjusting or credit information services in reasonable contemplation of being appointed under S 388. Advice in relation to debt solutions not included in S 388 would not be covered by the exclusion. This includes non-statutory debt solutions such as debt management plans, considered an area of key risk to the FCA, but also included a number of statutory debt solutions outwith S 388, including the Debt Arrangement Scheme (“DAS”) in Scotland.

The FCA’s interpretation of “in reasonable contemplation” effectively means that an IP may only provide advice where there is a strong possibility that the IP will be appointed. In England and Wales, advice to debtors pre bankruptcy may also not covered by insolvency exclusion, given there is no reasonable contemplation that the adviser may be formally appointed. Similar issues also apply in Scotland where (mainly for commercial reasons) the adviser may decline to be appointed in the bankruptcy as trustee but the Accountant in Bankruptcy could be appointed as trustee.

Any activities not covered by the exclusion require FCA authorisation unless the firm can avail of the restricted Designated Professional Body regime which is operated by a number of professional bodies, including ICAS. The DPB regime is, however, limited to advice which is incidental to other professional services being provided and would not apply in situations where the debtor has only come to a firm for debt advice and not for any other professional services, a commonplace occurrence.
This has had widespread implications for debtor access to debt advice (and subsequently gaining access to debt solutions). In Scotland, this is particularly an issue given that advising on, arranging, or administering DAS are not included within the insolvency exclusion forcing IPs into requiring full FCA authorisation or choosing to no longer operate in this area.

DAS is the preferred debt solution for the Scottish Government as it results in full debt settlement to the creditors.

Access to debt advice is a key priority of the Scottish Government's policy to assist individuals facing financial difficulties, many of whom are the most vulnerable in society, with The Bankruptcy (Scotland) Act 2016 requiring debtors to be provided with debt advice from an IP or approved Money Adviser. Debtors should be provided with advice which considers all appropriate debt relief and debt management solutions appropriate to their circumstances including DAS.

Whilst it is understood that certain debt management plans can be highly risky, DAS schemes are not, and are, in any case, highly regulated by the Accountant in Bankruptcy.

Firms requiring FCA authorisation become triple regulated by the FCA, the Accountant in Bankruptcy and the relevant insolvency licensing body, such as ICAS. This goes against the principals of Better Regulation.

Already, a number of IPs have taken the decision that they do not want to be subject to multiple layers of regulation and avoid DAS work, thus reducing the availability of advice to consumers and reducing competition in the market place. IPs are highly qualified persons who have passed insolvency examinations (which may include examination of their knowledge of non statutory debt solutions), are bound by ethical and technical standards, and can provide far wider advice than other, less qualified, debt advisers. This narrowing in the market place is not in the public interest.

(b) Wider implications: entity based regulation

Key issue: We consider that the FCA, in considering its mission, should take the opportunity to re-consider the entity based approach to financial services and consumer credit regulation whereby a professional firm requiring FCA authorisation for one of these areas, requires FCA authorisation for the other area and cannot avail of their professional membership body’s DPB regime, as explained further below. Failure to address this issue for the professions results in a number of firms being brought within FCA scope for incidental activities which would have otherwise been regulated by their professional body. This is not the best use of the FCA’s resources, and will result in firm’s giving up such activities, thus limiting consumer choice.

From 1 April 2014, consumer credit regulation was brought into the remit of the FCA via amendments to FSMA. This resulted in an entity based approach to regulation whereby if a firm required FCA authorisation for investment business it would need to obtain FCA authorisation for any consumer credit activities as well, and vice-versa.

Whilst this has little to no impact for actively authorised financial services firms, this has a large impact for professional firms whose regulatory bodies operate DPB regimes.

Post 1 April 2014, a number of our firms which previously held a DPB licence for restricted incidental financial service activities, such as corporate finance, were no longer allowed to do so, when they required to become authorised for consumer credit activities due to the insolvency issues highlighted in point (a) of our response. The wording of FSMA required such firms to apply to include both financial services and consumer credit within FCA permissions. Thus, whilst these firms are not conducting any mainstream financial services, they now find themselves subject to FCA regulation.

The professional regulatory framework in the UK should be more cohesive. The FCA and the professional accountancy bodies ought to be able to function in a complementary manner. Otherwise, the FCA may find itself promoting dual-regulation (from both the FCA and ICAS), which goes against the principles of Better Regulation, and results in the FCA increasing its scope unnecessarily. Without enhancing resources, the FCA would need to carefully consider priorities, with either existing resources being diverted to lower risk firms, or less attention is given to these activities
than would have been actively regulated by the accountancy bodies. Without an environment where the professional bodies and FCA and constructively work together (in complement to one another), there is greater risk of consumer detriment.