



Citizens Advice Scotland response

Building a Better Debt Arrangement Scheme

2018 Consultation

Citizens Advice Scotland (CAS), our 60 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer helpline, 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 and dealt with almost 800,000 advice issues for clients living in Scotland. With support from the network clients had financial gains of almost £142.2 million and our self-help website "Advice in Scotland" received approximately 3.2 million page views.

Citizens Advice Scotland welcomes the opportunity to respond to this consultation on the Accountant in Bankruptcy's proposals to build a better Debt Arrangement Scheme (DAS). CAS strongly supports the DAS and wants to see it continue to succeed; we encouraged and supported efforts to create it from the Scottish Law Commission's 1985 report on Diligence and Debtor Protection, through to the 2002 Act and subsequent regulations. The DAS is a very valuable option for a large number of CABx clients in financial difficulties, and Scotland should be proud of it. We also believe that other legal jurisdictions, which have less effective debt management options than those available in Scotland, could benefit from adopting debt arrangement schemes of their own, and should look to the Scottish example.

We also welcome the consultative approach adopted prior to the consultation. CAS took part in the DAS Working Group, and we are pleased to note that the advice sector's proposals to increase flexibility in the scheme have been included.

Introduction

The DAS scheme is unique around the world in that it offers debtors the opportunity to repay their debts free from worry about losing assets and free of incurring more interest and charges. Once the adviser has carried out the initial work and the Debt Payment Plan (DPP) has been approved, the ongoing administrative burden largely passes to the DAS administrator. This administrative transfer frees up the resources of CAB advice services, as the client will not need to be seen again unless they require further advice, or the payment plan needs to be varied. Despite these advantages, a DPP is not always a straightforward choice for client or adviser because of the amount of administrative and processing work involved at the outset. This is especially noticeable when comparing a DPP with a less formal voluntary repayment plan. The workload can also be substantial when the plan needs to be varied to respond to a change of circumstances because of current AiB system limitations, procedures and policies. So, CAS welcomes anything that the AiB can do to make the operation of the scheme more manageable for the advice sector.

1. Payments Distribution

The current tripartite system of approved adviser, DAS administrator and payment distributor (PD) causes confusion for debtors if they experience a change of circumstances. The PD is often the first point of contact, as that's to whom the payments go, but they have no powers to make changes to the DPP. Often the PD will have to refer debtor enquiries back to the adviser or DAS administrator and await further instructions, whilst the debtor may feel they are being pushed "from pillar to post" without a prompt or satisfactory resolution. We think that the proposals on payments distribution in the consultation will be beneficial as there will be fewer parties involved if CMAs manage their own payment distribution and the Accountant in Bankruptcy (AiB) carries out local authority and CAB payment distribution.

Question 1(a): Should the CMA role be extended to include payments distribution responsibility?

Yes No

Linking payment distribution to the ongoing advice and administration from the CMA should mean more continuity and a single point of contact for the debtor.

Question 1(b): Should AiB offer a payments distribution service?

Yes No

Question 1(c): If you answered 'yes' to Question 1(b) above, under which circumstances should AiB offer this service?

All public sector/CAB cases Where existing PD ceases/is unable to act

We would welcome the AiB becoming the default PD for local authority and CAB advisers. There would effectively be one fewer party involved in the DAS process than there is now, which for reasons already outlined would be advantageous for CAB clients.

Another advantage of the AiB becoming a PD is that they may have more influence and powers than the current PDs have to resolve issues such as creditors refusing payments, which causes problems for all the other parties involved in the DPP.

CAS also welcomes the proposal to revert some of the surplus from the AiB managing payment distribution to the free advice sector. To avoid conflicts of interest we think that the money reverted should be paid into a general fund to sustain CAB and public sector advice, both of which have experienced significant funding cuts in recent years.

Finally, CAS agrees that the AiB should be PD of last resort where a PD fails or wishes to exit the market. This will ensure continuity of payment arrangements for debtors.

2. A new fee structure

Question 2(a): In the event of the CMA role being extended to include payments distribution responsibility, at what level should the statutory administration fee be set?

15% 20% 23%

Currently the fees for CMAs are unregulated and are undisclosed to the AiB as mentioned in the consultation document. The AiB estimates that CMA costs average around £3,000 per case, however CAS is aware of much higher amounts being charged.

By including all fees within the DPP structure as proposed, creditors will bear the costs of a standardised CMA fee in future rather than the debtors themselves, as is currently the case. The differences that currently exist between CMA and CAB debt advice will be removed under the proposal, as in either case the debtor will pay back 100% of their debt and the creditor will receive at most 85% of what's owed (depending on the figure above adopted following the consultation). CAS cautiously welcomes this new transparent charging structure from a consumer perspective. However, we think that the AiB should carefully monitor the DAS sector to ensure that the DAS market does not become dominated by a few large CMAs at the expense of CAB and local authority advice services, who can offer a more holistic and wider range of advice than CMAs e.g. on housing, employment, benefits and consumer issues.

3. Reducing bureaucracy

CAS supports reducing bureaucracy in the Debt Arrangement Scheme wherever possible, especially where the outcome of a procedure is in the best interests of the creditors, but for whatever reason the creditors choose not to engage.

Question 3(a): Do you agree that automatic approval should be introduced for cases where the debt due to objecting creditors is less than a specified percentage of the total DPP debt?

Yes No

CAS recognises that automatic approvals for DPPs will be of concern to smaller creditors in a DPP who will lose the power to object if the greater creditor body accepts the DPP proposal. However, it also needs to be recognised that the same smaller creditor would not be able to stop a protected trust deed being granted if the majority of creditors acceded. Of the two options, the DPP provides a much better return, albeit over a longer period, and we see less harm to the interests of smaller creditors by allowing automatic approval of a DPP when weighed up against the other, sometimes viable, option of a protected trust deed.

Question 3(b): If you have answered ‘Yes’ to Q3(a) above, what proportion of total debt owed to non-consenting creditors should trigger the requirement for a fair and reasonable test to be conducted?

5% 10% 15% Other, please specify

Question 3(c): Do you agree that deemed creditor consent should be introduced for variations?

Yes No

Matching the creditor approval process for variations to the application process is very welcome, as it should reduce a currently time-consuming process of chasing unengaged creditors to gain consent.

Question 3(d): Where variation proposals will lead to a reduction in the duration of the DPP, do you agree these should be approved automatically by the DAS Administrator?

Yes No

We agree with this proposal as all parties benefit from automatic approval in these circumstances.

Question 3(e): Should AiB be able to submit variations on behalf of the debtor in the circumstances outlined above?

Yes No

We agree with the AiB having the powers to act and carry out variations which would have a positive impact on the DPP, with informed consent from the debtor, in circumstances where the original adviser is unable to act. Another situation where this might be required is where a creditor refuses to vary a large number of DPPs at one time, e.g. following an agreement with the FCA to pay redress.

4. Increasing flexibility

Question 4(a): Should short-term crisis payment breaks be introduced to address periods of crisis?

Yes No

CAS anticipates that the development of a short-term crisis break will benefit debtors as it will allow them to deal with short-term emergencies that could otherwise eventually cause a DPP to be revoked.

The AiB’s own research shows that currently many debtors are unable to pay their DPP around the Christmas period. Based on this evidence, we think that the AiB may wish to consider whether the DPP should be paid over 11 months a year. A similar thing happens

already in the social rented sector where tenants have a “rent free” fortnight around Christmas.

Question 4(b): If you have answered “yes” to question 4(a) above, do you agree money advisers should be responsible for authorising the proposed short-term crisis payment breaks without having to consult creditors?

Yes No

A process of having to consult may mean that the opportunity is lost to help the client. Giving money advisers the responsibility will allow for a more immediate and effective response to a crisis. The inconvenience that might be caused to creditors would be comparatively minimal, and it could benefit them overall if the break allows the DPP to be followed for the remainder of the year/repayment period.

Question 4(c): How many short-term crisis payment breaks should be available per rolling-year?

One Two Three

CAS would suggest one short-term crisis payment break with a term of up to 2 months per rolling year. This would allow the debtor breathing space to deal with the crisis during the first month and to get on their feet during the second month. We also think that there should be flexibility to make an application for a pro-rated standard payment break of up to a further four months through the DAS administrator if, for whatever reason, the short-term break proves to be ineffective and the conditions are met for the standard payment break.

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

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3. Permissions – I am responding as an...

| | |
|--|---|
| Individual <input type="checkbox"/> | Organisation <input checked="" type="checkbox"/> |
| (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: <input type="checkbox"/> Yes <input type="checkbox"/> No | 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). |

(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

Are you content for your response to be made available?

Please tick as appropriate

Yes No

Please return your response to Lisa.LedinghamPark@aib.gsi.gov.uk or [Lisa Ledingham-Park, DAS Team Leader](#), AiB, 1 Pennyburn Road, Kilwinning, Ayrshire, KA13 6SA by 24 January 2019.