

Relief for the indebted –an alternative to bankruptcy
Summary of Responses and Government Reply

November 2005



Issued: **30 November 2005**

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Foreword

Earlier this year we issued our consultation paper – ***“Relief for the Indebted –an Alternative to Bankruptcy?”*** which proposed a new procedure to provide debt relief for people who are not able to access any of the currently available remedies because they are financially excluded from doing so.

Such people do not owe a great deal and have nothing to offer their creditors. They do not have any assets over a nominal amount, they are on very low incomes and cannot afford the deposit required to petition for bankruptcy –which is in any event perhaps a disproportionate response to someone who has no estate to administer and no conduct issues that require further enquiry.

This paper is our response to the replies we received to our consultation, and sets out how we intend to proceed in the light of our consultation responses and other information we have collected since first devising the new procedure.

A handwritten signature in black ink, appearing to read "Desmond Flynn". The signature is written in a cursive style with a large, looping flourish at the end.

Desmond Flynn
Inspector General and Agency Chief Executive

Executive Summary

1. At the end of March this year we issued a consultation paper entitled “*Relief for the indebted –an alternative to bankruptcy¹*” which proposed a new form of debt relief for those individuals who were financially excluded from any of the current debt resolution procedures. The proposals suggested that individuals who meet certain criteria, including conditions as regards their liabilities, assets and income should be eligible to apply for a debt relief order, which could be made administratively by the official receiver. The effect of the order would be to provide relief from enforcement of the debts, and for the discharge of those debts after twelve months.
2. There were an encouraging number of responses to the consultation paper, most of which were very well thought out and of high quality, and we are grateful to everyone who took the trouble to express a view. Overall the responses were in favour of our proposals and it is our intention to take them forward when parliamentary time permits.
3. Responses were broadly in agreement with the concept of a fee to pay to administer the debt relief order scheme and we therefore propose that it funded by payment of an up front, non-refundable fee by the debtor. We think that it should be possible to set the fee at a level that the majority of people would find acceptable whilst at the same time covering the costs of administering the scheme, and we intend to continue with our plans to make debt relief orders self funding.
4. We propose that a debtor will be restricted to the frequency with which he can obtain an order, and will not be able to obtain one more than once every six years.
5. The concept of requiring the debtor to apply for an order using an approved intermediary was well received overall, and we now need to work closely with relevant organisations to ensure the provision of adequate resources, a properly developed system of approval and a well defined role are all fully addressed. We have formed a working group comprising representatives of the main organisations with an interest in this area to take these issues forward and will be liaising with them through the newly formed working group, to further develop, clarify and refine the role of the intermediary. The working group’s first meeting will be on 8th December. We intend to legislate to clarify that an approved intermediary will not be liable in damages for anything done or not done in carrying out his/her functions, providing they do not act in bad faith.
6. Ensuring that the intermediaries are properly funded is key to the success of the proposals and we will be looking carefully at how best to achieve this. We are proposing to allocate a portion of the up front fee towards funding the activities of the intermediaries and together with the working group mentioned above will

¹ Available at
:www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/consultationpaperwithnewanne
x1.pdf

explore the best mechanism for ensuring that funds are allocated on a fair basis that does not impinge on the independence of the advice that is given.

7. We propose that any monetary limit on the amount an individual can owe to be eligible for a debt relief order be placed in secondary legislation and kept under review, so that if appropriate, it can be amended without difficulty. We think that on balance, the cap on permitted liabilities should be initially set at £15,000.

8. We propose to retain the principle that secured debt should be included for the purposes of ascertaining the level of liabilities. The position of secured creditors will be unaffected, and they will retain their security. We intend to assess whether or not an individual is eligible for entry to the scheme by taking into account gross liabilities and also gross assets (subject to the restrictions on domestic items and items necessary for the debtors employment or trade, as set out later in this paper).

9. We think it is appropriate to set a cap on the surplus income that a debtor should be permitted to have and intend to do so. The cap will be set in secondary legislation and kept under review and it will be possible to amend the cap if appropriate. Although there is some weighty opinion against a fixed cap, overall there are more respondents that favour an initial fix at the proposed level of £50, and we intend to proceed on that basis.

10. The Common Financial Statement (CFS) is generally thought to be a suitable way of determining surplus income, but we will need to look at it carefully to see whether it needs to be adapted for our purposes. There is a working group of industry representatives looking at how the CFS can be improved and the Insolvency Service is liaising with that group. We think it should be possible to work with the group constructively so as to ensure that in whatever form we devise will be suitable for the purposes of assessing whether or not an individual meets the income requirements to be eligible for a debt relief order. We propose to define income for the purposes of a debt relief order in the same way as bankruptcy.

11. Initially we propose to set the asset limit at £300 but the level will be in secondary legislation. It will be kept under review and it will be possible to amend it if appropriate. We intend to proceed on the basis that there will be exclusions for certain property similar to that in bankruptcy. Domestic items and tools and equipment for use personally by the debtor in his business or employment will not be taken into account when determining the value of the debtor's assets.

12. The idea of making the order administratively was well received and we intend to take forward our proposal that the order will be made by the official receiver. We will ensure that when making his application the debtor will be informed that he is making his statement subject to the provisions of s5 of the Perjury Act 1911. We will also ensure that whatever forms the debtor is required to complete clearly state the effect of the order and the consequences of failure to disclose full facts or give false information.

13. We will ensure that there is an appropriate and proportionate range of remedies to tackle misconduct by the debtor.

14. We propose that in cases where the debtor makes a misleading statement to obtain a debt relief order, he should not benefit from the relief from enforcement it gives, and the order should be revoked. Further we consider that in appropriate cases where the misrepresentation is deliberate the debtor be subject to prosecution or a bankruptcy restrictions order. We propose that the debtor who experiences a windfall or an increase in income should disclose it to the official receiver. In cases where it appears that the debtor would be able to come to a sensible arrangement with his creditors –for example enter a county court administration order² or perhaps an individual voluntary arrangement then he should be given a period three months in which to make appropriate arrangements after which the order will be revoked. In cases where the debtor experiences a windfall or increase in income close to his discharge date, he should be permitted the full three months in which to make arrangements with his creditors, and that in some cases this will entail extension of the order until expiry of the period.

15. If a debtor fails to disclose a windfall then we propose that the order should be revoked, if the debtor already has his discharge then that discharge will be void and the creditors free to take enforcement action if they choose. We also propose that in appropriate cases the debtor may be subject to prosecution.

² DCA proposals for the reform of County Court Administration Orders include raising the maximum permitted level of liabilities to £15,000, the debtor having a surplus income of greater than £50 per month

Consultation Activities

Pre consultation activities

16. Before issuing our formal consultation paper we took soundings from a variety of organisations and individuals as to the appropriateness of our proposals. We also liaised closely with the Department for Constitutional Affairs (DCA) and tested the concept of the proposed scheme, and whether there was a need for one, both at seminars they organised in relation to their overall debt strategy and in outline in their own consultation paper "*A Choice of Paths*".³

17. We made visits and presentations and listened to views about our ideas at various functions and through written articles –for example in "The Adviser" magazine.

18. Feedback we received both from the work we undertook and also from the DCA's consultation made us believe that there was a perceived need for a new debt relief scheme and we therefore issued a formal consultation paper with the detail of how such a scheme might operate on 31st March 2005.

Consultation activities

19. Our consultation paper was sent to approximately 350 people comprising a range of individuals and organisations. It was also available on our website.

20. While the consultation was open we made further presentations to and liaised with a number of different groups, incorporating question and answer sessions to enable us to further develop our policy. We also met with individual organisations to discuss our proposals.

21. Since the formal consultation period ended we have continued to visit a variety of different organisations and functions and spoken about our proposals.

³ "A Choice of Paths –better options to manage over-indebtedness and multiple debt"
www.dca.gov.uk/consult/debt/debt.pdf

Introduction and background

22. Our consultation paper “*Relief for the Indebted –An Alternative to Bankruptcy*”⁴ was issued on 31st March 2005 and the closing date for responses was 30th June.

23. The proposals in the paper are aimed at providing an alternative form of debt relief for those individuals who owe relatively little, have no means to pay their debts and cannot access any of the currently available debt solution procedures.

24. The paper was sent to in the region of 350 individuals and organisations and we received 70 replies, in a variety of formats, including several who chose to answer in the form of a general letter rather than give separate answers to each question.

25. We are grateful to everyone who replied and for the overall quality of the responses, which have been very helpful in assisting us to clarify and finalise our policy.

26. We were surprised that one or two respondents expressed concern that the consultation paper had made an assumption, without consulting, that there was a need for an alternative form of debt relief, and suggested that we should have done so before going on to seek views about the detail. However, as we indicated in the paper, whether or not there was perceived to be a need for such a scheme was the subject of the DCAs “*Choice of Paths*”⁵ consultation issued in 2004, and views have already been sought on this point. We had already established that there appeared to be a need for an alternative form of debt relief and the purpose our paper was to seek views on the detail of how such a scheme might operate.

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www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/consultationpaperwithnewannex1.pdf

⁵ See footnote 2

Respondents

27. We received 70 responses from a wide range of individuals and organisations, representing both creditors and debtors' interests.

28. We have listed at Annex 1 (at the end of this paper) everyone who responded. Some respondents have asked that their replies be kept confidential and they have been recorded in the Annex as such.

29. The types of respondent can be categorised as follows:

Category	Number
Insolvency Practitioners (including R3)	5
Representative Organisation (Trade)	10
Representative Organisation (Advice Sector)	8
Individuals (Advice Sector)	8
Individuals (professional)	4
Individuals (other)	1
Creditors	7
Local Authority (Revenue Collection)	5
Local Authority (Money Advice)	5
Fee Paying Advice	4
CABs	12
Public Interest Body	1

Responses

30. We have set out below details of the answers we received to each question in the consultation paper, and also the way in which we intend to proceed in the light of those answers and other information we have collected over the last few months.

31. As mentioned above, we received 70 responses. It should be noted that not everyone who responded to the consultation replied to every question and therefore some of the answer detail below does not show a total of 70 replies to each question. Included amongst the “70” are 3 responses where the respondent chose to reply by use of a general letter rather than by answering the separate consultation questions.

Question 1a

Do you think payment of a moderate fee to cover the costs of the debt relief scheme is acceptable?

Responses

Answer	Number
Yes	50
No	7
Not Specified	9

32. We received 66 replies to this question, the great majority of which were in favour of a moderate fee.

33. All of the 7 that thought there should be no fee were from the debt advice sector, the general theme being that since the scheme was aimed at people with nothing it was nonsensical to require the debtor to pay a fee of any sort. One respondent said, *“The scheme seems to suggest most of the time consuming work being done by the not-for-profit debt advice sector, with no extra resources (correctly justified as reducing our workload). A suitable pay off for this would be for our clients to access the scheme through us with no fee to pay”* (Manchester Money Advice Service)

34. There were a number of responses that were eloquent but did not really state whether or not overall the respondent felt that a fee would be acceptable (i.e. not a straightforward yes or no), for example *“A Fee to cover costs would seem reasonable but consideration may need to be given to the appropriateness of levying a fee on someone already in financial difficulties and how such a fee should be applied”*. (APACS)”

35. Some respondents seemed to be unclear about the way in which bankruptcy is funded, with more than one suggesting that the money saved by the official receiver in dealing with fewer bankruptcies could be utilised to fund the scheme. We would like to take this opportunity to repeat what we said in the consultation paper, that the principle of the Insolvency Service's financial regime is that creditors pay for the full costs of the official receiver's administration of bankruptcy cases via a single administration fee funded in part from the petition deposit and also a general Secretary of State's administration fee charged in cases where there are assets greater than £2000. This means that, effectively, the fee income of the Service is directly related to the number of cases it receives, and the income that is received goes towards administering the cases. If the number of cases goes up, then so will fee income, and similarly, if the number of cases goes down, so does the fee income. Fewer cases do not mean that funds will be released to be spent elsewhere.

Responses were broadly in agreement with the concept of a fee to pay to administer the scheme and we would therefore propose that the debt relief order scheme is funded by payment of an up front, non-refundable fee by the debtor

Question 1b

What do you think would be a reasonable amount?

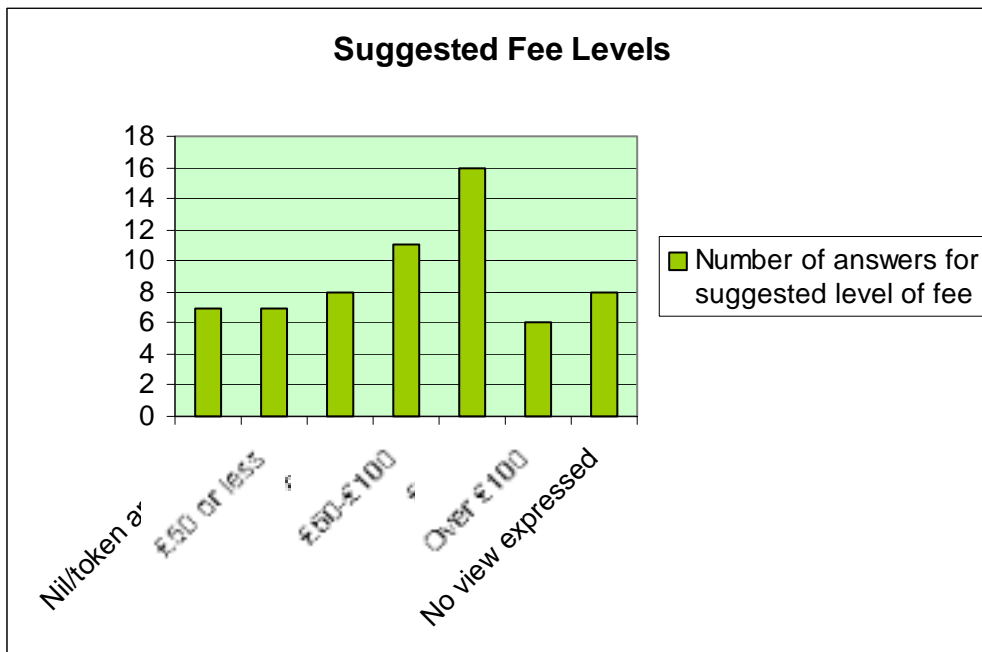
Responses

All Respondents	Number
Nil/token amount	7
£50 or less	7
£50	8
£50-£100	11
£100	16
Over £100	6
No view expressed	8

36. A total of 63 people/organisations replied to this question. A number of respondents did not have a suggestion as to the level at which the fee should be set, but did have ideas as to how it might be determined –for example the equivalent of one month's surplus income. Most of those who did not express an unequivocal view made such comments as "*It is for the insolvency service to determine to what extent it intends to subsidise the true cost of this alternative to bankruptcy*" (Credit Services Association).

37. Of those where the opinion was clear, there were a variety of answers, ranging from a token payment of £1 through £20-£30 up to £250, and a large number of the answers gave a range (say £50-£100, or “no more than £50”).

38. A few respondents linked their answers to the Regulatory Impact Assessment, and these were most likely to suggest a range –one for example suggested £65-£95 (Institute of Credit Management)



39. There was some suggestion that if the fee were set at an affordable level then it would not be possible for debt relief orders as devised to be self-funding. However, we have carefully considered this point and are of the view that if the scheme operates as we propose then it should be possible to set the fee at a level that is not unobtainable for people who wish to seek an order whilst at the same time providing sufficient resource to ensure that the scheme is adequately funded.

We think that it should be possible to set the fee at a level that the majority of people would find acceptable and propose to continue with our plans to make debt relief orders self funding. We believe that the fee should be set at no more than £100.

Question 1c

If you do not think a fee of any sort should be payable, do you have any suggestion as to how the scheme might be funded?

Responses

All Respondents	Number ⁶
Central Government generally	8
Insolvency Service	2
Credit Industry/Creditors	15

40. 26 answers were received to this question, 6 of which felt that the scheme ought to be self-funding/funded by fee income and have not been shown on the table above. It is clear that the majority of respondents to the consultation as a whole are in favour of a fee to cover administration costs. Many of the respondents had more than one suggestion each as to how the scheme could be funded if not with a fee, with popular choices being a combination of a levy on the credit industry and general taxation.

41. There were several suggestions that some of the cost associated with applying for a consumer credit licence should be allocated towards funding the scheme. There were a couple of suggestions that the creditors listed on the application ought to pay, or alternatively a levy be charged on those who appeared most frequently as creditors in such cases.

42. There is a perception amongst some that the scheme will lead to savings for the official receiver and the Courts Service and those savings ought to be applied to funding the scheme. However, as noted in paragraph 35, a reduction in the number of bankruptcy cases, will lead to a reduction in the fee income that the Insolvency Service receives.

43. Some respondents take the view – including CBI, Institute of Credit Management and Insolvency Practices Council - that funds should be made available by central government.

44. A number of creditors did not have a suggestion as to how the scheme might be funded, but were very firm in their view that it ought not be them (i.e. creditors)

The majority of respondents to the consultation believe that a moderate fee should be the mechanism by which the scheme is funded and this is the way in which we propose to proceed.

⁶ Some respondents gave more than one suggestion and these have been recorded separately so the total is shown as more than 20

Question 2

**Do you think entry to the scheme should be restricted to once every 6 years?
If not, what is an appropriate length of time?**

Responses

All Respondents	Number
Yes 6 years	36
No	3
No – once only	1
No –no limit	3
Every 6 years, maximum of twice	13(4)*
Longer than 6	9(4)*
Not clear	5

2. Figures in brackets denote that the respondents felt it should be longer e.g. 10 years, or failing that, once every 6 years with a lifetime limit of twice.

45. The majority of replies to this question indicate that once every 6 years would be an appropriate limit. However, there is a body of opinion that this is a little too lenient and that once every 6 years might be acceptable but consideration should be given to limiting the total number someone can apply to twice. We think that this option would make the scheme unnecessarily complicated. To have a combination of once every 6 years, but no more than twice would mean that, effectively, three checks would have to be made on every applicant –one to see if they had been subject to an order in the last 6 years, one to see if they had ever been subject to a previous order outside that time frame, and then if so how many orders had already been made. This can only add to the costs of the IT development and ultimately the size of the fee.

46. There is very little enthusiasm for the “once only” option.

We acknowledge the variety of responses to this question but at this stage propose to proceed on the basis that the greatest number of respondents suggested once every six years and we think this is a preferable approach. Therefore we propose that a debtor will be restricted to the frequency with which he can obtain an order, and will not be able to obtain one more than once every six years.

Question 3

Do you think that use of an approved intermediary would make the system more accessible and efficient?

Responses

Answers	Number
Yes	50
No	2
Not Specified	13

47. Overall, respondents were very much in favour of the concept of there being an intermediary. Some respondents (those counted as “Not Specified”) took the opportunity to write about the “pros and cons” without expressing an opinion as to whether their answer to the question was “yes” or “no”.

48. There was a general view that it would make the system easier to operate and that also it would provide a *“useful face-to-face contact, which would not otherwise be available”* (PriceWaterhouseCoopers). Many respondents voiced concerns about how the system should be funded

49. Two of the main organisations behind the advice sector –Citizens Advice and Advice UK expressed concern about how the work would be funded. Advice UK took the view that funding could be made available from the £45 million allocated to face to face money advice from the financial inclusion fund, and that the intermediaries were likely to be paid specialist advisers rather than volunteers so it will not necessarily be cheaper. Citizens Advice cautiously endorsed the idea, but were concerned about resources and also how an approval system might operate.

50. Both National Debtline and Money Advice Trust (who submitted a joint response) answered “Yes” to the question, but again expressed the view that there would need to be designated funding and also had some questions about who should act as the intermediary and the practical difficulties they envisaged (for example how should the application be signed). They also suggested that consideration be given to opening up the function of intermediaries to telephone advisers.

The concept of using an approved intermediary was well received overall, and we now need to work closely with relevant organisations to ensure the provision of adequate resources, a properly developed system of approval and a well-defined role are all fully addressed. We have formed a working group comprising representatives of the main organisations with an interest in this area to take these issues forward.

Question 4

What do you think the role of the intermediary should be?

Responses

51. Since this was a more general question seeking comments, we have not summarised the answers in a table. We received 63 separate responses.
52. The answers indicated a range of suggestions, generally incorporating such matters as determination as to whether a debt relief order was the best option, advising the debtor about his rights and responsibilities, gathering and validating information and helping to complete and submit the form. Several answers suggested that the intermediary should offer advice on budgeting and money issues generally.
53. There were a few answers that expressed concern about the possibility of a loss of independence and that the intermediary should not simply be an assistant to the official receiver. This was particularly strongly expressed by Citizens Advice, who said *“ For CAB advisers to participate in the scheme as approved intermediaries, the Insolvency Service must give Citizens Advice written assurances that the duties of the approved intermediary do not breach the Citizens Advice Service partnership accord with Government; i.e. that we will always act independently and in the best interests of our clients, and not as an agent of Government.”*
54. We should make clear that the decision as to whether or not a debt relief order should be made will rest with the official receiver alone and intermediaries would not be placed in the position of having to make a decision on behalf of the official receiver. Nor would they be expected to act in the interests of anyone other than their client.
55. The Insolvency Practices Council thought that the role of the intermediary was not defined in the consultation with sufficient precision. We would agree that we did not go to any lengths to define it in the consultation paper, since we were interested in seeking views on the issue, and indeed the question of whether or not there should be intermediaries at all.
56. On a practical level there was concern about the extent of the intermediaries’ input that would be required with such matters as valuing assets, and dealing with creditors.

We will be liaising with relevant organisations through the newly formed working group further develop, clarify and refine the role of the intermediary.

We propose to legislate to clarify that an approved intermediary will not be liable in damages for anything done or not done in carrying out his/her functions, providing they do not act in bad faith.

Question 5

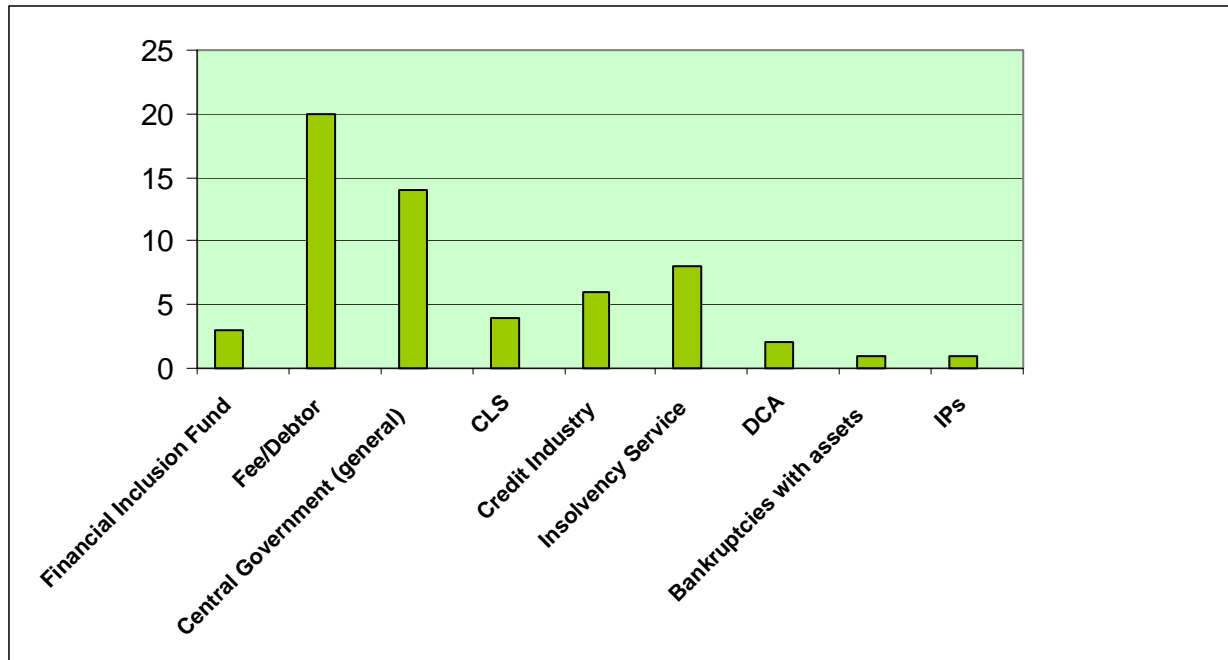
Do you think that some funding should be made available to the intermediaries for performing this role? If so, from what source should the funds come?

Responses

Answers ⁷	Number
Yes	48
No	7
Not Specified	9

57. The majority of respondents felt that funding should be made available to the intermediaries. Most thought that funding should in part come from the fee but a large number felt that government should provide at least some of it – i.e. that the scheme ought not be totally self-funding. The graph below is a representation of all the suggestions, but many respondents suggested that funding should be from a variety of sources –e.g. fee and government, and therefore each suggestion has been counted separately.

Suggested Sources for funding



⁷ Answers to the first part of the question only –i.e. “Do you think some funding should be made available to the intermediaries for performing this role?”

Ensuring that the intermediaries are properly funded is key to the success of the proposals and we will be looking carefully at how best to achieve this. We are proposing to allocate a portion of the up front fee towards funding the activities of the intermediaries and together with the working group will explore the best mechanism for ensuring that funds are allocated on a fair basis that does not impinge on the independence of the advice that is given.

Question 6a

Do you think there should be a limit to the amount an individual can owe to obtain entry to the scheme?

Responses

Answers	Number
Yes	47
No	13
Not Specified	5

58. The majority of respondents felt that there should be a limit, although some respondents (mostly from the advice sector) thought there should not.

59. Many respondents made the point that any limit would need to be capable of being updated on a regular basis. This is something of which we are aware and would propose that any limit will be capable of being amended without having to alter primary legislation.

We propose that any monetary limit on the amount an individual can owe to be eligible for a debt relief order be placed in secondary legislation and kept under review, so that if appropriate, it can be amended without difficulty.

Question 6b

Do you think that £15,000 is an appropriate cap? If not, why is this and what would an appropriate amount be?

Responses

Cap level	Number
Less than £15,000	6
£15,000	24
£20,000	7
£25,000	10
£30,000	2
£50,000	1
£60,000	1
No Limit/Not Specified	11

60. The largest number of all the responses fell into the £15,000 bracket, and a total of 30 people thought it should be set at £15,000 or less. However, a fair number thought that a £15,000 cap was not appropriate. Most of these thought the cap should be higher, or there should be no limit.

61. There is a clear split, with the advice agencies suggesting higher limits or more detailed criteria, and some creditors organisations suggesting lower limits. The larger representative organisations that agreed with a cap of £15,000 comprised:

Grant Thornton UK LLP
PriceWaterhouseCoopers
Civil Court Users Association
Credit Services Association
Insolvency Practices Council
Institute of Revenues, Rating and Valuation
Representative organisation (trade -anonymous)
Finance and Leasing Association

62. We have estimated what would happen to case numbers if we raised the liability cap to £20,000 whilst leaving the other entry criteria the same. If we did this, we estimate there would be in the region of 45,000 cases per annum after two years (as opposed to 36,000 with a cap of £15,000) currently projected to be nearly 54,000 (as opposed to 48,000) after 4 years.

63. We have taken into account the Department for Constitutional Affairs' proposed reforms to the County Court Administration regime to raise the permitted liability level to £15,000 and we think there should be some alignment between the procedures to enable movement from one to another should the debtor's circumstances change.

64. We think it is desirable that a low-income debtor who obtains a debt relief order and then experiences an increase in income should be able to come to an

arrangement to pay his creditors without losing relief from enforcement and the reformed county court administration order represents one way of doing this. We therefore think it is important that there is some commonality between the entry criteria.

65. A survey carried out in the Somerset Area into clients seeking debt advice during September and October 2005 found that 60% of those taking part in the survey had debts of less than £15,000⁸ and we think at this stage that £15,000 is an appropriate level at which to set the cap.

We think that on balance, the cap on liabilities should be initially set at £15,000. However, it is our intention to set this limit in secondary legislation, so that it may be kept under review and it will be possible to change the limit without difficulty, if appropriate.

Question 6c

Should secured debt be included as part of the total?

Responses

Answers	Number
Yes	18
No	35
Not Specified	15

66. There has been such an apparently great misunderstanding by some of the respondents to this question that we think that we must have been unclear in our approach.

67. Some of the responses seemed to think that the secured creditors would lose their security (which they would not). Nearly all the voluntary advice workers were concerned that to include secured debt for the purposes of totalling the liability cap would exclude homeowners, and there was a view that there should be some flexibility to allow homeowners with not much or no equity to enter the scheme.

⁸ Jeff Townsend, Somerset Welfare Rights Unit. The survey looked at information supplied by 8 advice agencies in the Somerset Area.

68. As explained in the consultation paper, to allow homeowners to enter the scheme would make the system more complex, and therefore more expensive, to administer and police. There would need to be a system of valuing the property and there would be problems about the action that should be taken should the value of the property increase to the extent that the creditors might expect payment of the debts. The more expensive the scheme becomes to operate, the greater the fee that will need to be paid by the debtor.

69. We have, when talking to people about our proposals, made a point of asking for suggestions as to how homeowners could be included whilst maintaining the integrity of the scheme and keeping it inexpensive to administer, but there have been no suggestions as to how this might be achieved.

70. We also take into account the reasons why it might be that there are homeowners who, with the housing market as it has been in recent years, have little or no equity. One explanation, in some (but not all) cases, might be that the homeowner has previously had unsecured debt which has been consolidated by a secured loan/second mortgage on the property, or a creditor may have taken a charging order. In such circumstances, the individual does not, in our view, fall into the category of "small" debtor at whom the scheme is aimed. Bankruptcy is perhaps not a disproportionate response in these cases.

71. Several respondents made the point that if there is secured debt then it must follow that there is an asset (albeit a secured one) and since the scheme was aimed at people with no assets, clearly they should not be able to enter the scheme. If only for the purposes of clarity, we think there is some merit to this argument, and in order to clarify the position and reduce confusion it might be easier to simply say that account must be taken of both gross assets and gross liabilities.

72. Despite the strength of feeling amongst the advice sector that some homeowners should be allowed in to the scheme, we do not think it will be possible to include homeowners without making the system complicated, and by logical extension, expensive, to administer.

We would propose to retain the principle that secured debt should be included for the purposes of ascertaining the level of liabilities. The position of secured creditors would be unaffected, and they will retain their security.

It is our intention to assess whether or not an individual is eligible for entry to the scheme by taking into account gross liabilities and also gross assets (subject to the restrictions on domestic items and items necessary for the debtors employment or trade, as set out later in this paper).

Question 7a

Do you think there should be a cap on the surplus income that is permitted before a debt relief order would be granted? [Is £50 a realistic figure?]

Responses

73. For the purposes of clarity in the response paper we have split this question, and answers about the level at which any surplus income should be set are dealt with under the next heading. The answers in the table below simply signify whether or not a respondent was in favour of the concept of a cap on surplus income, irrespective of the amount.

Answers	Yes
Yes	54
No	2
Not Specified	10

74. The vast majority of respondents felt that there should be some sort of cap. Of those who did not categorically express a view, most took the opportunity to suggest a flexible approach that took account of the individual debtor's circumstances.

75. We think that use of the Common Financial Statement goes some way already to taking account of the individual's financial circumstances, and we are liaising with an industry working group that is looking at developing the statement, so that the forms we use can be as flexible as possible whilst at the same time retaining some integrity for the system

We think it is appropriate to set a cap on the surplus income that a debtor should be permitted to have without expecting the debtor to use such a surplus to make repayments (even if only on account) to creditors and intend to do so. Such a cap would be set in secondary legislation and kept under review and it will be possible to amend it without difficulty, if appropriate.

Question 7b

**If £50 (per month) is not realistic, what is?
What is a realistic limit?**

Responses

76. There were a variety of answers to this question. Several respondents made suggestions in the £50-£100 bracket e.g. £65, and some others simply said “£50-£100”. To avoid a multiplicity of rows in the table below, they have all been amalgamated into £50-£100.

Answers	Number
Flexible approach	7
£10	3
£20	2
£30	2
£50	37
£50-£100	7
£100	5
£150	1
£200	1
Not Specified	1

77. The most popular response was that £50 per month is realistic, although there was a spread of other replies, comprising a fairly significant number of the total respondents, some of whom represented the larger debt advice organisations.

78. We think that notwithstanding the undoubted experience of some of the debt advisers, there are difficulties with opting for a flexible approach if we want to make the scheme fair, transparent and easy to operate. We also think it is the case that if the Common Financial Statement or a form very similar to that is used to establish the level of surplus income, that should offer sufficient scope to allow for individual circumstances.

79. Proposals by the DCA to reform county court administration orders include a requirement for the debtor to have a surplus income of more than £50 per month.

Although there is some weighty opinion against a fixed cap, overall there are more respondents that favour a fix at the proposed level of £50, and we propose to proceed on that basis.

As mentioned above, it is our intention to set the level in secondary legislation and kept under review. It will be possible to amend a level set in that way without difficulty if appropriate.

Question 8

Do you think that use of the Common Financial Statement would be an appropriate way to calculate surplus income? If not, why not and how would you suggest surplus income be calculated

Responses

Answer	Number
Yes	53
No	7
Not Specified	4

80. There has been anecdotal evidence that in some quarters the Common Financial Statement (CFS) is not well received, but this is not borne out by the consultation responses.

81. The great majority of all respondents felt that use of the CFS would be an appropriate way to calculate surplus income and all the larger representative organisations that responded thought so, although many felt it should form the basis of a tool for determining surplus income rather than as it stands at present, particularly as there is some concern about the use of trigger figures and their suitability in all cases.

82. One respondent was particularly vehement in their dislike of the CFS, and though they agreed that a form of universal statement would be acceptable, it should not be the CFS as it stands. They suggested that the CFS enabled debtors to arrange a comfortable lifestyle whilst avoiding payments to creditors.

83. Some answers stated that since the CFS was designed for households rather than individuals it was inappropriate for the purposes of ascertaining whether or not an individual was a suitable candidate for a debt relief order, but we have checked with the Money Advice Trust, who helped develop the statement and they state that there is no reason why it cannot be used for individual expenditure.

The CFS is generally thought to be a suitable way of determining surplus income, but we will need to look at it carefully to see whether it needs to be adapted for our purposes. There is a working group of industry representatives looking at how the CFS can be improved and the Insolvency Service is liaising with that group. We think it should be possible to work with the group constructively so as to ensure that whatever form we devise⁹ will be suitable for the purposes of assessing whether or not an individual meets the criteria for a debt relief order.

⁹ The form that we propose to use will be specified in secondary legislation. For that reason, although our form will be based on the CFS it will need to be a separate version to enable ease of amendment should that be necessary.

Question 9

Do you think that income in “NINA” [DRO] cases should be defined in the same way as income in bankruptcy cases? If not why not and how should income be defined?

Responses

Answers	Number
Yes	56
No	5
Not Specified	4

84. For the purposes of income payments orders and agreements in bankruptcy, the Insolvency Act 1986 includes in its definition of income of the bankrupt *“every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of carrying on any business or in respect of any office or employment...”*

85. Most respondents agreed that income should be defined in the same way as this. Of those who did not, there was an almost universal request that child benefit, child maintenance, disability living allowance, and attendance allowance should be excluded.

86. We should make clear that when considering whether or not a bankrupt is able to make an income payments agreement, or whether to seek an income payments order, the official receiver does not generally take such benefit payments into account, and they are not included in the calculation of surplus income. We would propose to treat debt relief orders in the same way.

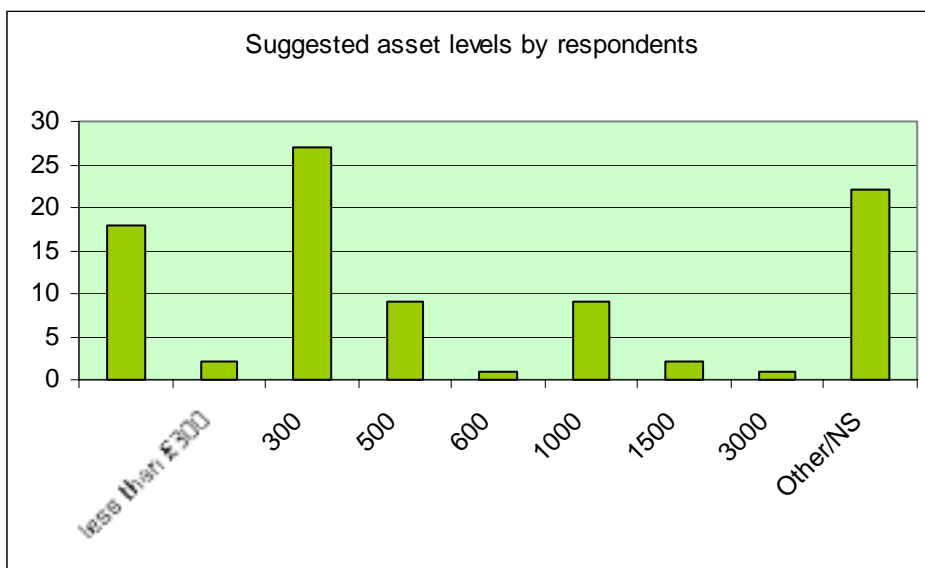
It is our intention to define income for the purposes of a debt relief order in the same way as bankruptcy, as set out above.

Question 10

Do you think the proposed limit of £300 assets is reasonable? If not what do you think a reasonable figure should be?

Responses

87. There was a spread of results here, with many respondents feeling that £300 was too low. A number also expressed the view that the debtor should be allowed to keep a car. The chart below shows the suggested values by respondents for asset levels and also the number of respondents who felt the debtor should be allowed to have a car.



88. Although the largest number of respondents (28) were in favour of the £300 limit, there were also quite a significant number (15) who were in favour of increasing it to a specific amount, and a further 22 who wanted it increased and/or made more flexible but who did not specify a particular cap.

89. We have some difficulty with the idea that assets level should be increased substantially, since if it were, the debtor would be able to access bankruptcy. Similarly, we do not think that ownership of a car should be treated any differently than in bankruptcy. We recognise that some people, particularly those living in more remote communities may have real practical difficulties without a vehicle, but we do not think that it would be fair that people who seek a debt relief order should be able to retain a car for a use that is not directly connected with their employment or trade, whilst that facility is not available to people who become bankrupt.

90. We should also not lose sight of the fact that debt relief orders are aimed at people who have *nothing* to offer their creditors in terms of assets or income.

91. Although a number of respondent felt the limit of £300 was too low and/or not flexible enough, our proposed limit was the most popular choice.

Initially we would propose to set the asset limit at £300 using secondary legislation. By that means, the limit could be kept under review and amended it without difficulty if appropriate.

Question 11

Do you think there should be exclusions for certain property similar to that in bankruptcy?

Responses

Answers	Number
Yes	53
No	4
Not Specified	5

92. Nearly all the people who answered this question felt that there should be similar exclusions to bankruptcy, and that domestic items and tools and equipment for use personally by the debtor in his business or employment should not be included in the calculation of the level of assets.

We intend to proceed on the basis that there will be exclusions for certain property similar to that in bankruptcy, and that domestic items and tools and equipment for use personally by the debtor in his business or employment will not be taken into account when determining the value of his assets.

Question 12

Do you agree that the order could be made administratively? If you think the court should be involved with the making of the order, why is this?

Responses

Answers	Number
Yes	60
No	3
Not Specified	3

93. The great majority of respondents were in favour of the order being made administratively. Of those that weren't, some felt that the court would add "gravitas" and would impress on the debtor the severity of the situation.

94. There was a degree of sympathy for the idea that the debtor should be required to make a "statement of truth" or declaration when applying for the order, and some concern that by not applying through the courts the debtor would in some way be more inclined to be untruthful about his circumstances.

95. When a person who has been adjudged bankrupt is required to provide information about his affairs to the official receiver, his attention is drawn to the provisions of s5 of the Perjury Act 1911 which states:

If any person knowingly and willfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made –

(a) in a statutory declaration; or

(b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which he is authorised or required to make, attest, or verify, by any public general Act of Parliament for the time being in force; or

(c) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any public general Act of Parliament for the time being in force, he shall be guilty of a misdemeanor and shall be liable on conviction thereof on indictment to imprisonment for any term not exceeding two years, or to a fine or to both such imprisonment and fine.

96. The debtor is also told that this means he must give the official receiver answers that are true to the best of his knowledge and belief. He may be committing a criminal offence if he deliberately gives false information in his answers to the official receiver's questions.

97. We would propose to follow the same procedure in relation to Debt Relief Orders.

The idea of making the order administratively was well received and we propose to proceed on the basis that the order will be made by the official receiver. We propose to ensure that when making his application the debtor will be informed that he is making his statement subject to the provisions of s5 of the Perjury Act 1911. We also intend to ensure that whatever forms the debtor is required to complete clearly state the effect of the order and the consequences of failure to disclose full facts or give false information.

Question 13

Do you think the protection offered to creditors is sufficient? If not what further steps are necessary to safeguard the position of creditors?

Responses

All Respondents	Number
Yes	34
No	8
Not Specified	23

98. This question elicited a great deal of comment about the proposed low costs of the scheme and the incompatibility of that with rigorous scrutiny and the possible adverse consequences for creditors.

99. There will be a robust enforcement regime that will include a range of remedies aimed at tackling misconduct and non-disclosure by the debtor, and in some respects the consequences of such conduct will be more severe than in bankruptcy.

100. We are proposing that if a debtor obtains a debt relief order and is found to have made misleading statements about his eligibility (for example has failed to disclose assets, or liabilities) then that would, if deliberate, constitute a criminal offence. However, unlike bankruptcy, if the debtor has made a misleading statement about his assets, liabilities or income to obtain an order, it will also be possible to revoke the order, thus leaving the debtor once again without protection from enforcement and at risk of action by his creditors. This would also apply after the order if the debtor comes into property during the period of the order, which he fails to disclose.

101. The official receiver would be able to investigate suspicion of misconduct in exactly the same way as if the debtor had been adjudged bankrupt, and debtors whose conduct is found to be culpable and to have contributed to the insolvency would be subject to a regime of restrictions orders of between 2 and 15 years in the same way as in bankruptcy.

102. There will be a range of offences aimed at tackling misconduct by the debtor, similar to those in bankruptcy such as failure to disclose information about his affairs, transfer of property out of the reach of creditors and destruction of books and papers.

103. The proposed enforcement remedies are not mutually exclusive and in some cases, misconduct by the debtor may lead his being subject to a combination of (or indeed all of) the available enforcement actions.

104. There will be a facility for creditors who are dissatisfied with the actions of the official receiver to apply to the court for the matter to be reviewed, and for the court to give directions or make such order as it thinks fit.

105. Finally, irrespective of the debtor's conduct, there is no facility for an early discharge in the debt relief order procedure and therefore all debtors – even those who are not in any way culpable - will be subject to bankruptcy restrictions¹⁰ for a minimum of twelve months.

We will ensure that there is an appropriate and proportionate range of remedies to tackle misconduct by the debtor that incorporates a system of restrictions, offences, and revocation of the order where necessary.

Question 14

Do you think that if a debtor makes a misrepresentation in order to obtain a debt relief order there should be enforcement action in addition to revocation of the order? If so, what type of action do you think is appropriate?

Responses

Answers	Number
Yes	50
No	9
Not Specified	7

106. To some extent, this question is addressed in the previous section.

¹⁰ While the order is in force the debtor will be subject to the same restrictions as if he were bankrupt. For example, he will not be able to obtain credit above a prescribed amount without disclosing his status or engage in business under a name other than that was disclosed in the application for the debt relief order.

107. Most respondents felt that if there was a *deliberate* misrepresentation then in addition to revoking the order, there should be other enforcement action, for example making it a criminal offence or seeking a Bankruptcy Restrictions Order. There was general agreement that *some* type of enforcement action should be taken.

108. If there is a misrepresentation that is not deliberate then a number of people thought the order ought not be revoked. However, we think we will need to take a firm line and not allow for any misrepresentation, even if accidental, since otherwise the official receiver would have to spend resources examining whether or not in his view the misrepresentation was deliberate, which would be a time consuming and costly process.

109. A number of respondents suggested that the debtor should be made bankrupt however, bankruptcy is not intended to be a punitive procedure – one of the main purposes of bankruptcy is to effect an orderly and equitable realisation of assets for the general benefit of creditors

We propose that in cases where the debtor makes a misleading statement to obtain a debt relief order, he should not benefit from the relief from enforcement it gives, and the order should be revoked. Further we consider that in appropriate cases where the misrepresentation is deliberate the debtor be subject to prosecution

Question 15a

What action do you think should be taken if the debtor receives a windfall or experiences an increase in income?

Responses

110. This was a very general question and it has proved to be difficult to assess the responses.

111. A range of views were expressed –from “using bankruptcy” “reviewing the order” to terminating it and allowing the debtor one month to pay his creditors. A number of respondents made the point that there would be little to be gained from revoking an order if the windfall was not substantial enough for worthwhile proposals to be made by the debtor. There was a general consensus that if the debtor found himself in a position to pay then he should do so, but some concern about defining what constituted a windfall.

112. One respondent suggested that no action should be taken if the debtor experiences a windfall, and that he would be better off using the money for a

fresh start, and that the costs of reopening the case would not be justified in economic terms of what was on offer.

113. A few suggested that the case be referred back the intermediary for the debtors position to be reassessed, although Citizens Advice made a point of stating that they were not in favour of this approach, nor do we think that it should be a requirement for the debtor to do this. And a number suggested that the official receiver should take control of and distribute any funds. However, this would not be legally possible since the estate will not “vest” in the official receiver and he will have no greater right to administer it than any other person.

114. There were a number of answers that expressed agreement with our proposals.

We would propose that the debtor who experiences a windfall or an increase in income, irrespective of the sums involved, should disclose it to the official receiver. In cases where it appears that the debtor would be able to come to a sensible arrangement with his creditors –for example enter a county court administration order¹¹ or perhaps an individual voluntary arrangement then he should be given a period of time in which to make appropriate arrangements after which the order would be revoked.

Question 15b

Do you agree that if the debtor benefits from a windfall close to the date at which the debts are due to be discharged that the order should be extended to allow the debtor time to deal with the matter. If not why is this and what steps do you think should be taken to protect the position of creditors?

Responses

Answer	Number
Yes	48
No	1
Not Specified	12

115. It was agreed by a large majority of the respondents that the debtor should be permitted some time to deal with his creditors by extension of the order if the

¹¹ The DCA proposals for the reform of County Court Administration Orders include raising the maximum permitted level of liabilities to £15,000, the debtor having a surplus income of greater than £50 per month

windfall occurred near to the discharge date, although some expressed the view that the extension should not be indefinite and should be for a defined period of time only.

116. We agree with this approach and feel that if in all cases a debtor who experiences a windfall is given three months to deal with his creditors (see *answer to question 15c below*), this would be sufficient. In some cases the three-month period may take the debtor beyond 12 months, in which case the order will be extended to allow the debtor a full three months to make arrangements.

We would propose that in cases where the debtor experiences a windfall or increase in income close to his discharge date, he should be permitted three months in which to make arrangements with his creditors, and that in some cases this will entail extension of the order until expiry of the three month period.

Question 15c

What length of time do you think would constitute a reasonable period to enable the debtor to deal with his creditors?

Responses

Answers	Number
Not Specified	6
1 month	4
2 months	5
2-3months	3
3 months	26
3-6 months	4
6 months	12
12 months	3

117. The majority of the respondents favoured a three month period to enable the debtor to deal with his creditors, although many made the point that it would depend on the circumstances of the windfall as to what a constitutes reasonable length of time –for example an inheritance might take longer to resolve.

118. We think however, that the period at issue is the period during which the debtor needs to be taking steps to resolve the position; even if he is unable to conclude realisation of an asset during the period it should be possible for him to make an agreement with his creditors in that time.

We propose that a debtor who benefits from a windfall be given a three month period in which to make arrangements with his creditors. After this time the order should be revoked.

Question 15d

Do you agree that if the debtor fails to disclose a windfall prior to discharge of the debts that the discharge should be void and creditors free to take enforcement action? If not, what action do you think should be taken?

Responses

Answers	Number
Yes	51
No	2
Not Specified	9

119. A large majority of respondents were in favour of this approach. Of those that did not specifically state whether they were or not, there was concern that there should be suitable appeal processes in place, and that it would depend on the circumstances of the case.

120. Several respondents suggested that the failure to disclose should be subject to criminal sanctions and we agree that in appropriate cases, failure to disclose a windfall should lead to prosecution.

We propose that if a debtor fails to disclose a windfall then we propose that the order should be revoked, the discharge void and the creditors free to take enforcement action if they choose. We also propose that in appropriate cases the debtor may be subject to prosecution.

Annex 1

LIST OF RESPONDENTS

Advice UK	Gregory Pennington Limited
Alliance and Leicester PLC	Helen Sutton
APACS	Hounslow Council Debt and Benefit Casework Unit
Association of Business Recovery Professionals	Insolvency Practices Council
Bankruptcy Advisory Service Limited	Institute of Credit Management
Bankrupts Limited and Apex Debt Counselling	Institute of Revenues, Rating and Valuation
Boothferry CAB	Jane Garrett
Brachers Solicitors	Jeff Townsend
Bradford CAB	Jeremy Sutcliffe
CBI	Julie Green (solicitor)
Charis	Kennet CAB
Cheshire Building Society	Manchester Money Advice Service
Chiltern Debt Management	MBNA Europe
Christians Against Poverty	Michael Green
Citizens Advice	Mick Fennell
Civil Court Users Association	Money Advice Trust
Confidential (business)	National Debtline
Confidential (business)	Paul Beckwith
Confidential (CAB)	Port Talbot CAB
Confidential (CAB)	PriceWaterhouseCoopers
Confidential (CAB)	Ralph Sewell
Confidential (IP)	Revenues Team, Swindon Borough Council
Confidential (representative organisation)	RF Financial Services
Confidential (representative organisation)	Richard Bickerdike
Credit Services Association	Rochdale and District CAB
Deb Sankey	Salford CAB
Direct Debtline	Seaford CAB
East London Financial Inclusion Unit	Sefton Borough Council (Revenues)
Enforcement Services Association	Severn Trent Water Limited
Epping Forest District Council	Sheffield CAB Debt Support Unit
Finance and Leasing Association	Salford City Council Debt Advice Service
Freeman Jones	South Holland District Council
Gemstone Financial Management	Stoke on Trent CAB
Gloucestershire Money Advice Service	Tim Smith
Grant Thornton UK LLP	
Greater Manchester Benchmarking Authorities	