

Debt Arrangement Scheme

The Fair and Reasonable Test Guidance

DAS - The Fair and Reasonable Test Guidance

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The Fair and Reasonable Test

1. Background

DAS is a government-run debt management tool, which allows debtors to repay their debts through a Debt Payment Programme (DPP). The DPP allows debtors to pay off their debts over an extended period while giving them protection from creditors taking diligence action against them to recover the debt in the DPP. The DPP can last for any reasonable length of time.

DAS is overseen by the Accountant in Bankruptcy (AiB) in his role as DAS Administrator. In this guidance, the term ‘the DAS Administrator’ refers to members of staff in the AiB’s DAS Team.

All DPP applications are sent to every creditor. It is important to provide as much information to creditors from the start, as this will allow them to make a considered decision on the proposal. If all creditors accept a DPP proposal either by active or deemed consent (where the creditor has not responded within 21 days from the date the DPP proposal was sent to them), the DAS Administrator must approve the DPP in terms of Regulation 24. This is referred to as an ‘automatic approval’.

If any creditor rejects the proposal, the DAS Administrator can still approve a DPP if it is considered ‘fair and reasonable’.

In determining whether a Programme is fair and reasonable, all relevant factors under Regulation 25(2) should be taken into consideration. This is usually referred to as the ‘Fair and Reasonable Test’ or ‘FR Test’.

Another instance where a case will go for a ‘fair and reasonable test’ is if there is only one debt in the DPP, and the creditor has not responded.

Further background, including information which can be provided by money advisers and creditors, is in Appendix 1.

2. The FR Test – Aspects to be considered by DAS Admin

This guidance provides general background on how the FR Test works. The key parameters here are the length of the DPP and the level of creditor rejection. As has been said above, if no creditor objects, the DPP will be automatically approved. If there are creditor objections, then the longer a DPP and the higher the level of creditor rejection, the less likely it is that the DPP will be approved.

However, in all cases there may be other factors which could affect the final decision – e.g. a discretionary condition which would shorten the term of the DPP and/or address creditors’ concerns – and the regulations give the DAS Administrator wide discretion over what can be taken into account in reaching a decision. So it is not possible to develop a “formula” to guide money advisers on what level of creditor objection might lead to the rejection of a plan of a particular length. In every case, all appropriate information provided will be taken into consideration during the decision making process. But in broad terms, the higher the level of non-consent and the longer the proposal, the greater the onus on the debtor and MA to show why it would

be Fair and Reasonable for the DAS Administrator to 'dispense with' the creditors' rejection of the proposal.

2.1 Collating the information to guide decisions

The DAS Administrator will check all areas of the case on DASH to collate the information used in reaching a decision, which will include the following (most of which are set out by Regulation 25(2)) :

- Is the client on the Register of Insolvencies;
- Has sequestration action been started by a creditor;
- Details of debtor's previous DAS DPP applications or revoked DPPs, if any;
- Creditor comments, including supporting documents;
- Details of any proposed discretionary condition;
- Money Adviser comments, including supporting documents;
- Income and expenditure has been assessed in accordance with the Common Financial Tool Guidance and comments are provided where required, for example, where trigger figures have been exceeded or payment agreements are due to end during the term of the DPP, allowing an increase to the DPP instalment amount;
- Level of acceptance / rejection by creditors
- Length of DPP and total debt;
- Any other factors which would be relevant under Regulation 25 (this will include the information mentioned in Sections 1 - 5 of Appendix 1)

Further information on some of these points is given below:

2.2 Is the client on the Rol

Debtors may not apply for a DPP if they are party to a protected trust deed, or if they have been sequestrated and not yet discharged, or if they are subject to a bankruptcy restrictions order or bankruptcy restrictions undertaking. The checks of the Rol confirm that the debtor is eligible to apply for the DPP.

2.3 Earlier DPP proposal(s) that was / were not approved

The DAS Administrator will take note of any previous DPP application that was rejected. For example, consideration will be given to what factors, if any, are different in this application when compared to the earlier application(s). Any obvious differences (e.g. an increase in the available surplus income; a difference in the level of the debt) should already have been addressed and explained by the MA as part of the general background information put forward when submitting the case.

The DAS Administrator will also take note of any previous approved DPPs which were revoked or completed. If any previous DPPs were revoked, the DAS Administrator will look at the details of the case(s), including the reasons for the revocation.

If any previous DPPs were completed, the DAS Administrator will check that there are no possible 'duplicate' debts in the current application. Any debts included in a

previously completed DPP have been cleared and should not be included in a new DPP proposal.

2.4 Creditors' comments

Creditor comments will be taken into consideration during the decision making process, as will any comments made by the money adviser and debtor. DASH notifies money advisers when a creditor has rejected a DPP proposal, and again when the DPP goes into the Fair and Reasonable Test queue. If the money adviser has not added any comments to DASH at these points, and there are no obvious contradictions or discrepancies, the Fair and Reasonable Test decision may be made on the basis of the information available. However, if a creditor's comments contradict information on DASH – e.g. information in the CFT - this will be raised with the MA, who will be asked to provide copies of the evidence used when compiling the CFT.

Examples of creditor(s)' objections based on administrative grounds include:

- **Debt sold on or the creditor is unable to recognise debt based on information provided**

The DAS Administrator will firstly consider how significant the debt is in comparison to the remaining debts in the DPP.

For example, if the debt comprises a minimal percentage of the total debt, and the objection does not really affect the DPP as a whole, it may be possible to approve the DPP with a discretionary condition that the debtor must work with the MA to ensure that DPP is amended as required.

Alternatively, if the debt comprises a significant percentage of the total debt, further information could be obtained from the MA, with a view to re-releasing the proposal to creditors.

- **Debt amount incorrect or debt been omitted.**

Creditors may accept a DPP proposal but state that the balance of the debt owed to them is wrong or a debt due to them has been omitted from the DPP. They can do this by selecting 'Accept DPP but Disagree Debt'.

This information will be taken into consideration while making a decision on the Fair & Reasonable Test. For example, if the balance is amended how would this affect the DPP – particularly in terms of the length? Would it still be Fair and Reasonable?

If the balance of a debt has to be amended, and this will change the length of the DPP by **less than 3 months**, under DAS Admin operational procedures the necessary changes can be made and the DPP approved under Regulation 24. The balance(s) can be amended and the total debt/number of instalments recalculated.

If the balance of a debt has to be amended, and this will change the term of the DPP by **more than 3 months** then the case will be put forward for Fair and Reasonable Test so that the case can be considered as a whole. If the DPP is considered 'fair

and reasonable', it can be approved with a discretionary condition that the debtor will liaise with the MA to submit a variation to amend the balances. The usual timescale for submitting the variation will be within four to six weeks of the date the DPP is approved.

- **Administrative error**

Creditors sometimes accept a DPP proposal but advise of an administrative error which will have no effect on the term of the DPP, for example, the creditor reference number is incorrect. They can do this by selecting 'Accept Admin Error'.

If the admin error is solely in regard to a reference number or an administrative change which has no effect on the term of the DPP, the DAS team can make the necessary changes and approve the DPP under Regulation 24.

2.5 Discretionary conditions

In accordance with **Regulation 28**, a DPP can be subject to a discretionary condition. Discretionary conditions are usually put forward by the MA, on behalf of the debtor, and will usually lead to a reduction in the overall length of their DPP at a later date. Discretionary conditions can range from the realisation of an asset in the future to an anticipated increase in funds that will allow the debtor to pay more.

Please note that under current regulations a discretionary condition cannot be placed on the selling of a dwelling house occupied by a debtor as their sole or main residence.

An acceptable discretionary condition must be time-bound, specify the amount of any lump sum or increase to the instalment amount, and give details of the asset to be realised or the source of the increase to the instalment amount. This can be due to many reasons – e.g. when a secured loan or hire purchase agreement ends, the sums which are currently being paid to those agreements can be paid into the DPP instead.

If this information is not provided a discretionary condition cannot be put in place.

Discretionary conditions can also be imposed by the DAS Administrator when accepting a case at the Fair and Reasonable stage, particularly if this addresses concerns raised by creditors.

If the discretionary condition is not met as specified, the DPP is likely to be put forward for revocation action and could be revoked.

2.6 Other reasons for creditor rejection

Creditor reasons for rejection may include a number of issues which should have been identified during the AiB checks of the registers. For example:

- current sequestration proceedings (where a creditor petition has been submitted, but sequestration has not yet been awarded);

- ‘live’ sequestrations, where the debtor has been discharged, but the Trustee is still in place;
- ‘live’ Protected Trust Deeds;
- bankruptcies or PTDs where both debtor and trustee have been discharged;
- previous DPPs which were revoked, or completed; and/or
- previous applications for a DPP which were rejected.

All comments received from creditors will be considered by the DAS Administrator

3. Case Conferences

3.1 Complex cases

Some cases are more complex than others. Such cases are likely to be the subject of a case conference (DAS Discussion) where all of the issues in the case will be discussed before the final decision is reached.

There can be many reasons why a case might go to a case conference – for example, if all creditors have rejected the DPP proposal; if the debtor has business interests; if there are significant discrepancies in information provided by the MA and by the creditors; etc.

The case conference will be arranged as soon as the relevant staff are available and the case/s will be noted to say a case conference was held.

4. Example cases

Appendix 2 contains three example cases which were considered at Fair and Reasonable Test. These examples are real cases which have been anonymised. All of the creditors mentioned in the examples are different.

Appendix 1 – Required Information

1. Information the Money Adviser MUST provide at the start of a DPP

DASH has specific areas for certain information (eg. the debtor's income and expenditure is found under the 'Debtors' tab). Any additional information should be added under the 'Notes' tab on DASH, and be clearly titled for ease of reference (e.g. 'Details of discretionary condition'; 'Information on family circumstances', 'Reasons for expenditure on Housekeeping' etc.).

Examples of additional information the Money Adviser must provide include:

- Income and Expenditure, using the Common Financial Tool (CFT);
- Areas of expenditure which breach CFT trigger figures;
- Reasons why those areas of expenditure are high;
- If the debtor receives DLA, PIP or Attendance Allowance, a note should be added to the case to show if the benefit includes an element paid in respect of another individual or if it is paid solely due to the circumstances of the debtor;
- Details of any proposed discretionary condition – this should be as concrete as possible – how much, by when, and where will the funds come from.

2. Information the Money Adviser MAY provide at the start of a DPP

Providing the following information is recommended, as it give creditors the opportunity to consider the full facts of the case and the debtor's circumstances. If all creditors are satisfied with the information provided, and accept the DPP proposal, this will lead to an 'automatic approval':

N.B. This list is not exhaustive, but includes common reasons why creditors reject DPP proposals.

- Further details about the CFT;
- Comments on the length of the DPP;
- Assets* owned by debtor – can they/will they be realised and paid into the DPP? If not, provide reasons why they can't/won't be realised;
- The debtor's payment history; reasons why the debt was incurred/accrued;
- The debtor's circumstances – family, health, financial etc (N.B. the debtor must sign a mandate confirming that the information can be shared with the creditors and DAS Admin).

* Certain assets are 'excepted' by Regulation 28 – all other assets can be considered

3. Information a creditor MAY provide in response to a DPP proposal

N.B. If a creditor wants to amalgamate a number of debts, or to split a debt into individual accounts, this should be highlighted at 'Debt Confirmation' stage, and actioned by the MA, before the DPP proposal is issued.

- Creditor's response to the proposal (i.e. accept, reject);
- If the creditor accepts the DPP in principle, but the balance or reference number is wrong, they should choose 'Accept Disagree Debt' or 'Accept Admin Error' rather than 'Reject'. Please provide the new balance and/or reference number;
- If rejecting the proposal, please give reasons for the rejection;
- Use plain English. Industry jargon such as 'Sent to 20E router' (used by some banking groups) should be avoided
- If a creditor has started legal action, or sequestration proceedings, the debtor can still apply for a DPP. However, it is helpful if the creditor provides details of the legal action. Please note that in these circumstances a sheriff may continue (defer) the bankruptcy hearing to allow the debtor to apply for a DPP. The hearing can be continued for as long as the sheriff thinks fit.. The sheriff may also decide to award sequestration. All matters to do with the sequestration are entirely at the sheriff's discretion.

4. Information the MA may provide when they see a creditor has rejected the proposal (notified through 'Cases with DPP rejected by Creditors' workflow on DASH):

- Feedback which addresses the reasons for rejection given by the creditor
- If the creditor states that debts have been omitted or the balances are wrong, does the MA agree? What do they propose as the way forward?

N.B. All general background information should already be on the case and have formed part of the proposal sent to creditors.

5. Information the MA may provide when the case reaches FR Test stage (notified through DASH workflow)

Any change to the debtor's circumstances since the DPP proposal was issued.

Appendix 2 – Example cases

Appendix 2 contains three example cases which were considered at Fair and Reasonable Test. These examples are real cases which have been anonymised. All of the creditors mentioned in the examples are different.

The aim of the examples is to illustrate the type of information which is provided to the DAS Administrator by creditors and money advisers. They may also illustrate areas where further information **could** have been provided by any party.

As you read through the examples, consider whether or not you would have approved the DPP. Does your opinion change as you read through the information available? What other information do you think might have been useful to the DAS Administrator? Do you think that the decision might have been different if that information had been included in the application?

Copies of the anonymised decision notes for the example cases are included at Appendix 5. Decision notes do not generally name the individual creditors in a case, or give details of the debtor's previous or current insolvencies even though these may be found in public records.

1. Example case 1

Total debt: £5,150.77

Term: 1 year 9 months

Example case 1

Rejection by creditors: 16.94%

Creditor 1 rejection - owed 16.94% of the debt :

- The debtor's compliance history
- The reasons why the outstanding debt was accrued
- Queries over the debtor's previous DPP
- Concerns over the supplied expenditure information and the debtor's commitment to maintaining this DPP
- The debt has been outstanding for 4 years
- The debtor has previously given the creditor a proposal to pay the debt in full, but did not make payment
- Although some payments have been received recently, these are as a result of contact by the creditor.

Example case 1

Comments from MA:

- Information on a number of items of expenditure which are higher than the trigger figures set out in the Common Financial Tool (the Common Financial Statement issued by the Money Advice Trust)
- A breakdown of the spending within some of the areas where the trigger figures have been exceeded
- This is a single person household
- Housekeeping: the debtor has confirmed that he spends £70 p/w on food for at home and work and an extra £20 p/m on toiletries
- Phone: the debtor is currently tied into a contract of £45 p/m and cannot reduce this amount until the contract expires.
- Other: the debtor has confirmed that he spends £150 p/m on nights out and £50 p/m on the gym and has confirmed that he cannot reduce any of these amounts at present.

Example case 1

Other information:

- Previous DPP was approved two and a half years prior to the current application
- Revoked three months prior to the current application
- Details of previous DPP – total debt was £8,752.06; term 1 year 11 months
- Three proposals to revoke the previous DPP due to missed payments were rejected over a period of 16 months – debtor said he would resume payments and make up arrears. All of these arrangements failed. At the time the previous DPP was finally revoked the debtor was in arrears of the equivalent of 5 months' payments
- Notes on the previous case state that the debtor had i) accrued continuing liability payments to one creditor, but had made an arrangement to pay those arrears, and ii) one of the reasons for missed payments was that the debtor had had to pay an unexpected bill from a creditor
- The 'unexpected bill' had been received from the rejecting creditor in the current case.

2. Example case 2

Total debt: £7,103.99

Term: 6 years 3 months

Example case 2

Rejection by creditors: 67.71%

Creditor 1 rejection - owed 29.84% (four debts):

- Please note different bank details are used for some of the differing debts. Failure to use the correct details will result in the DAS being revoked.

Creditor 2 rejection - owed 37.87%:

- The balance is incorrect
- Some items in the debtor's income and expenditure are different from the amounts previously declared to the creditor
- Examples of areas where there are differences, which indicate that the surplus income could be higher
- Following initial help from the creditor, the debtor sought additional credit from high APR lenders
- It is in the debtor's interest to identify the creditor as a preferred creditor, to be excluded from the DPP

Creditor 3 accepted - owed 8.97%

- Creditor details to be updated

Creditor 4 accepted - owed 4.14%

- Balance is incorrect

Example case 2

Comments from MA:

- A full I&E was carried out with the client, and all essential expenses have been evidenced

Example case 2

Other information:

- Information provided by Creditor 1 shows that the debtor is also known by another name and has had a previous address. This information is not on DASH
- The Rol shows that the debtor was sequestered two years prior to the DPP application. The sequestration was on a Trust Deed petition. AiB records show that the Protected Trust Deed reference number was from the year prior to the sequestration
- The debtor had been discharged from sequestration but the trustee was still in place
- The MA had noted the case to say that no records had been found when searching the Rol. The Rol record is in the other name and address used by the debtor
- MA informed of the record on the Rol and asked if the debtor was paying a contribution to the sequestration

Example case 2

MA response including documents

- Debtor has advised that a payment to the trustee is being deducted from his salary at source. This is not shown on the CFT as the deduction has only recently started to come off in this way. The debtor has 18 months left to pay. He would be willing to increase the payment to his DPP at this point
- Debtor will send his most recent wage slip, showing the deduction, as it has only recently started to come off in this way.
- All of the debts in the DPP were incurred after the date of sequestration
- The debtor's wage slip describes the deduction as 'Debt Arrangement'. There is a further small deduction which appears to be an Arrestment Handling Fee'

3. Example case 3

Total debt: £18,182.59

Term: 18 years 4 months

Example case 3

Rejection by creditors: 38.93%

Creditor 1 rejection - owed 38.93%:

- Due to term of repayment plan

Creditor 2 accepted - owed 36.3%:

- Balance is incorrect

Example case 3

Comments from MA:

- None

Example case 3

Other information:

- Amending the balance of Creditor 2's debt would increase the term of the DPP by one month
- Previous DPP was revoked six months prior to the current application
- Details of previous DPP – total debt was £25,856.47; term 6 years 4 months
- An earlier proposal to revoke the previous DPP due to missed payments was rejected 15 months before the final decision to revoke the Programme. At that point the debtor had missed five payments after an approved payment break had ended, but had provided reasonable cause for this
- The debtor then applied for a variation to reduce payments to a token amount for a period of six months. The variation was approved with a discretionary condition to this effect
- There was a delay in submitting the next variation application, to reinstate the instalment amount, so the debtor paid the token amount for a period of nine months
- The variation application, when received, was to increase the token amount slightly. The overall term of the Programme would have been 52 years 7 months. The variation was approved with a further discretionary condition that the debtor would increase the instalment amount to the original level after six months
- The debtor made two payments at less than the token amount, and then missed four payments
- A revocation proposal was issued to the debtor and creditors. The debtor did not respond. The DPP was revoked
- At the point the previous DPP was revoked, it was in arrears of around 10.5 instalments – including arrears of the token payments. Creditors received no payments in a 15 month period, which included the approved payment break. During the following 15 month period, when the debtor was paying a token amount, the total amount paid to creditors was less than one month's payment at the original instalment amount.

Example Case 3

Review Request from Debtor following rejection of the DPP application – reasons:

- The majority of creditors (61.7%) consented to the proposal
- The timescale may be reduced when the debtor's mortgage is paid, at which time the DPP contribution could be revised
- The debtor disagrees that the balance was incorrect, as commented by one of the creditors
- The debtor has made every effort to repay his debts since being forced to leave work due to ill health, and would like the chance to continue to do so

Comment from Money Adviser:

- The comment that the balance was incorrect is unfair as the balance was supplied by the creditor on DASH under "Awaiting Debt Confirmation"

Example Case 3

Review Outcome:

- Not upheld

Appendix 3 - Regulations 25 and 28

Extract from the Debt Arrangement Scheme (Scotland) Regulations 2011, as amended: Regulations 25 and 28

25.— Approval by the DAS Administrator

(1) Where approval cannot be given under regulation 24, the DAS Administrator must approve a debt payment programme that is fair and reasonable.

(2) In determining whether a debt payment programme is fair and reasonable, the DAS Administrator is to have regard to—

(za) where the debtor is an individual, the Common Financial Tool;

(zb) where the debtor is an individual, any statement and evidence required under regulation 20(2B) to satisfy the DAS Administrator in applying the Common Financial Tool;

(a) the total amount of debt;

(b) the period over which a programme will operate;

(c) the amount (if any) by which it appears to the DAS Administrator, on the basis of such information as the creditors and the debtor have provided, that the value of any land owned by the debtor exceeds so much of the total amount of debt as is secured by way of a standard security over any interest in that land;

(d) the method, and frequency, of payments under a programme;

(e) an earlier proposed programme that was not approved;

(f) a matter specified in regulation 21(2) that would have prevented an application being made, where the matter no longer has that effect;

(g) the involvement of the debtor in a—

(i) debt payment arrangement, including a debt payment programme under these Regulations;

(ii) time to pay direction under section 1 (time to pay directions) of the Debtors (Scotland) Act 1987, or time to pay order under section 5 (time to pay orders) of that Act ¹; or

(iii) time order under section 129 (time orders) of the Consumer Credit Act 1974 ²;

(h) the extent to which creditors have consented (deemed or otherwise) to a programme;

(i) any comment made by the money adviser; and

(j) an asset of a debtor that could be realised to pay debts to be included in a programme.

(3) In determining whether a debt payment programme is fair and reasonable, the DAS Administrator may have regard to any other factor that the DAS Administrator considers appropriate.

(4) Approval under paragraph (1) may be made subject to a condition under regulation 28.

28.— Discretionary conditions

(1) A debt payment programme on approval under regulation 24 or 25, or approval of a variation under regulation 38, may be made subject to one or more of the conditions specified in paragraph (2).

(2) A specified condition is that the debtor must—

(a) realise, and distribute amongst the creditors the value of, an asset of the debtor other than an asset excepted by paragraph (3);

(b) sign and deliver a payment instruction to an employer; or

(c) be bound by any other reasonable condition intended to secure completion of the programme.

(3) An excepted asset is—

(a) a dwelling house or mobile home occupied by a debtor as the debtor's sole or main residence;

(b) an asset that is exempt from attachment under section 11 (articles exempt from attachment) of, or that is not a non-essential asset under schedule 2 (non-essential assets) to, the Act.

Appendix 4 - Examples of decision wording

1. Sample wording for FR Test decisions

Reasons for the FR Test decision must be provided in every case . See below for examples of the wording of these decisions. **The decision wording should quote the specific regulations used in making the decision.**

2. DPP approved at FR Test – example wording

The DAS Administrator considered whether or not the DPP application was “fair and reasonable” by referring to Regulation 25. In this regard, the following factors are relevant to the decision:

- Regulation 25(2)(za)
- Regulation 25(2)(zb)
- Regulation 25(2)(a)
- Regulation 25(2)(b)
- Regulation 25(2) (d)
- Regulation 25(2)(h)
- Regulation 25(2)(i) *
- Regulation 25(3)

[* Refer to “5(2)(i) if the MA has made any comment. This can include comments made during the debt checking process, new case stage, comments re the CFT, as well as substantive comments about the application]

In this case, the total amount of debt is £ «Amount», and the DPP will run for «number» years «number» months. The non-consenting creditor has «number»% of the total debt.

Summary of reasons for non-consent, and any actions taken to remedy creditor concerns etc.

Taking into account the above information, *[including the length of the DPP with regards to the level of the debt / the extent to which creditors have accepted the DPP proposal / the reasons for the creditors’ non-consent / etc, as applicable]* the DAS Administrator deems that this proposal is fair and reasonable. The DPP is therefore approved.

3. DPP approved with Discretionary Condition – example wording

The DAS Administrator considered whether or not the DPP application was “fair and reasonable” by referring to Regulation 25. In this regard, the following factors are relevant to the decision:

- Regulation 25(2)(za)
- Regulation 25(2)(zb)
- Regulation 25(2)(a)

- Regulation 25(2)(b)
- Regulation 25(2) (d)
- Regulation 25(2)(h)
- Regulation 25(2)(i) - if MA has made any comments
- Regulation 25(3)
- Regulation 25(4)
- Regulation 28

In this case, the total amount of debt is £ «Amount», and the DPP will run for «number» years «number» months. The non-consenting creditor has «number»% of the total debt.

Summary of reasons for non-consent, and any actions taken to remedy creditor concerns etc.

The money adviser has provided information in support of a potential discretionary conditions. [Example] the debtor is currently paying £«Amount» per month towards a secured loan / mortgage / HP agreement. This debt will be repaid in «number» months, at which point the monthly payment in the DPP will be increased by £«Amount».

Taking into account the above information, *[including the length of the DPP when the discretionary condition takes effect / the extent to which creditors have accepted the DPP proposal / etc]* the DAS Administrator deems that this proposal is fair and reasonable. The DPP is therefore approved, subject to the following discretionary condition:

Details of discretionary condition(s), sums involved, and timescales.....

If the debtor fails to comply with any part of the discretionary condition, the DPP may be revoked.

4. DPP rejected at FR Test – example wording

The DAS Administrator considered whether or not the DPP application was “fair and reasonable” by referring to Regulation 25. In this regard, the following factors are relevant to the decision:

- Regulation 25(2)(za)
- Regulation 25(2)(zb)
- Regulation 25(2)(a)
- Regulation 25(2)(b)
- Regulation 25(2) (d)
- Regulation 25(2)(h)
- Regulation 25(2)(i) - if MA has made any comments
- Regulation 25(3)

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In this case, the total amount of debt is £ «Amount», and the DPP will run for «number» years «number» months. The non-consenting creditor has «number»% of the total debt.

Summary of reasons for non-consent, any info received from MA, and any other information relevant to the decision

Having considered all the above information, *including the length of the DPP with regards to the level of the debt / etc, as applicable*] the DAS Administrator deems that the proposal is not fair and reasonable and it is therefore rejected.

Appendix 5 – Decision Notes for Example Cases

1. Example case 1 - Decision

The DAS Administrator considered whether or not the DPP application was “fair and reasonable” by referring to Regulation 25. In this regard, the following factors are relevant to the decision:

- Regulation 25(2)(za)
- Regulation 25(2)(zb)
- Regulation 25(2)(a)
- Regulation 25(2)(b)
- Regulation 25(2) (d)
- Regulation 25(2) (g)(i)
- Regulation 25(2)(h)
- Regulation 25(2)(i)
- Regulation 25(3)

In this case, the total amount of debt is £5,150.77, and the DPP will run for one year nine months. The non-consenting creditor has 16.94% of the total debt.

The reasons for non-consent can be summarised as follows:

- the debtor’s compliance history and the reasons why the outstanding debt was accrued
- queries over the debtor’s previous Debt Payment Programme
- concerns over the supplied expenditure information and the Debtor’s commitment to maintaining this DPP.
- the debt has been outstanding for four years. The debtor had previously given the creditor a proposal to pay the debt in full, but did not make payment. Although some payments on account have been received recently, these are as a result of contact by the creditor.

The debtor was previously in a DPP which was approved two and a half years ago. It was revoked three months ago because the debtor had failed to make all payments as they fell due. Prior to that, three previous proposals to revoke the DPP had been rejected as the debtor had made arrangements to pay. These arrangements failed.

The non-consenting creditor has also referred to concerns about the Financial Statement of the debtor.

The money adviser (MA) acting on behalf of the debtor has provided information on a number of items of expenditure which are higher than the trigger figures set out in the Common Financial Tool (the Common Financial Statement issued by the Money Advice Trust).

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The CMA has given a breakdown of the spending within some of the areas where the trigger figures have been exceeded, but has not explained why this spending is necessary. The debtor has stated that he cannot reduce these items of expenditure.

The Common Financial Tool etc (Scotland) Regulations 2014, Regulation 3(2) states that:

“The debtor’s contribution is to be the debtor’s whole surplus income (assessed for instance weekly, fortnightly or monthly in accordance with the Common Financial Statement) in excess of the lower of –

- (a) the debtor’s expenditure over that period; or
- (b) the trigger figures for a reasonable amount of expenditure published from time to time as part of the Common Financial Statement”.

Schedule 1 and 1A of the Debt Arrangement Scheme (Scotland) Amendment Regulations 2014 states that:

“1. Regulations 3 to 5 of the Common Financial Tool etc (Scotland) Regulations 2014 apply to the approval of a debt payment programme as they apply to assessing the appropriate amount of a living debtor’s income to be paid to a trustee after the sequestration of the debtor’s estate with the modifications set out in this Schedule”

The expenditure of the debtor exceeds the trigger figures, and no reason has been given for this in some categories.

Taking into account all of the above information, including the debtor’s previous involvement in a payment arrangement and the issues around the CFT, the DAS Administrator deems that this proposal is not fair and reasonable. The DPP is therefore rejected.

2. Example case 2 – Decision

The DAS Administrator considered whether or not the DPP application was “fair and reasonable” by referring to Regulation 25. In this regard, the following factors are relevant to the decision:

- Regulation 25(2)(za)
- Regulation 25(2)(zb)
- Regulation 25(2)(a)
- Regulation 25(2)(b)
- Regulation 25(2) (d)
- Regulation 25(2) (f)
- Regulation 25(2) (g)(i)
- Regulation 25(2)(h)
- Regulation 25(2)(i)
- Regulation 25(3)

In this case, the total amount of debt is £7,103.99, and the DPP will run for 6 years 3 months. The non-consenting creditors have 67.71% of the total debt.

Two other creditors have accepted the DPP proposal but have indicated that there are errors.

Creditor 1, owed 8.97% of the debt, has accepted the proposal but has asked for the creditor details to be updated. This appears to have been done.

Creditor 2, owed 4.14% of the debt, has accepted the proposal but indicated that the balance is incorrect. This could be remedied.

Creditor 3, owed four debts comprising 29.84% of the total debt, has rejected the proposal stating that the banking details are incorrect. This could be remedied.

Creditor 4, owed 37.87% of the total debt, has rejected the DPP proposal for several reasons, which can be summarised as follows:

- the balance is incorrect
- some items in the debtor’s income and expenditure are different from the amounts previously declared to Creditor 4. The creditor has provided examples, which indicate that the debtor’s surplus income could be higher
- the debtor sought additional credit from high APR lenders, following initial help from Creditor 4
- it is in the debtor’s interest to identify Creditor 4 as a preferred lender, to be excluded from the DPP, in order to help the debtor after the DPP ends.

The debtor cannot exclude a creditor from the DPP as Regulation 20(2A) states that a “debt payment programme...must provide for the payment of all debts due by the debtor at the time of making the application”.

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The DAS Administrator had regard to all the comments made by the creditors and to comments made by the Money Adviser (MA) acting on behalf of the debtor.

The MA advised the DAS Administrator that a full review of Income and Expenditure (I&E) had been carried out with the debtor, in accordance with the Common Financial Tool (CFT) and that all essential expenses had been evidenced.

The MA subsequently advised that the debtor's most recent wage slip showed a deduction at source which was not reflected in the wage slips provided as part of the review of I&E.

The DAS Administrator also had regard to the debtor's previous involvement in a debt payment arrangement. Public records show that the debtor is currently in an arrangement, which is linked to a previous arrangement. The CMA has confirmed that the debts included in the DPP have been incurred since the start date of the current arrangement. The deduction from salary, noted above, is linked to the current arrangement

Having considered all the above information, including the level of creditor rejection and the reasons for rejection, and the debtor's previous involvement in debt payment arrangements, the DAS Administrator deems that the proposal is not fair and reasonable and it is therefore rejected.

3. Example case 3 – Decision

The DAS Administrator considered whether or not the DPP application was “fair and reasonable” by referring to Regulation 25. In this regard, the following factors are relevant to the decision:

- Regulation 25(2)(za)
- Regulation 25(2)(zb)
- Regulation 25(2)(a)
- Regulation 25(2)(b)
- Regulation 25(2) (d)
- Regulation 25(2) (f)
- Regulation 25(2) (g)(i)
- Regulation 25(2)(h)
- Regulation 25(2)(i)
- Regulation 25(3)

In this case, the total amount of debt is £18182.59, and the DPP will run for 18 years 4 months. The non-consenting creditor has 38.93% of the total debt.

The non-consenting creditor has objected to the proposal due to the term of the programme being too long.

An additional creditor, holding 36.3% of the total debt, has also commented that their balance is incorrect. Correcting the balance would increase the term of the programme by a further instalment.

The debtor was previously in a Debt Payment Programme which was revoked as the debtor had failed to make all payment under the Programme as they fell due.

Having considered all the above information, the DAS Administrator deems that the proposal is not fair and reasonable and it is therefore rejected.

4. Example case 3 – Review Outcome Letter

Your Debt Arrangement Scheme (DAS) Review

I have completed my review of your application which was received by this office on dd/mmm/yyyy.

Decision

After considering your application and all representations submitted your review has not been upheld.

Reason for Decision

My reason for this decision is as follows:

When approving/rejecting the programme the DAS Administrator must give regard to Regulation 25 (2). Below is a list of these Regulations and the consideration that was applied :-

(za) where the debtor is an individual, the Common Financial Tool; - The Common Financial tool shows debtor's income from a Private Pension, ESA and DLA/PIP. Total Income is £xxxx.xx per month. Total Expenditure is £xxxx.xx. No trigger figures have been breached.

(zb) where the debtor is an individual, any statement and evidence required under regulation 20(2B) to satisfy the DAS Administrator in applying the Common Financial Tool; - Nothing was required.

(a)the total amount of debt; £18,182.59

(b)the period over which a programme will operate; - 18 years and 3 months

(c)the amount (if any) by which it appears to the DAS Administrator, on the basis of such information as the creditors and the debtor have provided, that the value of any land owned by the debtor exceeds so much of the total amount of debt as is secured by way of a standard security over any interest in that land; - Not Known. The debtor had confirmed that he is currently paying a mortgage at £xxx.xx per month. However, equity value is unknown.

(d)the method, and frequency, of payments under a programme; - £xx.xx per month

(g)the involvement of the debtor in a—

(i)debt payment arrangement, including a debt payment programme under these Regulations; - You previously had a DPP which was revoked. The reason for this was after a variation period had ended there was a totally of 4 missed payments. There was no response from yourself regarding the revocation.

(h)the extent to which creditors have consented (deemed or otherwise) to a programme; - Consenting Creditors – 61.07 %. Non- Consenting Creditor 38.93%.

DAS – The Fair and Reasonable Test Guidance

The non-consenting creditors reason for rejecting the programme was due to term being too long.

(i)any comment made by the money adviser; and – Your Money Advisor made a comment in the review that the creditor 2 stating that was incorrect is an unfair one as the balance supplied by creditor on DASH under “Awaiting Debt Confirmation” . The creditor confirmed that the balance was only £25 over from what was in the DPP therefore I do not believe it is necessary to take this into consideration under the Fair and Reasonable as it wouldn't have a huge impact on DPP.

(j)an asset of a debtor that could be realised to pay debts to be included in a programme. – Not Known.

(3) In determining whether a debt payment programme is fair and reasonable, the DAS Administrator may have regard to any other factor that the DAS Administrator considers appropriate:-

I appreciate the points that you have made in your Review regarding the rejection of the DPP. The matter regarding your mortgage being cleared and having extra funds which can be used to pay the DPP, was not known at the time of the DPP application. If you wished this to be considered as part of your DPP, you would have needed to use Regulation 28 to explain that solution.

As it stands, creditors would have to wait a period of 18 years for payment of the debt of £18,182.59. The period to repay the debt is deemed unreasonable. The revocation of a previous DPP for non-payment also formed part of the consideration

After giving consideration to all of the above and the information within your review I have deemed that the DPP is not Fair and Reasonable.