

ECONOMY, ENERGY AND FAIR WORK COMMITTEE**Debt Arrangement Scheme (Scotland) Amendment Regulations 2019****SUBMISSION FROM CAMPBELL DALLAS DEBT SOLUTIONS LTD.****Money Advisers and payments distributors: approval, functions and fees**

Regulation 4 proposes a statutory administration fee of 20% of the total debt balance, to cover the costs for the CMA and payment distribution, with a further 2% to the DAS Administrator and states that the CMA may not charge the debtor a fee for their services. The CMA has the choice to act as the Payment Distributor for the case or to seek an alternative 3rd party Payment Distributor. Where a 3rd party PD is required this would reduce the percentage fee available to a Money Advisor from the standard 15% to 12%, potentially acting as a disincentive to promoting DAS as a solution. Setting the overall fee at 23% would allow Money Advisors to maintain the percentage fee currently charged, while still allowing 8% for the Payment Distributor. Given the not insignificant initial outlay to purchase and licence software to allow a Money Advisor to introduce set up their own PD function, many organisations may find it difficult to put the necessary infrastructure in place. In the early years of setting up as a payment distributor the funds ingathered will be relatively small in comparison to the outlays required for software and staffing.

We would disagree with the Accountant in Bankruptcy acting as Payment Distributor for cases given the potential conflict of interest that this could create.

It would be advisable to clarify whether a free debt advice organisation, e.g. Council or C.A.B. money advice service, acting as Money Advisor for a DPP will be able to charge a fee to act as Money Advisor, given that the creditors are now paying the fee rather than the debtor. If this is not the case then these organisations will be unfairly disadvantaged in terms of funding. The creditors will also receive different percentages of the total balance depending on whether the Money Advisor is able to charge a fee. Consistency across the board would be a more logical and equitable solution.

Many Continuing Money Advisors currently charge an initial fee of the first 2 months' budget surplus, as the administrative costs of setting up a DPP tend to be front loaded. This was recognised by the DAS Administrator in the Report & Summary of Responses to 'Building a Better Debt Arrangement Scheme 2018 Consultation - Returning Funds to the Free Advice Sector'. Under the current proposals this income stream would be lost, as no fees are able to be charged to the debtor. Another potential disincentive when promoting the DAS to creditors is that the debtors would have 2 months where they are not making any payments, during the Debt Confirmation and Proposal stages of the application, which takes them out of the mind set of making a monthly payment. There is a danger that this would make it more unlikely that the first DPP payment will be made and therefore increasing the likelihood of the plan being revoked before any payments have been received.

Based on the relatively small number of creditors who responded to the previous 2018 Building a Better DAS Consultation, there is a significant risk that creditors will be more resistant to DAS applications based on the reduced percentage of the debts that will be paid to them, at most 78% of the debt as compared to the current 90%. The result of this is likely to be more objections to DPP proposals and consequently more applications being rejected.

Creditor consent

The DAS Administrator will be required to approve any DPP accepted by 90% of creditors by value. This is welcomed, however the threshold is high at 90% and should be set at lower threshold, e.g. 75%.

Methods of payment

The PD will now be able to make their own decision on the acceptability of a payment method proposed by the debtor and not specifically covered by the DAS regulations. This is welcomed as it removes a small amount of work from the DAS Administrator and allows the debtors more flexibility in how they make their payments to the PD.

Application for variation: creditor statement

The onus on creditors to provide evidence of any debts that were wrongly assessed or omitted at application stage is welcomed, as the current onus on the debtor and CMA to obtain the required details and evidence from the creditor is unnecessarily circuitous, being time consuming for the debtor and/or CMA with no corresponding benefit to the creditor.

Proposal for variation: administrative changes or reduction in period

The DAS Administrator will approve variations where either the creditors have accepted the variation or been deemed to accept by not responding with 21 days. This seeks to formalise the generally accepted position by specifically including this in the legislation. Given the ability to message creditors directly through eDEN and that the creditors should be applying for these variations themselves, the process of amending a debt or adding an omitted debt should be more streamlined and efficient.

Joint DPP and payment break: cohabitants

The change to allow a payment break on the grounds of separation from a cohabiting partner is a sensible and overdue amendment to the regulations. We have had a number of cases where payment breaks were not available under exactly these circumstances and this has resulted in debtors being forced out of their DPP and often into insolvency. The proposed change would provide reasonable breathing space for the debtor(s) to establish their financial position and implement any changes required to their household budget.

Short term financial crisis payment breaks

Due to the time taken for a Payment Break variation application to be processed, 4-6 weeks, many debtors are left with missed payments against their DPP while awaiting the outcome of the application. Where the financial crisis was short term in nature, this meant that there was no benefit to applying for a payment break. The new proposal allowing a maximum of 2 one month 'emergency' payment breaks per 12 months allows greater flexibility and will help to protect debtors from unwarranted missed payments being noted against their DAS. This should help to reduce the number of cases where creditors are able to apply for revocation of the DPP on the grounds of missed payments. We note that this will be a further administrative burden on Money Advisors and that where the Money Advisor is not also acting as the PD, this will be expected on the basis of the fee chargeable by the Money Advisor reducing from 15% of the debt balance to 12% under the current proposals. Writing to the DAS Administrator, PD and creditors to advise of these breaks will increase the workload of the CMAs and a function to notify creditors and the DAS Administrator through the online eDEN portal would be beneficial in this respect.