moneyadvicescotland
Scotland's Money Charity

EVIDENCE BASE 2017/18

JUNE 2018

INTRODUCTION

Money Advice Scotland is keen to ensure that the views and concerns of our members, partners and supporters feature prominently on the social policy agenda. To that end, in 2017 we launched the Money Advice Scotland Evidence Base: an online social policy reporting tool designed to capture the pressing social policy issues impacting consumers in Scotland. The report which follows sets out the first annual summary of submissions to the Evidence Base.

The Evidence Base was designed to offer the advice sector a platform for flagging up issues that are causing clients detriment, and the voices of our members are featured throughout. As well as representing the first-hand experience of money advisers, the report also contains a series of recommendations for policymakers. Frontline workers are often a barometer for emerging issues, and policymakers will benefit from drawing on this knowledge and experience.

For this report, we have identified four main themes which reflect the concerns of the majority of submissions we received. We anticipate that money advisers will recognise many of these concerns, and we encourage further submissions to help us build the case for change. However, the list is far from exhaustive and we rely on the first-hand experience of our members to act as a gauge for the issues and concerns that are causing harm. The tool is designed to be as concise and simple as possible and should take no longer than 10 minutes to complete.

It is clear from submissions to our Evidence Base that advice services are encountering clients in ever more complex circumstances. The proportion of clients with priority debts is on the increase and this brings added urgency as well as limiting options for people in problem debt.

This shifting profile of people in debt comes at the same time that advice services are overstretched and underfunded. The recent Wyman review of debt advice funding suggested that demand currently outstrips supply by 50%. In Scotland, local authority investment in money advice services dropped from £21m in 2014/15, to £11.7m in 2016/17. Alongside the seemingly perpetual review of funding arrangements, this decline has contributed to the sense that the impact of advice has been undervalued.

We hope that this report serves as a reminder of the invaluable work that is being undertaken throughout the advice sector. As an overarching recommendation, we call on the Scottish Government to consider all options available to help ensure that debt advice is adequately funded so that the sector can continue to provide essential support to the rising growing of people who need it.

Given the increasing pressure on adviser workloads, we want to thank everyone who took the time to respond to requests for submissions. What is asserted without evidence can be dismissed without evidence, and our policy work is enhanced immeasurably by the input and insight of our membership. We hope that policymakers will take note of the fact that advisers have taken the time to share these concerns.

Our strategic plan for 2018-23 sets out a new vision of a fairer Scotland where people are not stigmatised by debt. The recommendations to policymakers within this report are designed to go some way to achieving that aim. For our part, we will work to be an effective advocate for the sector as we continue in our mission to be the driving force towards financial wellbeing for the people of Scotland.

SUMMARY OF RECOMMENDATIONS

This report sets out a series of recommendations to policymakers based on submissions to our Evidence Base

- We call on the Scottish Government to consider all options available to help ensure that debt advice is adequately funded, so that the sector can continue to provide essential support to the growing number of people who need it
- We call on the AiB, the FCA, and relevant RPBs to take action to address the growing numbers of clients in trust deeds when other options are more suitable
- We call on the FCA to undertake a review on the sale of products linked to PTD (such as early exit loans and life insurance) with the view of determining whether these practices are leading to unfair consumer outcomes
- We call for a sensible approach to evidence requirements that recognises the difficulty of verifying all expenditure
- We propose a review of income disregards for certain income sources, including: student bursary, child maintenance and the newly devolved Scottish Government benefits
- We call for a full review of alternative approaches to calculating contributions for debt solutions, and advocate the introduction of a new minimum income/living standards check on all financial statements
- We call on the Scottish Government to undertake an equivalent review to that which is underway in England and Wales, and to consider adding the DMHEF to the list of prescribed medical certificates
- We call on the Scottish Government to work with the British Medical Association (BMA) to provide clarity around the DMHEF to health professionals
- We support calls made by Money and Mental Health for the simplification of the DMHEF to help allow clearer and earlier identification of mental health problems
- The AiB should liaise with credit reference agencies to ensure that DAS is accurately recorded on credit reports. In the interim, Money Advice Scotland will create and circulate a template notice of correction letter to allow money advisers to challenge individual cases
- We call on the AiB to convene all relevant stakeholders – including the advice sector, Payment Distributors, UK Finance and other trade associations – to find a resolution to the current discrepancies with outstanding DAS balances

PROTECTED TRUST DEED

In 2017/18, the number protected trust deeds (PTDs) increased to 5,963 and remained the most popular formal debt solution in Scotland. While other statutory debt options are in decline – applications to the Debt Arrangement Scheme (DAS) have dropped by 44% since 2014/15 – the trust deed market is growing.

Protected trust deeds are a good option for people with unmanageable levels of debt and little prospect of repaying within a practicable timescale. However, it is evident from submissions to our Evidence Base that a number of people are in trust deeds when other options may be more suitable. When things go wrong, we have encountered evidence to show that in many instances the free advice sector – already overstretched and underfunded – is left to pick up the pieces.

Lead generators

A large amount of anecdotal evidence suggests that the uptick in PTD numbers is at least in part driven by lead generators, who can earn up to £2,000 for each referral. We were made aware of cases where this process failed to capture a full picture of a client's circumstances, leading to potential detriment.

> After being contacted by a lead generator, a 76 year-old client agreed to a trust deed proposal of 48 monthly payments of £183. The client had debts of £15,000 and his income comprised solely of state pension and DLA. The letter from the firm suggested that the client would make potential savings of more than £6,000 by opting for the trust deed.
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> The client visited a CAB for advice relating to benefits when the debt issue arose in conversation. The adviser explained all available debt options. The client was eligible for the Minimal Asset Process (MAP) route into bankruptcy which meant that, after paying a £90 application fee, all debts were written off and he was discharged after 6 months.

Early exit loans

We are concerned at reports of early exit loans from PTD that end up costing more than a client's remaining payments. The advantages to clients are typically framed as lower monthly repayments (albeit over longer periods) and the opportunity to rebuild a poor credit rating.

In our view, the benefits to the client are questionable at best. We are concerned by practices wherein the total amount repayable under the early exit loan far exceeds the remaining trust deed payments. A potential conflict of interest may also arise, since it is typically the trustee who introduces the client to the lender.

> With one year of the trust deed left, the trustee introduced the client to a company that specialises in lending to customers who are in an IVA or trust deed. The benefits to the client of exiting the trust deed early were stated as a decrease in monthly payments and the opportunity to start to rebuild her credit rating.
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> Accessing the early exit loan extended payments to 10 months beyond the expected trust deed completion date. Rather than completing the trust deed with total payments of £1200, the total amount repayable under the loan is £2162.83 including interest and charges – an additional cost to the client of £962.83.

The number of cases reported around trust deeds and early exit loans remains relatively low, but the practice merits closer attention. In certain circumstances, it will be appropriate to bring cases to an early closure, but we are unconvinced that there is any place for early exit loans within the trust deed market.

On the issue of unsuitable products, we are concerned by the practice of trustees selling life insurance as part of the PTD. In many cases, the policies are inappropriate, with few or no checks on existing conditions. We have also heard reports of cases where any potential pay-out covers the costs of the trustee's fees only, rather than being paid towards the debts or to surviving family members.

Unsuitable trust deeds

Previous analysis has identified high PTD failure rates with some firms refusing to discharge individuals in up to 88% of cases. It is worth noting that in these cases, any payments made by the client are typically swallowed up in fees to the trustee, rather than being paid to creditors. In many of the examples submitted to our Evidence Base, it was also questionable whether PTD was the correct solution at the outset in any case due to the absence of realistic affordability checks and the failure to advise of all options.

"Analysis indicated client could not afford a trust deed as she had insufficient disposable income. Trust deed is now cancelled, but not before we had to complain to trustee to get wage arrestment stopped.

"Overall, the client has paid £100 a month for 3 years – none of this money has gone to creditors, only to the trustee. Debts still exist as trustee discharged, but debts didn't. We will likely to proceed to bankruptcy but you do wonder why this was not solution in first instance."

It must be emphasised that these practices are limited to a small minority of firms. As well as damaging the reputation of good insolvency practitioners and PTD as a product, failures within the market also lead to pressure on the free advice sector.

Analysis from the Improvement Service shows that local authority investment in money advice services has been devastated in recent years, decreasing from £21m in 2014/15 to £11.7m in 2016/17. This comes at a time when the independent review of debt advice undertaken by Peter Wyman called for a 50% increase in the supply of debt advice across the next two years to meet existing demand. Against this backdrop, it is clear that the free advice sector lacks the capacity to handle second-hand cases.

"We're not doing debt advice any more. We're fixing other organisations' debt advice instead."

Recommendations for policymakers

Submissions to our Evidence Base highlighted a number of concerns that require closer scrutiny.

- We call on the AiB, the FCA, and relevant RPBs to take action to address the growing numbers of clients in trust deeds when other options are more suitable
- We call on the FCA to undertake a review of the sale of products linked to PTD (such as early exit loans and life insurance) with the view of determining whether these practices are leading to unfair consumer outcomes

FINANCIAL STATEMENTS

Financial statements are used to determine a person's repayments to their debts. In Scotland, anyone in a statutory debt solution (and many informal agreements) to repay debts will first complete a financial statement – effectively an income and expenditure form – with a money adviser or trustee.

In Scotland's statutory solutions, 100% of a household's surplus income is taken as the contribution to repay debts. A savings/contingency buffer is permitted, but limited to 10% of surplus income and capped at a maximum of £20 per month.

This is not the only cap, and limits are put on many items of expenditure. Certain spending categories such as rent are classed as essential – this means that there are no caps on spending as long as evidence is provided. However, for other categories, spending guidelines known as "trigger figures" are applied.

Evidence requirements

In cases where a trigger figure is breached, a money adviser or trustee can provide additional evidence to the AiB to explain the expenditure.

That said, Money Advice Scotland members reported to our Evidence Base that the evidence requirements in cases where trigger figures are breached can be excessive.

Examples of this included an elderly disabled client who was challenged on the cost of incontinence pads, and a part-time student whose expenditure on public transport to visit his children was considered too high.

> A client on a low income and with mental health problems completed a financial statement with an adviser. After submitting the case to the AiB, the client received a letter which asked to explain various items of expenditure that were considered excessive.
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> The client (who has anxiety) was taken aback by the long list of evidence requirements and became convinced that this information was being sought in order to evict her from her tenancy. The client subsequently dropped out of the advice process.

When more information is required, a letter is issued directly to the client. In some cases, this causes unnecessary stress, particularly where the differences are significant. In these cases, the client will typically contact the adviser in a panic who will then get back in touch with the AiB to remedy any discrepancies.

We cannot lose sight of the fact that the majority of people entering into bankruptcy are on low incomes. The average net household income for a MAP application in 2016/17 was just £1,035 per month. Our members report a surge in what we refer to as living cost debts: people who are falling behind on essential bills such as rent, council tax and fuel bills. When people turn to consumer credit, it is often because they have few other options in the wider context of rising prices and stagnating incomes.

As the profile of people in debt changes, the system must flex to take account of this and find a better balance. This may also ease the workload pressure on advisers, trustees, and staff at the AiB.

An adviser submitted a MAP application. The client had no surplus income, lived in social housing with a non-dependent adult child and earned a little over £1,000 per month. As a MAP bankruptcy, the client pays a £90 application, all debts are written off and discharge occurs after 6 months.

Soon after submitting the application, the client received a letter advising that unless she provided further evidence within 21 days, bankruptcy would be awarded with a contribution fixed at more than £600 per month for 48 months.

After the adviser got in touch with AiB to contest the assessment, the award was revised back down to a nil contribution.

Treatment of income

Concerns relating to financial statements typically focus on evidence requirements for expenditure, but reports to our Evidence Base also flagged problems around the treatment of certain sources of income. Regulations and guidance state that a contribution cannot be taken where a person's sole income comes from state benefits. However, advisers suggested that the current list of exemptions is insufficient.

In 2017, guidance was changed, without consultation or engagement, to allow a contribution to be taken from students in receipt of a bursary, even if this is their only source of income. This decision prompted criticism from the advice sector and NUS Scotland.

Members also raised concerns about the treatment of support received from charities. An adviser raised the case of a MAP client who receives a monthly charitable contribution for families in severe financial difficulty. The financial statement shows no disposable income, but the AiB took the view that a contribution can be made from charitable payments if the payments are paid direct to the client. A strict reading of regulations and guidance often leads to harsher outcomes for people in debt.

Recommendations for policymakers

Financial statements form the central pillar of the advice process, but it is clear from submissions to our Evidence Base that further improvements are necessary.

- We call for a sensible approach to evidence requirements that recognises the difficulty of verifying all expenditure
- We propose a review of income disregards for certain income sources, including: student bursary, child maintenance, and the newly devolved Scottish Government benefits
- We call for a full review of alternative approaches to calculating contributions for debt solutions, and advocate for the introduction of a new minimum income/living standards check on all financial statements

DEBT AND MENTAL HEALTH EVIDENCE FORMS

The Debt and Mental Health Evidence Form (DMHEF) was developed following collaboration between the Money Advice Liaison Group (MALG) and Chris Fitch to simplify and standardise the process of securing medical evidence for people in problem debt.

When the DMHEF is completed by a health professional, creditors will often suspend recovery action, freeze interest and charges, allow debts to fall into abeyance, or in some cases, write off debts altogether. One in four people with a mental health problem is also in debt, and the DMHEF is an important tool to help advisers to demonstrate this connection.

Charges for completing the DMHEF

In 2016, the Money and Mental Health Policy Institute (MMHPI) launched the “Stop the Charge” campaign after finding that three out of ten of people with mental health problems who had seen a health care professional in the last 24 months were charged up to £150 to provide this evidence. Money and Mental Health found that charging for the form risks exacerbating mental health problems at a time when people are already extremely vulnerable.

Money Advice Scotland were supporters of the original campaign which set out the case for stopping charges for the DMHEF. In England and Wales, the Department of Health is currently undertaking a review of GP charges for mental health patients. In the interim, people with problem debt continue to face barriers when attempting to prove mental health conditions.

Submissions to our Evidence Base highlighted concerns around low response rates to requests to complete the DMHEF. Advisers also raised concerns about medical professionals completing the form with little or no supporting text, or alternatively sending out a full medical history printout, but declining to complete the DMHEF. Where the form was returned completed, advisers were often given no notice of a charge until an invoice was received.

If people are in problem debt, it should be of no surprise that a fee for the DMHEF is unaffordable and that other essential costs will be forsaken to meet the charge. It is also worth noting that advice agencies – already stretched by falling investment from local authorities – have no budget allocation to meet the costs of requesting the DMHEF.

No DMHEF means fewer options for clients

Advisers submitted reports to our Evidence Base where the failure to obtain a completed DMHEF had restricted the options available towards addressing problem debt with clear repercussions for the client's mental health recovery.

“I have a client who suffers from prostate, colon and bowel cancer. In addition to this he was previously admitted to hospital after a nervous breakdown. He has poor mental health and continues to receive psychiatric treatment.

“The client is being pursued by sheriff officers for Council Tax arrears from a previous address. Due to his mental health, I sent an application for severe mental impairment for Council Tax, and the DMHEF to his GP. The forms were returned incomplete, with the GP billing us £25 and advising that he will supply information after assessment.

“It's back to the drawing board now – I have requested the accounts are put on hold for 8 weeks which is now exhausted and he's no further forward in trying to deal with the debt.

"We can hopefully try again through another medical professional. It's either that or offer token payments."

Inconsistent application by creditors

We also heard examples where the same form prompted inconsistent responses from creditors. One adviser highlighted an example where the same DMHEF prompted three creditors to write off a combined balance of £22,000, but one remaining creditor declined to write off a credit card balance of £2,500. This means that the client will likely opt for bankruptcy. Moreover, the impact on the client's mental health (and the adviser) is clear:

"It is noticeable that he is much harder to contact and I'm worried that moving forward with the complaint is going to be worse for him than letting it go now. I'm caught between wanting to chase him up, knowing that might trigger his anxiety more, so need to give him space."

Again, it must be emphasised that advisers were very positive on the benefits of the DMHEF process, and that minor tweaks could lead to big differences for some of the most vulnerable in society.

"I think that the forms are great. We need a better understanding on the part of medical professionals of the effect even minor debts have on mental health problems and that not dealing with the debt effectively can either block recovery entirely of at least make it harder to achieve."

"As for creditors it is definitely a training issue as most creditors have a specialist department that once you get to speak to them are very understanding and well-trained. The problem is that their contact details are usually difficult to get hold of and there is a lot of call centre tennis with general customer service staff."

Recommendations for policymakers

It is clear from submissions to our Evidence Base that the DMHEF is an excellent resource within an adviser's toolkit to support vulnerable clients with mental health problems, but it could work better.

- We call on the Scottish Government to undertake an equivalent review to that which is underway in England and Wales, and to consider adding the DMHEF to the list of prescribed medical certificates
- We call on the Scottish Government to work with the British Medical Association to provide clarity around the DMHEF to health professionals
- We support calls made by Money and Mental Health for the simplification of the DMHEF to help allow clearer and earlier identification of mental health problems

DEBT ARRANGEMENT SCHEME

Scotland remains the only part of the UK to have a statutory debt management plan. The advantages of the Debt Arrangement Scheme (DAS) are clear: protections are increased for people in debt as interest and charges are frozen.

Creditors are also notable beneficiaries of DAS; in 2016/17, £37.3m was repaid to creditors through the statutory scheme, compared to £29.4m through protected trust deed, and £17m through bankruptcy.

In March 2018, the AiB published a paper setting out new proposals to improve and enhance DAS. This includes the removal of the 100% surplus income requirement and a relaxation of access to credit within a debt payment programme (DPP).

The announced changes are welcome and may help reverse the 44% decline in approved DPPs between 2014/15 and 2017/18. Nonetheless, submissions to our Evidence Base highlighted areas where further improvements related to DAS are considered necessary.

DAS recorded incorrectly on credit files

It cannot be emphasised enough that DAS is a voluntary debt management plan, rather than an insolvency solution. Certain professions have strict rules that preclude employees from entering insolvency products and, as a result, many people opt for a debt payment programme (DPP) under DAS instead. Despite this, submissions to our Evidence Base highlighted cases with clear detriment for the person affected due to the inaccurate recording of DAS by certain Credit Reference Agencies (CRAs).

> A client currently making payments as part of a DPP under DAS applied for a new job with a financial services firm. As part of pre-employment screening, the potential employer conducted a check with a credit reference agency (CRA). The CRA report showed a CCJ and an IVA against her name.
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> When she challenged this, the CRA acknowledged that her DPP was neither a CCJ nor an IVA, but that DAS had to be marked in some way on her credit file. The client was unsuccessful with her job application.

It is debatable whether DAS should feature on a credit file at all – especially in cases where a person has not defaulted on debts before entering a DPP. For this to be marked incorrectly as debt solutions and court actions that do not apply in Scotland is a failing that demands a long-term remedy. In our view, it is wholly unfair that the incorrect recording of a voluntary debt management plan should hinder a person's career prospects.

We heard examples from advisers where challenges had prompted corrective action from CRAs.

> "I have been dealing with an old client of mine who is in a DPP and was denied a remortgage due to DAS showing on her credit file as an insolvency. We submitted a notice of correction and the credit reference agency confirmed that they will update the file for lenders attention which will hopefully assist. It can be worthwhile challenging this."

This is a temporary fix, however, and individuals and advisers should not have to correct something that is factually wrong in the first place. The new General Data Protection Regulation (GDPR) also sets out a strengthened accuracy principle that should demand swift action to resolve this failing.

Discrepancies with DAS balances

Advisers identified problems wherein the balance provided by the DAS Payments Distributor is out of sync with what creditors claim is outstanding. We received examples of cases where the value of the discrepancy exceeded £1,000. In many cases, the debt balance varied by more than 100%. More often than not, any divergence was to the detriment of the person in debt rather than the creditor.

This is of particular concern in cases where a client may now be in a position to make a full and final settlement.

> "When negotiating full and final balances some creditors will accept, say, 50%. But that is of their balance which is often a lot higher than the figures I am working with as confirmed by the payment distributor."

Conflicting balances can cause disputes at the end of the DPP, where a person is being pursued for the perceived shortfall. Again, this undermines one of the key benefits of DAS: this option should allow full repayment of debts whilst ensuring safeguards against further recovery action.

Reports to our Evidence Base suggested that the opportunity to pick up on discrepancies at an early stage is lost, because a client does not receive a regular statement of what they have paid. Advisers also noted difficulty in securing resolution to disputes, with neither the AiB nor the Payments Distributor accepting responsibility for addressing discrepancies.

Recommendations for policymakers

We are of the view that changes announced to DAS will make the option a more attractive product for people in problem debt. As part of this aim to make DAS fairer, further improvements can still be made.

- The AiB should liaise with credit reference agencies to ensure that DAS is accurately recorded on credit reports. In the interim, Money Advice Scotland will create and circulate a template notice of correction letter to allow money advisers to challenge individual cases
- We call on the AiB to convene all relevant players including the advice sector, Payment Distributors, UK Finance and other trade associations – to find a resolution to the current discrepancies with outstanding DAS balances

About Money Advice Scotland

Money Advice Scotland is Scotland's Money Charity.

Our mission is to be the driving force towards financial wellbeing for the people of Scotland.

Our vision is for a fairer Scotland where people are not stigmatised by debt.

If you have any questions about this paper, please contact david@moneyadvicescotland.org.uk.

Please visit www.moneyadvicescotland.org.uk/content/evidence-base to make submissions and report any concerns or case studies to our Evidence Base.