

Setting the pace

Scotland leads the way in facilitating the repayment of problem debt through a statutory debt management plan (DMP). Yet, while the legal protections are strong, more flexibility is needed to ensure the scheme achieves its intended outcomes and provides an accessible route out of debt for those in severe financial hardship. This is especially vital as the rest of the UK looks to learn from Scotland's range of debt solutions. DAS needs to set the right pace.

The introduction of the Debt Arrangement Scheme (DAS) in 2004 marked a groundbreaking moment in the provision of debt relief. As the UK's first, and only, statutory debt repayment scheme, DAS sees Scotland leading the way in offering protection to those working hard to repay their debts and has inspired discussions about the introduction of an extended breathing space scheme for England and Wales.

Despite being an advantageous scheme for many, only around 500 DAS applications are approved each quarter; and numbers have been falling.¹ The effectiveness of DAS is limited by its inflexibility and unintended consequences for debtors in vulnerable situations. Accountant in Bankruptcy (AiB), the DAS Administrator appointed by the Scottish Government, recently acknowledged that changes were needed. In their interim response to the DAS 2016 Review Consultation, they reaffirmed their commitment to ensuring debt solutions are fit for purpose and stated aims of improving accessibility, sustainability and flexibility.²

A personal debt crisis is not merely a financial problem; it brings social costs and deeply personal consequences that touch every area of someone's life. Christians Against Poverty (CAP) has supported people in financial difficulty, often with additional multiple complex needs for over 20 years. As a DAS-approved administrator, CAP has experience of administering the scheme: the relief it offers and also the pitfalls. The recommendations set out in this briefing support the AiB's intentions of building more flexibility into DAS and set out specific areas that need to be addressed to ensure DAS is in the shape we need it to be.



'We had a large amount of debt, which we struggled to pay each month. Although we hadn't missed any payments, life was tough. We were really frightened of losing our home and were spending very little on food.'

Having CAP's help, advice and support made things much easier to get through. It had been a very frightening period, but we were committed to getting our debts paid off in full in the shortest possible time and DAS offered us a way to do that.'



¹ The number of Debt Payment Programme (DPP) applications received per year fell by around 45% between 2014-15 and 2016-17. 4,397 DPPs were approved in 2014-15, compared with 2,415 in 2016-17. AiB (2015) *Annual Report and Accounts 2014-15*, available at bit.ly/2xEkxna and AiB (2017) *Annual Report and Accounts 2016-17*, available at bit.ly/2fn9vrs.

² AiB (2016) *Debt Arrangement Scheme 2016 review consultation interim response*, available at bit.ly/2x4nRaD

The need for reform

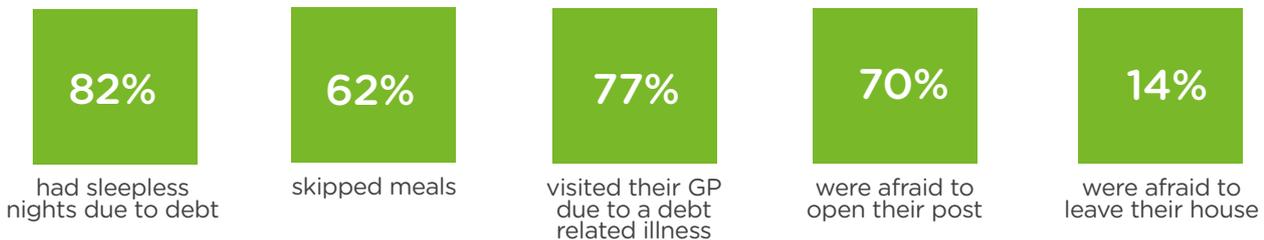
There are crucial reforms needed to make DAS a simpler, more accessible and straightforward process. This would not only save time and resources for money advisers at a time when demand for debt advice is increasing, but more importantly increase take-up and achieve better outcomes for more people in desperate need of debt help.

A PICTURE OF OUR AVERAGE DEBT HELP CLIENT IN SCOTLAND

When seeking debt help:



Three fifths waited over two years before getting help with their debt, during that time:



CAP supports people facing complex and uncertain situations, both personal and financial, which have often resulted in extended periods of hardship. In this context, flexibility is vital to prevent those in hardship facing hurdles to access a suitable solution. While DAS is a great tool for clients who have stable circumstances and will make consistent payments, it is only suitable for less than one fifth of CAP's Scottish DMP clients.³

One of the main challenges lies in the central distributor model and the limited three-way communication this involves. It means clients need to be capable of managing correspondence from their creditors and resolving any problems themselves. In practice, there are more collections, reassignment and enforcement that takes place than implied in the statutory protections. There is also a risk that those in the most vulnerable situations, who are unable to request a payment break when a crisis hits, will find their protections

revoked and interest and charges added retrospectively if their Debt Payment Programme (DPP) fails.

Furthermore, changes made in December 2014 that required all debts to be included in a DPP have caused problems for some clients, who for instance have rent arrears or owe money to a friend or family member. These issues expose people in financial crisis to further anxiety and financial consequences that risk worsening their situation.

Ensuring DAS is fit for purpose is important in the context of rising demand for debt advice and increasing resource constraints faced by free-sector money advisers. As more Scottish residents struggle to keep up with the costs of their basic living needs and face problem debt, action is needed to ensure DAS is accessible and suitable for all who desperately need the protection that the scheme provides.

³ As of 21/04/17, 18% of CAP clients in Scotland pursuing a repayment route were in a DAS. There were 60 active DPPs and 278 clients on a DMP.

Recommendations

CAP welcomes the proposals made in the interim report by AiB following the DAS 2016 Review Consultation. In order to ensure DAS continues to lead the way in offering protection to those repaying debts, the following recommendations highlight additional areas of needed reform, which will help DAS remain a scheme Scotland can continue be proud of:

Improved accessibility

1. Remove the requirement to include all debts in a DPP
2. Accept reasonably up-to-date balances already held by money advisers
3. Extend the six-week interim intimation period to six months

Improved sustainability

4. Remove the ability to reinstate interest and charges retrospectively if a DPP fails
5. Improve the client experience where a debt is reassigned
6. Increase creditor awareness, understanding and buy-in of DAS



Improved accessibility

1. Remove the requirement to include all debts in a DPP

Case study



71-year-old CAP client, Sandra, living in owner-occupied sheltered accommodation had found herself in financial difficulty when she became a victim of fraud. She applied for DAS to protect her property, and was required to include the £1,500 she owed to her brother and a couple of friends. Dealing with this informal loan through an official system caused friction in their relationship and on-going anxiety for Sandra.

Since 2014, it has been a requirement to include all debts in a DPP. This is not always in a debtor's best interest, especially with regards to rent arrears and some other priority debts. DAS cannot guarantee protection from indirect enforcement action. There have been instances of eviction when a tenancy is up for renewal, repossession through the Sheriff court or instalment of a prepayment meter. These types of enforcement cause detriment to clients through routes that DAS is unable to offer protection from.

In practice the requirement to include all debts in a DPP undermines the protections offered by DAS and reduces take-up. Where clients are understandably concerned about the implications of including specific debts in a DPP, they lose out on the statutory protections altogether. It is welcome that AiB intends to introduce flexibility with regards to the inclusion of rent and mortgage arrears, as long as they are disclosed in the DPP proposal. However, further discretion for money advisers to exclude other forms of debt on the same terms would further achieve increased take-up of DAS, and also offer more complete protection from enforcement action and peace of mind for debtors.

2. Accept reasonably up-to-date balances already held by money advisers

Case study



Jean and Peter, a couple in their late 70s and in ill health, sought help from CAP with debts totalling over £45,000, including a large tax debt from a failed business and five other debts. The couple were facing court action to take them through sequestration. However, they did not want to lose their home and could repay within three years, therefore DAS was the preferred solution. The court case was delayed to allow for the DAS application, but by the time balances could be acquired to process the application and conduct a 'Fair and Reasonable' test, the DAS could not be approved before the date of the next court hearing.

The requirement to confirm verbally the balance of each debt included in the DPP with the creditor, taking note of the date and time of the phone call and the name and department of the person they spoke to when making a DAS application places a heavy burden on money advisers. Clients have ten debts on average and this information must be provided within four weeks. Creditors are not always forthcoming with this information and some have policies whereby balances can only be given in writing. Where paperwork has to be sent to the client and then forwarded to the money adviser it is easy for the four-week balance deadline to be missed and force a new round balance to be acquired as a consequence. This results in further delays for the client before the DAS application can be submitted and duplication of work for money advisers.

Extending the four-week balance deadline would set a more realistic deadline for money advisers supporting clients with multiple complex needs. However, more generally this requirement seems an unnecessary hurdle as creditors are asked by the AiB to confirm the balance when a DPP is approved. These balances are often different to those acquired during the four-week period due to further interest and charges. Alternatively, accepting reasonably up-to-date balances from within the last six months, with a view that the specific amount will be confirmed by the creditors when the DPP is set up, would still give a sufficiently accurate view of a client's financial situation without creating excessive workloads for money advisers and barriers to accessing DAS.

3. Extend the six-week interim intimation period to six months

Case study



Duncan and Yvonne are in their 60s and have debts from a former business. When they contacted CAP for help their interest-only mortgage term had just expired and they did not have savings or an endowment policy to cover the balance. It took 16 weeks for the clients to switch to a repayment mortgage and put together a DAS application, and then a further four weeks for the DAS to be approved and set up with the distributor.

On average clients wait over two years before seeking help with their debts due to fear and shame. Therefore, entering the debt advice process is a big step and often a challenging time for clients as they face personal and financial problems head on. Submitting a DAS application triggers a six-week interim intimation period, giving intermediate protection from collections and enforcement action before a DPP is officially set up. This can also be applied for earlier to provide breathing space while a DAS application is put together.

In light of the time needed to see an adviser, get complex situations in order, acquire balances (as highlighted above) and the 21 days creditors have to respond to a DAS application, six weeks is often insufficient. This is also problematic where a DAS is rejected by a creditor and clients need to wait for an appeal or for a new application to be submitted, and where a DAS has been accepted but there is a lag between the interim intimation period ending and DPP payments starting.

At present the six-week interim intimation period is only sufficient where clients' circumstances are straightforward and they are able to proactively engage in the application process. This is not reflective of the vast majority of those in financial distress to whom DAS aims to offer relief. Six weeks is also not in line with industry standards, for instance there is a 60 day hold period under the FCA's guidelines. In practice, often the level of correspondence received by clients from creditors increases during the initial weeks of a DPP before ceasing.

Inadequate intimation leaves clients vulnerable to enforcement action at this difficult point and risks them disengaging from debt advice without a resolution. A longer period of interim intimation would cater for cases where there are complexities and delays, as well as offering stability during the initial few weeks of a DPP as residual collections activity stops. A six-month period of interim intimation would be a more suitable length of time considering the challenges and complexities of clients' lives, especially where there are vulnerable circumstances.

Improved sustainability

4. Remove the ability to reinstate interest and charges retrospectively if a DPP fails

Case study



One couple CAP helped apply for DAS received statements from a creditor showing that interest and charges were still accruing. Bill and Helen were anxious about this as they had previously been in a DMP with CAP where this creditor had stopped interest and charges. AiB advised that this was nothing to worry about, but still the clients found this very confusing regardless.

A major strength of DAS is that all interest, fees and charges are frozen. However, interest and charges often continue to accrue on statements received by the client, causing confusion. For the most part, these charges will not be paid due to the completion of the DPP, therefore, the distress caused by this is unwarranted.

Where the DAS fails, the client is liable for these charges retrospectively. Whereas in contrast, interest and charges also tend to be frozen for debts in DMPs with a free-sector money adviser, but are not shown on statements or added retrospectively if the DMP fails. This asymmetry means that those entering DAS risk an exacerbated financial situation should lack of stability mean their DPP fails. It is not fair or reasonable to penalise debtors, who have made repayments in accordance with their DPP and attempted to resolve their debts through DAS.

Whilst in principle payment holidays provide protection to prevent DAS from failing, this system is not sufficient in practice. Where a payment holiday is required, circumstances often also mean clients are not in the position to make a formal request. Furthermore, whether due to emotional trauma, all-consuming personal circumstances or limited capacity, clients are not able to return to the money adviser for assistance. As such, it is those in the most vulnerable situations who are at the highest risk of seeing their DAS fail.

The ability to reinstate interest and charges retrospectively is unjustified and distressing for both those who fail a DPP and those who complete it successfully. It also creates a barrier for those in precarious financial positions and vulnerable situations from accessing debt relief through DAS. Considering the emotional toll problem debt places on clients, 38% of whom have thought about or considered suicide before CAP's help, DAS should seek to minimise not only enforcement but also the stress associated with collections activity. In light of this, the ability to reinstate interest and charges retrospectively should be removed.

5. Improve the client experience where a debt is reassigned

Case study



Two CAP clients, Teva and Ian, have been paying into a DPP for the past 18 months. During this time, three different debts have been passed out or sold to separate collection agencies who have begun chasing for payments. This has caused confusion and the clients were anxious that the statements did not reflect payments that had been made (as these were received by the original creditors).

Under DAS, debtors are expected to deal with all creditor correspondence themselves and inform their money adviser of any changes that need to be made. Most collection activity still encountered by clients in a DAS occurs when debts are reassigned. Details of the DPP are commonly not passed to the new creditor and under DAS all correspondence is received by the client and it is their responsibility to inform the money adviser that a debt has been reassigned. This results in increased collections activity for a time, despite a statutory agreement to repay being in place. Not only does this cause confusion for debtors, but it is important to note that the impact of these letters and phone calls is not trivial for those who have experienced acute financial stress, particularly the most vulnerable.

While the rationale is that it is easy for the debtor to refer this communication onto their money advisers, vulnerability and mental health issues mean that there is a risk that instead the debtor disengages altogether. It would be more appropriate for the responsibility of updating the details of the DPP to sit with the creditor. Moreover, several creditors have put policies in place to prevent debts in a DPP being sold or reassigned to a third party. To more comprehensively stop collections activity while a DAS is in place, it should be considered good practice to take the same approach where a debt is in a DPP.

6. Increase creditor awareness, understanding and buy-in of DAS

There remains a lack of awareness and understanding about DAS in the credit industry. This creates instances where DAS protections are not abided by, and debtors continue to receive correspondence from creditors, as well as collections or enforcement actions. Many creditors are unaware of DAS, and what it means they can and cannot do when contacted by money advisers on behalf of clients. Part of this stems from the low volume of DAS cases each creditor sees, and has resulted in limited investment from the credit industry into staff training on handling DAS cases. On the other hand, AiB could better facilitate communication between DAS-approved money advisers and creditors, for instance ensuring creditor contact details on the DASH portal are up to date.

The protections DAS offers can only have the intended effect if they materialise in practice. This often does not happen and it is common for clients to be anxious about increased contact from creditors when entering a DPP. There needs to be increased engagement and persistence on the part of AiB to secure creditor buy-in. As a statutory scheme, there should be more requirements for creditors to abide by the conditions of DAS and use the DASH portal to increase efficiency, speed of case progression and the level of protection secured under DAS in practice.

DAS explained

DAS is a statutory debt management scheme introduced by the Scottish Government in 2004 and administered by Accountant in Bankruptcy (AiB). It is only available to Scottish residents and allows debtors to repay their debts over a reasonable period of time without the threat of court action or escalating interest and charges.

DAS applications need to be made through an approved DAS money adviser, and are subject to a 'Fair and Reasonable' test before being approved. Once approved, debtors make a single regular payment through a debt payment programme (DPP), which is distributed by a payment distributor. When a DPP is approved, all interest and charges are frozen and then waived on completion of the DPP. Debtors also receive protections, set out in law, preventing their creditors taking action against them to recover any debts in the DPP. This includes legal action and petitioning for bankruptcy.

A DPP is for a fixed length of time, typically less than ten years. Debtors can apply for a six-month payment break or to vary the DPP if their circumstances change. Once a DPP is completed, all creditors are informed that the debts have been repaid. A DPP can fail if in arrears by the equivalent of two agreed DPP instalments.