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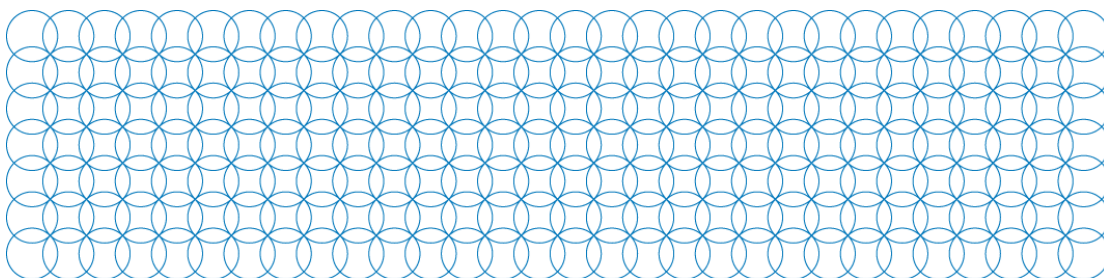
Debt Management Schemes – delivering
effective and balanced solutions for debtors
and creditors consultation

Impact assessment and annexes

Impact assessment and annexes to consultation paper CP09/09

Published on 18 September 2009

This consultation will end on 18 December 2009





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Impact assessment and annexes

**The impact assessment and annexes to a consultation produced by the
Ministry of Justice, the Department for Business Innovation and Skills (BIS)
and the Insolvency Service, a BIS Executive Agency.**

**This information is also available on the websites of the Ministry of Justice,
BIS and the Insolvency Service: www.justice.gov.uk, www.bis.gov.uk and
www.insolvency.gov.uk**

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Department /Agency: Ministry of Justice & The Insolvency Service		Title: Debt Management Schemes – delivering effective and balanced solutions for debtors and creditors	
Stage: Consultation	Version: 2 nd Draft	Date: September 2009	
Related Publications: “A Choice of Paths” (Department of Constitutional Affairs); “Administration and Enforcement Restriction Orders – setting the parameters” (Ministry of Justice)			

Available to view or download at: <http://www.justice.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

Debt Management Plans (DMPs) are a non-statutory method for individuals with difficulty in meeting their repayments to seek agreement with creditors for alternative repayment terms, using a third party as a provider. These plans rely on voluntary creditor participation and evidence suggests that some creditors continue to enforce and charge interest, causing some plans to fail and debtors having to access other, possibly less suitable, debt solutions. There may be a market failure in providing information, as evidence suggests that debtors may not be aware of other solutions and some debt solution operators may seek to exploit this for their own gain. There may also be justification for government intervention on equity grounds, as some individuals seeking such arrangements are likely to be low-income and/or vulnerable.

What are the policy objectives and the intended effects?

The following are key outcomes: Helping people who could, but are struggling to, repay their debts; ensuring that fees charged by debt management scheme operators are reasonable and consistent; ending the practice of some creditors adding interest to debts included in a repayment plan; preserving the best features of the current debt management industry; ensuring that the needs of debtors, creditors and operators are correctly balanced, and ensuring that debtors are aware of the range of options available to them and are advised on the most appropriate and sustainable solution(s) for their circumstances.

This consultation is intended to provide stakeholders with an opportunity to comment on the existing informal debt resolution options and identify whether and, if so, how such arrangements can be improved.

What policy options have been considered? Please justify any preferred option.

There are 3 main options that have been analysed:

- *Option 1:* Do nothing more than continue with measures underway to raise awareness about current schemes and enforce existing rules with operators (the base case);
- *Option 2:* Improve current schemes by the introduction of best practice codes or other non-statutory regulation; or
- *Option 3:* Commence the powers in Chapter 4 of part 5 of the Tribunals, Courts and Enforcement Act

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Three years after implementation, the impact of the policy will be reviewed and evaluated.

Ministerial Sign-off For Implementation Stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



..... Date: 16/09/09

Policy Option: 2	Description: Improve current schemes by the introduction of best practice codes or other non-statutory regulation
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ Unknown		
	Average Annual Cost (excluding one-off)		
	£ Unknown		
Total Cost (PV)			£ Unknown
<p>Other key non-monetised costs by 'main affected groups' Set-up and ongoing costs for the government. Creditors and operators will incur costs in agreeing and monitoring the code, and risk lower profits by not complying with the non-statutory regulation. .</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£ Unknown		
	Average Annual Benefit (excluding one-off)		
	£ Unknown		
Total Benefit (PV)			£ Unknown
<p>Other key non-monetised benefits by 'main affected groups' Debtors benefit from the transparency of information and are able to make better decisions. This has a positive external impact on society through less use of scarce taxpayer's funds. Those creditors and operators that comply with the code benefit through improved reputation and increased confidence in their services.</p>			

Key Assumptions/Sensitivities/Risks The key assumption made with the costs and benefits that have been identified is that a large number of DMS operators will want to comply with the code of practice/non-statutory regulation.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		England and Wales	
On what date will the policy be implemented?		To be decided	
Which organisation(s) will enforce the policy?		To be decided	
What is the total annual cost of enforcement for these organisations?		£ To be determined	
Does enforcement comply with Hampton principles?		Yes	
Will implementation go beyond minimum EU requirements?		No	
What is the value of the proposed offsetting measure per year?		£ Nil	
What is the value of changes in greenhouse gas emissions?		£ Nil	
Will the proposal have a significant impact on competition?		No	
Annual cost (£-£) per organisation	Micro	Small	Medium Large
Are any of these organisations exempt?	No	No	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase -
Increase	£	Decrease of	£ Net Impact £

Key: Annual costs and benefits: (Net) Present

Policy Option: 3	Description: Commence the powers in Chapter 4 of part 5 of the Tribunals, Courts and Enforcement Act (TCEA) 2007
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ Unknown		
	Average Annual Cost (excluding one-off)		
£ Unknown		Total Cost (PV)	£ Unknown
Other key non-monetised costs by 'main affected groups' Set-up and ongoing costs for the government. Creditors and operators risk lower profits by not complying with the non-statutory regulation and when faced with competition may risk exiting the market. These costs will be greater then for Option 2 due to the increase in number of regulations within the statutory regulation.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£ Unknown		
	Average Annual Benefit (excluding one-off)		
£ Unknown		Total Benefit (PV)	£ Unknown
Other key non-monetised benefits by 'main affected groups' Debtors benefit from the restrictions put in place and the impartial advice given. The positive impact on both debtors and wider society would be far greater than for Option 2. Creditors and operators realise greater reputational benefits than in Option 2 also due there being an approval process put in place by the Supervising Authority.			

Key Assumptions/Sensitivities/Risks The key assumption made with the costs and benefits that have been identified is that a large number of DMS operators will want to become approved by the Supervising Authority.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ Unknown	NET BENEFIT (NPV Best estimate) £ Unknown	
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What is the geographic coverage of the policy/option?		England and Wales			
On what date will the policy be implemented?		April 2010			
Which organisation(s) will enforce the policy?		To be decided			
What is the total annual cost of enforcement for these organisations?		£ To be determined			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		No			
What is the value of the proposed offsetting measure per year?		£ Nil			
What is the value of changes in greenhouse gas emissions?		£ Nil			
Will the proposal have a significant impact on competition?		Yes			
Annual cost (£-£) per organisation		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/a	N/a

Impact on Admin Burdens Baseline (2005 Prices)				(Increase -
Increase	£	Decrease of	£	Net Impact
				£

Key: Annual costs and benefits: (Net) Present

Evidence Base (for summary sheets)

1. Introduction and Background

1. Since the expansion of the credit market in the 1980s the availability of credit has increased significantly. A large majority of households are able to access this credit and repay their debts. However, in recent years there has been a steady rise in the proportion of individuals reporting their debts as being a 'heavy burden'¹. Similarly, in terms of insolvency, although this has remained fairly stable in 2007 and 2008, there was a steady increase in the number of insolvencies in every quarter of 2008 – from just under 25,000 in Q1 to over 28,000 by Q4 – and this has continued into 2009. The number of personal insolvencies in Q1 2009 exceeded 30,000 for the first time (an increase of 6% on Q4 2008 and 23% on Q1 2008), and reached 33,000 in Q2 2009 (a quarter-on-quarter increase of 9%, and a year-on-year increase of 27%)². This suggests that the number of people in financial difficulty may be steadily increasing, which is reinforced by insolvency forecasts, with predictions that 140,000 people could be declared insolvent in 2009

Current Statutory Provisions

2. A number of statutory options are currently available to individuals in England and Wales encountering difficulties in meeting their repayments. These range from options for those able to repay some of their debts to mechanisms for those unable to meet their commitments. Full details of the relevant constraints and effects of all of these schemes set out in the guide *In Debt – dealing with your creditors*³. These are briefly set out below.
3. For those individuals who can pay at least a proportion of their debts:
 - Individual Voluntary Arrangements (IVAs) – under this scheme, agreed monthly contributions are paid and assets may be realised but the balance of debts remaining at the end of the agreement are written off;
 - county court Administration Orders (AO) – a long-term debt repayment scheme that provides debtors with protection from enforcement and allows them to make a single monthly payment, which is then distributed to their creditors. However, AOs are only available to those whose total unsecured debts are less than £5,000, a relatively low debt ceiling for today's debt levels, and

¹ According to *the British Household Panel Survey* between 1995 and 2005 debtors who encountered financial problems remained relative stable around 10%. From 2005 to 2008 this proportion increased to around 15%¹. Since mid-2008, survey evidence indicates that this proportion has increased slightly further – from 14% to 16%¹. This has coincided with an increase in the proportion of individuals who report being at least 1 month in arrears on their credit commitments – from 13% to 15%. This suggests a steady increase in the numbers of debtors who have encountered financial problems, particularly over the last 12 months or so

² For comparison purposes, it should be noted that a new route into bankruptcy (Debt Relief Orders) was introduced in April 2009, which makes it difficult to compare historical figures

³ Published by the Insolvency Service on 2 July : <http://www.insolvency.gov.uk/pdfs/guidanceleafletspdf/indebt-web.pdf>

- Time Orders – only for single debts, incurred under the agreements regulated by the Consumer Credit Act.
4. For those individuals who genuinely cannot repay their debts and may never be able to do so:
- Bankruptcy;
 - Debt Relief Orders (DROs) – introduced in April 2009, the DRO allows those with surplus income of less than £50 per month, assets of less than £300 and total debts of less than £15,000 to have their debts written off after a year.
5. In addition to the above schemes, the Government has plans to reform the existing county court Administration Order (AO). These reforms would include raising the debt ceiling, introducing a requirement to update information regularly and define debts that cannot be included. A recent Government consultation⁴ sets out the terms for the introduction of a new measure, the Enforcement Restriction Order (ERO), which is designed to assist those who experience a sudden and unforeseen downturn in their financial circumstances and where there is a realistic prospect that the debtor's financial circumstances will improve by stopping all enforcement action for up to 12 months. However, due to the current replacement of county court IT systems, it is now clear that the reform of the AO and introduction of the ERO schemes could not be implemented before April 2011 at the earliest and their effects would have been limited due to strict entry criteria.

Debt Management Plans

6. The recent changes to the economic situation have added urgency to the need to ensure that there are comprehensive measures available to assist those whose financial circumstances have unexpectedly changed and need assistance with debt problems.
7. An alternative method of dealing with debt problems, for those who can afford to make payments towards their debts and who wish to retain their assets if possible, is to enter into a Debt Management Plan (DMP). This is a market-based solution that has arisen to meet the demand of those consumers for whom the current suite of insolvency options available is not appropriate for their financial situation and personal/family circumstances. DMPs are therefore a non-statutory method for providing help and assistance to those who need structured support to repay their debts.
8. The Government is committed to helping those in financial difficulties. As part of the Government's financial inclusion programme, measures designed to provide better targeted help and assistance for the over-indebted and those with multiple debts were included in Part 5 of the Tribunals, Courts and Enforcement Act (TCEA) 2007.
9. These measures included provision for powers for the Lord Chancellor to introduce statutory debt repayment plans. Currently, DMPs are offered in both the commercial and not-for-profit sectors, but these rely on voluntary creditor involvement and continued participation. However, concerns have been raised with respect to certain aspects of the current arrangements (detailed below), which this consultation is

⁴ Administration and Enforcement Restriction Orders – setting the parameters', Ministry of Justice (2008)

seeking to gather further information on and potential solutions for addressing such concerns.

10. This consultation was one of the matters contained in the Consumer White Paper *A Better Deal for Consumers: Delivering Real Help Now and Change for the Future*, published on 2 July⁵.

2. Scope of the Impact Assessment

11. This is a consultation-stage Impact Assessment. It accompanies the consultation document on “Debt Management Schemes - delivering effective and balanced solutions for debtors and creditors”. Consultees are invited to offer views and comments on the different policy options and evidence on the associated costs and benefits. Evidence gathered through the consultation will then feed into a decision about policy development, and the results will be published in the final Impact Assessment.
12. It is important to stress at the outset that quantification of numbers, costs and benefits has been very difficult due to the lack of industry-wide figures. Where attempts have been made to do this, significant uncertainties remain. As such, where it has not been possible to quantify the costs and benefits, we have provided, insofar as we can, the qualitative costs and benefits of the proposals. We would welcome comments on the estimates contained in this Impact Assessment, which will help inform decisions about which is the most appropriate policy solution.
13. These options will have effect in England and Wales only. Scotland has its own legislation relating to individual insolvency, which features sequestration and Trust Deeds as the equivalent to bankruptcy and IVA. Scotland also has legislation providing for a Debt Arrangement Scheme (DAS). DAS was introduced in November 2004 as a statutory debt management tool, agreed outside of court-based schemes, to allow debtors to repay multiple debts in full over an extended period of time without the threat of legal action or diligence from their creditors. Change were made to DAS in 2007, freezing interest and charges on debts included in a Debt Payment Plan (DPP) under DAS, with interest and debts written off if the DPP is completed. It is only delivered through the not-for-profit sector and so cannot be directly compared to the current debt management plan regime that operates in England and Wales.

Strategic Objectives

14. The proposals’ strategic objective is to provide stakeholders with an opportunity to comment on the existing debt management plan arena and identify whether improvements are necessary, and if so how this can be achieved. The Government is completely neutral at this stage about all possible options, including the ‘do nothing more than continue with measures underway to raise awareness about current schemes and enforce existing rules with operators’ option, and the Government is running a completely open consultation exercise.

⁵ <http://www.berr.gov.uk/files/file52072.pdf>

15. We believe that the policy options should be assessed primarily in relation to the following key outcomes:
- ensuring that debtors are sufficiently aware of the range of options available to them;
 - ensuring that people who could, but are struggling to, repay their debts receive appropriate help and appropriate advice;
 - ensuring that the fees and interest charged by debt management scheme operators are sufficiently reasonable;
 - preserving the best features of the current debt management industry, taking into account any effects on the supply of credit, and ensuring that the industry operates efficiently;
 - ensuring that the needs of debtors, creditors and operators are correctly balanced, and that equity and distributional implications are taken into account appropriately;
 - ensuring that competition remains healthy in the market for debt management operators, including in relation to consumer choice, market innovation and market entry.
 - ensuring that increased Government intervention and/or regulation is considered only in the face of clear market failure and only in the absence of sufficiently effective market-based solutions;
 - in these circumstances only considering Government intervention and/or regulation when this is likely to be sufficiently effective, taking into consideration the estimated costs, benefits and risks;

Organisations in the scope of the proposals

16. The main groups affected by the proposals are:
- Debtors – there are no figures for the number of plans in existence (estimates vary from 300,000 – 700,000) it is generally accepted that around 100,000 new plans come into existence each year;
 - Creditors – from all sections of the unsecured sector; and
 - Existing/future DMP operators – again there are no definite figures for the number of operators. Estimates vary from 150 - 350.

3. Rationale for Government Intervention

17. The rationale for Government intervention in industry is usually founded upon efficiency arguments. In particular a pre-condition for considering Government intervention is usually the existence of sufficiently significant failures in the way markets operate. In addition there would usually be an absence of sufficiently effective market-based solutions to these market failures, plus evidence that the proposed

Government intervention would be sufficiently effective and efficient itself, without unduly generating a further range of market distortions. Aside from efficiency considerations the Government might also consider intervening for distributional reasons or for reasons of fairness or equity.

18. In this instance we are considering the market of operators of DMSs. We are not considering the size of this market, i.e. how many people have encountered financial problems and have become indebted. Nor are we considering directly the possible causes behind changes in the size of this market, which might relate to wider economic changes, wider financial market developments, and wider social, educational and behavioural issues. Instead we are concerned about the position of those who have entered this market as a result of their indebtedness, in particular with how well the market for DMPs is working.
19. In common with other markets for financial services, information asymmetries may exist between operators of DMPs and their consumers. In addition some consumers might be affected by low levels of financial capability⁶, including in relation to their awareness and understanding of their financial position. The existence of information asymmetries and low levels of financial capability may provide opportunities for some DMP operators to exploit this situation to their advantage. There is some evidence for this – a recent survey showed that, despite 96% of consumers claiming to be familiar with their finances, only one-quarter could accurately state how much they had left to pay on their loans and around one-third of consumers were unsure what an APR⁷ was⁸. In addition, the 2008 Consumer Conditions survey identified the credit market as one with a low overall consumer confidence when compared to a wide range of other markets, particularly the perception that credit products are difficult to understand⁹.
20. At the same time other DMP operators have sought to maintain market confidence by establishing codes of practice. The Debt Resolution Forum (DRF) has established a code plus standards and is seeking accreditation for these from the Office of Fair Trading (OFT). The Debt Managers Standards Association (DEMSEA)'s code was recently approved by the OFT under its Consumer Codes Approval Scheme. In addition the OFT itself issued guidance in 2001, updated in 2008, which sets out expected minimum standards of behaviour for those offering debt management services. The OFT plans to review compliance with its guidance in 2009.
21. These voluntary codes of practice and guidelines aim to address some of the possible effects of the information asymmetries and levels of financial capability at hand by providing a range of consumer safeguards. As such they may be regarded as market-led solutions to the market failures which exist. The safeguards set particular standards in relation to how DMPs should operate. This self-regulation does not cover all possible types of market behaviour, instead it covers particular aspects only.
22. The rationale for considering additional Government involvement, beyond the activities of the OFT, relates to whether there are significant enough failures in the way that

⁶ In 2006 the FSA identified low levels of financial capability amongst a significant part of the UK population, particularly young people

⁷ APR is an abbreviation for annual percentage rate and describes the interest rate for the year

⁸ <http://press.experian.com/popup/sd.cfm?f=In%20The%20Know%20FINAL1.htm>

⁹ <http://www.berr.gov.uk/files/file48855.pdf>

market-led codes and standards are devised and implemented. If there were then the resulting safeguards might be set at too high or too low a level, or they might cover too many or not enough market services or products.

23. Whilst safeguards might be widened or strengthened to the initial apparent benefit of consumers and consumer confidence, there might also be costs in terms of industry competition, consumer choice, market innovation, industry efficiency, and industry and Government costs. These downsides might also impair consumers in due course.
24. As such there is an optimal level and extent of regulation. The objective of this consultation is to shed light both on what the optimal level and extent of regulation might be, and also on how that regulation should be devised and implemented (i.e. by the industry itself in conjunction with the OFT or by others parts of the Government).

4. Cost Benefit Analysis

25. The Impact Assessment (IA) process aims to identify as far as possible the impacts of government proposals on society. A critical part of the process is to undertake a cost benefit analysis (CBA) of the proposal. CBA assesses whether the government's proposals would deliver a positive impact to society, accounting for economic, social and environmental considerations. The IA process therefore should not be confused with a *financial appraisal*, which is focused purely on assessing how much resources government would save from certain proposals.
26. The CBA underpinning this IA rests on answering three basic questions:
 - i) What market failure or institutional problem has led the relevant market or sector not to function properly¹⁰?
 - ii) What sort of Government intervention is appropriate to ensure the problem is corrected?
 - iii) Is the recommended Government intervention likely to have the desired impact? To establish a strong case for Government intervention, we must assess the costs and benefits of Government involvement and show that the benefits are likely to outweigh the costs.
27. Question (i) has been addressed in Section 3 above, the rest of this section focuses on (ii) and (iii).

Principles of cost benefit analysis

28. This IA identifies as far as possible both monetised and non-monetised impacts from society's perspectives, with the aim of understanding what the net social impact to society might be from the introduction of new legislation on DMS.

¹⁰ The government may also intervene for equity / fairness reasons. Where such reasons are used it is important that the extent of the problem is fully explained.

29. Cost benefit analysis places a strong emphasis on the monetisation of costs and benefits. However there are important aspects that cannot sensibly be monetised. These might be distributional impacts on certain groups of society or some institutional impacts, either positive or negative. Cost benefit analysis in this IA is therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are non-monetisable.
30. An important consideration for any cost benefit analysis is the relevant scope of the assessment. The scope of this IA is defined to include:
 - impacts that fall within the United Kingdom - that is to say we have tried to capture all the impacts that fall on UK firms and their consumers.
 - impacts that fall on both present and future generations - in line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it.

OPTIONS ANALYSIS

OPTION 1 - BASE CASE (“Do-Nothing more than continue with measures underway to raise awareness about current schemes and enforce existing rules with operators”)

Description

31. The Impact Assessment and HMT Treasury Green Book Guidance requires that all options are assessed relative to a common “base case.” The base case for this IA has been assumed to be “do nothing more than continue with measures underway to raise awareness about current schemes and enforce existing rules with operators.” As the base case effectively compares against itself, the net present value (NPV) is zero.
32. In order to allow for an informed consideration of the options that we are proposing, we have considered the effect of making no changes to the current structure of DMPs.
33. In terms of the number of individuals entering into formal insolvency, this has remained relatively stable between 2007 and 2008. However, there was a steady increase in the number of insolvencies in every quarter of 2008 – from just under 25,000 in Q1 to over 28,000 by Q4 – and this has continued into 2009.
34. The number of personal insolvencies in Q1 2009 exceeded 30,000 for the first time (an increase of 6% on Q4 2008 and 23% on Q1 2008), and reached 33,000 in Q2 2009 (a quarter-on-quarter increase of 9%, and a year-on-year increase of 27%)¹¹. This suggests that the number of people in financial difficulty is steadily increasing, which is reinforced by insolvency forecasts, with predictions that 140,000 people could be declared insolvent in 2009.
35. There are already a number of options for individual debtors to deal with their problems, including: bankruptcy, IVAs, DROs, AOs or consolidation loans. An alternative method of dealing with debt problems, for those who can afford to make payments towards their debts and who possibly may wish to retain their assets, is to

¹¹ For comparison purposes, it should be noted that a new insolvency procedure (Debt Relief Orders) was introduced in April 2009, which makes it difficult to compare historical figures

enter into a DMP. This is a market-based solution that has arisen to meet the demand of those consumers for whom the current suite of insolvency options available is not appropriate for their financial situation. DMPs are therefore a non-statutory method for providing help and assistance to those who need structured support to repay their debts.

36. However, evidence collected through stakeholder engagement and recent research reports suggests the existence of several potential problems in relation to current arrangements:
- Inadequate/inappropriate advice given to debtors by DMP operators;
 - Awareness and level of fees and charges levied by commercial DMP operators;
 - Quality of financial statements being delivered to creditors by DMP operators, including the potential manipulation of figures to present an ultimately unsustainable plan in a favourable way;
 - Poor service provided to clients by DMP operators, including withholding monies and/or making late payments to creditors;
 - Continued application of interest and fees to debtor accounts by creditors/debt owners, despite a DMP being put in place to service those debt repayments;
 - Continued enforcement action to collect outstanding debts by creditors/debt owners, despite a DMP being put in place to service those debt repayments.
37. The strong recent increases in formal individual insolvency proceedings and a rise in the proportion of people reporting difficulties in meeting their repayments means that there is potential for costs to consumers arising from these problems being exacerbated in the near future.¹²
38. As set out in **Annex A**, there are already industry-led efforts to provide a cohesive code of practice for DMP operators through DEMSA, DRF and the Debt Standard Code of Conduct. This has recently been further strengthened by the introduction of the Debt Management Exchange, a service launched by TDX Group (also responsible for the Debt Standard Code of Conduct) to promote consistency of standards across the fee-charging debt management industry.¹³ From a brief analysis of the features of these different schemes, it would seem that these codes of conduct go a long way towards addressing some of the problems identified.
39. However, two main issues arise in relation to any self-regulatory regime – enforcement and coverage (i.e. membership). It would seem from current evidence that enforcement of these codes is quite robust – for example, recent sanctions taken against DEMSA members. Furthermore, evidence from the recent Money Advice Trust (MAT) research¹⁴ suggests that some of the poorest practices experienced by

¹² Further details can be found at **Annex A**

¹³ [Under this process, creditors outsource the debt management process to DMX, which processes debt management proposals from third parties \(such as fee-charging debt management companies\) on the creditors' behalf](#)

¹⁴ An independent review of the fee-charging debt management industry', June 2009

40. This leads to the second issue – coverage of the supplier base in terms of membership of existing codes of practice. According to the MAT research, of the 150+ fee-charging debt management companies identified, DEMSA has a membership of only 5 firms¹⁵ – though these firms claim to account for approximately 38 per cent of all fee-paying debt management cases handled in the UK¹⁶ (difficult to assess given the current lack of empirical figures) – DRF has a membership of 33 firms¹⁷ and only 3 firms subscribe the Debt Standard Code of Conduct.¹⁸ This means that there is a substantial proportion of the total industry base that is not signed up to any of the existing codes of conduct, strengthening further the case for considering options other than to “do nothing more than continue with measures underway to raise awareness about current schemes and enforce existing rules with operators.”
41. Other issues arising from the current situation are that there is currently no centralised collection of data on DMPs, including for example the number of plans exited and reasons for doing so. The variation in fees and charges would continue in the market and will be an ongoing concern for both debtors and creditors. This variation in itself is not a problem but rather there is an issue of information. From anecdotal evidence it seems that those who have lower levels of financial capability are perhaps more likely to be charged disproportionately higher fees than those who have more. A common approach to the setting of fees and chargers in DMPs would mitigate the problems associated with those operators that may be able to manipulate debtors.
42. The practice of some creditors adding interest to debts would persist which would add to the financial difficulties of debtors, either by potentially prolonging the length of a DMP or possibly increasing the amount owed. This may increase the amount owed, such that the DMP becomes unsustainable.
43. Evidence suggests that some individuals currently using DMP operators are encountering problems regarding their awareness of alternative options available to them, perhaps partly due to the lack of independent information available and partly due to the advice given to them by certain DMS operators . By doing nothing more than continue with measures underway to raise awareness about current schemes and enforce existing rules with operators, the problem of a lack of information could potentially be addressed through the recent Insolvency Service (INSS) Guide, ‘In Debt? Dealing with your creditors’. Awareness could potentially be further enhances by the forthcoming publication of a leaflet that explains in simple terms what debtors should expect from DMS operators and refers back to INSS Guide for further detail.
44. If responses to this consultation provide substantive support for this option, the Government will have to review whether any further action is necessary beyond the measures underway:

¹⁵ <http://www.demsa.co.uk/members/>

¹⁶ <http://www.ofc.gov.uk/news/press/2008/140-08>

¹⁷ <http://www.debtresolutionforum.org.uk/members.php>

¹⁸ <http://www.thedebtstandard.com/debt-solution-providers.aspx>

- guidance to be published shortly on what to expect from non-court based Debt Management Scheme operators to help raise awareness with debtors about the benefits and pitfalls of current debt management plans;
- continued enforcement activity against firms who fail to operate within the rules and who provide sub-standard services to consumers with problem debt;
- OFT's plan to review its Debt Management Guidance in 2009 to identify the nature and scale of non-compliance within the debt management sector and to adjust its future regulatory activity accordingly

OPTION 2 – “introduction of best practice codes or other non-statutory regulation”

Description

45. This option would focus on improving the level of information available through the introduction of a code of practice. It is non-statutory and, as by law operators do not need to be part of the scheme, there are likely to be some operators who would not join. The majority of the costs would be borne by industry as they would agree and implement the code of practice. The incentives for parties to sign up to codes of practice would be in the form of the benefits they receive, as discussed below. Such a code would need to include creditor behaviour/attitudes and address issues such as interest, enforcement, the calculation of surplus income etc. This is wider than the current DEMSA and DRF codes, which only deal with industry standards.
46. The costs and benefits identified for creditors and operators are contingent upon them adopting the code or non-statutory regulation.
47. Efforts are already underway to address problems through the introduction of several self-imposed codes of conduct and a ‘best practice’ code could build on these to introduce additional desirable features not currently included. Such a code would necessarily need to address the following issues:
 - ensuring debtors were given appropriate advice on all available options;
 - standardising operators’ set-up and administration fees;
 - the calculating of surplus income;
 - whether there should be a total debt limit;
 - whether there should be a time limit for the length of plan;
 - the methods for providing information to creditors;
 - protection for debtors by stopping interest and additional charges;
 - when and how information on debtors’ means should be updated; and
 - when plans would be considered to be no longer viable.

48. Obviously, enforcement is critical to the success of any self-regulatory solution and so, if this option finds support, it should be monitored and evaluated regularly with the results placed in the public domain to ensure transparency. Expansion of membership for codes of conduct would also be of critical importance, especially given the apparently narrow membership of existing codes. This could be particularly difficult when such debt is sold onto a third party in the debt purchasing market – e.g. ensuring that the debt purchaser also adheres to the freezing/limiting of interest and enforcement action to safeguard the continuation of viable repayment plans.

Costs of Option 2

49. Option 2 would impose additional costs on the Government, DMS operators and creditors. However, due to the existence of the DEMSA code, which is already approved by the OFT under its Consumer Codes Approval Scheme, this process may not involve excessive costs, if it can easily be amended or updated.

First Round Costs (Direct)

The Government

50. The Government would need to facilitate discussions between operators and creditors in drafting the code of practice; these set up costs would be one-off.
51. There would be ongoing costs that would be incurred by operators and creditors in collecting information and providing proof of compliance to the chosen enforcement body of any code that is introduced.
52. Additionally, there would be ongoing costs involved in monitoring the effectiveness of the code.

Second Round Costs (Indirect)

Operators

53. There would be no direct impacts on operators due to the code of practice being a non statutory regulation. As joining is a voluntary action, only those operators for whom joining the code of practice would be beneficial (taking into account all the appropriate costs and compliance) and so there would be no additional external costs imposed on them.
54. If operators decide not to join the code of practice they may lose clients to other operators that have joined the code of practice, provided that consumers are well informed and exercise effective choice between operators. This may offer a competitive advantage for those firms that are part of the code by being in a better position to attract clients. The question is - would operators that may initially decide not to join, be forced to join eventually due to a decline in their profits from not joining, or risk having to exit the market?

Creditors

55. There would also be no direct impacts on creditors due to the voluntary nature of the code. However there may be a cost involved if the various aspects of the code, such as the freezing of interest, force a decline in creditors profits, with the worst case scenario being an exiting of some operators from the market.
56. There may also be costs imposed on creditors, which would be dependent on the outcome of the consultation; at this stage however these are highly uncertain. For example at **Annex B** there are indicative cost ranges for creditors if they are asked to meet provider's costs.

QIA 1. If you are a creditor, can you give details of the estimated cost of adopting a code to your business?

QIA 2. If you are an operator, can you give details of the estimated cost of developing and adopting a code to your business?

Benefits of Option 2

57. The adoption of the code may lead to benefits for debtors and wider society. The assumption made when looking at the benefits is that this code would be sufficient in achieving the objectives set out in the description, and that a sufficient number of operators adopt the code of practice for these benefits to be realised.

First Round

Debtors

58. Debtors would be the greatest beneficiaries of this option, as they would be better informed about the availability of their options. By having all the relevant information available and this information being more transparent, debtors are in a better position to be able to make choices that impact positively on their circumstances.
59. An increase in those finding a sustainable solution to their debt problems without the need to realise their assets (normally the home) could assist people to meet their rent/mortgage commitments (as these would be classed as priority payments) with greater ease relative to the base case.
60. The adoption of a common method of calculating surplus income (and therefore the repayment rate) would ensure that plans were sustainable, as creditors would have confidence in the reliability of figures submitted by operators (and therefore debtors). This could then lead to a lower incidence of creditors taking unilateral enforcement action, or levying interest and additional charges, while a plan was in place.

Second Round

Creditors/Operators

61. As operators and creditors can decide whether to opt into this scheme, the external benefits to them might be minimal. However, due to the existence of the code of practice and as operators and creditors adopt the code, over time the reputation of the industry as a whole may improve and thus increase the status of the creditors and operators that have adopted the code.

Wider Society

62. In finding a sustainable solution to indebtedness, there would be an easing of pressure from the external impacts that indebtedness (externalities) would usually have, for example the demand for social housing and other means tested services. Additionally, any reduction in the stress associated with debt problems could lead to benefits for the individuals and other public sector services such as the National Health Service which it has not been possible to quantify here.

OPTION 3 - Commence the powers in Chapter 4 of part 5 of the Tribunals, Courts and Enforcement Act (TCEA) 2007

Description

63. This option would focus on improving the level of information available about the options available for debtors through the introduction of statutory regulations. The greater the number of restrictions that are introduced, the stronger the likely negative impact on the numbers and types of debtors who enter into such a scheme. A regulated approach of introducing a statutory DMP would ensure that only operators that are approved according to criteria imposed by the Supervising Authority and who operated plans that included the criteria below were able to offer their services under the regulatory regime:¹⁹ The new statutory DMP would:
- be open to some or all non-business debtors (s109 (2));
 - specify all of the debtor's qualifying debts (s110(2));
 - require the debtor to make payment in respect of each of the specified debts (s110(3));
 - exclude secured debts, e.g. mortgages, hire purchase, (s.132);
 - restrict a creditor presenting a bankruptcy petition against the debtor while the statutory debt repayment plan is in operation, unless specified in regulations, or the creditor has permission of a county court (s115);
 - restrict creditor enforcement action from the date the debtors asks the operator of an approved Debt Management Scheme to arrange a statutory debt repayment plan, unless specified in regulations or the creditor has permission of a county court (s116); and
 - stop the addition of additional charges, e.g. late payment penalties, and interest from the date the debtor asks the operator of an approved Debt Management Scheme to arrange a statutory debt repayment plan, unless specified in regulations or the creditor has permission of a county court (s117).
- In addition, statutory debt repayment plans may:
- be registered in the Register of Judgments, Orders and Fines (RJOF) (s120); and

¹⁹ This option is discussed in further detail in Annex C

- be subject to a right for creditors to appeal to a county court about the statutory debt repayment plan being arranged or their debt being included in it or the terms of the plan (s122).

64. The introduction of schemes where operators are approved would introduce a common approach across all operators. However, such schemes would be reliant on impartial advice being given on the most appropriate solution and an effective supervisory/audit regime being in place. It is likely that any debt included in a DMP (whether regulated or not) would need to be classed as 'non-performing' and creditors would therefore need to provision for it in this way. The costs and benefits identified for creditors and operators are contingent on them volunteering to be part of the schemes.

Costs of Option 3

65. As with Option 2, this Option would impose additional costs on the government, DMS operators and creditors. However due to the statutory nature of this option, the costs are going to be generally greater than for Option 2 for all the parties involved assuming that participation rates in statutory schemes are higher than for a voluntary scheme.

First Round

The Government

66. The costs that the Government would incur in this Option are far greater than Option 2 due to the need to introduce regulations. There would be initial set-up costs for the Supervising Authority although these would be recovered from fees paid under the approval process. There would be ongoing costs incurred in setting up the Supervising Authority and for stakeholders in collecting information and providing proof of compliance.

Operators

67. The costs for operators would be greater than in Option 2, assuming that participation would be higher. There would be additional costs in ensuring that all conditions imposed by the Supervising Authority were met and for preparing applications for approval by the Supervising Authority. An example measure included in the regulations, such as capping the fees that are charged by operators, might also reduce their income.

68. If approval for operators was time-limited to say 5 years, a further application and fee may need to be paid.

Second Round

Creditors

69. These costs would be similar to Option 2 but greater because of the statutory regulations, which may cover a greater range of areas that are outside the scope of self-regulatory measures (e.g. creditor behaviour) and may also result in greater participation than a voluntary scheme.²⁰

²⁰ Indicative cost ranges are at Annex B.

The Government

70. Additionally there would be ongoing costs to Government to ensure that the costs of the Supervising Authority's role in monitoring performance and standards were met.

Operators

71. As with Option 2, if operators decide not to comply with the regulations, they may lose clients to other operators that do meet the regulations, perhaps providing a competitive advantage that would leave those firms in a better position to attract clients. The question is - would operators that may initially decide not to join, be forced to join eventually due to a decline in their profits from not joining, or risk having to exit the market?

QIA 3. If you are an operator, can you give details of the estimated cost of adopting these proposals to your business?

QIA 4. If you are a creditor, can you give details of the estimated cost involved if changes are needed to debt provisioning caused by debts being included in a regulated scheme?

QIA 5. What level of funding would be necessary to ensure the Supervising Authority is "fit for purpose"?

Benefits of Option 3

72. Option 3 would potentially lead to benefits for debtors, creditors and wider society.

First Round

Debtors

73. The benefits for debtors might be greater than in Option 2 if the statutory nature of the option results in a greater number of creditors and operators complying. A wider range of problems could potentially be tackled under this option (e.g. creditor practices) than a self-regulatory scheme that only covers operators.
74. The result would be a greater transparency of information for debtors as well as having restrictions in place that protect even those who are least informed. For example, they should know which options are available, how much needs to be repaid, and roughly how long that would take.

Second Round

Creditors

75. As the code of practice discussed in Option 2 would be a voluntary arrangement, the benefits accruing to creditors would potentially be greater for Option 3, if participation were higher. Creditors should be confident that debtors have considered all available options for dealing with their debt; they would not need to chase up their debts, as the result of the statutory scheme would be that creditors would be paid what they are owed.

Wider Society

76. The benefits to wider society of Option 3 could be greater than in Option 2, if there are a greater number of operators participating. As this option could also be better at easing the external costs of indebtedness, it would potentially result in fewer individuals requiring social housing and other means-tested benefits.

SUMMARY OF OPTIONS

77. The introduction of a code of practice may be quicker than adopting Option 3 (where the Government would introduce regulation), given the number of interested parties, however there may be unintended consequences. For option 2, it may be difficult to secure agreement that would allow a sufficient number of the strategic objectives to be met to be sure that any changes are effective. There is a risk that a self-regulatory solution will not work. This may occur if monitoring and enforcement mechanisms are not implemented appropriately. This will lead to no improvement in the situation for either debtors or creditors and could in fact increase costs through a higher level of complaints and disputes. The adoption of Option 3 may be too costly for smaller operators.
78. Neither option 2 nor option 3 would stop DMS that use current standards and practices from continuing to operate.
79. **Table 1** presents a high level summary of costs and benefits of Options 2 and 3 focused on the key affected areas:

Table 1 : Summary of Options						
		Debtors	Government	Creditors	Operators	Wider Society
Option 2: Code of Practice/ other non-statutory regulation	Costs		<ul style="list-style-type: none"> ▪ Set up costs. ▪ Ongoing costs of collecting information & monitoring effectiveness 	<ul style="list-style-type: none"> ▪ Highly uncertain - May see a reduction in profits if do not join. Some may join the code or risk exiting the market 	<ul style="list-style-type: none"> ▪ Highly uncertain – May see a reduction in profits if do not join. Some may join or risk having to exit the market. This is highly uncertain 	

	Benefits	<ul style="list-style-type: none"> ▪ Transparency of information and are protected 	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Increased confidence in receiving what they are owed. 	<ul style="list-style-type: none"> ▪ Reputational benefits if they join. 	<ul style="list-style-type: none"> ▪ External benefits to taxpayers as there should be less demand on means tested public services,
Option 3: Statutory Regulation	Costs		<ul style="list-style-type: none"> ▪ Greater than Op2 due to statutory regulation ▪ Cost of Supervising Authority 	<ul style="list-style-type: none"> ▪ Greater than Op 2 	<ul style="list-style-type: none"> ▪ Greater than Op 2 as there would be more restrictions to comply with. 	
	Benefits	<ul style="list-style-type: none"> ▪ 		<ul style="list-style-type: none"> ▪ Greater than Op 2. More confidence in receiving maximum payments possible etc 		<ul style="list-style-type: none"> ▪ Greater than Op 2 – more restrictions leading to greater external benefits to society.
<p><i>NB: This is a high level summary to give some indicative impacts. The actual impacts, discussed in the main narrative are likely to be more varied.</i></p>						

4. Impact Tests

Competition Impact Test

80. The Initial Competition Assessment is enclosed as **Annex D** as a number of questions in the Competition Assessment are answered with a yes, then they are examined in further detail below.
81. It should be noted that although this assessment focuses on Option 3 the majority of answers are equally as likely to apply to Option 2, with the exception of references to the Supervising Authority.

The first question in the Competition Assessment is

In any affected market, would the proposal

Directly limit the number or range of suppliers?

This is likely to be the case if the proposal involves:

- the award of exclusive rights to supply, or
- procurement from a single supplier or restricted group of suppliers, or
- the creation of a form of licensing scheme, or
- a fixed limit (quota) on the number of suppliers

82. Given that operators of approved debt management schemes can only be delivered by those who successfully apply to be recognised for that purpose by the Supervising Authority then it is clear that the new statutory regime may limit the number of suppliers.

83. The consultation document sets out that there are over 300 operators of the current plans and that the quality of these operators varies can mean some debtors might access a plan through a lower quality provider. Consequently if the Supervising Authority can ensure that all statutory operators are of good quality it can be argued that restricting the group of operators may provide positive benefits for consumers.

84. If option 3 is implemented it is likely to restrict the number of suppliers as operators may be required to incur greater costs. At this stage it is unknown the extent to which existing suppliers might exit the market. If only a small number exit the market then the market should remain competitive. However if a large number exit the market and there were only a few dominant firms left, then competition would be limited and this, over time, could lead to a lack of incentive to improve quality and service.

QIA 6. If option 2 or 3 is implemented what are your views on whether the number of current operators will expand or contract?

The second question in the Competition Assessment is

In any affected market, would the proposal

Indirectly limit the number or range of suppliers?

This is likely to be the case if the proposal significantly raises the costs:

- of new suppliers relative to existing suppliers,
- of some existing suppliers relative to others, or
- of entering or exiting an affected market.

85. Given that operators of current plans need to have a Consumer Credit License and that for statutory plans in addition to that license operators would have to apply to be recognised by the Supervising Authority and also fund the regulatory inspections of the Supervising Authority then it is reasonable to assume that it would raise the costs

- of new suppliers relative to existing suppliers, and
- of some existing suppliers relative to others.

86. The points made above in response to question 1 also apply here and it can be argued that the benefits to debtors of accessing an approved debt management scheme through quality operators is justification to go ahead with the proposal. However it should be recognised that the new suppliers are likely to incur extra costs, by applying for recognition by the Supervising Authority and being required to fund the Supervising Authority's regulatory regime and this may act as a barrier for smaller firms.

The third question in the Competition Assessment is

In any affected market, would the proposal

Limit the ability of suppliers to compete?

This is likely to be the case if the proposal:

- controls or substantially influences
 - - the price(s) a supplier may charge
 - - the characteristics of the product(s) supplied, for example by setting minimum quality standards
- limits the scope for innovation to introduce new products or supply existing products in new ways,
- limits the sales channels a supplier can use, or the geographic area in which a supplier can operate,
- substantially restricts the ability of suppliers to advertise their products, or
- limits the suppliers' freedoms to organise their own production processes or their choice of organisational form.

87. There is anecdotal evidence that in a minority of cases the operator charges excessive fees to the debtor in relation to initial advice and for the setting up and administration of a plan.

88. The consultation considers that the initial advice to a debtor should be free and that the ongoing administrative fees of an approved operator would be capped. This indicates that the proposal will control the price a provider (supplier) can charge.

89. The proposed cap on operators' fees would act to limit the parameters on which compete. The proposed restrictions on price and quantity (through license approvals) are likely to have a significant impact on competition in the market. Other forms of competition would be expected to remain, for example, in relation to quality of service above minimum requirements that would be imposed and audited by the Supervising Authority.

90. Another potential consequence of imposing a fee cap is that a charge on a proportion of the debtor's payment might cause firms to actively compete to capture debtors who will be making the largest monthly payment and possibly providing a lower quality service to those debtors whose monthly payments are at the lower end of the range. Alternatively, there may be little price competition if operators set their fees at or adjacent to the cap.

91. Another issue covered by this question is the advertisement of products. In the Commons Committee Stage of the Tribunals Courts and Enforcement Act 2007, on Thursday 22 March 2007, Vera Baird stated:

“Regulations will control and limit advertising, which might provide further reassurance to the hon. Gentleman, who suggested that people might misrepresent the supervision under which they operate when offering a scheme. For a company to misrepresent itself by saying that it has the authority of a court to offer a scheme when it does not, or by saying that it has powers that it does not have, would certainly be an abuse of the scheme and would likely be a criminal offence, probably under the terms of the theft Acts. I hope that that reassures him on the issue of false advertising. There is scope in the Bill to limit or control advertising.”

92. The restrictions on advertising will thus place an additional constraint on competition in the market, although the primary objective is to provide protection for consumers.

Small Business Impact Test

93. It is difficult to collect reliable data on the current industry structure related to the supply of Debt Management Plans. However, the MAT research suggests that the vast majority of fee-charging DMP operators are small operators, with nearly 40% having less than 10 employees and a further third having between 10 and 50 employees.
94. It is likely that payment of a fixed nominal membership fee of an industry code of practice (under option 2) or licensing fee for providing statutory debt repayment plans (under option 3) could be more costly in relative terms for a small firm than a larger firm. However, the degree of fragmentation within the industry makes it more difficult to obtain evidence on how the impact for small firms might be different to that of larger firms.

Legal Aid and Justice Impact Test

95. These proposals are not expected to have an impact on legal aid. If Option 3 is introduced, there is a statutory right of appeal, but the impacts of this are likely to be offset by a reduction in the number of applications and attempted enforcements.

Health Assessment, Sustainable Development and Rural Proofing

96. Further analysis to be undertaken over the consultation period to fully understand the potential impacts of proposed measures on the principles of sustainable development, rural proofing and health, consistent with the relevant guidance.

Carbon Assessment

97. The measures set out in this Impact Assessment are unlikely to have an impact on climate change.

Equalities Impact Assessment

98. The proposals have been screened for impact on equalities. On the evidence available, we do not consider that any of the options impact differentially on individuals or groups within the population according to their ethnicity, religion, disability, age, gender or sexual orientation. Further information is provided at **Annex E**.

Human Rights

99. The options in this Impact Assessment are compliant with the European Convention on Human Rights

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	No	No
Health Impact Assessment	Yes	No
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	Yes	No
Rural Proofing	Yes	No

Questionnaire

We would welcome responses to the following questions set out in this Impact Assessment

QIA. 1	If you are a creditor, can you give details of the estimated cost of adopting a code to your business?
QIA. 2	If you are an operator, can you give details of the estimated cost of developing and adopting a code to your business?
QIA. 3	If you are an operator, can you give details of the estimated cost of adopting these proposals to your business?
QIA. 4	If you are a creditor, can you give details of the estimated cost involved if changes are needed to debt provisioning caused by debts being included in a regulated scheme?
QIA.5	What level of funding would be necessary to ensure the Supervising Authority is “fit for purpose”
QIA.6	If option 2 or 3 is implemented, what are your views on whether the number of current operators will expand or contract?

Annex A: Background

Current Debt Management Plans (DMPs)

1. There are three parties to a DMP – debtors, creditors and a DMP provider. Debtors agree – via the negotiation of a third-party DMP provider – alternative repayment terms with their creditors, often involving the freezing/lowering of interest and other charges. This arrangement allows debtors to repay their debts over time by making a single monthly repayment to the provider from disposable income. This payment is then distributed amongst the creditors until the debts are paid in full. Many creditors also cease to take enforcement action once a debt management plan has been set up, although this is not mandatory.

Size and structure of industry

2. Due to their non-statutory nature, it is almost impossible to collect reliable data about how many DMPs are in existence. Evidence from the Consumer Credit Counselling Service (CCCS) – a free-to-client DMP provider – indicates that in 2008 around one-third of all counselled clients were recommended to enter into a DMP – higher than both bankruptcy (around 15%) and IVA (around 2%)¹. Survey evidence suggests that, after seeking debt advice, around one-fifth of consumers enter into a DMP².
3. Collectively, CCCS and PayPlan, the two largest free-to-client DMP operators account for roughly 150,000 DMPs. However, it should be noted that this does not include those individuals who seek advice from other free-to-client debt advice agencies, such as Citizens Advice, who may help debtors to make alternative repayment arrangements that might not be recognised by the client as a ‘Debt Management Plan’, through issuing self-help materials (e.g. template letters), assisting them through the process or managing it on their behalf. Given that Citizens Advice dealt with over 600,000 debt clients in 2008/9 (covering more than 1.9m debt issues) in England and Wales alone, it is likely that this number could be even higher.
4. A recent report by Money Advice Trust (MAT), looking at the fee-charging debt management industry³, estimated that the number of people repaying their debts through a DMP from a free-to-client

¹ Source: CCCS Statistical Yearbook 2008

² Source: YouGov Debt Tracker

³ ‘An independent review of the fee-charging debt management industry’, Collard (June 2009)

provider was approximately 133,000. Based on the above figures, it would seem that this is a slight underestimate. The MAT research also estimated that 300,000-375,000 people were on a DMP from a fee-charging provider.

5. Discussions with a wide range of stakeholders over the last 12 months indicate that there are between 300,000 and 700,000 individual DMPs in existence and that between 100,000 and 150,000 new plans come into existence each year. It is unknown how many DMP operators operate across both the commercial and not-for-profit sectors, but MAT research indicates that there are over 150 fee-charging operators of DMPs. Of these 150, around 130 seem to be direct operators of DMPs, with the remainder acting as brokers or introducers to debt management companies, rather than act as direct operators of DMPs.
6. In terms of industry structure, the MAT research suggests that the vast majority of fee-charging DMP operators are small operators, with nearly 40% have less than 10 employees and a further third having between 10 and 50 employees. This is also reflected in the number of customers, with over a quarter of fee-charging DMP operators having fewer than 500 DMP clients and a further 30% having between 500 and 1,000. There were few large fee-charging operators, with only around 10% having more than 5,000 DMP clients. The predominant method of service delivery was via the telephone, accounting for almost three-quarters of fee-charging operators.

Length of Debt Management Plans

7. Unlike some other debt remedies, there is no formal time limit on the duration of a DMP. The survey of fee-charging DMP operators conducted for the MAT research found that the average projected length of a DMP was between 60 and 120 months (5-10 years). Industry figures indicate that the average term to repay debts through a DMP is 12 years.
8. However in most instances, the average actual duration of a DMP was considerably shorter than the projected length. Evidence from the above survey indicates that, for the majority of companies, the average actual duration of a DMP as 36 months (3 years) or less, with 12-24 months the most common response. Interviews with credit industry representatives indicated that plans tended to last 24 months (2 years) at best.
9. This research was supported by anecdotal evidence, which also suggests that a number of DMPs do not continue until all debts are paid off. Where individual plans cease soon after inception, neither debtors nor creditors benefit. For debtors, a large proportion of payments made will be used to cover the operators' set-up fee rather than to repay their debt, and creditors will receive only a small percentage of their debt.

10. However, the long-term sustainability of plans benefits both debtors and creditors. This allows debtors to repay their debts in a controlled way and free from the stresses caused by constant enforcement attempts, while ensuring that creditors recover the maximum possible amount of their debt and substantially reducing their recovery costs. Additionally, the voluntary nature of DMPs means that partial debt write-off cannot be offered without creditor agreement and creditors are not restricted from taking unilateral enforcement action. Such action can lead to debtors being forced to service that debt as a priority. This can be detrimental to other creditors and can put an otherwise viable DMP in jeopardy.
11. There are a variety of reasons why DMPs may not run to term, including:
 - debtors being unable to acquire the requisite budgeting skills and so fail to make the required monthly payment to the plan provider;
 - some creditors do not freeze or do not lower the interest rates on the outstanding debt and the debtor becomes disheartened as they feel they will never be able to repay their debts in full;
 - sometimes a creditor might take unilateral enforcement action against the debtor and the debtor repays that debt instead of making the usual monthly payment to the provider and the plan then fails;
 - a minority of plan operators may charge excessive fees which are taken before any payments to the creditors are made, resulting in some creditors taking enforcement action and the debtor decides not to enter into the plan;
 - some debtors do acquire budgeting skills and feel able to deal with their indebtedness by paying creditors directly (without using the plan provider) or by taking on and servicing a consolidation loan to repay the creditors; and
 - there are changes in a debtor's circumstances, possibly a reduction in income, which means the planned repayments cannot be maintained.
12. DMPs can only be sustainable over the long term by ensuring that monthly repayment offers have been verified as an affordable amount, taking account of surplus income. However, we have been told by a commercial provider (who is a member of DEMSA) that it is common practice to manipulate income and expenditure figures to arrive at a monthly repayment that they know will be acceptable to creditors.
13. Evidence from the MAT research suggests that others had cancelled their DMP because they were dissatisfied with the service they had

received from their DMP provider. Equally, there were those currently repaying debts through a (commercially-provided) DMP, who were keeping up with their plan payments and other commitments and felt their financial situation had improved since entering into a DMP.

Users of Debt Management Plans

14. Previous research in this area has noted that customers of debt management companies (whether fee-charging or free-to-client) are more likely to be in work and to have higher incomes than clients who use free-to-client debt advice services such as CABx⁴. More recent research found that around half of CAB debt advice clients had less than £20 per month in total to offer to all their creditors, and of these around half were unable to offer any payment at all⁵.
15. Most recently, the MAT research found that DMPs were largely marketed at people with unsecured credit commitments under £15,000. A survey of fee-charging DMP operators indicated that over 70% had customers had average unsecured debts of £20,000 or less. In comparison, the average level of unsecured debt among CCCS clients who started a DMP in 2008 was around £28,000⁶. Among CAB debt advice clients, the average non-priority debt (which includes most consumer credit debts) tends to be much lower and in 2008 was around £14,000⁷.

Fees and charges

16. Among DMP operators, there are two main funding models:
 - free-to-client operators (e.g. CCCS, Payplan) are funded by the credit industry, in the form of voluntary contributions from individual lenders⁸, and there are no charges to the customer. Evidence from the MAT research suggests that the voluntary contribution made by individual lenders is in the region of 10% of the monthly repayment made by people on a DMP.
 - fee-charging operators charge customers directly for the services they provide. The OFT does not set guidance on the structure or level of charges levied in its Debt Management Guidance, but does

⁴ 'Fee or free? The role of fee-charging debt management companies in money advice provision', Whyley & Collard (1999)

⁵ 'Deeper in debt: The profile of CAB debt clients', CAB Briefing, May 2006

⁶ CCCS Statistical Yearbook 2008

⁷ 'A life in debt: The profile of CAB clients in 2008', CAB Briefing, Feb 2009

⁸ Not all lenders make the contribution and so are effectively cross-subsidised by those that do

set out the information about charges that should be provided to consumers.

17. Evidence from the MAT research indicates that by far the most common fee structure for fee-charging operators is an initial set-up fee and a monthly management fee.
18. The most common form of set-up fee was for the DMP provider to retain the first monthly repayment rather than distribute it to creditors. In a few cases the set-up fee was capped, with upper thresholds ranging from £27.50 through to £150 and £500. Some companies retained the first two or three months' repayments as a set-up fee. Other forms of set-up fee included a percentage of the first monthly payment; and a flat fee, which varied from £100 to £250. The MAT research also found evidence of relatively large set-up fees (up to £3,000) for some fee-charging operators – paid by participants who had all used the same company – in addition to the monthly fee.
19. The monthly charges for DMPs mainly comprised a proportion of the customer's repayment, which varied from 7.5% to 17.65%, with 15% the most common amount charged. In some cases, minimum and maximum thresholds were applied to these payments, with the minimum varying from £11.40 to £35 and the maximum from £38.95 up to £160.
20. In the context of the MAT research, creditors raised charges as a concern as, although there is no direct cost to creditors, the money paid to fee-charging DMP operators by customers reduces the amount available for repayment of the customer's debts:
 - first, credit industry representatives questioned the increasingly common practice of companies charging **high set-up fees**, which effectively extended the duration of the DMP. Citizens Advice Bureaux practitioners provided examples of DMP set-up fees ranging from £2,500 to £4,500, paid in instalments. The research also revealed instances of monthly management charges that exceeded the amount distributed to client's creditors.
 - concerns were raised about the scale of **charges for additional services** provided to customers alongside DMPs, such as managed bank accounts or pre-paid credit/debt cards. These additional services further reduced the amount of money available to repay creditors.
 - in some cases, fee-charging debt management companies **retained the first two or three months' payments from customers as fees** for setting up a DMP. This meant that lenders or debt collection agencies might not receive any payment at all for several months, giving lenders or debt collection agencies an

incentive to continue pursuing debtors for payment in the intervening period.

- a number of credit industry representatives were also unhappy about **recent increases in charges** by several fee-charging companies, which had been applied retrospectively to existing as well as new DMP customers. This reduced the amount of money being repaid on existing DMPs, which could in turn lead creditors to decide that a DMP was no longer acceptable to them.

21. Other concerns raised by credit industry representatives included the wide variation in levels of charges between fee-charging companies and fears that their customers were using a credit card to pay set-up fees. Evidence from Citizens Advice Bureaux advisers reported a small number of instances (all related to the same company) where clients had been advised to make payments to the debt management company either by credit card, or by withdrawing cash using their credit card.
22. According to the MAT research, the majority of individuals with commercially-provided DMPs were aware from the outset that they would be charged for any service received, and the level of fees and charges they were required to pay, which ranged from £9 to £90 per month, the average being around £40 per month⁹. In addition, about half of participants were aware of paying other types of fee, typically meaning that the first one or two payments were kept by the debt management company as a set-up or administration charge.
23. Most participants in the MAT research were satisfied that they had received sufficient information about the fees, but others felt they had not been aware of charges, or that such charges would apply at an early stage. In some cases, customers had been told about charges after an initial discussion or had assumed it was free until they received paperwork from the company that indicated otherwise. It was not uncommon for participants to report that they were given details of free-to-client DMP operators after they had committed to a fee-charging company, but none of these switched as they did not want to go through the process again or were worried about disrupting payment arrangements or losing set-up fees.
24. Several participants knew they would be charged, but did not find out the amount until they received their first monthly statement. In some cases, the fees were much higher than expected and all subsequently went on to cancel their DMPs because they were unhappy with the service they had received. Most considered the fees to be reasonable for the service provided, at least in the early stages of the process.

⁹ As a proportion of the repayment amount, this ranged from 2%-37.5%, with most participants paying 15-18%

Some participants questioned the value they received for the fee paid once the DMP was set up, as the fee represented money that could have been used to repay their creditors more quickly.

Regulation/enforcement

25. Organisations that provide DMPs (whether or not they charge for their services) are required to be licensed under the Consumer Credit Act 1974, for which the OFT is responsible. The OFT also publishes sector-specific guidance for debt management companies¹⁰, which sets out minimum standards¹¹ that have to be met if they are to be judged fit to hold a consumer credit licence. A review of compliance with the 2001 Debt Management Guidance was published by the OFT in 2003. It found that, while complaints about debt management companies had dropped, there were still some potential breaches particularly in relation to advertising. OFT plans to launch a compliance review of its Debt Management Guidance later this year to obtain a clearer picture of compliance levels across the industry and take appropriate follow-up action.
26. However, during discussions with industry it has emerged that some may be operating without such a licence. Where the OFT identifies cases of non-compliance with its guidance or unlicensed trading, appropriate enforcement action is taken in each case – for example, in 2009 the OFT accepted undertakings from three licensed debt management businesses to improve the standards of the debt advice provided by their debt management services.
27. In addition, there are currently three codes of practice that cover fee-charging debt management companies, which aim to promote good practice and quality standards within the industry:
 - the **Debt Managers Standards Association (DEMSA)** was established in 2000 *to promote good practice in the debt management industry*¹². Its code of practice was approved by the Office of Fair Trading in 2008, under the Codes Approval Scheme. The code is described as an extension or addition to the OFT's Debt Management Guidance, and includes additional requirements in relation to issues such as staff training, the administration of client accounts, and the process of redress for customers and lenders in the event of a company failure. The code is monitored by regular checks on websites, advertising and promotional literature, monthly customer satisfaction surveys and annual compliance audits. Sanctions for members who breach the code of practice include written warnings,

¹⁰ http://www.oft.gov.uk/shared_of/business_leaflets/credit_licences/oft366.pdf

¹¹ These standards include: advertising, marketing & promotion, contact with consumers, pre-contract information, contract terms, advice and debt management services

¹² <http://www.demsa.co.uk>

- the **Debt Resolution Forum** was set up in 2006, *to promote professional standards of resolving debtors' financial problems*¹³. It has a wider membership than DEMSA, drawn from the broader debt remedy industry. Its standards relate to a number of areas including training and qualification of staff, client funds, advertising and publicity, fees and charges and complaints. Its corporate governance standards state that compliance is normally subject to monitoring and inspection by its regulatory body (set up by the Insolvency Practitioners Association) on admission to membership and on a risk-assessed basis thereafter. Sanctions for members that breach its standards include warnings, fines, restrictions and removal from membership.
 - the **Debt Standard Code of Conduct** was established in 2008 to provide an independently-awarded quality mark to operators of debt management plans, IVAs and trust deeds¹⁴. Approved operators act to regular assessment of their business and compliance with the code of practice. The code includes provisions in similar areas to those mentioned above, such as staff training, advertising and public relations, fees and charges and complaint handling. Breaches of the code of conduct may result in disciplinary action including suspension or termination of membership.
28. The MAT research indicated high levels of awareness among industry operators of DEMSA and the Debt Resolution Forum. Fewer companies were aware of the TDX Group, which established the Debt Standard Code of Conduct, perhaps explained by the fact that it had been introduced fairly recently. Most companies surveyed, however, were not members of DEMSA or the Debt Resolution Forum, nor had they signed up to the Debt Standard Code of Conduct.
29. While the credit industry representatives we interviewed generally welcomed the introduction of these codes of practice, some wanted to see an industry-wide kitemark that was easily recognised by creditors and debtors.

Freezing of interest and charges

30. The non-statutory basis of current DMPs mean that creditor involvement is voluntary and they are not bound to the scheme or the terms of individual plans. As well as negotiating monthly repayments that represent less than the contractual minimum, debt management companies (whether fee-charging or free-to-client) generally also request that lenders freeze the addition of interest on a debtor's outstanding balance for the duration of a DMP. If one or more

¹³ <http://www.debtresolutionforum.org.uk>

¹⁴ <http://www.thedebtstandard.com>

31. Evidence from interviews with credit industry representatives for the MAT research indicates that it is uncommon for lenders to routinely agree to freeze interest once a DMP is in place. Only one of the lenders who were interviewed said it was standard practice to implement a freeze on interest for all customers on a DMP. The remaining lenders either considered requests to freeze interest on a case-by-case basis, only in exceptional circumstances or not at all. For debt collection agencies, the decision whether or not to continue to apply interest once a DMP had been set up was generally at the discretion of the original lender.
32. The situation in relation to interest charges is rather more complex – in-depth customer interviews for the MAT research reported that interest payments were frozen by creditors initially, but were sometimes re-introduced once the level of debt had been reduced. There is also some anecdotal evidence to support this growing tendency for some creditors to apply interest after DMPs have operated for some time, although some do apply a reduced rate. This can cause problems, as any added interest can significantly lengthen the time it takes a debtor to repay debts and can therefore be seen as a disincentive for debtors to continue to comply with the terms of plans. A series of case studies provided by Payplan (a free-to-client provider), set out at the bottom of this Annex, demonstrate the effects of this practice.

Creditor experience

33. Interviews with credit industry representatives for the MAT research revealed a mixed picture in terms of working with fee-charging debt management companies.
34. At best, they enjoyed good working relationships with companies, which tended to be the larger, longer-established players. These companies had efficient systems, processes and operations that were well-managed and able to cope with high customer volumes. They were generally amenable to discussions with the credit industry about sharing management information and how to further streamline their operations. Once a DMP was in place, it was felt that these companies were proactive in following-up missed payments from customers.
35. At the other end of the spectrum, credit industry representatives expressed concerns about fee-charging debt management companies that they considered to be less reputable. These tended to be smaller, more recently-established firms, and the key issues were perceived to be a lack of transparency in their operational activities (including the

fees they charged) and an unwillingness to engage with the credit industry.

36. Compared to fee-charging debt management companies, creditors interviewed for the MAT research felt that the not-for-profit advice sector was generally felt to provide more comprehensive advice in relation to people's debt problems, including referring debtors for advice on other issues, such as employment or immigration.
37. On the whole, credit industry representatives felt they enjoyed good relationships with CCCS and Payplan (operators of free-to-client DMPs), which in their view provided a high and consistent standard of financial statements.
38. They tended to find it less easy to engage with smaller, individual not-for-profit advice agencies, such as Citizens Advice Bureaux. Some respondents felt that dealing with numerous individual and autonomous agencies meant that it was difficult to promote the widespread use of the types of standard working practices and policies that they had with fee-charging debt management companies and creditor-funded advice operators. However, a few respondents noted that the situation was improving, for example through the introduction by Citizens Advice of a creditor liaison officer.

Quality of advice

39. Earlier research outlined concerns, among creditors and money advisers in the not-for-profit advice sector, about the quality of advice provided by fee-charging debt management companies¹⁵. Two main issues were raised in this respect:
 - unlike free-to-client services, fee-charging debt management companies are generally only set up to deal with a customer's unsecured credit debt, even if they also have debts related to secured loans (such as a mortgage) or household bills, such as utilities or council tax.
 - secondly, in relation to unsecured credit debts, there were concerns that fee-charging companies only discussed with customers the debt remedy (or remedies) that they offered or that were most profitable to the company, even when a more appropriate remedy might have existed.

¹⁵ 'Fee or free? The role of fee-charging debt management companies in money advice provision', Whyley & Collard (1999)

40. These concerns were echoed by credit industry representatives interviewed as part of the MAT research. In particular they all feared that the advice provided by some fee-charging debt management companies was not always the best advice for the customer. As a result, there was a risk that the customer might end up with a debt remedy that was inappropriate to their needs. It is important to note, however, that these fears were articulated mainly in relation to the newer, smaller companies in the industry rather than the larger, longer-established firms. Evidence from CABx practitioners seemed to support this – the most common example involved situations where fee-charging debt management companies had advised clients against bankruptcy, after this course of action had been recommended by a CAB adviser.
41. Evidence on consumer awareness of free-to-client advice services was collected for the MAT research and was found to be particularly high for CABx, but very low for CCCS and Payplan, in the period before they used a fee-charging debt management company. Reasons for not seeking advice included difficulties in getting an appointment and a reluctance to discuss financial difficulties face-to-face. Others were unsure whether CAB dealt with debt problems or the nature of assistance they could receive – for example, one participant really wanted someone to sort out his debt problems for him and thought he would only receive advice from CAB.
42. Of those that sought free-to-client advice, the MAT research found that most did not speak to an adviser, primarily due to availability. A few were given self-help information, but they did not use it. Those that did speak to an adviser were generally advised to negotiate with their non-priority creditors themselves, and were provided with information and standard letters to help them. However, they reported only partial success at negotiating reduced monthly repayments and did not go back to the adviser for further help.
43. Among customers of fee-charging debt management companies interviewed for the MAT research, about half recalled discussing other possible debt remedies (typically an IVA and/or bankruptcy) and half did not.
44. Of those who discussed other debt remedies, several had a strong opposition to bankruptcy and rejected it as a suggestion. In relation to IVAs: one participant was told that he was not eligible because of the amount he owed in unsecured credit (£14,000); another was advised against an IVA given the assets she had, and two had already unsuccessfully pursued an IVA before contacting the fee-charging debt management company they spoke to.
45. Among those who did not discuss any other options apart from a DMP, one really wanted the adviser to guide her to the appropriate solution, while others were very clear when they contacted the company that

they wanted a DMP. In those circumstances, it is possible they may have disregarded any other debt solutions that were mentioned.

Financial statements

46. The purpose of collecting a financial statement from debtors is to calculate the amount of disposable income that could be used to repay their creditors. This includes verifying consumer income and taking reasonable steps to verify regular outgoings.
47. Credit industry representatives who were interviewed for the MAT research reported considerable variation in the standard of financial statements received from fee-charging debt management companies, and felt that CCCS and PayPlan both provided a high and consistent standard of financial statement. Where they had concerns about the information provided in financial statements, these tended to relate particularly (although not exclusively) to the smaller, newer entrants to the industry. These concerns centred on three issues:
- the consistent and correct use of ‘trigger figures’¹⁶;
 - misrepresentation of income and expenditure by fee-charging debt management companies (e.g. understating income or overstating expenditure), and
 - doubts about the thoroughness of customer assessments, particularly debtor income and expenditure.
48. According to the MAT research, some credit industry representatives suspected some financial backwards-engineering – i.e. financial statements were worked out around the total amount that a debtor wanted to repay or the level of fees charged, rather than a debtor’s income and expenditure.
49. During the course of the MAT research, it was suggested that greater standardisation of financial statements could remedy some of these issues, for example by use of the Common Financial Statement¹⁷. However, the research concludes that standardisation of financial statements alone would not address all of the concerns outlined above.
50. Evidence from CAB practitioners analysed for the MAT research found that, in several cases, commercial companies had (in their opinion) not taken proper account of the client’s circumstances or left the client with little or no money to live on. There was also evidence that some

¹⁶ Trigger figures represent pre-agreed levels of discretionary expenditure (e.g. telephone, travel, housekeeping)

¹⁷ The CFS provides a standard budgeting format and a set of trigger figures, and is used widely by the not-for-profit advice sector, the credit industry and some fee-charging debt management companies

repayment plans were unaffordable for clients, who as a result were unable to maintain payments beyond a short period of time.

Debtor experiences

51. The MAT research classifies the outcomes for customers of fee-charging DMP operators into three broad categories – those currently repaying their debts through a DMP, those that started to repay through a DMP but had subsequently terminated it (usually due to dissatisfaction with the service received) and those no longer on a DMP because they had paid off all (or almost all) of their debts.
52. Those customers in the first group generally felt their financial situation had improved since starting a DMP and were keeping up with their plan payments and other commitments. Most customers in the second group had cancelled their agreement because creditors reported they had not been paid by the company or had received payments late. Those who had received poor service were, for the most part, customers of fee-charging debt management companies that were not members of any of the three industry codes of practice identified earlier and felt themselves to be in worse financial situation than before they contacted the company. In addition, a few participants in this second group had been persuaded to move to another debt remedy by the same company, which proved unaffordable.
53. However, DMPs had proved a successful route for some individuals to manage their debt repayments – those in the third group had paid off all (or almost all) their debts in one of three ways:
 - repaid their debts in full through a DMP, over periods ranging from two to nine years.
 - repaid most of their debts through a DMP, but decided to terminate the plan once the outstanding balances were low and arranged to make the final payments direct to the creditors.
 - made payments under a DMP for a period of time (ranging from two months to seven years) before reaching a full and final settlement agreement with their creditors.
54. Unsurprisingly, customer satisfaction was closely linked to outcomes – most of the participants who had completed their DMP felt they were significantly better off now than when they first contacted their fee-charging DMP provider, were managing well financially and were optimistic about their financial future. Even so, some were unhappy about some issues, such as the continued application of interest charges and poor communication regarding the balances outstanding to creditors. However, in terms of customer satisfaction, the sample used in the MAT research is not representative and therefore cannot be extrapolated to the whole population of DMP users.

Stakeholder views

55. Some in the advice sector feel that further legislation is needed – for example, in a recent report¹⁸, Citizens Advice set out support for the introduction of statutory debt management measures, which “could provide an alternative method of debt relief that would allow them [people] to deal with their debts in a more effective and equitable way. This...provides a way for people to make affordable repayments to their creditors which are binding.”
56. In a recent report¹⁹, MAT stated that: “...the statutory debt repayment scheme...has the potential to provide an additional debt remedy to those who need it. However, the extent to which the needs of people in debt are met by the scheme will depend on the detail of how such a scheme is agreed and implemented.”
57. In order to reflect the views of interested parties, a number of open seminars were held by the Ministry of Justice (MoJ) during 2008. These were followed by a series of individual meetings with creditor organisations, debt management scheme operators and the advice sector. However, those meetings have not provided a clear consensus on how the current regime could be improved but did suggest that there was a need for further consultation. This is supported by the number of organisations who have made statements welcoming the proposed consultation.

¹⁸ ‘A life in debt: The profile of CAB clients in 2008’, CAB Briefing, Feb 2009

¹⁹ ‘An independent review of the fee-charging debt management industry’, Collard (June 2009)

Case Studies – provided by Payplan

Effect of continued interest charges during payment plan

Case Study 1 – Over £15k interest charged during Debt Management Plan (DMP) term

But for additional charge s would be finishing his DMP in September this year but is likely to have to pay for at another three years

Client – Wayne, 30 years old **Payplan DMP Started** – 30th March 2005

Estimated debt at start of DMP - £28,300

Clients monthly repayment at start of DMP - £510.00 per month

Estimated length of DMP at start – approx 4.6 years, finishing September 2009

Total Creditors – 12

Estimated remaining debt based on balance confirmed at start of arrangement - £334.28

Clients monthly repayment as of July 2009 - £610.63 per month

Total paid to all creditors through DMP - £ 27,965.72

Confirmed remaining debt is actually - £15,503.29

Estimated length of DMP at July 2009 – 2 years 11 months, finishing approx June 2012

Property – Rented **Assets** – None

Case Study 2 – Client charged over £7200 by lenders during DMP

Now has a further two years of DMP payments due to balances increasing through interest. In total he will pay back approx £37,003.96 to his creditors, of which £7205.59 is interest accrued during his DMP

Client – Roger, 65 years old **Payplan DMP Started** – 18th June 2003

Estimated debt at start of DMP - £ 29,798.37

Clients monthly repayment at start of DMP - £419.17 per month

Estimated length of DMP at start – approx 5.9 years, finishing approx March 2009

Total Creditors – 4

Estimated remaining debt based on balance confirmed at start of arrangement - £1,688.65

Clients monthly repayment as of July 2009 - £357.00 per month

Total paid to all creditors through DMP - £ 28,109.72

Confirmed remaining debt is actually - £8,894.24

Estimated length of DMP at July 2009 – 2 years finishing approx June 2011

Property – rented **Assets** – None

Case Study 3 – Client repays £5400 over three years in DMP but is charged £3800 by creditors during the same period

Plan extended by 3 years from the previous estimate, meaning he has only paid off £1,644.94 from his original balances, when he has paid almost £5,400 to his creditors.

Client – Robert. 51 years old **Payplan DMP Started** – 10th July 2006

Estimated debt at start of DMP – £30,000

Clients monthly repayment at start of DMP - £150.00

Estimated length of DMP at start – approx 16.6 years, finishing approx January 2023

Total Creditors – 8

Estimated remaining debt based on balance confirmed at start of arrangement - £ 22,586.31

Clients monthly repayment as of July 2009 - £150.00

Total paid to all creditors through DMP - £ 7413.69

Confirmed remaining debt is actually - £28,355.06

Estimated length of DMP at July 2009 – approx 15.7 years remaining finishing approx February 2024/2025

Property – Mortgaged (secured loans on mortgage) **Assets** – Mortgage approx equity £105,000 – not including secured loan.

Annex B: Operators' costs under statutory scheme

Administration fees for statutory debt repayment plan operators

Administration Fees							
Operators' Costs (%)	Total Debt (£)						
	20,000	30,000	40,000	50,000	60,000	70,000	75,000
10	2,000	3,000	4,000	5,000	6,000	7,000	7,500
12.5	2,500	3,750	5,000	6,250	7,500	8,750	9,375
15	3,000	4,500	6,000	7,500	9,000	10,500	11,250

Source: Ministry of Justice calculations

The tables below indicate the costs to individual creditors if the conclusion of consultation is that creditors should meet operators' costs. These costs would be met from monthly instalments received.

Administration fees for statutory debt repayment plans, met by creditors

Assuming cost per creditor (10%)							
Average number of debts	Total Debt (£s)						
	20,000	30,000	40,000	50,000	60,000	70,000	75,000
2	1,000	1,500	2,000	2,500	3,000	3,500	3,750
3	667	1,000	1,333	1,667	2,000	2,333	2,500
4	500	750	1,000	1,250	1,500	1,750	1,875
5	400	600	800	1,000	1,200	1,400	1,500
10	200	300	400	500	600	700	750
15	133	200	267	333	400	467	500

Source: Ministry of Justice calculations

Administration fees for statutory debt repayment plans, met by creditors

Assuming cost per creditor (12.5%)							
Average number of debts	Total Debt (£s)						
	20,000	30,000	40,000	50,000	60,000	70,000	75,000
2	1,250	1,875	2,500	3,125	3,750	4,375	4,688
3	833	1,250	1,667	2,083	2,500	2,917	3,125
4	625	938	1,250	1,563	1,875	2,188	2,344
5	500	750	1,000	1,250	1,500	1,750	1,875
10	250	375	500	625	750	875	938
15	167	250	333	417	500	583	625

Source: Ministry of Justice calculations

Administration fees for statutory debt repayment plans, met by creditors

Assuming cost per creditor (15%)							
Average number of debts	Total Debt (£s)						
	20,000	30,000	40,000	50,000	60,000	70,000	75,000
2	1,500	2,250	3,000	3,750	4,500	5,250	5,625
3	1,000	1,500	2,000	2,500	3,000	3,500	3,750
4	750	1,125	1,500	1,875	2,250	2,625	2,813
5	600	900	1,200	1,500	1,800	2,100	2,250
10	300	450	600	750	900	1,050	1,125
15	200	300	400	500	600	700	750

Source: Ministry of Justice calculations

Annex C: Potential features of statutory scheme

Approved schemes could seek to define:

- **excluded debts** – in addition to those excluded above (i.e. secured and business debts), it is suggested that the following debts should be excluded from a statutory debt repayment plan: those debts considered to be non-provable in bankruptcy (e.g. fines, confiscation orders, student loans); rent arrears where the debtor is still in possession of the property, and future payments in respect of ongoing commitments.
- **requiring debtors to provide updated information** – this has been identified by creditors as a crucial feature in order for them to have confidence in the sustainability of the plan. This would enable the provider to vary the plan if necessary and ensure that it is both current and relevant to the debtor's circumstances, whilst still allowing debts to be repaid.
- **a standard approach to calculating debtors disposable income and ability to pay** – for example, by using the Common Financial Statement to assess debtors' surplus income potentially available to make repayments.
- **a time barrier to re-entry into an approved debt repayment plan** – where the plan is terminated due to non-compliance (e.g. failing to maintain payments or updating information), a debtor would not be able to apply for a further plan until a certain time after the original plan was terminated. This would hopefully prevent an unscrupulous debtor setting up a plan with the intention of letting it fail and setting up another one immediately to take advantage of the protection from enforcement.
- **a minimum number of debts** – statutory debt repayment plans would be aimed at helping debtors with multiple debts, therefore a requirement could be imposed for a debtor to have a certain number of outstanding debts (at least one of which they should be unable to repay) before entry into an approved debt repayment plan is granted.
- **a cap on the fees charged by operators** – as discussed earlier, there would seem to be significant variation in charges for setting up and administering a DMP; this could be addressed by a cap on fees, set at an appropriate level.
- **total debt limit** – the introduction of a total debt limit could be a method of ensuring that debtors face the reality of their situation and do not enter into schemes that would run for many years. However, the introduction of a limit to the amount of debt that could be included in a statutory debt repayment scheme could result in some debtors obtaining an inappropriate

debt solution for them and their creditors depending on individual circumstances, for example not taking account of the number of dependants living with the debtor.

- **an asset cap** – entry to statutory debt repayment plans could be restricted to those who have assets below a specified figure. The introduction of such a cap could be another method of ensuring that debtors face the reality of their situation and do not enter into schemes that may be inappropriate for them. However, if this was introduced it would not take account of individual circumstances and might exclude some debtors for whom a statutory debt repayment plan would be the best solution for them and their creditors. It would also be necessary for the assets to be valued to establish that the entry criteria are met which would add to the operators' costs and ultimately returns to creditors.
- **time limits** – statutory debt repayment plans could be time limited to provide a fixed end date; with a maximum period of, say, 10 years. However, unless there is an element of debt write-off (discussed below), the introduction of a time limit for statutory debt repayment plans would inevitably lead to some individuals being denied access to the scheme, as not all debtors will be able to repay in the time limit set. A time limit would also protect creditors from excessive periods where interest is frozen. It could also lead to debtors entering other schemes (e.g. bankruptcy) and such schemes might bring diminished returns when compared to a debt repayment plan.
- **minimum payment rate** – anecdotally, the majority of current private sector operators currently operate a minimum payment requirement of between £70 and £150 per month to ensure commercial viability. It would be possible to introduce a minimum payment rate to ensure that statutory debt repayment plans were only available to those in the 'can pay' group. However, if a minimum rate is not specified it might encourage other operators (possibly from the not-for-profit sector) to offer schemes at much lower repayment rates than exist now. This could offer protection for those who need time for their circumstances to improve and to the most needy who need relief from collections pressure.

Annex D: Competition assessment

In any affected market, would the proposal

1. Directly limit the number or range of suppliers? YES

This is likely to be the case if the proposal involves:

- the award of exclusive rights to supply, or
- procurement from a single supplier or restricted group of suppliers, or
- the creation of a form of licensing scheme, or
- a fixed limit (quota) on the number of suppliers.

2. Indirectly limit the number or range of suppliers? Yes

This is likely to be the case if the proposal significantly raises the costs:

- of new suppliers relative to existing suppliers,
- of some existing suppliers relative to others, or
- of entering or exiting an affected market.

3. Limit the ability of suppliers to compete? Yes

This is likely to be the case if the proposal:

- controls or substantially influences
 - the price(s) a supplier may charge
 - the characteristics of the product(s) supplied, for example by setting minimum quality standards
- limits the scope for innovation to introduce new products or supply existing products in new ways,
- limits the sales channels a supplier can use, or the geographic area in which a supplier can operate,
- substantially restricts the ability of suppliers to advertise their products, or

- limits the suppliers' freedoms to organise their own production processes or their choice of organisational form.

4. Reduce suppliers' incentives to compete vigorously? No

This may be the case where a proposal:

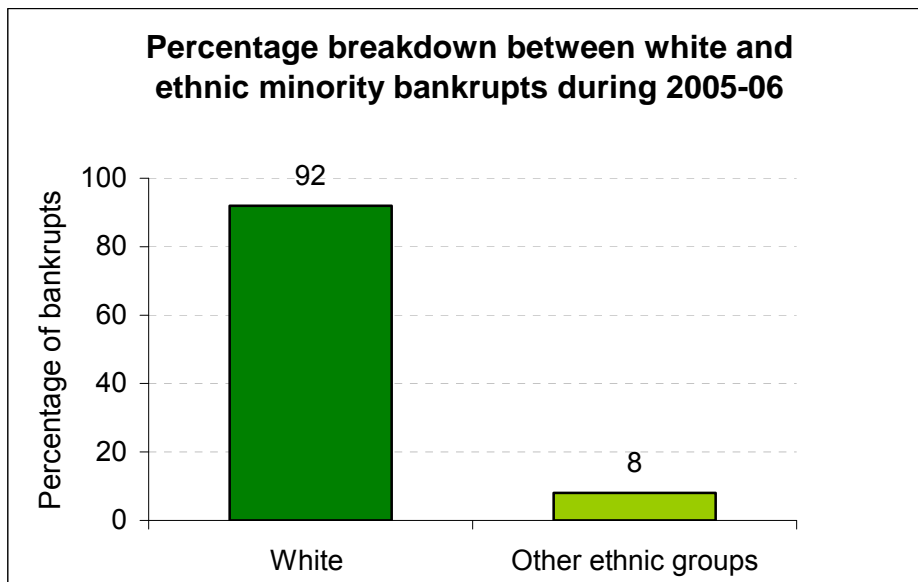
- exempts suppliers from general competition law,
- introduces or amends intellectual property regime,
- requires or encourages the exchange between suppliers, or publication, of information on prices, costs, sales or outputs, or
- increases the costs to customers of switching between suppliers.

Annex E: Race, Gender and Disability Impact Assessment

Ethnicity

Because Debt Management Plans re a non-statutory debt resolution procedure there is very little data available on the ethnic diversity of such debtors.

Information is available from The Insolvency Service on the ethnicity of bankrupts. During the year 2005-06 the ethnicity of 45,495 bankrupts was obtained.¹ The split between ethnic groups among bankrupts is shown below:



This compares very closely with the overall population as shown in the last census figures for 2001 at 91.8% and 7.9% respectively.²

However, data held by The Insolvency Service indicates that ethnic minority bankrupts are less likely to present their own bankruptcy petition (65% of ethnic minority bankrupts present a debtor's petition when compared to white bankrupts, 84% of whom present a debtor's petition).

The analysis of impact by ethnicity shows that there may be the potential for differential impact, but that this is not associated with discrimination. Differential benefit (there is no adverse impact) will be felt by those whose religious belief, political opinion or racial group affects their willingness to enter formal debt relief proceedings.

¹ <http://www.insolvency.gov.uk/pdfs/annual2005-06web.pdf>

² <http://www.statistics.gov.uk/cci/nugget.asp?id=273>

Gender

The Insolvency Service also carried sampling of individual voluntary arrangement (IVA) debtors in 2002, 2004 and 2006³ this shows that well over half of IVA debtors are male, although the proportion of female IVA debtors is increasing (see Table 1).

Table 1

Gender of IVA debtor	Male	Female
2002	63.6%	36.4%
2004	59.4%	40.6%
2006	54.6%	42.4%

This may be as women are less economically active than men.⁴

Female IVA debtors are more likely to have lower liabilities compared to male IVA debtors,⁵ which initially suggests that they may be more likely to meet the extended fast track IVA procedure entry criteria. Further, according to data for a sample of IVA debtors in 2005, 47% of the IVA debtors who owed £75,000 or less were female, compared to 31% of IVA debtors who owed more than £75,000.

Disability

It is widely acknowledged that disability can be both a cause and consequence of financial difficulties. Currently, no profiling statistics are held on any disabilities of those who enter insolvency proceedings. However, statistics published by Leonard Cheshire in 2005⁶ show that 63% of people with disabilities (including physical, sensory, learning and mental health problems) who had debt problems owed under £10,000, with an average of £8,750 being owed (with the vast majority of debts being unsecured). Additionally, 53% had an income of £10,000 or less.

³ Extracted from the 1st year report on '21st Century debtor: Understanding the main drivers of personal insolvency in England and Wales' (Claire Drake's ESRC CASE PhD in Collaboration with the Insolvency Service)

⁴ Information based on tables KS09b and KS09c (Economic activity in England & Wales) from the 2001 Census data, which shows that 73.8% of men aged 16 to 74 are economically active compared to 59.5% of women in the same age range. 'Economically active' is defined as people aged 16-74 who were working in the week before Census Day, those not working but looking for work and able to start within 2 weeks, including full-time students who are economically active.

⁵ Price waterhouseCoopers, *Living on Tick: The Twenty-First Century Debtor* (2006) available at <http://www.pwc.com/uk/eng/about/svcs/brs/PwC-IVARreport.pdf>

⁶ Leonard Cheshire - In The Balance <http://www.lcdisability.org/download.php?id=249>

The 2001 Census data for England and Wales show that around 18% say they have a long-term illness, health problem or disability which limits their daily activities or the work they could do. Partial results from an Insolvency Service survey of IVA debtors in 2005 and 2006 show that 13% of IVA debtors consider they have a disability. A breakdown of the type of disability is shown at Table 2.

Table 2

Breakdown of disability	%
Long-term Illness	39%
Physical difficulties	39%
Mental difficulties	11%
Long-term Illness/Physical difficulties	4%
Long-term Illness/Mental difficulties	2%
Long-term Illness/Physical difficulties/Sensory difficulties	2%
Physical difficulties/Mental difficulties	4%
Learning difficulties/Long-term Illness/Physical difficulties/Mental difficulties	2%

Further, 20% of those with a disability said it affected their access to IVAs – this is equivalent to around 3% of IVA debtors stating they had a disability that affected them accessing an IVA.

Half of these respondents had mental difficulties (all depression or similar) (either alone or with other disabilities), and this was cited as the reason in every case as to why access to IVAs was affected - in broad terms, debtors felt they could not deal with the situation. One respondent with physical difficulties felt access to IVAs was affected because s/he was unable to obtain face-to-face debt advice. One respondent with physical difficulties and long-term illness stated she had to rely on her husband to complete the forms in the short time span required. Another respondent with terminal illness felt that the creditors' decision to approve IVA had been influenced by his disability. The remaining respondents gave reasons that did not apply to accessing IVAs.

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