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Scotland's Money Charity

RESPONSE

DAS 2016 review consultation interim response

August 2017

Background

Money Advice Scotland welcomes the opportunity to respond to the consultation on the changes proposed to the Debt Arrangement Scheme (DAS).

To help form the basis of this response, Money Advice Scotland surveyed its members on the options for determining contributions within a debt payment programme (DPP) and any other views on how DAS can be improved. Respondents included advisers from local authorities, housing associations, citizens advice services, as well as a number of insolvency practitioners.

On 7 August 2017, we held a consultation event alongside the Accountant in Bankruptcy (AiB) with members at our offices in Glasgow. We are grateful to Carol Kirk, Policy Review Team Leader at the AiB, for taking the time to outline the scope of the consultation and for being present throughout the day to offer invaluable insight and input.

Debt Arrangement Scheme – proposed changes

Whilst the consultation seeks views on determining the contribution under the Common Financial Tool (CFT) only, we take this opportunity to comment on the other proposed changes for the Debt Arrangement Scheme.

All debts

The consultation document sets out a move away from the current requirement to include all debts within a DPP:

> AiB, therefore, aims to introduce some flexibility by making it possible to exclude rent arrears and mortgage arrears from a DPP. The DPP proposal circulated to creditors will still be required to disclose all debts, and a new requirement will be added to identify any debts of this sort which are being excluded from the DPP.

Members unanimously welcomed this proposed change. Respondents to our survey and attendees at our consultation day were in agreement that the requirement to include all debts was a barrier for many clients who may otherwise enter a DPP.

Members were of the view, however, that the flexibility to exclude rent and mortgage arrears did not go far enough. Across our membership, there was consensus that energy debts should also be excluded from a DPP. An adviser noted that clients with energy debts are often making affordable repayments on meters and prefer to continue to do so. When priority debts were under control with working arrangements already in place, it was considered counter-productive to bring these debts to a head. As one adviser commented “some debts are not broken, so why break them?” A number of advisers cited examples of clients who had opted for a DMP rather than a DPP due to this inflexibility, or had delayed dealing with debts altogether. This option can lack some of the considerable benefits of DAS – most notably the freezing of interest and charges as well as the risk that creditors can unilaterally terminate a voluntary DMP at any time.

Members also saw the benefit in excluding other priority debts from a DPP. Several members noted concerns about the inclusion of guarantor loans within a DPP given that a creditor can seek the balance from the guarantor at any time and this can deter the client from entering a DPP.

Introducing flexibility to include the sale or re-mortgage of a dwelling house as a discretionary condition

The interim response proposes the introduction of the flexibility to allow a discretionary condition regarding the dwellinghouse:

> AiB has been advised of circumstances in which debtors are unable to repay their debts in full within a reasonable timescale based on monthly contributions alone, and wanted the ability to include the offer of a future "lump sum" contribution using the proceeds of a future sale or re-mortgage of their dwellinghouse. AiB proposes to amend the regulations to make this possible.
>
> This discretionary condition will include details of the "lump sum" which is expected to be realised as well as the timescale for meeting this condition. This will help to ensure the completion of the programme. The inclusion of such a condition would be entirely the decision of the debtor – the option here is to give the debtor more choice, rather than place them under any pressure to sell property they wish to keep: DAS was designed as a tool to help debtors protect their assets.

Members were generally favourable towards this proposed change with the clear caveat that this must be the decision of the client only. In that sense, members welcomed the emphasis within the interim response that the proposed option is intended to offer the client more choice, rather than place them under any pressure to sell a property unwillingly.

Advisers who were less keen noted concerns that this proposal may undermine the recognised foundation that DAS protects the home. Overall, however, with the necessary protections and safeguards in place, it was considered that this would add flexibility to DAS.

Access to credit whilst in a DPP

Currently, a client in a DPP can only access credit in limited circumstances and with the permission of the DAS Administrator. The interim response proposes to introduce enhanced flexibility:

> In most circumstances, those in a DAS DPP have to apply to the DAS Administrator before obtaining any further credit, and this is usually only allowed for certain essential purposes. The rationale for this is that the debtor should not be able to service more debt since all surplus income is being used to pay off their existing debts.
>
> Most respondents said that this is too restrictive and argued that it was not right for those repaying their debts through a DAS DPP to face more stringent controls than those gaining debt relief through bankruptcy, especially given the potentially longer period over which the current DAS restrictions last. AiB agrees, and we therefore propose to mirror the restrictions in bankruptcy so that a debtor will be required to notify any new potential creditor that they are in a DPP if they apply for credit of more than £2,000, or already have credit of £1,000 or more.

Members agreed that the current limits on accessing credit were unduly stringent for what is effectively a voluntary payment programme. It cannot be restated often enough that DAS is a debt management tool as opposed to an insolvency option and there ought to be clearer distinctions to assist people towards making informed choices.

DPPs typically run for longer periods than other debt solutions so dips and spikes in income and expenditure are more likely. Credit is often a useful tool to smooth out these fluctuations and shocks. As one adviser noted, “life gets in the way” and it was considered that increasing flexibility around access to credit may enhance sustainability.

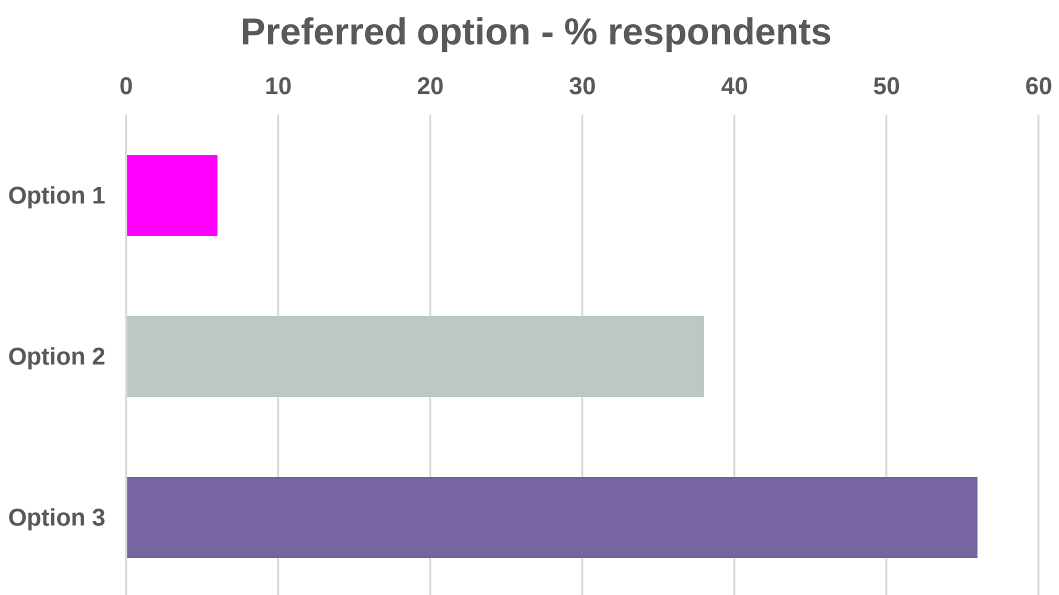
Concerns were raised over the statement that no variation will be allowed to service new debts, however. This could lead to a scenario where a client is permitted to borrow but cannot afford repayments leading to the inevitable revocation of the DAS. It follows that any change in terms of allowing access to credit must also be matched by increased flexibility around the surplus income. Although out with the remit of the AiB, it was also noted that lenders have a responsibility not to lend to people who cannot afford to repay in any case.

Debt Arrangement Scheme - Common Financial Tool

The proposals around increasing flexibility around the contribution within the Common Financial Tool (CFT) are welcome. In the AiB's annual report for 2015/16, data showed that approved applications to the Debt Arrangement Scheme were down year-on-year by 50.9 per cent. If DAS is to remain an attractive option for clients and creditors alike, it was considered imperative that adequate flexibility is introduced to the process that determines the level of contribution.

Question 1: What is your preferred choice for determining the level of contribution to be made by debtors in the future?

Option 1	Continue with current arrangements where all surplus income is used as a contribution amount in a DPP, whilst encouraging debtors to make the most of the current savings provision.	☐
Option 2	Introduce some additional flexibility around the CFT surplus income, but only where this will not extend the length of the DPP to beyond a specific period to help ensure the sustainability of the DPP.	☐
Option 3	Introduce flexibility by removing the requirement to use the full surplus income as calculated by the common financial tool to determine the level of contribution. There would still be a requirement to circulate a completed CFT to creditors, together with the proposed contribution level. This would allow creditors to consider whether or not to accept or object to the proposal.	☒



Option 1

Option 1 was generally considered as the status quo and, therefore, unsuitable in meeting the aim of improving and enhancing DAS.

In its interim response, the AiB notes that the savings category within the Common Financial Tool is rarely used. Despite this, a majority of advisers attending our consultation event said that they do use the contingency, although there was no fixed category or spending line that advisers use universally to record this expenditure. It was suggested that a designated field within the CFT may help the AiB to identify this more easily.

In any case, the current savings provision was considered as offering insufficient breathing space for a long-term debt repayment – clients require something more robust than 10 per cent of disposable income, capped at £20 per month, to build up any kind of resilience or add flexibility to the DAS process. Members also pointed out that for most other items of expenditure, allowances were set in terms of household composition. For example, the trigger figure for food for a family of four will be considerably higher than that of a single person. It was considered incongruous, then, that the contingency would be the same no matter the make-up of the household.

Option 2

Option 2 was welcomed as a move in the right direction, but one that also raised new concerns. Members were keen to know what exactly additional flexibility entailed – for example, did this mean a set percentage of surplus income below 100 per cent, or a more relaxed approach to trigger figure breaches? The lack of clarity about what additional flexibility denoted in practice meant that members felt unable to commit to this option.

Of all objections levied at option 2, members were most concerned about the application of a specific timescale on DPPs. An insolvency practitioner noted that option 2 limits the ability to put forward proposals that creditors may be willing to accept but fall out with the timescale.

There seems to be a slight contradiction in proposing that flexibility will be allowed, so long as a DPP does not run beyond a specific period. Members pointed out that the case for additional flexibility is stronger in DPPs that run for longer periods. We recognise that DPPs are more likely to fail the longer they run, but that in itself may be an indicator of the consequences of the absence of adequate flexibility in the current process.

Option 3

Option 3 received the support of a majority of respondents, including advisers and insolvency practitioners alike. This proposal was considered as the best way to bring both flexibility and sustainability to DAS. Allowing enhanced discretion on the part of the money adviser and the client was viewed as essential in terms of improving DAS. If the client and creditors are content with the proposals then the DPP should be allowed to proceed.

Option 3 was considered to be most appropriate in reflecting the spikes and dips in expenditure that clients experience over the lifetime of a DPP. As a respondent noted:

> Increased flexibility allows debtors to adapt to small changes in their circumstances (working hours going up and down, increased childcare costs during school holidays) without the need to make changes to their DAS.

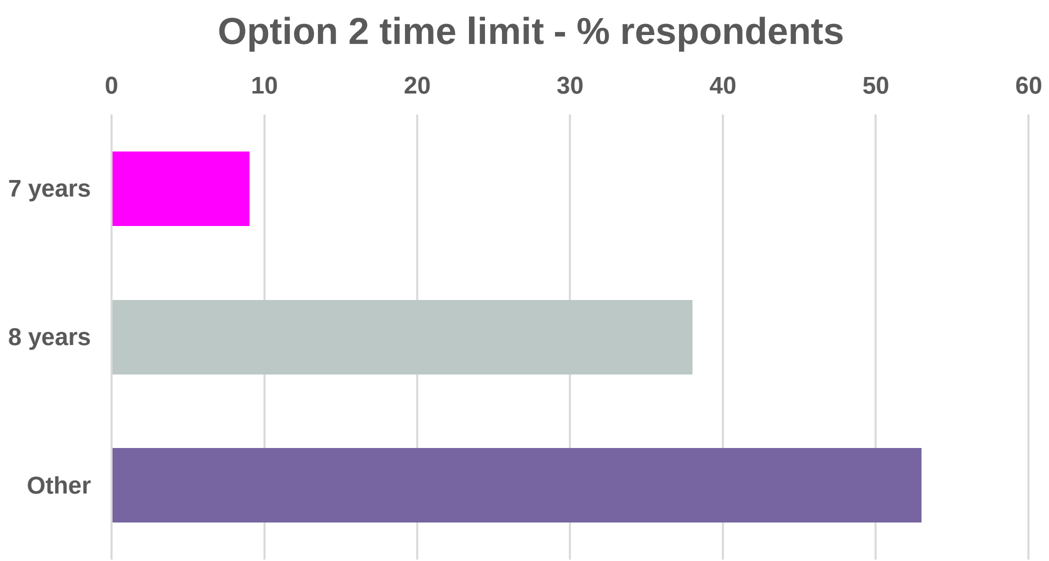
A number of members also cited examples of clients who cannot opt for DAS due to concerns that it is too rigid for long-term commitment. As one member noted:

> DAS should not feel like a punishment – clients are paying their debts off and should still be able to have an acceptable standard of living.

That the trigger figures are not linked to living standards is still considered as a shortfall in the current methodology. Whilst reference to the methodology behind the CFT was not referred to within the interim response – this will no doubt be discussed in more detail during the consultation on whether to implement the Standard Financial Statement – we are of the view that this remains pertinent to the DAS review. As we recognise throughout this response, DPPs typically run for longer periods and this can mean paring expenditure back to low levels for several years. Members also noted that given the vast majority of debts are repaid, there is an incentive on the part of the client not to extend DPPs beyond a reasonable duration.

Question 2: If option 2 was to be adopted, flexibility will only be offered providing it does not extend the DPP beyond a specific period of time. What timescale do you consider to be reasonable?

7 years ☐ 8 years ☐ other ☒ please specify: unspecified



Please explain why you consider this a suitable time period:

Responses to this question reflected the comments outlined previously that imposing a timescale undermined the wider remit of the proposal to add flexibility to DAS. An insolvency practitioner noted:

> We do not believe an absolute time limit should be stipulated in statute and have therefore chosen option 3

Members anticipated that a time limit would prevent some clients from entering DAS and questioned why this should be introduced if creditors are content to agree to DPPs over a longer period:

> Introducing timescales can limit options for clients. I have a DAS which is 17 years. If DAS was not available then it would be informal offers. If creditors are happy why should AIB intervene?

For members who did specify an alternative, 10–12 years was the most recurring suggestion. That said, we remain of the view that no timescale should be included as part of the proposals to improve and enhance DAS. As an adviser pointed out, this may also prove advantageous to creditors in the long run:

> Whilst I note that DPPs are more likely to fail if it is too long, a note should be given of debtor's circumstances and this should be explained. A period of 10 years or even longer, may be viable to keep payments low if there is likely to be a material change in a client's circumstances. Examples of this are child care costs not being necessary as children grow up, there may be an inheritance due, or there may be a mortgage or car loan due to be paid off. These circumstances may warrant a longer DPP initially, but with an option to review and eventually go for a shorter time.

A number of attendees at our membership event also commented that consulting on a suitable time period for option 2 suggested that this was already the AiB's preferred option and somewhat pre-empted the outcome of the review.