Citizens Advice Scotland
Scottish Association of Citizens Advice Bureaux

Debt Arrangement Scheme (Scotland) Amendment Regulations 2009

Submission to the Justice Committee by Citizens Advice Scotland

Citizens Advice Scotland and its 71 CAB offices form Scotland's largest independent advice network. CAB advice services are delivered through 199 service points throughout Scotland, from the islands to city centres.

The CAB service aims:

to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities, or of the services available to them, or through an inability to express their need effectively

and equally

to exercise a responsible influence on the development of social policies and services, both locally and nationally.

The CAB service is independent and provides free, confidential and impartial advice to everybody regardless of race, sex, disability or sexuality.

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Summary

1. The draft regulations introduce a number of key changes to the Debt Arrangement Scheme (DAS) which are:-
   - The removal of compulsory money advice from the application process
   - The introduction of an electronic application process allowing debtors to apply directly for DAS
   - A minimum payment threshold set at £100 per month or 1% of the total debt whichever is the higher
   - A maximum repayment period fixed at 100 months
   - The widening of the scheme to allow for debtors with a single debt to access DAS
   - The diminution of the role of money advisers, due to the transfer of administration to the DAS Administrator for all existing and new cases
2. While some of these changes are to be welcomed, particularly the increased access for single debt debtors, others are a cause for concern for the CAB service, particularly:-
   - The introduction of a minimum payment and a maximum term for debt payment programmes
   - The lack of money advice throughout the process
3. While opening up the scheme to a new range of debtor, the changes will also reduce access for the existing group of debtors who can currently access the scheme. The changes may also result in debtors inappropriately applying to the scheme due to the absence of money advice.

Background

4. Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland's network of 71 Citizens Advice Bureau (CAB) offices. These bureaux deliver frontline advice services throughout nearly 200 service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.
5. In 2007/08, Scottish bureaux dealt with 90,145 new consumer debt enquiries, representing more than 250 debt issues brought to Scottish bureaux every day of the year. Consumer debt remains the most common single issue that clients bring to bureaux.
6. The Debt Arrangement Scheme (DAS) was introduced by the Debt Arrangement Scheme and Attachment (Scotland) Act 2002, and launched in November 2004. CAS had been involved in its development for almost 15 years, and were critical of the original scheme due to the absence of compulsory composition for debt (debt write off), and freezing of interest and charges.
7. The scheme was amended on 30 June 2007, to allow for the freezing of interest and charges as soon as a Debt Payment Programme (DPP) under DAS is put in place. Applications to DAS have increased following the reforms to the programme.
8. However, in September 2008, CAS published a research report[1] looking at the impact of the changes made to DAS on CAB debt clients. The report found that despite the amendments to the scheme:-
    - Four in every five CAB debt clients still cannot qualify for DAS, mainly due to insufficient disposable income to offer to creditors
    - One in every five CAB debt clients who did have some disposable income to offer to creditors were excluded from DAS as their debts would take too long to repay
    - One in every four CAB debt clients could not access DAS or any other debt management option
    - One in every ten CAB debt clients had debts of over £10,000 but had no access to any debt management option

1. CAS is of the view that the current proposals will reduce access for CAB debt clients in general, despite increasing access for single debt clients.

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[1] Restricted Access The Debt Arrangement Scheme based on the evidence of citizens advice bureau clients across Scotland CAS September 2008

The Reforms

Minimum Payments and Maximum Term

2. A major proposal in the new regulations is the introduction of a minimum monthly payment of £100, or 1% of the debt whichever is greater. This means that the maximum length of a Debt Payment Programme (DPP) will now be set at 100 months, or 8 years and 4 months.

3. We are concerned that the inclusion of both these amendments will exclude a number of clients who would previously have had access to the scheme, and for whom DAS would have been an appropriate option. This leaves them potentially vulnerable to diligence (formal debt recovery such as bank arrestments, earnings arrestments etc) and ultimately bankruptcy if the debt is greater than £3,000. If the client is a homeowner, their exclusion from DAS also puts them at risk of losing their home.

4. Our report on DAS “Restricted Access” found that 19% of debt clients could access DAS and make full payment within 10 years, and an additional 7% could access DAS provided the repayment period was beyond 10 years. This results in 26% of clients who were likely to be able to access DAS. Applying the new regulations to these findings would halve the number of CAB debt clients able to access DAS to only 13%.

5. Our recent debt report, “Drowning in Debt” [2] highlighted the growing problem of indebtedness, showing that the average debt of a bureau debt client had reached over £20,000. The research found that only 10% of debt clients would be able to access DAS and repay the full amount within 10 years, a fall from the previous year. This would decrease even further under the proposed regulations.

6. In addition, where the average debt owed by bureau debt clients is £20,193, a debtor would need a disposable monthly income of more than £200 in order to repay this debt within 100 months. The DAS “Restricted Access” research found that only 16% of debt clients had a disposable income of more than £200, which implies that 84% of CAB debt clients would be unable to repay the average debt within the new proposed timescale of 100 months.

7. This is supported by evidence from CAB accredited money advisers, using their existing DAS client base:

    - Dumfries and Galloway Citizens Advice Service (DAGCAS) report that of the 69 debtors currently under a DPP, 43 (62% of the total) would not have qualified under the proposed regulations. Of these 43 cases, 18 would not qualify due to the minimum payment threshold and 25 would not qualify due to the time limit of 100 months

    - Airdrie CAB report that of the 45 debtors currently under a DPP, 35 (78%) would not have qualified under the proposed regulations. Of

[2] Drowning in Debt based on the evidence of citizens advice bureau clients across Scotland CAS June 2009

these 35 cases, 10 would not qualify due to the minimum payment threshold and 25 would not qualify due to the time limit of 100 months

- East Ayrshire CAB report that of the 19 debtors currently under a DPP, 10 (53%) would not qualify under the proposed regulations. All ten would have failed to qualify due to the time limit of 100 months. In addition, 9 out of the 10 currently have DPPs for periods of between 100 and 120 months. All of these DPPS are held by homeowners who would not be able to increase their repayment offer
- Haddington CAB report that of the 4 debtors currently under a DPP, **all** (100%) would not qualify under the proposed regulations. All four would have failed to qualify due to the time limit of 100 months
- Roxburgh CAB report that of the 14 debtors currently under a DPP, 7 (50%) would not qualify under the proposed regulations. Of these 7 cases, 1 would not qualify due to the minimum payment threshold but 6 would not qualify due to the time limit of 100 months

Bureau	**Number of current DPPs**	**DPPs over 100 months**	**DPPs with less than £100 repayments**	**% of current DPPs that wouldn't qualify from July 1st**
DAGCAS	69	25	18	62%
Airdrie	45	25	10	78%
East Ayrshire	19	10	0	53%
Haddington	4	4	0	100%
Roxburgh	14	6	1	50%
Total	**151**	**70**	**29**	**66%**

Money Advice

8. One of the major effects of the new regulations is the removal of the money advice gateway. Under the old regulations, a debtor could not access DAS without first obtaining advice from an approved money adviser. While removing this requirement will undoubtedly increase the number of applicants for DAS, nevertheless CAS is concerned that some debtors will apply for DAS without fully understanding the implications, or being aware of all of the options/alternatives available to them. Anecdotally, such a situation has already been reported by the Accountant in Bankruptcy officials in relation to the low income low assets route to sequestration, which is accessed directly by debtors.
9. CAB accredited money advisers have also reported concerns that without money advice, many debtors will underestimate their essential household expenditure and enter into debt payment programmes under DAS that they cannot realistically afford. This could result in their defaulting on priority bills such as mortgage and council tax payments, resulting in a revocation of the DAS debt payment programme.

10. CAB accredited money advisers have reported that one of the main problems with the administration of DAS is that the paperwork and procedures involved in making an application are cumbersome. The new procedures for DAS will result in the DAS administrator taking over all of the administration processes for existing and new debt payment programmes. While this is welcome, it could still be done without forfeiting the money advice gateway. If the gateway was retained, streamlining the administration would free up money advisers to help more debtors apply for DAS.

11. Under existing regulations, a debtor can intimate to the DAS administrator that s/he will be sending a form to their creditors to notify them of her/his intention to apply for a debt payment programme. From the moment this intimation is registered, the debtor has a period of protection of up to six weeks from any formal debt recovery action being taken by a creditor. Under the new system, provided debtors are made aware of this protection, they will be able to make the relevant intimation themselves, and the six week protection period will start to run. Under the new regulations, there is no time limit within which the DAS administrator has to approve or reject the application. This is a cause for concern, as following a rejection it is likely then that a debtor will seek money advice. A money adviser may be able to resubmit the application in a form that is likely to be accepted, however it is crucial that the debtor still retains the period of protection. Accordingly it is imperative that the DAS administrator is set a short time period within which to make the assessment of the application in order to afford a debtor the maximum period of protection from formal enforcement. Currently the new regulations are silent on this aspect.

12. The DAS administrator has been given new powers to apply a “fair and reasonable” test to all applications that do not have the majority consent of creditors either in number or value of debt. While this new power will prevent creditors from withholding consent inappropriately, nevertheless again there are some concerns. Previously where creditors had rejected an application the client was given a further opportunity via a money adviser to put forward comments in relation to the creditor’s reasons. Under the new provisions there would not appear to be any provisions for the debtor being given an opportunity to address these objections.

Single Debt Clients

13. We welcome the inclusion of debtors with single debts to the scheme, as it will provide a welcome breathing space in which to repay a single debt, while being afforded protection from formal enforcement. It may also prevent further indebtedness, as in our experience, clients can take out further credit to help finance an original debt which subsequently becomes unmanageable.

14. However, although this is an improvement only 5% of CAB debt clients in our Drowning in Debt research held a single debt. This was a substantial reduction from 18% as evidenced in our earlier 2004 debt research[3], and therefore is unlikely to make a substantial impact on our debt clients.

[3] On the Cards the debt crisis facing Scottish citizens advice bureau clients CAS February 2004

Conclusion

15. All of our research shows that there are significant policy gaps in respect of CAB debt clients in multiple debt. Our recent debt research has highlighted that unmanageable debt is growing in relation to debt levels, numbers and types of debt. Our research showed that nine in every ten clients said that debt had a negative impact on their health, and attributed stress and depression to their financial situation regardless of the reason for being in debt.

16. While undoubtedly the debt arrangement scheme needs substantial reform to make it more accessible, these proposals will further restrict access for CAB debt clients. There remains a need to either amend existing systems or introduce a new system that will be easily accessible and will allow debt clients to manage multiple debts, allowing for composition (debt write off) and freezing of interest and charges that falls short of bankruptcy. This could be done by way of reforming protected trust deeds to allow a fast track cheap and easy route to debt management.

17. If these regulations are to be introduced in their current form, then we would propose that their introduction be delayed pending reforms of protected trust deeds that will address this unmet need. Given the current economic climate, we would consider there is a need to widen access to debt management routes, not restrict them further. Accordingly these regulations should not be enacted until a route that addresses the unmet need is in place.