

Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux



1939-2009: 70 years
of Scottish CAB advice

The Debt Arrangement Scheme – Improving Access Consultation Response

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Citizens Advice Scotland and its 83 CAB offices form Scotland's largest independent advice network. CAB advice services are delivered through 222 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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Introduction

1. Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland's network of 83 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.
2. In 2008/09, Scottish bureaux dealt with 360,836 debt issues – a 14% increase from the previous year. Debt accounted for 54% of the increase in all issues dealt with by the Scottish citizens advice bureau over the last five years, due not only to increasing numbers of people, but also to the growing complexity of debt. Just under one thousand debt issues are dealt with by the Scottish citizens advice bureaux every day of the year.
3. The Debt Arrangement Scheme (DAS) was introduced by the Debt Arrangement and Attachment (Scotland) Act 2002, and launched in November 2004. CAS has been involved in its development for almost 15 years, and are currently involved in its delivery. The money advice role is outlined in Appendix 1 attached. CAS were critical of the original scheme due to the absence of compulsory composition of debt (debt write off), and freezing of interest and charges.
4. The scheme was amended on 30 June 2007. The changes allowed for the freezing of interest and charges as soon as a Debt Payment Programme (DPP) under DAS was put into place, but no provision was made in respect of compulsory composition of debt. While increasing access overall, these changes have not made a significant difference to CAB clients.
5. In September 2008¹, we published our research report “*Restricted Access*” which looked at the impact of the changes on CAB debt clients. We found:-
 - a. Four in every five CAB debt clients still cannot qualify for DAS, mainly due to insufficient disposable income to offer to creditors
 - b. 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
 - c. One in every four CAB debt clients could not access DAS or any other debt management option
 - d. One in every ten CAB debt clients had debts of over £10,000 but had no access to any debt management option
6. Despite these findings, we consider DAS to be a critical element in the options available to debt clients. It provides welcome relief to those who can repay their debts, but need respite from mounting interest and charges. Accordingly, we welcome the consultation paper aimed at improving access to DAS, and hope that some of the proposals suggested will make DAS a better scheme for our clients.

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

7. The proposals relate both to the principles behind DAS, as well as to its operation. Accordingly, in October this year, we held a consultation day with a number of our money advisers to ensure that their views were fully represented in our response to the proposals. Fifteen advisers attended from fifteen different citizens advice bureau, with representatives from urban, rural and islands bureaux attending. This response represents these views, alongside our evidence on the scheme and its operation.

Access to DAS

Q1a: Should applications for DPPs only be made by approved money advisers?

Q1b: Should some form of accreditation be required?

Q1c: Should DAS training remain an essential element of any accreditation process?

8. Despite amendments to the debt arrangement scheme applied in June 2007, take up of the DAS scheme still remains relatively low. Currently the scheme can only be accessed by way of an approved money adviser. While there are variations throughout the country in respect of their availability, nevertheless "*Restricted Access*"² indicated that only around one fifth of CAB debt clients would fit the criteria that would allow the debt arrangement scheme to be offered as a viable option. Advisers remain of the view that there are a number of CAB debt clients for whom there are no debt management options, particularly those who are asset rich but income poor, and that this is the reason behind the relatively low take up, as opposed to lack of approved money advisers.
9. While advisers accept that there are potential difficulties in some areas that prevent people being able to access the scheme, nevertheless there remains strong support for the gateway, with the majority wishing to retain this as a route into DAS. Not only do money advisers make clients aware of all of their options - including the debt arrangement scheme, but they also look at the client's liability for the debts overall, as well as maximising income. Debt advice can be a complex area, and the intervention of a money adviser can be critical.

² Restricted Access: The Debt Arrangement Scheme based on the evidence of citizens advice bureaux clients across Scotland CAS September 2008

An East of Scotland CAB reports of a client who has had adjudication taken against them by their bank for a £20,000 unsecured loan. The client jointly owns her home but the debt is hers only. The client made pro rata payments for roughly three years without missing a payment. The adjudication could not be halted but the client was entered into the Debt Arrangement Scheme. Using DAS means the client's debt will be repaid within ten years and the interest frozen.

10. Not only is money advice considered critical in order to access the scheme, but the involvement of an adviser allows a debtor to be aware of their rights once they have been accepted into the scheme.

A South of Scotland CAB reports of a client who has a creditor that is pressing her for increased payments despite having been accepted into the Debt Arrangement Scheme (DAS). The client is being visited at his home by doorstep creditors demanding payments. The client has been assured that he is protected under the scheme.

11. Accreditation of individual advisers has been put into place to ensure consistency of advice as well as quality of advice. Advisers felt however, that while ensuring quality of advice was essential to successful operation of the scheme, consideration could be given to agency or organisation approval rather than individual approval. In this way, the gateway could be opened up to many more money advisers provided the agency or organisation could ensure that appropriate quality assurance systems were in place.

Q1d: If the approved money adviser route is no longer essential, who should be able to submit applications for DPPs?

Q1e: Should debtors be able to apply for a DPP without having obtained money advice?

Q1f: Should debtors be able to make direct applications for a DPP online?

12. As outlined above, advisers are of the view that there is a definite need to route people through an adviser in order to access DAS. Approved advisers are providing the client with an informed option, allowing the client to choose the most *appropriate* option for them. While only one fifth of CAB debt clients fit the criteria to access DAS, DAS may not always be the *best* option, and it is critical that all appropriate options are explored fully with the client before opting for a debt payment programme.

An East of Scotland CAB reports of a couple who had outstanding debts of just over £33,300. Legal action was progressing for the unsecured debt; the couple had tried equity release schemes but could only secure £15,000 so did not pursue this route. Family members were also unable to assist and monthly payments for credit card debts had reached £750 per month. The couple discussed their options with an adviser and decided to use DAS, reducing their payments to £300 per month. One year since beginning the scheme, the couple reported to the bureau that although their budget was tight, they have greater peace of mind and are no longer being hassled by creditors.

13. Routing debtors through an adviser not only ensures quality of advice, but also provides additional support to debt clients. By discussing their problems and options, clients can then feel confident that the correct route has been taken to address their debt difficulties, and additionally, are more likely to meet their obligations. Our most recent research “*Drowning in Debt*”³ highlighted the positive effect that money advice has on clients.

“If I was in a bit of a rut of having problems with companies being a bit difficult in any way, I would go straight to them again. They know. They understand it all. You can really get messed about with all these companies because they think you are stupid and you don’t know anything. You don’t know what your rights are. CAB will tell you all your options and your rights.”

14. We remain firmly of the belief that debtors should only access the debt arrangement scheme through the money advice gateway. However, if this is to be removed then debtors will still require some form of information and guidance as to how to assess their options before making an application under the scheme. Consideration should be given to compulsorily utilising the CASHflow assisted self help packs, about to be launched in Spring 2010 that are designed to provide debt clients with the tools that will allow them to assess their options, while retaining the support of a money adviser. This support will include discussions about the client’s income and expenditure as well as the preparation of realistic offers of payment to their creditors.

Administration

Q2a: Should the DAS administrator take on more of the administration duties currently carried out by approved money advisers?

Q2b: If the DAS administrator takes on more of the administration of DPPs, at what point in the process should the DAS administrator take on this function?

³ Drowning in Debt based on the evidence of citizens advice bureau clients across Scotland CAS June 2009

15. Advisers were unanimous in their view that the DAS administrator should take on more of the administrative duties. Advisers considered that their role should extend to carrying out the initial advice, completing the application and sending the form to the DAS administrator – all of the administration up to and including form 3. Advisers preferred the administration from Form 4 onwards – the stage whereby creditors are contacted – to be taken on by the DAS administrator. If at that stage, any objections are received from creditors then the debtor should be encouraged to return to their money adviser to allow the client to respond.
16. Additionally, further administration could be undertaken by the DAS administrator regarding any variation. While a client would undoubtedly make contact with an adviser initially to discuss a change of circumstances, advisers were of the view that the DAS administrator could take on the remainder of the administrative work following the initial application.

Q2c: Should there continue to be annual reviews of DPPs?

Q2d: If yes, should the DAS administrator take responsibility for this function?

17. The majority of advisers considered that an annual review was welcome in principle. However, guidance states that in conducting a review, a letter should be sent to the debtor to determine if there has been any significant material change in circumstances, regardless of whether the debtor has been making the agreed payments timeously or not⁴. Advisers considered that it would ease their burden if the DAS administrator sent the initial letter out to the client, but if there had been any changes in circumstances the debtor should be asked to revert back to the adviser.

Consent Rules & Fair and Reasonableness

Q3a: Should the timescale for creditors' response be increased from 21 days to 35 days?

Q3b: Should the DAS administrator be able to consider whether a programme is fair and reasonable where consent or deemed consent is given by ALL of the creditors?

Q3c: Should the entry criteria for DAS be defined to enable the DAS administrator to assess whether the proposal is fair and reasonable prior to seeking consent of creditors?

Q3d: Where the DAS administrator receives a proposal that is evidently not fair and reasonable, should the debtor be given an opportunity to amend the proposal?

⁴ Para 7.1.6 Debt Arrangement Scheme Guidance for DAS approved money advisers

18. Advisers in general were in agreement about increasing the timescale for creditors' responses to 35 days. While the 21 days notice was already considered a reasonable time period, there were no objections to extending it by a further two weeks.
19. There were strong objections however to applying the fair and reasonable test on debt payment programmes that had already received the consent of creditors – whether deemed consent or otherwise. There was a view that if creditors accepted the payment programme and its terms, there is no need to apply a further test. In addition, extending the timescale for positive consent should reduce the number of “deemed consents”, and thus ensure that creditors are fully aware of, and in agreement with the repayment plan set out by the debt payment programme.
20. In addition, currently if the creditors object and the DAS administrator rejects the programme, the debtor has to re-submit a new programme. It may be appropriate to allow the debtor an opportunity to amend a rejected proposal rather than re-submitting.

Debt Payment Programmes

Limits of a DPP

Q4a: Should there be a limit on the duration of a DPP?

Q 4b: If yes, what do you consider to be a reasonable maximum period for a DPP?

Q4c: Should the DAS administrator be provided with additional information to explain why a DPP is likely to last for more than 10 years (or some other specified period?)

21. The current guidance for money advisers is effectively that a debt payment programme is considered “fair and reasonable” by the DAS Administrator provided it does not exceed ten years⁵. However, our “*Restricted Access*”⁶ found that only around one fifth of CAB debt clients would qualify for the DAS scheme within that recommended ten year repayment period. Currently, provided creditors agree or are deemed to agree to the debt payment programme approval is automatic, resulting in a number of debt payment programmes that are in excess of ten years.
22. Advisers have reported that there can be a wide range of reasons as to why a debt payment programme is submitted beyond ten years. These include:-
 - Clients wishing to preserve their home

⁵ Debt Arrangement Scheme Guidance For DAS approved money advisers Appendix 3 A3.3

⁶ Restricted Access The Debt Arrangement Scheme based on the evidence of citizens advice bureaux clients across Scotland CAS April 2008

An East of Scotland CAB reports of a couple with £53,000 of unsecured debt, plus a mortgage and secured loan totalling £162,000. DAS was the only option available to the couple which would ensure statutory protection and safeguard their house.

An East of Scotland CAB reports of a client couple. The husband had income of £2,000 per month covering all household accounts and living expenses, leaving a state retirement pension and a small occupational pension of £350 per month. Their house is worth in excess of £100,000, but they have an interest only mortgage of £77,000. Due to their age, a remortgage would be impossible. They have debts of around £30,000 which could be payable by a debt payment programme for 12.5 years, payable at £200 per month. This will make the clients 73 when it expires, but meantime allows them to keep their home.

- Client's circumstances likely to change before the expiry of the debt payment programme – this could be that their mortgage is repaid, freeing up more money to repay their debts, or alternatively they are anticipating an inheritance etc.
- The prevention of creditor harassment continuing, particularly when the client is elderly

A West of Scotland CAB reports of a female client aged 58 in part time employment. She has multiple debts. She had worked full time but her hours were reduced and she is struggling to repay her debts. The CAB had contacted the creditors on her behalf, but she was still receiving phone calls. She reported receiving phone calls non stop from one creditor, on Fridays and Saturdays up until 9 pm. She had informed them that the CAB was helping but they still continued to call. The client is now too frightened to answer the phone.

- There is no suitable alternative debt solution for the client and creditors have agreed or have been deemed to agree

A West of Scotland CAB reports of a client in full time employment who has multiple debts. She had been using a debt management company to deal with her creditors. From owing £15,000 which was to be paid off over 6 years, she has now been told she owes £31,000 and it would take 12 years to clear her debts. The client is anxious to get this sorted as she is pregnant and her income will be reduced when she goes back to work part time.

23. This flexibility allows for a client's individual circumstances to be taken into account. If a client's circumstances *do* change, then there is the option of making an application for a variation. Accordingly, advisers are of the view that there should be no prescribed limit on the duration of a DPP.
24. Currently, the DAS Administrator applies the "fair and reasonable" test to a DPP if a creditor has objected. At that point, if the proposed DPP is in excess of ten years, then an adviser will advise the DAS Administrator of the reasons behind this, in order that the test can be fairly applied. In deciding whether or not to consent to a DPP, creditors can discuss a client's individual circumstances with an adviser, and accordingly determine for themselves – and agree – the reasons why a DPP is being proposed beyond the duration recommended by the guidance. Accordingly there should be no requirement to provide the DAS administrator with additional information.

Payment Amounts

Q4d: Should there be a required minimum total payment per month in a DPP?

Q4e: If yes, what should the minimum total payment per month be?

25. Our research into DAS "*Restricted Access*"⁷ indicated that just over a fifth of CAB debt clients had a monthly disposable income of between £1 and £50 in which to service their debts. In addition, "*Drowning in Debt*"⁸ indicated that on average, CAB debt clients had just over 6 debts each. However, just over a third had two to four debts each, another third had between five to seven debts each, and around 28% had between eight and ten debts each. This would mean that if a CAB debt client *can* access the scheme, then inevitably payments will be small. Bureau advisers however, were very clear that one of the benefits of the scheme is its flexibility and are opposed to introducing minimum payments which they consider would restrict access further.

Q4f: Should all payments in DPPs be distributed to creditors on a *pro rata* basis?

Q4g: Should there be a prescribed minimum payment per month, per creditor?

Q4h: If yes, what amount should be required per creditor, per month?

26. Advisers were of the view that the DAS scheme needs to remain flexible, however were not adverse to setting a prescribed minimum payment, provided it does not exceed £1 per creditor. This would allow both the client and the adviser to work with the limited income available for distribution and determine

⁷ Restricted Access The Debt Arrangement Scheme based on the evidence of citizens advice bureaux clients across Scotland CAS April 2008

⁸ Drowning in Debt based on the evidence of citizens advice bureau clients across Scotland CAS June 2009

the most suitable option for repayment, given the client's individual circumstances.

Q4i: Should there be both a minimum monthly payment and a maximum period for a DPP to combat low payments in excessively long DPPs?

27. As outlined in the answers above, advisers are opposed to the setting of either a minimum monthly payment or a maximum period for a DPP.

Q4j: Should the DAS administrator be required to make more use of discretionary conditions? For example, where a debtor has an expected future lump sum or anticipated additional income to put towards their DPP.

28. Advisers would not support a requirement to make use of discretionary conditions. Currently, the DAS Administrator has the ability to impose additional conditions and there does not appear to be any need to change the existing situation. While debtors may well enter a debt payment programme with a view to their circumstances changing, this change could be anticipated but not necessarily occur for a number of reasons. Advisers would not want an *anticipated* change of circumstances to be a requirement within a DPP, as this could lead to the failure of the DPP and its revocation if the change of circumstances did not come to pass.

Joint and Several Liability

Q5a: Should joint DPPs for debtors with joint obligations for at least one debt be introduced?

29. Our *Drowning in Debt* research indicated that 14% of CAB debtors had a joint responsibility for their debts, alongside a spouse or partner⁹ - just over one in every seven debt clients. Advisers considered that widening the scope of a DPP to allow joint DPPs for debtors with joint obligations would be welcome.

Single Debts

Q6a Should debtors be able to propose a DPP that includes only one debt?

30. Although on average, a CAB debt client has just over six debts, just under one in five of CAB debt clients had only one debt. Accordingly, advisers considered widening the scope of a DPP to include only one debt would be welcome.

⁹ Drowning in Debt based on the evidence of citizens advice bureau clients across Scotland CAS June 2009

A North of Scotland CAB reports of a client who had received a letter from a debt collector demanding payment. The client was a student receiving an income of £180 per fortnight. She had initially offered to repay the debt at £77 per week but couldn't afford it. The CAB discussed repayment options with the client, and she felt she could afford £20 per fortnight. Initially the debt collectors were hostile and refused to enter into any formal agreement. They eventually conceded that if the client was willing to repay the debt back at £20 per fortnight then they would not take any further action, although she would continue to receive letters from them.

A West of Scotland CAB reports of a female client with council tax arrears who had been repaying this at a monthly rate of £20. She was now finding this too difficult, and requested repayment terms of £10 per month. Council tax was her only debt. The CAB were able to assist her with making an offer to her creditors.

Payment Distribution

31. We have no comments to make with regard to the proposals concerning payment distribution.

Conclusion

32. In summary, Citizens Advice Scotland are in general supportive of:-

- The retention of the money advice gateway for debtors accessing the debt arrangement scheme
- Accreditation to continue for advisers, either individually or by accrediting agencies/organisations to ensure consistency and quality of advice provided
- If the gateway to the scheme is to be removed, then consideration be given to provided assisted self help to debtors wishing to use DAS
- The DAS administrator taking on some of the administrative roles within DAS
- The retention of annual reviews of DPPs, with the DAS administrator taking on some of the administration
- The extension of the time period for a creditor's response from 21 days to 35 days
- A minimum prescribed payment of £1 per month per creditor
- The introduction of joint DPPs for debtors with joint obligations
- The introduction of a DPP servicing one debt

33. We would not be supportive of:-

- A removal of the money advice gateway
- A limit on the duration of a DPP
- A requirement to provide the DAS administrator with additional information if a DPP is for a period beyond 10 years
- A minimum total payment to be imposed
- Any requirement to increase the use of discretionary conditions

APPENDIX 1

The Money Advice Role

The legislation¹⁰ states that prior to becoming an *approved* adviser you must meet the minimum entrance requirements. In general this means that you will be a casework adviser who meets the skilled level for money advice (now Scottish National Standards Type II). The money adviser will be trained by MATRICS¹¹ and will be assessed on whether s/he possesses the skills and training needed to competently advise a debtor on taking part in a debt payment programme under the debt arrangement scheme. Debtors will benefit from having their income maximised by the money adviser, and will be assisted with the preparation of a budget to enable realistic and sustainable offers be made to creditors.

The debt counselling process states that a money adviser must advise the debtor of **all** of the viable options available to them so that **the debtor** can make an informed decision about the most appropriate course of action.

The CAS research report into the debt arrangement scheme “Restricted Access” shows that 19% of clients that participated in the survey would qualify for the debt arrangement scheme within a recommended repayment period of less than ten years, however only 6% of those clients were intending to apply under DAS. Those clients who chose not to enter into a debt payment programme under DAS will have been made aware of all the alternative viable options open to them by the money adviser. These clients will have considered their individual circumstances and opted for the option that was preferable to them. While these clients had access to DAS, they have chosen not to take that option. Applications to DAS have begun to increase considerably in the last year as more people facing financial difficulties find a debt payment programme to be their most viable option.

When a client chooses to enter into a debt payment programme, all offers are then sent to creditors by recorded delivery, and confirmation of this is held by the money adviser. In the event of a creditor claiming that they did not receive the offer, confirmation of delivery will be sought from Royal Mail. All creditors are encouraged to provide contact details to the DAS Administrator in order that mail can be directed to the correct area in the first instance.

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¹⁰ The Debt Arrangement and Attachment (Scotland) Act 2002

¹¹ Money Advice Training, Information, Research and Consultancy Service (MATRICS) is a partnership project between CAS and Money Advice Scotland funded by the Scottish Government to provide second tier support to money advisers throughout Scotland.

Money Advice Consultant