



Accountant in Bankruptcy

**Debt Arrangement Scheme
(DAS):
The Way Forward**



Contents

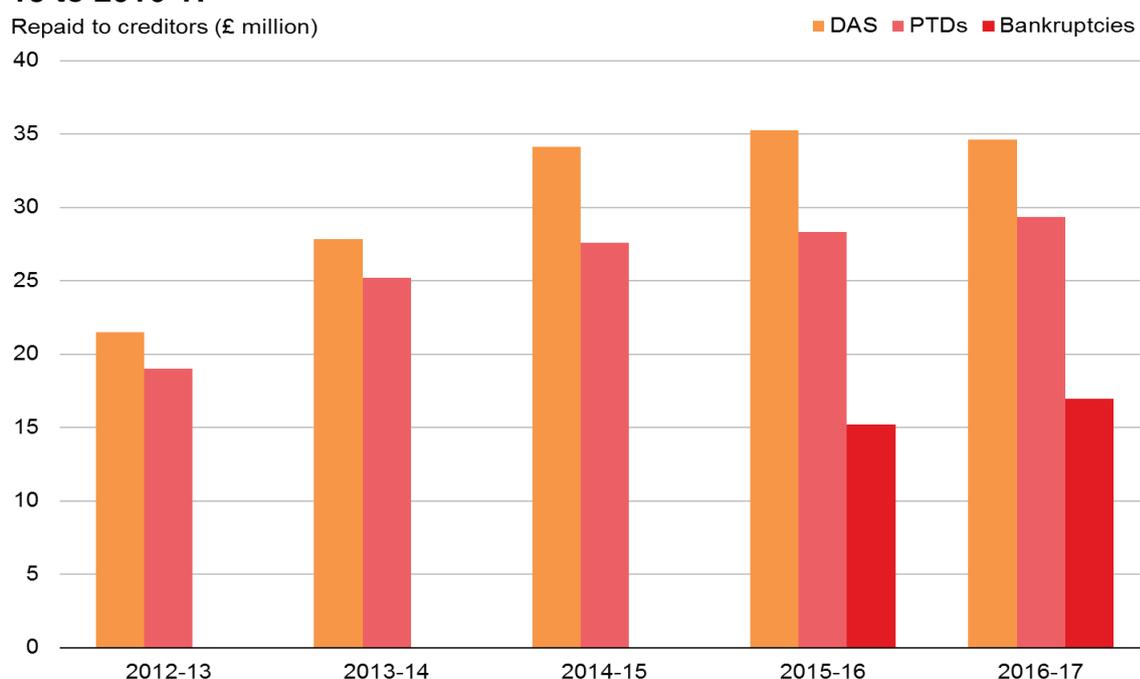
1. Debt Arrangement Scheme - The Story so Far	3
2. DAS Consultation Response and Proposed Improvements	8
3. Enhancing Scheme Administration – Regulation and Information Technology	12
4. Longer Term Outlook - Making DAS Work for Advisers	15
5. Next Steps	18

1. Debt Arrangement Scheme - The Story so Far

1.1 The Debt Arrangement Scheme (DAS) has become a great success since its introduction in 2004. DAS is a key component of the Scottish debt management system, providing an effective statutory alternative to insolvency or debt consolidation. The UK government has recognised this success and, in response to repeated lobbying, is due to consult later this year on the development of a similar solution for the rest of the UK.

1.2 By the end of 2017-18, DAS will have helped facilitate payments of over £200m from debtors since the process was reformed in 2011. Through DAS, debtors pay their debts in full, with over 6,000 people having now successfully completed a DAS Debt Payment Programme (DPP). Creditors receive at least 90p in the £, with the remaining 10p in the £ covering the costs of administering the scheme. Over the past five years, DAS has repaid more to creditors than either of the formal insolvency solutions; protected trust deeds (PTDs) and bankruptcies, as shown in chart 1 below.

Chart 1: Amount repaid to creditors by statutory debt solution: Scotland, 2012-13 to 2016-17¹



1.3 While it is true that DAS is not the best option for everyone and there is clearly a place for insolvency solutions for those unable to manage the burden of unsustainable debt, it is clear that DAS generates the most positive returns for creditors.

1.4 Debtors also benefit from the scheme. They are afforded the opportunity to pay back debt over an extended period of time with the ability to have payments varied should circumstances change. Unlike non-statutory solutions, DAS affords protection from creditor enforcement action and automatically freezes interest and charges on the debts included in the DPP. On completion of the DPP, the interest

¹ Amount repaid to creditors through bankruptcies unavailable before 2015-16.

and charges are written-off. Creditors' consent is not an absolute requirement under DAS and the DAS Administrator is empowered to impose the terms of a DPP on creditors where the proposal is deemed fair and reasonable to all parties. Fairness is maintained through a review and appeal process for those dissatisfied with the DAS Administrator's decisions.

1.5 DAS is a holistic solution which seeks to ensure that individuals receive appropriate money advice, including help with budgeting and help to maximise their income. This advice is aimed at building the financial capability of debtors so they are better-equipped to manage their finances effectively throughout and beyond completion of their DPP. DAS has the inbuilt structure that requires debtors to pay their continuing liabilities or the DPP is revoked. This reinforces the aspect that DAS is not only helping to manage existing debt, but also building the habits of better financial management – this in turn will hopefully prevent debt being built up again in the future. One measure of the success of this approach is that over a quarter of those who have successfully completed a DPP have managed to do so early. By comparison, bankruptcy is not considered to be as effective at building a budgeting habit as there is no further consequence for a debtor failing to pay their continuing liabilities. For all these reasons, for those for whom a DAS is possible, AiB considers it the best option.

1.6 The Scottish Government has aimed to continually build on the experience gained by operating DAS in the real world to enhance the scheme. Together with feedback received from stakeholders, this has resulted in the Regulations being amended over the years in an effort to help the scheme meet its full potential. Despite these efforts, we believe there is scope for DAS to grow significantly and replace non-statutory solutions that are often marketed heavily but cannot offer the range of benefits that are available through DAS. Chart 2 below shows the number of DPPs approved since 2006-07 and chart 3 shows the number of DPPs approved in comparison to other statutory debt solutions.

Chart 2: Approved DPP under DAS: Scotland, 2006-07 to 2016-17

Approved DPP under DAS

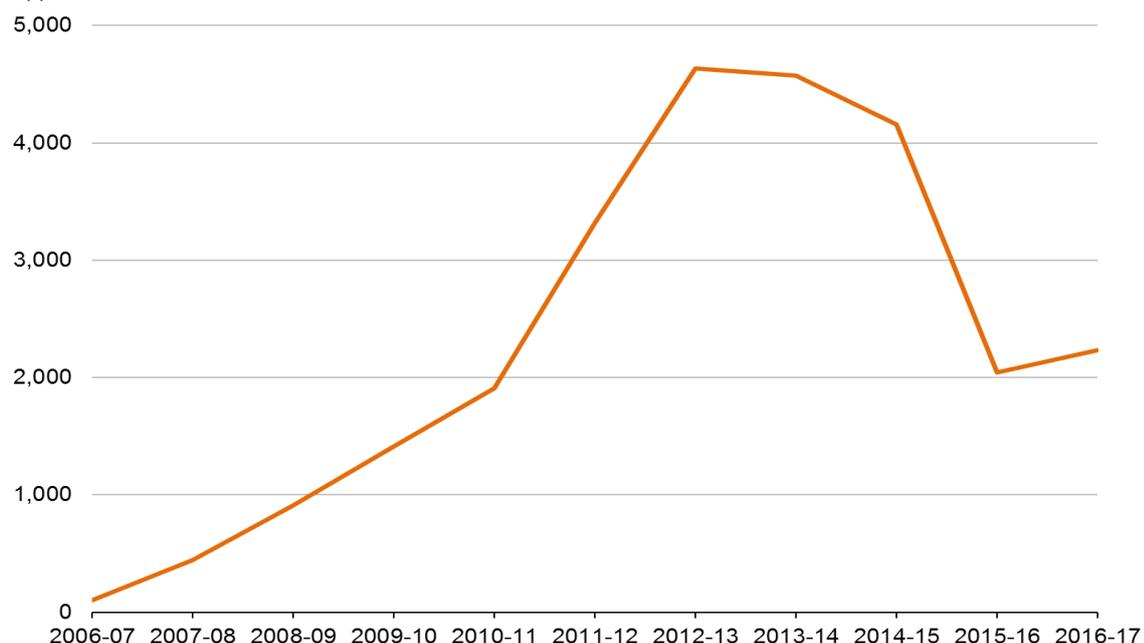
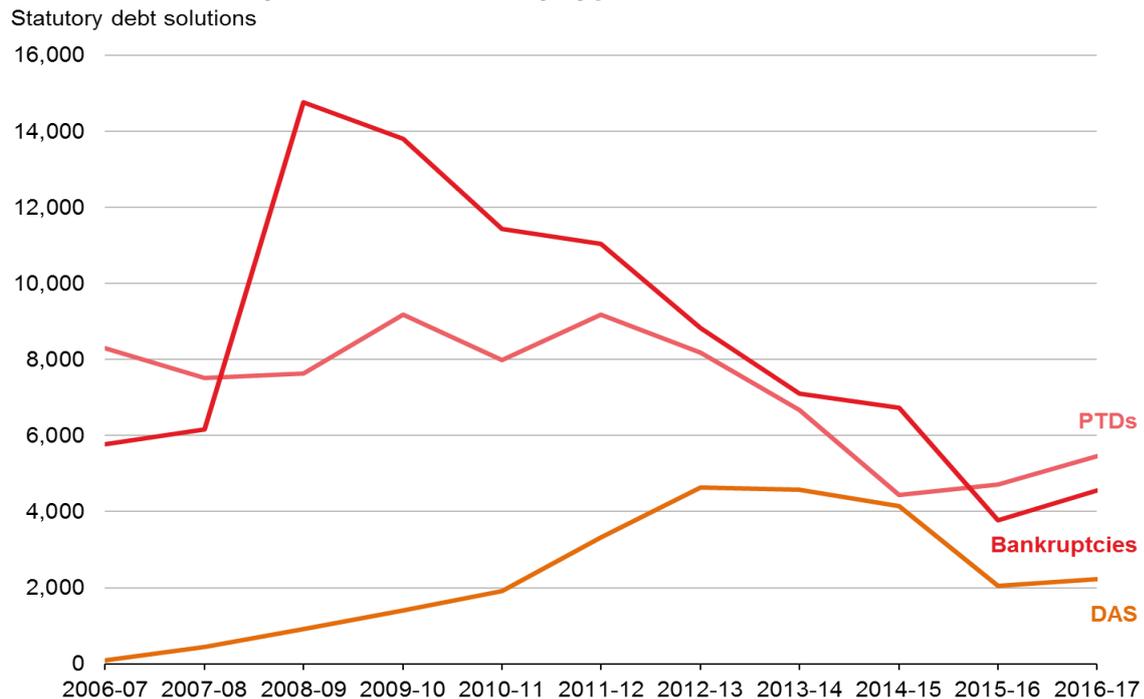
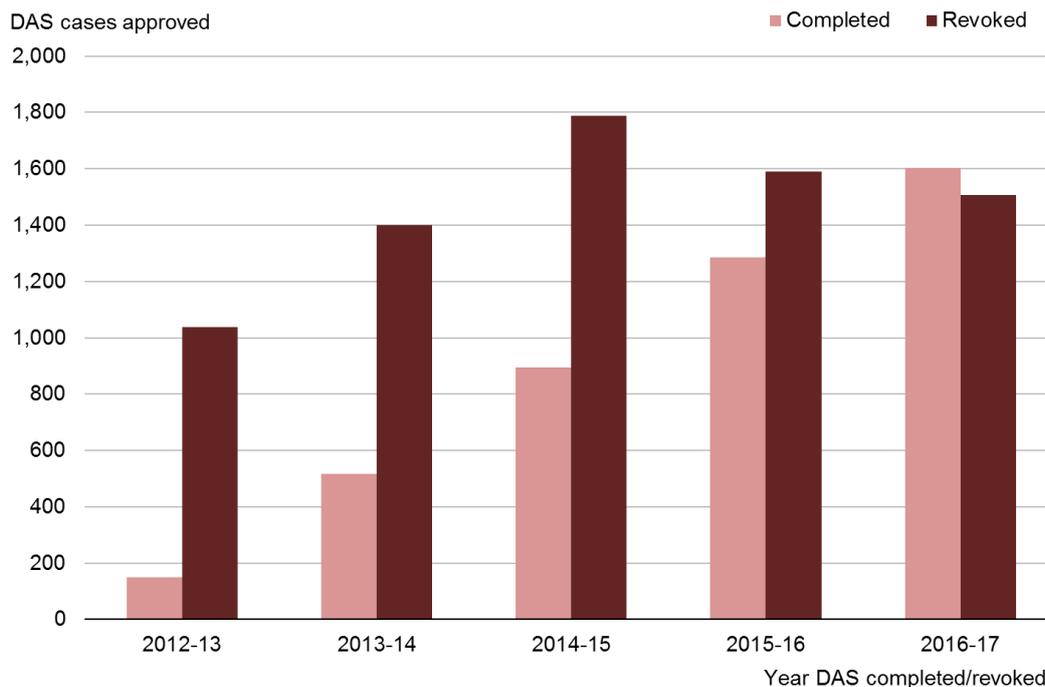


Chart 3: Statutory debt solutions by type: Scotland, 2006-07 to 2016-17



1.7 A DAS DPP is often a long-term commitment with an average forecasted duration of 6.8 years. As such, it is inevitable that a proportion of cases will not be completed. Consequently, in the early years, revoked DPPs will outnumber successful completions – as some will fail within a few months, while it will take a number of years before large numbers of DPPs are completed. For the first time in 2016-17, completions outnumbered revocations, and we expect that trend to have continued over the last twelve months, as shown in chart 4 below.

Chart 4: Completed or revoked DAS cases: Scotland, 2012-13 to 2016-17



1.8 While the failure of a DAS DPP cannot be portrayed as a positive outcome, creditors still benefit from the repayments made up until the revocation. DPPs that “failed” in 2016-17, for example, had managed to repay over £5.9 million to creditors before they were revoked – equivalent to 26% of the original total debt included (£23.0 million). By comparison, the average dividend payable to creditors in successfully concluded PTDs in 2016-17 was only 19.8% of the debts included. Additionally, if a DPP is revoked, the principal sum outstanding when the DPP was approved will have reduced, so debtors’ indebtedness will to some extent have been diminished.

1.9 Ultimately, Accountant in Bankruptcy (AiB) aims to ensure that all those who could benefit from DAS are able to do so, and that all those who start a DPP have the best possible chance of completing it. Insolvency solutions will, of course, continue to remain available for individuals for whom DAS is unsuitable.

The Remaining Issues

1.10 There are a number of reasons why fewer people have elected to repay their debt through DAS in recent years which have also affected personal insolvency numbers more generally:

- creditor forbearance has increased, with most creditors less inclined to enforce debt recovery except as a last resort
- Financial Conduct Authority requirements, in particular for treating customers fairly, are an increasingly important consideration for creditors leading to more sympathetic recovery policies
- low interest rates mean that DAS features are not so beneficial

1.11 Recent reports show that personal credit is now back to pre-credit crunch levels and experience shows that this would normally result in an increasing number of people in financial difficulty. We have already seen a small increase in insolvencies and the number of DPPs approved this year. It is therefore important that DAS is fit for purpose for those who need it in coming years.

1.12 AiB has identified three potential factors limiting DAS reaching its full potential:

i) lack of flexibility, in particular over determining the contribution at full surplus income and requiring all debts to be included in the DPP. We believe this approach has made DPPs less sustainable over the longer term and made non-statutory solutions by comparison more attractive options. AiB is convinced, however, that the protections offered by DAS within a government-regulatory framework offers the best solution for the vast majority of people, so we believe more of those currently choosing a debt management plan (DMP) would be better off in DAS;

ii) the need to enhance the scheme administration to remove the cumbersome nature of some elements of the legislative and administrative machinery; and

iii) lack of money advisers offering DAS in both the free to client and fee-paid sectors. For both sectors, the financial imperatives point to other solutions

(especially trust deeds), while the current DAS administrative process means that advisers have to commit a significant amount of effort to supporting their DAS clients.

1.13 The proposals set out in this document encapsulate AiB's plans for the short and medium term reforms to legislation and information technology that are designed to improve the accessibility to and operation of the DAS to address these concerns.

2. DAS Consultation Response and Proposed Improvements

Increasing Flexibility – Legislative Improvements

2.1 During 2016 and 2017, AiB carried out two separate DAS consultations on proposals for improvement. Following the first consultation, AiB set out a proposed way forward on many issues, and asked for views on one additional area where no consensus had emerged in the first consultation. This section pulls together those already announced changes, a summary of the responses to the second consultation, and AiB's response.

2.2 At the earliest opportunity, AiB will take forward recommendations to Ministers for new legislation to embed these changes, which, subject to parliamentary approval, should take effect during 2018. The legislation sought will primarily look to improve DAS accessibility and the sustainability of DPPs by introducing greater flexibility where possible. In particular, it will:

- i) remove the requirement to include all debts in a DPP. Debtors will now be able to choose whether or not to include rent and mortgage arrears; and
- ii) end the requirement for the debtor's monthly contribution to their DPP to be their full surplus income. Debtors will now be able to choose to offer creditors less than their full surplus income, with any rejection of such an offer being subject to a "fair and reasonable" test as with creditor rejections of DPP proposals on other grounds.

2.3 The detailed changes to be taken forward are as follows:

All Debts - The requirement to include all debts in a DPP was introduced to provide maximum protection to debtors. DAS is designed to be a "diligence stopper" that protects debtors from further action by their creditors. A majority of respondents to the consultation exercise, however, said that it should not be necessary to include all debts. It was highlighted that the compulsory inclusion of rent and mortgage arrears has, in some instances, resulted in DAS not presenting the best option for the debtor. In these cases, DAS does not necessarily provide full protection to the debtor from further action. For example, we have been made aware of occasions where those renting from a private landlord have been unable to renew their tenancy agreement and have experienced difficulty in securing alternative rental property. In addition, debtors who have a pre-agreed arrangement for arrears with their mortgage lender are unable to enter a DPP without disrupting that arrangement. In these areas, DAS is not delivering what was intended. AiB therefore aims to increase flexibility by making it possible to exclude rent arrears and mortgage arrears from a DPP. The DPP proposal circulated to creditors will still be required to disclose all debts, and a new requirement will be added to identify any debts of this sort which are being excluded from the DPP. This will allow creditors to consider whether or not to accept or object to the proposal – and objections will result in the proposal being subject to a "fair and reasonable" test by AiB as happens now if a creditor objects to a proposed DPP.

Use of the Common Financial Tool (CFT) to determine level of contribution -

The 2016 consultation highlighted a desire for greater flexibility in DAS particularly around the requirement for all surplus income, as calculated by the CFT, to be used as the contribution in DAS. In recognition of this response, we issued the second DAS consultation in June 2017, which proposed the following three options:

Option 1) continue with the current arrangements;

Option 2) introduce flexibility around the CFT surplus income but only where this will not extend the length of the DPP beyond a certain time; and

Option 3) introduce total flexibility by removing the requirement to use the common financial tool in determining the level of contribution.

We received 38 responses to the 2017 DAS consultation and the following table shows a breakdown of responses received from each stakeholder group.

Stakeholder Group	Option 1	Option 2	Option 3
Creditor	9	0	0
Advice Sector	0	4	10
Local Authority creditor sector	1	0	0
Local Authority advice sector	0	3	1
Debtor	0	0	0
Recognised Professional Bodies	0	0	0
Solicitors/Advocates	0	0	0
Insolvency Practitioners	0	0	5
Other *	0	2	3
Total	10	9	19

*From the organisations identifying themselves as “other”, one is from the mortgage servicer/creditor industry, two are chartered professional bodies and two are trade bodies.

The table shows that the majority of respondents wanted more flexibility in this area.

AiB aims to find the right balance between creditor and debtor interests here. Allowing debtors to offer less than their full surplus income will potentially increase the duration of DPPs. This means asking creditors to accept less, as inflation will eat away at the value of the debt being repaid to creditors. All other things being equal, longer DPPs are also more likely to fail, as there is a greater chance of outside events changing a debtor’s circumstances. On the other hand, asking debtors to contribute their full surplus income over several years places them under a significant burden. Our conclusion is that increasing flexibility in this area of DAS could potentially allow DAS DPPs to be more sustainable, and that within reason, it is in creditors’ interests for DPPs to have the best possible chance of success.

Therefore we will move to break the requirement for all surplus income, as calculated by the CFT, to be used as the contribution in DAS and introduce full flexibility in this area of DAS. The money adviser will still be required to complete the CFT on behalf of the debtor in the DAS process and this will be circulated to creditors as part of the DPP proposal. This will promote transparency by allowing creditors to establish the

proportion of surplus income the debtor is proposing to pay towards their DPP and the consequent impact on the duration of the programme. Creditors will have the opportunity to accept or object the proposal and any objection will result in the proposal being subject to a “fair and reasonable” test by the DAS Administrator.

Introducing flexibility to include the sale or re-mortgage of a dwellinghouse as a discretionary condition - There was a mixed response from respondents on whether a further discretionary condition regarding the dwellinghouse should be introduced, with most who objected primarily doing so as they feared that debtors may be subject to undue pressure to sell their family home. On the other hand, AiB has been advised of circumstances in which debtors are unable to repay their debts in full within a reasonable timescale based on monthly contributions alone, and wanted the ability to include the offer of a future “lump sum” contribution using the proceeds of a future sale or re-mortgage of their dwellinghouse. These individuals are unable to make this proposal under the current DAS legislation. AiB proposes to amend the regulations to make this possible, while making clear that this remains entirely the debtor’s choice. This discretionary condition will include details of the “lump sum” which is expected to be realised as well as the timescale for meeting this condition. This will help to ensure the completion of the programme. The inclusion of such a condition would be entirely the decision of the debtor. The intent here is to give debtors more choice, rather than place them under any pressure to sell property they wish to keep, given DAS was designed as a tool to help debtors protect their assets.

Access to credit while in a DPP – In most circumstances, those in a DAS DPP have to apply to the DAS Administrator before obtaining any further credit, and this is usually only allowed for certain essential purposes. The rationale for this is that the debtor should not be able to service more debt since all surplus income is being used to pay off their existing debts. Most respondents said that this is too restrictive and argued that it was not right for those repaying their debts in full through a DAS DPP to face more stringent controls than those gaining debt relief through bankruptcy, especially given the generally longer period over which the current DAS restrictions are imposed.

AiB agrees, and we therefore propose to mirror the restrictions in bankruptcy so a debtor will be required to notify any new potential creditor that they are in a DPP if they apply for credit of more than £2,000, or already have credit of £1,000 or more. This will work in conjunction with our proposal to break the requirement for a debtor to pay their full surplus income, as calculated by the CFT, as a payment in DAS - allowing more flexibility for the debtor to service any further credit taken out. The approval of any new credit will be at the creditor’s discretion. Failure to maintain payments toward the new debt could result in the revocation of the DPP. It will not be possible to allow a variation to reduce existing payments to allow for the servicing of new debt.

Continuing Money Adviser’s Fee - AiB will also seek to improve transparency by introducing a requirement to disclose the Continuing Money Adviser’s (CMA) fee for setting up and administering the DPP. Schedule 1 of the regulations will be amended to ensure this information is captured on the necessary forms. This information will then be provided to creditors as part of the DPP proposal and is for information

purposes only. As it is at present, the CMA fee will not form part of a fair and reasonable test.

Approved Money Advisers - AiB will update legislation to reflect the growing regulatory role that the Financial Conduct Authority (FCA) exercises in relation to debt advice. AiB will work together with the FCA to ensure the regulations fully capture the need for money advisers to meet FCA requirements.

Business DAS – Many of those who responded to the consultation did not respond to questions around business DAS as they had little or no experience in that field. Of those who did respond, most thought there should be more flexibility along the lines permitted for personal DAS DPPs. AiB agrees, and will introduce additional flexibility to business DAS by removing the requirement to have at least two debts, and introduce the facility for a payment break of up to six months for the duration of the DPP. This will bring business DAS in line with personal DAS and make business DAS more attractive to viable businesses who may be able to access the scheme to address issues of short term indebtedness while continuing to operate. Where a payment break is utilised, it will be possible to extend the DPP for the same period, i.e. up to 6 months, providing the total length of the DPP remains within the five year maximum period.

AiB has considered further whether any changes are required in regulations to specify which debts should be limited to business DAS as opposed to personal DAS. Sole traders are entitled to include business debts alongside personal debts in a personal DAS, so any definition of a business debt that could only be included in a business DAS would be limited to the debts of partnerships, charities or similar organisations. It is unlikely that an individual would seek to include such debts in a personal DAS. Even should they do so, it is considered that there is minimal prospect of their creditors being prejudiced by such an approach. Given such an assessment, no change is proposed at this time.

Non Legislative Improvements

2.4 The consultation raised a number of areas for improvement which do not require legislation. As a result, AiB will look to take the following forward by the time the new regulations come into force:

Review Process – AiB will improve the use of plain English in all communications, review guidance to ensure it is as helpful as possible and share case studies with money advisers which highlight the review process. It is hoped that this will help debtors and money advisers to understand decisions and help develop future practice.

Guidance – AiB will provide additional areas of guidance covering issues including when a DPP is reasonable, and the role of the money adviser and payments distributor.

3. Enhancing Scheme Administration – Regulation and Information Technology

Regulatory Changes

3.1 Any statutory scheme relies on detailed administrative rules and processes which must be linked back to the underpinning legislation. Experience over time shows a number of areas where operation of any particular scheme can cause unnecessary burden for debtors, advisers and administrators, which require minor changes to legislation before they can be fixed.

3.2. Stakeholders have suggested a number of minor changes to regulations, largely arising from circumstances not considered when the current regulations were drafted, to help deliver the legislative intent of the scheme and reduce administrative friction. These are not considered to represent any substantive policy change, but deal with real world situations arising from individual cases. The changes identified are as follows:

Extend payment break criteria to include a reduction in disposable income resulting from benefit reduction (to be consistent with other circumstances) -

Under the current criteria for a variation for payment deferral, there is no provision for a debtor to apply under Regulation 37 (1)(h) and (3) if they have suffered an income shock due to a reduction in benefits. As it is permissible to enter into a DAS DPP with income that consists solely of benefits, it has been highlighted by stakeholders that not having this option creates a disadvantage to someone who pays their DAS from benefits in comparison to someone in employment. To rectify this, we propose to amend the legislation to cover a reduction in benefit income.

Introduce automatic approval for variations arising from debt discharged by a creditor applying compensation -

Currently variation applications proposed by the DAS Administrator under Regulation 36A where the grounds are under Regulation 37(1)(ea) (where liability of a debtor is discharged by a creditor applying compensation) can only be approved if the application is deemed fair and reasonable by the DAS Administrator. The grounds for the application will mean that the total debt and the DPP term will be reduced, benefitting both the debtor and the creditor. With this in mind, it seems unnecessarily bureaucratic to have the application go through the full administration process of a fair and reasonable test, including circulation to all creditors. AiB proposes to amend Regulation 38 (1) to allow these applications to be automatically approved on receipt. This brings the process into line with a regulation 37(1)(b) variation proposed on agreement between a debtor and a creditor that has used compensation to discharge a debt.

Extend provision to correct accidental errors to include those made by the money adviser, payments distributor or creditor, and allow these to be rectified immediately -

Currently Regulation 4A allows for the correction of accidental errors made in any decision taken by the DAS Administrator under the legislation. This proposal will extend those current provisions to enable accidental errors made by any party to be rectified and support their immediate resolution. AiB proposes to extend Regulation 4A to allow the DAS Administrator to correct any accidental error made in a determination where the error was caused through

incorrect information provided by any other party. In addition, AiB proposes to remove the stipulation limiting the DAS Administrator's powers to correct an accidental error where an application for review under Regulation 47 has been received. This will enable the DAS Administrator to correct any accidental error identified immediately, resulting in benefits for all parties.

Allow CMAs to issue notification of approval or rejection of a variation - CMAs conduct most of the administration work in the DAS cases they are working with. Current legislation, however, stipulates that the DAS Administrator must issue the notification of the approval or rejection of a variation application. CMAs work closely with their clients throughout the term of the DPP and it has been suggested by CMA organisations that all administration work should be conducted by them to streamline the process and avoid confusion of other parties involved. The CMA already issues the notice of approval or rejection of the initial DPP application and any revocation application. The DAS Administrator will continue to undertake these functions in cases where no CMA is engaged.

Allow CMA and the DAS Administrator to send notice of recall of arrestment to each employer following approval of a debt payment programme - At present, Regulation 33(1)(a) stipulates it is the DAS Administrator who sends a notice of recall of arrestment following the approval of a DPP. At this stage in the process, the CMA is working closely with the debtor and it has been suggested the regulations allow for the CMA to issue this notice for their cases. This is consistent with the approach taken to the issue of DPP approval notification to creditors and is a function generally carried out at the same time.

Clarify grounds for variation such that changes in household circumstances rather than only changes in the debtor's circumstances can give rise to variation - It is accepted that changes in the circumstances of other members of the household, not just those of the debtor, can impact on the debtor's income and expenditure, and thus change the level of the debtor's disposable income. Regulation 37 does not provide for this in all cases. This has created difficulty for example where the income and expenditure of the household has been impacted by illness of a partner or other family member.

Modernise the terminology relating to eligibility to enter joint debt payment programmes - It has been highlighted that the terminology of Regulation 22(1)(b) relating to eligibility criteria for entering a joint DPP is in need of updating to take account of legislative changes in relation to, for example, same sex marriage.

Equalise the conditions on information withheld from the DAS Register on grounds of sensitivity with those applying to bankruptcy and the Register of Insolvencies - A sensitivity clause should be introduced to afford vulnerable applicants the same level of protection when entering DAS as afforded to those entering an insolvency solution. This will ensure that where appropriate, applicants confirmed as being at risk may have their address details withheld from the DAS Register.

Equalisation of the post debt payment programme protections for individual and business DAS – Currently, the regulations provide protection from a creditor

commencing or executing diligence against individuals in a business DAS only once the DPP is approved. We intend to extend this protection to match personal DAS by amending Regulation 30 to ensure that those in business DAS are protected against a creditor enacting diligence from the date of their application for a DPP.

Information Technology Development

3.3 The most significant improvement in scheme operation over the coming years will come from enhancements to the IT on which the scheme depends. Work has started on designing and building a new web-based case management system to replace the current 2011 model. Taking advantage of the great improvements in IT capacity since that date, and catching up with the regulatory framework, the new system will improve the efficiency of the DAS process for money advisers, creditors, the payments distributors and DAS Administrator, with the aim of improving the debtor's experience. Funding is being provided in full by the Scottish Government.

3.4. Many of those with experience with the current DAS process are helping with the system design. The aim is for an initial training system to be available for users from summer 2018, with the full system available for view and familiarisation from early 2019, and full "go live" in summer 2019. In particular, the system will provide the following benefits:

- an improved user interface, based on feedback from stakeholders
- simplified form completion with status indicators included
- a tailored home page for individual users
- new notification process allowing alerts to be sent on receipt of correspondence and status changes
- full business DAS functionality
- payments distribution functionality for AiB

4. Longer Term Outlook - Making DAS Work for Advisers

4.1 Debtors can only access DAS through a qualified money adviser. Looking at DPPs beginning in 2017-18, 15 fee charging firms and 63 free-to-client advice organisations submitted at least one DAS application – but only eight and 14 of these respectively submitted more than 10.

4.2 This supports the view that the likely greatest constraint on the growth of DAS is the number of advisers who are willing and able to offer it. There is very strong evidence that suggests demand for debt advice far outstrips supply – one recent estimate suggested by around 50% - so there are likely to be large numbers of people who would benefit from DAS who are unable to access an adviser when they want to.

4.3 Before exploring potential solutions, it is necessary to explain more of the detail of the current system, and in particular, the arrangements for payments distribution – the process by which the debtor’s single payment is allocated between and paid to all their creditors. Current arrangements for payments distribution are set out in Part 3 of the Debt Arrangement Scheme (Scotland) Regulations 2011. The regulations require the DAS Administrator to appoint a panel of service providers who have the relevant FCA permissions to facilitate the transmission of payments from debtors to their creditors. At present, this panel consists of four firms whose membership expires in June 2019. The payments distributors are allowed to charge an administrative fee of up to 8% of the payments they process, which is a charge paid by the creditors rather than by the debtor. AiB itself charges 2% on all payments made to creditors to cover some of the costs of administering the scheme – which means creditors currently receive a minimum of 90% of the principal debt, while debtors pay their debts in full.

Why aren’t there more DAS advisers?

4.4 **For the free-to-client sector**, the key constraint on available advisers is likely to be funding. We know that DAS imposes significant costs on advisers, but of itself, provides no funding to cover those costs. The costs of arranging and administering a DPP will vary widely depending on the circumstances of an individual debtor, but one free-to-client organisation recently estimated it at around £300 per case.

4.5 The public sector, in particular Scottish local authorities, provides funding for debt advice more generally, which will include some of the costs of DAS – but this funding has been falling in recent years. Some organisations in the free-to-client sector also obtain significant funding through what is known as the “fair share” model – by which a pro rata contribution is made by all those creditors receiving contributions under a DMP. The system is voluntary, and although it is supported by the big banks, some creditors pay less than the requested percentage or do not pay at all. The model has recently received significant support in Peter Wyman’s Independent Review of the Funding of Debt Advice. It seems reasonable to ask creditors in DAS to cover the costs of administering the scheme in full, given the significantly greater returns they receive through DAS compared to the alternatives of formal insolvency.

4.6 Free-to-client sector organisations often deal with highly vulnerable clients, and want to work with these clients throughout their debt journey. Anecdotally, AiB has been told the current DAS payments distribution arrangements are seen as an obstacle to this as, once a DPP has been approved, the debtor's main contact for DAS for the life of the DPP may be with the payments distributor rather than with the initial money adviser.

4.7 **For the fee-charging sector**, organisations are able to recover their costs through CMA fees. These are currently not disclosed (although see paragraph on CMA fees at page 10), but information provided to AiB suggests these average around £3000 a case, or roughly 15% of the level of the debts covered in the DPP. It might be expected that the average costs of such cases will be higher than in the free-to-client sector, as more complex cases may tend towards the fee-charging sector.

4.8 The low numbers of cases put forward by the fee-charging sector suggests CMA fees do not provide adequate incentive to private sector money advice organisations to promote DAS to their clients. Anecdotally, AiB has also been told that some fee-charging organisations are not attracted to DAS because they are denied access to the income stream provided by the payments distribution function and are concerned that their efforts would potentially benefit commercial rivals who deliver the DAS payments distribution service. It is noteworthy that the fee-charging sector has in the past administered large numbers of DMPs, the non-statutory alternative to DAS.

One possible way forward

4.9 AiB believes that one way forward to help address many of the issues outlined above would be by changing the payments distribution arrangements. Money advisers in either sector which generate cases would be entitled to either undertake the payments distribution arrangements, or contract with another organisation to do that work on their behalf, in exchange for a fee. They would also be required to support the debtor throughout the life of the DPP. In exchange for these additional responsibilities, the money adviser would be entitled to a fixed percentage of the payments made to creditors as an administration fee, set at a level which would cover the average costs of case administration. The current separate CMA and payments distribution fee would fall.

4.10 The level at which the administration fee would be set will be one of the main issues for future discussion. Assuming the costs of average case administration are close to the £300 mentioned earlier, this might be in the region of 20 to 25% when brought together with the costs of payments distribution and Agency administration. This is broadly in line with existing charges for DAS DPPs in the fee-charging sector, taking into account the 15% CMA fee mentioned in paragraph 4.7, the 2% administration fee paid to AiB, and the up to 8% charged for payment distribution.

4.11 At the same time, AiB itself will develop the capability to deliver a payments distribution function, both to act as a payments distributor of last resort and to ensure there is a party willing to undertake payments distribution work on behalf of any

smaller free-to-client organisations which would not want to enter into partnership with another payments distributing body.

4.12 AiB will consult on the full details of this proposal later in the year, with the aim of bringing such an arrangement into place by summer 2019 when the current contracted period for payments distribution ends.

5. Next Steps

5.1 AiB will now take forward a set of regulations to implement the changes outlined in sections 2 and 3, with a view to these changes being introduced at the earliest opportunity.

5.2 AiB will also consult on the potential to open up payment distribution to other parties later this year.

5.3 Although this is not a formal consultation document, we would welcome comments on the overall approach outlined here, and further suggestions for improvement in the medium to longer term. Your comments should be sent to:

AIB_Policy_Development_Enquiries@gov.scot

or to:

Carol Kirk, AiB, 1 Pennyburn Road, Kilwinning, Ayrshire, KA13 6SA.