

ECONOMY, ENERGY AND FAIR WORK COMMITTEE

Debt Arrangement Scheme (Scotland) Amendment Regulations 2019

SUBMISSION FROM CITIZENS ADVICE SCOTLAND

Citizens Advice Scotland (CAS), our 59 member Citizen Advice Bureaux (CAB) and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone.

In 2017-18 the Citizens Advice Service network helped over 295,100 clients in Scotland and dealt with almost 800,000 advice issues. With support from the network clients had financial gains of over £138 million and our self-help website Advice in Scotland received approximately 3.2 million page views.

Introduction

Citizens Advice Scotland (CAS) welcomes the opportunity to give evidence to the Economy, Energy and Fair Work Committee on the Debt Arrangement Scheme (Scotland) Amendment Regulations 2019. The Citizens Advice network has had a long involvement with the Debt Arrangement Scheme (DAS); from the Scottish Law Commission's 1985 report on Diligence and Debtor Protection, through to the 2002 Act and all the subsequent regulations. DAS is a very valuable option for a number of CAB clients in financial difficulties, and prevents some far worse outcomes, like bankruptcy. CAS supports any developments in the Debt Arrangement Scheme that will reduce bureaucracy and make it easier for advisers and our clients to use. To that end we contributed to a cross sector working group in the summer of 2018 which has led to the draft regulations before the committee.

CAS is broadly supportive of the intention behind the Debt Arrangement Scheme (Scotland) Amendment Regulations 2019. Regulations 5-11 in particular introduce flexibility into the DAS process and CAS welcomes these changes. But we have concerns about the possible unintended consequences arising from the changes to payment distribution in regulation 4, particularly around the practical implications for our members of an open market for payment distributors that the regulation creates. For our members the choice of payment distributor will lie with the client, but it is not a genuine choice given that the clients will not benefit in any way from choosing one payment distributor over another. For that reason we are asking the committee to consider whether the AiB should retain control of the choice of payment distributor for money advice services that do not have a payment distribution function themselves.

Related to the payment distribution issue, the committee may be aware that the AiB are currently consulting on returning funds to the free advice sector from doing payment distribution themselves. Whilst funding may not need to be covered by regulation, the sector feeling is that this is an important detail and that the consultation should have been finalised before the regulations were laid.

Background

A person can only enter into a Debt Payment Plan (DPP) under the Debt Arrangement Scheme via a money adviser, either from the free or fee charging debt advice sectors. Once the DPP is up and running the repayments to the creditors will be made through a Payment Distributor (PD). Currently if a person in debt uses a fee charging debt advice provider (called a Continuing Money Adviser in the regulations) they will also have to pay additional fees up front and ongoing monthly payments on top of their payments to their DPP. These can amount to thousands, so clearly from a consumer point of view there is a distinct advantage to going with a free sector adviser as they only have to pay back their debt and no more.

One of the benefits of DAS for our members is that the ongoing administration of a DPP will be done by the AiB and PD after the DPP application has been approved, which relieves advisers of an ongoing burden of paperwork. The client will only come back to their adviser if their circumstances have changed and they need some more advice on their new situation. The fee charging sector has responsibility for all the ongoing administration of their cases, which partially justifies the additional fees paid by their clients.

In either sector the client pays back 100% of their debt, but from that up to 8% is deducted to pay the PD and 2% to cover the administration costs of the AiB. The creditors absorb this fee and get back 90% of their debt. At present, there are 4 companies that the AiB have selected (via a tendering process) to do the PD work. DPPs submitted by CAB advisers will have one of the 4 PDs automatically allocated to their cases by the AiB's systems. The CAB adviser has no control over this, but this works well, as they do not have to be responsible for choosing and allocating a PD which actually has no material impact on the DPP.

Regulation 4

Regulation 4 changes who can be a payment distributor, increases the fees that can be charged on a Debt Payment Plan to 20% and changes the definition of a Continuing Money Adviser (i.e. an adviser who up until now has offered DAS on a fee charging basis).

Regulation 4 (2) (b) puts fee charging and free debt advice providers on the same footing for the first time, from the perspective of a consumer seeking to enter the DAS. Fee charging providers will no longer be able to charge additional fees. Instead they will be able to deduct 20% from the individual's payments to cover fees and payment distribution. Once again the creditors will entirely absorb the costs so will get back 78% of what they are owed (100% debt less 20% PD fee and 2% AiB administration fee) instead of the 90% they get now.

Regulation 4 (4) (a) also removes the tendering process restricting the number of PDs. Instead anybody with the appropriate FCA permissions will be able to set up as a payment distributor. The AiB hope that equalising the costs of access, increasing the PD fees and removing the barriers to being a PD will entice new commercial players into the DAS market for a guaranteed return of 20% and encourage existing providers to expand their operations.

Under regulation 4 (6) (b) CAB clients will also have 20% deducted from their payments for payment distribution costs. However because our members are not payment distributors themselves the AiB envisages that our members may choose to enter into agreements with commercial providers for PD services and that these firms may share the 20% with them to recognise the advice work done. This arrangement is not stated in the regulations.

The AiB also intends to become a PD “of last resort” both for the free advice sector and so they can step in if there is a PD market failure by another provider. Where the AiB is selected as PD by the free advice sector they have committed in a policy paper to sharing the 20% PD fee, taking 5% for their PD costs and paying the rest back in recognition of the money advice work. CAS is supportive of this proposal given the cuts in funding for debt advice work in recent years. However, how this is done is also important to us in order to preserve our network’s independence and impartiality.

The Problem

- The removal of the process by which PDs tender for work and the AiB allocates PDs to DAS cases in line with the terms of their bids, shifts an administrative burden onto the free advice sector. The current PD arrangements are a matter for the AiB and the four firms to whom they currently allocate PD work. If the regulations come into force then the burden of PD choice rests with the client because the PD works on their behalf and the client has a right to choose. This creates an extra decision point for the client in an already complicated journey through the DAS process.
- To make a PD market work individual Citizens Advice Bureaux will have to find PD partners and agree terms. The best terms are likely to be available for exclusive arrangements and a large numbers of cases, acceptance of which is likely to undermine the independence of the CAB. It is also important to note that PDs will not be obliged to accept work from our members. This creates the added burden of the money adviser having to enter into correspondence with a range of PDs to establish who is willing to take on their DPPs.
- For the client’s choice of PD to be genuinely meaningful it must be an informed choice. Informed choice would have to entail the money adviser providing details of all the PDs, the likelihood of acceptance by the PD, and any commercial agreements that exist between them and the CAB. However the choice is actually irrelevant to the client because the client does not financially benefit in any way from choosing. Furthermore, any PD market that does exist is only likely to benefit people with more disposable income as the PDs have the right to choose whether to accept the DPP and will turn away unprofitable ones. So this would not be a truly open market for **all** consumers and it is likely that the most vulnerable would have the least choice.

Other Concerns

- The AiB is counting on these regulations to increase the numbers of DAS cases and counteract the growth in Protected Trust Deeds. In other words they are interfering with a market and incentivising advice providers to increase their use of the scheme. We note from other markets (e.g. financial advice) incentives can detrimentally affect human behaviour. With the added complications of an underfunded free advice sector and a

commercial sector motivated by profit, conflicts of interest may arise with the client's interests.

- The fee changes will mainly suit a few firms who already have payment distribution functions, operational capacity to benefit from efficiencies of scale and the funding to market and promote the scheme. This already happens in the Protected Trust Deed market where a few firms have achieved market dominance amid allegations of poor practice. The danger is that the underfunded free advice sector will be left with the more complex and non-profitable cases, thus exacerbating ongoing funding and resource problems.

What We Would Change: The PD Process for the Free Advice Sector

We think that the AiB should remain in charge of the PD process for the free advice sector. This would avoid undermining the independence of our members that could be an unintended consequence of an open PD market and also the onerous administration on our members to support informed choice, for no apparent client benefit. We appreciate that this is an unusual perspective from an organisation that promotes consumer choice wherever possible. However, in this case, the choice is not a genuine one for consumers as they will not benefit from it. Nor will the choice actually exist for clients with smaller DPP payments that are not profitable enough for PD firms. Putting the AiB back in charge would either require additional regulation or for these regulations to be withdrawn and redrafted, as regulation 4 (3) of the 2019 regulations omits the DAS administrator's right to appoint a PD from the 2011 regulations.

If the PD choice for the free sector was incumbent on the AiB they can decide whether to sub contract the work to other PDs or do it themselves. The AiB would also be far better placed to negotiate commercial terms with PDs than individual Citizens Advice Bureaux and local authorities, as they could offer the PDs cases in sufficient numbers, aggregated from multiple sources, to be a viable commercial proposition for the PD to take on the work. This would free up the free advice sector to do what they do best, i.e. give advice. Putting the AiB back in charge of selecting PDs would either require additional regulation or for these regulations to be withdrawn and redrafted, as regulation 4 (4) (a) of the 2019 regulations omits the DAS administrator's function to invite tenders and approve a PD from the 2011 regulations.

Concluding Comment

CAS believes that a review of free advice sector funding needs to take place to consider how it can be sustainably funded to provide a genuinely free and independent alternative for consumers. Aligning funding to just one debt repayment option will not resolve the funding problems in the free advice sector and in fact is more likely to benefit fee charging firms. This is clearly beyond the scope of the regulations but should be a priority for the Minister and the Scottish Government going forward.