moneyadvicescotland
Scotland's Money Charity

# RESPONSE

## DEBT ARRANGEMENT SCHEME (DAS) REVIEW 2016

**May 2016**

## About Money Advice Scotland

Money Advice Scotland is the national umbrella organisation in Scotland which promotes and champions financial inclusion and the development of free, independent, impartial, confidential money advice. Our mission is to be the driving force towards financial wellbeing for the people of Scotland.

### Introduction

Money Advice Scotland welcomes the opportunity to respond to the Accountant in Bankruptcy consultation on the Debt Arrangement Scheme.

To help prepare this response, Money Advice Scotland conducted a survey of its members, staff and Council of Management. Respondents including money advisers from local authorities, Citizens Advice Bureaux, housing associations and other advice agencies.

Our membership deals primarily with individuals so we have not provided a response for the questions on the Business DAS.

### 1. MONEY ADVISER'S FEES

**Question 1(a): Should the continuing money adviser's fees for setting up and administering the DPP be disclosed in the DPP proposal?**

Our respondents agreed that the continuing money adviser's fees for setting up and administering the DPP should be disclosed in the proposal.

### 2. JOINT DEBT PAYMENT PROGRAMME

**Question 2(a): Has removing the need for two debtors being jointly and severally liable for a debt made it easier for couples to enter a joint DPP?**

A majority of our members were of the view that the removing the need for two debtors being jointly and severally liable for a debt has made it easier for couples to enter a joint DPP. It was considered that this enables more people to access the DAS scheme.

### 3. STANDARD CONDITIONS – FIRST AGREED PAYMENT

**Question 3(a): Is 42 days the correct length of time for a debtor to pay their first agreed payment following the date on which the DPP was approved?**

Our respondents were in near unanimous agreement that 42 days is the correct length of time for a debtor to pay their first agreed payment.

One respondent noted that the 42-day period allows for all income frequencies to be considered as well as providing adequate time to pull funds together for the first payment. It was also added that if 42 days is not sufficient, then it raises questions of whether DAS is appropriate for that debtor.

## 4. COMPOSITION

**Question 4(a): Do you agree that composition should be available when a debtor has been paying their DPP for a period of 12 years with at least 70% of the total debt having been repaid?**

If a debtor has paid their debt for 12 years and 70% of the total debt has been repaid, there would seem to be good cause for some "debt forgiveness" to be included in this product.

**Question 4(c): Do you agree that the creditor should have 21 days to accept the offer of composition?**
**Question 4(e): Is it appropriate that an offer of composition is deemed to have been accepted by a creditor if AiB does not receive a response from the creditor within 21 days?**

It was agreed that 21 days is a suitable period for creditors to respond and that this should be considered as an acceptance if no reply is received within that time.

## 5. REVIEW PROCESS

**Question 5(a): Have you encountered any issues with the introduction of the review process?**

A large proportion of our members noted that they had not used the review process since its introduction. Nonetheless, many respondents highlight a perceived conflict of interest in the process wherein the AiB is seen as reviewing its own decision. One respondent noted that "debtors do not perceive it to be fair as it is the same body who is responsible for the original decision and the review." Whilst we are aware that different parts of the AiB deal with the first decision and subsequent review decision, from a debtor's point of view this could be seen as being considered by the same individuals.

**Question 5(c): Have you identified any improvements that you consider are necessary to the review process?**

Following on from the previous answer, a number of respondents observed a lack of independence with the review process. One respondent suggested that a new review panel should be set up which includes non-AIB staff, money advisers and other stakeholders. Another respondent supported this option, but did concede concerns about how practical this may be and suggested that other alternatives could be examined. It was proposed that a body similar to the Policy and Cases committee could be set up to review decisions.

The fact that appeals can be made on a point of law only was also considered as a limitation in the review process.

**Question 5(e): Do you agree that 14 days is the correct length of time to have to submit a request for a review?**

More than half of our respondents considered 14 days to be the correct length of time to submit a request for review.

Of these respondents, the longest alternative period suggested was 28 days, with a number of respondents proposing this timescale. No respondent argued for the review period to be less than 14 days. It was also argued that the review period could be brought in line with the 21-day response time allowed for creditors.

## 6. FLEXIBLE PAYMENT BREAK

**Question 6(a): Is up to six months an appropriate timescale for a flexible payment break?**

More than 80 per cent of respondents to our survey were of the view that up to six months is an appropriate timescale for a flexible payment break. Respondents who deferred from this view noted that six months may be insufficient in circumstances such as maternity leave or long-term illness.

The question was also raised, however, about whether applying a specific timescale on anything can truly be described as flexible. Other respondents argued that the payment break could be linked to the overall duration of the DPP.

## 8. APPROVED MONEY ADVISER FOR DAS

**Question 8(a): Is regulation 6 sufficient to ensure both that there are sufficient DAS advisers and that they are suitably qualified for the purposes of debt counselling and creating a DPP proposal?**

Some of our respondents voiced the opinion that qualification should be based on individual accreditation, rather than organisational accreditation. As an organisation, we support raising standards and individual accreditation (including the Certificate in Money Advice Practice), but recognise that organisational approval also works well for much of our membership.

Prior to the 2011 Regulations, access to DAS was restricted to a narrow set of approved advisers working to a high standard. In future years, with uncertainty looming over the funding of debt advice services aligned with rising levels of debt, advice agencies may find themselves encountered with more clients and less resources. With this backdrop, it will be imperative that the Regulations find the right balance between professional quality standards and the number of DAS approved advisers. It is essential that there are sufficient numbers of approved advisers across the country to ensure equal access and choice for debtors.

## 9. COMMON FINANCIAL TOOL

**Question 9(a): Do you agree that the Common Financial Tool should be used to help determine if DAS is the correct product for a debtor?**

Our respondents noted that the CFT is useful as part of the advice process prior to a DAS application, primarily in terms of obtaining an assessment of the income and expenditure – and also to assist with income maximisation – but is not always the deciding factor in determining the correct product for the debtor.

Almost half of our respondents were of the view that the Common Financial Tool can deter some debtors from entering into a DAS. Respondents suggested that the spending guidelines under the CFT can prove a barrier to opting for DAS. One adviser commented:

> "Debtors cannot build up a reasonable contingency to deal with any unexpected expenses. As any proposal must be agreed to by creditors for DAS and/or pass fair and reasonable test, the CFT should not have to be rigidly applied - where it is exceeded there can be a conversation between creditors and adviser."

Another adviser noted:

> "I have had several clients who now will not go into a DAS as they want to repay their debt at a level lower than CFT generated surplus income. I am now doing less DAS applications and more debt repayment plans. This is even after explaining to them about the legal protection of the DAS."

This view was consistent across a number of respondents who also reported that they had stopped using DAS altogether for this reason and clients were now using alternative methods such as DMPs. One respondent commented that "DAS no longer seems to be acknowledging that people are actually trying to deal with their debt in a manageable way."

Comments were also raised about whether it is fair that a debtor entering into a DAS (with an average period of seven years) is subject to the same financial statement and spending guidelines as a debtor who enters an alternative statutory option for 48 months.

**Question 9(c): Have you encountered any issues with using the Common Financial Tool for DAS?**

Generally, respondents noted concerns about the spending guidelines with many describing the trigger figures as "unrealistic." Advisers also called for "less stringency" around the evidence requirements for fluctuating expenditure.

**Question 9(e): Have you identified any improvements that you consider are necessary to the Common Financial Tool for DAS?**

Pre-empting question 10 of the consultation, all but one of the members we consulted were of the view that a share of surplus income – rather than all available surplus income – should be taken as a contribution.

One adviser also made the point that the CFT did not always reflect the specific circumstances of those living in remote and rural communities:

> This has been a dramatic deterrent for high earners in a rural area. My last example involved a resident in a rural village, working in Brighton with travel costs well in excess of the CFT figures, other lifestyle choices meant he had excessive re building cost for his home which don't even have a category. He had an offer of payment over £800 a month on £40,000.

From a technical point of view, advisers also noted that better migration was required between systems. For example, the CFT migrates to BASYS but not to DAS. In cases where a variation is required, another respondent commented that it would be helpful if the original CFT was held on record.

There is also a case to be made that the contingency field currently serves two separate purposes for debtors and that two distinct categories may be an improvement: the first as a contingency or income buffer; and the second as a genuine savings category to help build up financial capability in the debtor in the long-term. It was also suggested that this should be set at a minimum level for all, rather than ten per cent of disposable income capped at £20 per month.

## 10. COMMON FINANCIAL TOOL – SETTING CONTRIBUTIONS

**Question 10(a): Should the Common Financial Tool be used to determine the level of contribution to be made in a DPP?**

Despite having misgivings as outlined in previous answers, a majority considered the CFT to be a useful method of determining a debtor's disposable income.

**Question 10(c): If you answered yes to question 10(a), should all excess income be taken as a contribution in a DPP?**
**Question 10(f): If you answered no to question 10(c), what proportion of surplus income should be taken as a contribution?**

Only one of our respondents took the view that 100 per cent of excess income should be taken as a contribution in a DPP. Of those who suggested a specific proportion of excess income, more than half of respondents argued that 50 per cent or less should be taken as a contribution.

A number of our respondents also took the view that no set amount of excess income should be stipulated and that it should be up to the debtor and creditors to agree to an amount acceptable to all parties.

## 11. ALL DEBTS

**Question 11(a): Do you agree that all debts should be included in both a DAS for individuals and a business DAS?**

A majority of our members were of the view that all debts should not be included in a DAS. Advisers also noted the apparent correlation between the introduction of all debts to be included in a DAS and the drop-off in applications.

**Question 11(c): If you answered no to question 11(a), are there specific debts which should be excluded from DAS?**

Across our responses, advisers consistently argued that mortgage and rent arrears should be excluded from DAS. One adviser noted that “mortgage arrears and secured loan arrears are often easier dealt with (and paid off) by increasing the ongoing instalments with the agreement of the creditors.” Another respondent from a housing association made the point that including rental arrears may impact on the debtor’s tenancy, adding concerns such as potential eviction to ongoing financial difficulties.

A number of other advisers responded that small family debts should be also be excluded. On the other side of this argument, one respondent argued that debts excluded and subsequently accruing interest and charges may worsen a debtor’s situation.

**Question 11(d): If you answered no to question 11(a), do you think that debtors should be able to choose which debts to include in DAS?**

When certain creditors are not engaging with the DASH system or the money adviser, a respondent made the case that advisers should be allowed to omit these debts as this prevents the other engaging creditors from receiving payments.

It was also noted that if certain debts are excluded in future, the debtor should still have to declare all debts and provide reasons for why certain debts have been left out of the proposal.

## 17. EFFECT ON A CREDITOR

**Question 17(a): Are the regulations which prevent creditors from giving credit to debtors too restrictive?**

As DAS is a longer-term product, the need for credit is likely to be greater than for debtors in bankruptcy or Protected Trust Deed that typically last four years. Given that debtors entering into DAS will be paying back most if not all of their debts, having access to credit for essential goods and services may also act as an incentive.

### Additional comments

Despite the fact that it is not referenced either in the AiB consultation document or in our own survey to members, concerns were raised about the upcoming implementation of the Standard Financial Statement.

One respondent confirmed that they understood the concept of the SFS and the addition of additional spending categories, but were very concerned about what has been proposed so far.

Looking further ahead, if the SFS is implemented with spending guidelines unchanged and far out of step with the CFS, the point was raised that a debtor submitting a variation could find themselves paying a considerably higher contribution if assessed under the new financial statement.

## RESPONDENT INFORMATION FORM

Please note that this form must be returned with your response to ensure that we handle your response appropriately.

### *1. Name/Organisation*

**Organisation Name**

Money Advice Scotland

**Title** **Mr** ☐ **Ms** ☐ **Mrs** ☒ **Miss** ☐ **Dr** ☐ ***Please tick as appropriate***

**Surname**

MacDermid

**Forename**

Yvonne

### *2. Postal Address*

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|---|---|---|
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### *3. Permissions* - I am responding as…

**Individual** ☐ / **Group/Organisation** ☒

***Please tick as appropriate***

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

***Please tick as appropriate*** ☐ **Yes** ☐

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

***Please tick ONE of the following boxes***

Yes, make my response, name and address all available ☐

*or*

Yes, make my response available, but not my name and address ☐

*or*

Yes, make my response and name available, but not my address ☐

**(c)** The name and address of your organisation ***will be*** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your ***response*** to be made available?

***Please tick as appropriate*** ☒ **Yes** ☐ **No**

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

***Please tick as appropriate***

**Yes** ☒