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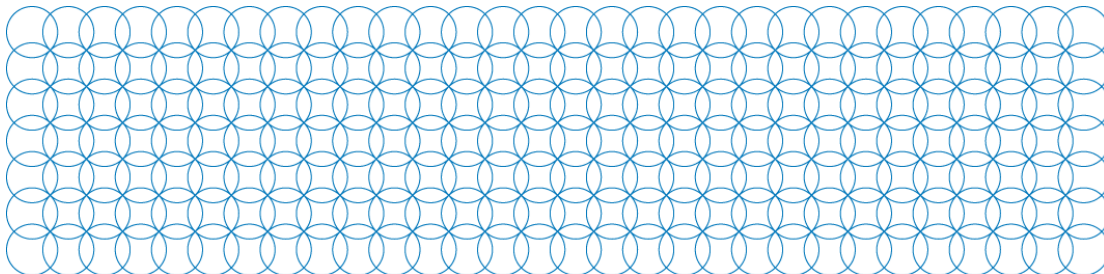
THE
INSOLVENCY
SERVICE

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

Consultation paper CP09/09

Published on 18 September 2009

This consultation will end on 18 December 2009





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

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

About this consultation

- To:** The consultation is aimed at all those with an interest in providing options to help the over-indebted and debtors with multiple debts in England and Wales.
- Duration:** From 18 September 2009 to 18 December 2009
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- Response paper:** A response to this consultation exercise is expected to be published by 31 March 2010 at:
www.justice.gov.uk

Contents

Foreword	8
Executive summary	9
Introduction	11
Background	13
The proposals	19
Questionnaire	45
About you	50
Contact details/How to respond	51
The consultation criteria	53
Consultation Co-ordinator contact details	54

Foreword

The current economic downturn is causing real hardship for many hardworking consumers and the Government is determined to do all it can to support them both now and in the future. The recent steps taken to support homeowners shows that swift and decisive action can and does work.

The proposals in this paper should be read in conjunction with the Government's White Paper "A Better Deal for Consumers: Delivering Real Help Now and Change for the Future", issued by the Department for Business Innovation and Skills. As the White Paper describes, we have taken active steps to improve the provision of debt advice and support for people facing financial difficulty.

This consultation looks at the way that debtors deal with their indebtedness. It asks for evidence on whether we should use powers contained in Chapter 4 of Part 5 of the Tribunals Courts and Enforcement Act (2007) to approve operators of Debt Management Schemes or whether the taking of other steps to make sure that debtors are protected and creditors' interests are safeguarded would be more appropriate.

In the interim, we will publish guidance on what to expect from non-court based Debt Management Scheme operators to help debtors better understand the benefits and pitfalls of current debt management plans. We will also continue to take tough, swift action against firms who fail to operate within the rules and who provide sub-standard services to consumers with problem debt.

If the consultation shows that there are problems with current Debt Management Plans that need to be addressed, we will consider what further action can be taken urgently, recognising that it is likely to take time to implement the measures in Options 2 and 3. To achieve this we will take account of what assistance other departments including the Office of Fair Trading (OFT) can provide and what interested third parties (e.g. advice agencies, current Debt Management Scheme operators, creditor umbrella bodies) can do to bring about early improvements.

We want to ensure that everyone affected has an opportunity to contribute to this important consultation.



Bridget Prentice MP
Parliamentary Under
Secretary of State
Ministry of Justice



Ian Lucas MP
Minister for Business and
Regulatory Reform
Department for Business
Innovation & Skills

Executive summary

1. The Government is committed to helping those in financial difficulties, whilst balancing this against creditors' rights to recover their debts wherever possible, both now and in the future when demand for debt solutions is expected to increase due to the current economic downturn.
2. The Insolvency Service's guide "In Debt? – dealing with your creditors" published on 2 July¹ provides details of the range of current measures available to assist debtors whether or not they have the ability to repay their debts. As a part of wider Government action to support consumers set out in 'A Better Deal for Consumers: Delivering Real Help Now and Change for the Future' published on 2 July², the Government is keen to explore alternative options for delivering effective support for debtors and fair returns for creditors. This includes the possible implementation of the powers to introduce approved Debt Management Schemes, aimed at supporting those who can repay their debts.
3. In considering whether action is required, the Government will be guided by the following objectives:
 - 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 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.
4. To raise awareness more immediately about the benefits and pitfalls of current debt management plans, the Government will publish guidance on what to expect from non-court based Debt Management Scheme operators to help debtors better understand their options. Taking tough, swift action against firms who fail to operate within the rules and who provide sub-standard services to consumers with problem debt remains a high priority and the Office of Fair Trading (OFT) has key responsibility

¹ <http://www.insolvency.gov.uk/pdfs/guidanceleaflets/pdf/indebt-web.pdf>

² <http://www.berr.gov.uk/files/file52072.pdf>

for regulatory action in this area. The OFT plans to launch a compliance review of its Debt Management Guidance in 2009 to obtain a clearer picture of compliance levels across the industry and take appropriate follow-up action.

5. Taking forward a commitment from the Government's Consumer White Paper to consult, this paper sets out and seeks views on whether there is a need for further intervention in this area and, if so, which options are most suitable for achieving the objectives listed in paragraph 3 above.
6. The options considered are:
 - continue with measures underway to raise awareness about current schemes and enforce existing rules with operators;
 - improve current schemes by the introduction of best practice codes or other non-statutory regulation;
 - commence the powers in Chapter 4 of Part 5 of the Tribunals Courts and Enforcement Act (TCEA) 2007 to introduce statutory debt repayment plans.
7. In developing these proposals, we have listened to the views of a wide range of stakeholders from the credit and advice sectors, current operators from both the not-for-profit and commercial sectors and other Government Departments. This consultation provides the opportunity to comment further.
8. It is recognised that each of these options will have advantages and disadvantages and may deliver some or all of the objectives set out in paragraph 3 to differing degrees. In deciding which course to pursue, the Government will take into account both the needs of creditors to recover their debts and the need to safeguard vulnerable debtors.
9. However, if the consultation shows that there are problems with current Debt Management Plans that need to be addressed, we will consider what further action can be taken urgently, recognising that it is likely to take time to implement the measures in Options 2 and 3. To achieve this we will take account of what assistance other departments including the OFT can provide and what interested third parties (e.g. advice agencies, current Debt Management Scheme operators, creditor umbrella bodies) can do to bring about early improvements.
10. Responses are requested to a series of questions in the Consultation Paper. There is a separate initial Impact Assessment which also includes a series of questions. These questions are designed to obtain sufficient information to allow suitably detailed analysis of the current situation and an informed decision to be taken on any potential further steps, if necessary.

Introduction

11. This paper asks questions on whether there is a need for intervention in this area.
12. The consultation is aimed at all those with an interest in providing options to help the over-indebted and debtors with multiple debts in England and Wales, while balancing this against the needs of creditors to receive a return from those debtors who can afford to repay their debts.
13. This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The consultation criteria, which are set out on page 53 have been followed.
14. Copies of the consultation paper are being sent to:

Judicial: The Master of the Rolls; The Chancellor of the High Court; The Deputy Head of Civil Justice; the President of the Queen's Bench Division, the Senior Presiding Judge; Judges' Council; H.M. Council of Circuit Judges; High Court Masters' Group; Association of H.M. District Judges; Magistrates' Association; National Bench Chair Forum; Judicial Communications Office; Designated Civil Judges.

Legal bodies: The Bar Council; The Law Society; The Faculty Office; The Institute of Legal Executives; Law Centre Federation; The Institute of Paralegals; The Office of the Legal Services Ombudsman.

Advice bodies, for example: Civil Justice Council; Advice Services Alliance; Citizens Advice; Advice UK; Consumer Focus; Money Advice Trust.

Creditor bodies, including British Bankers Association; Civil Court Users Association; Council of Mortgage Lenders; Finance and Leasing Association; Credit Services Association; collection agencies.

Existing Debt Management Scheme operators, including the Consumer Credit Counselling Service; Debt Resolution Forum; Debt Managers Standards Association (DEMESA) members; and Payplan.

Recognised Professional Bodies for insolvency practitioners.

Utility service operators, including water companies; gas companies; electricity companies; Water UK and Energy Retail Association.

Other Government Bodies, including Her Majesty's Treasury (HMT); the Office of Fair Trading (OFT); and the Department for Communities and Local Government (DCLG).

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

Background

Context

15. Since the expansion of the credit market in the 1980s, the availability of credit has increased significantly. Whilst the majority of credit users are not in financial difficulty, the global recession has resulted in a rise in the minority of debtors who can repay their debts, but experience problems in doing so and need support either in the short or long term.
16. The Insolvency Act 1986 provides assistance to those who genuinely cannot repay their debts and will never be able to do so, by making provision for the bankruptcy of individuals. Since April this year, Debt Relief Orders have enabled those with debts of less than £15,000, no substantial assets and little or no income to write-off their debts. The Act also provides support for those who can pay at least a proportion of their debts through Individual Voluntary Arrangements (IVAs). Assistance for such individuals is also available through county court Administration Orders (AO), a court-operated 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, this has limited scope due to the relatively low debt ceiling (compared to today's debt levels)³.
17. The Government has plans to reform the existing county court Administration Order (AO), as well as to introduce 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.
18. 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. 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.
19. An alternative method of dealing with debt problems, for those who can afford to make payments towards their debts and who may wish to retain their assets if possible, is to enter into a debt management plan (DMP).

³ In addition, Time Orders are potentially a solution for some debtors, although they only apply to credit agreements regulated under the Consumer Credit Act and only cover single debts, not multiple debts.

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.

20. There are no firm figures for the numbers of DMPs currently in existence, although industry estimates vary between 300,000 to over 700,000. Recent research by the Money Advice Trust suggests that there could be 400,000-560,000 plans across the whole debt management industry⁴. It is generally accepted that between 100,000 and 150,000 new DMPs come into existence each year. This means that the total numbers set up each year are at least equal to and most likely exceed the number of debtors using the current suite of statutory schemes.
21. The current numbers entering DMPs suggest that they are a very useful tool for debtors and their creditors.
22. Those choosing this method of assistance use the services of a third party operator to arrange an individual DMP. As a part of this process the operator should discuss all of the available options and their impacts with the debtor and ensure that the debtor is aware of any fees that may be charged if a DMP is set up.

Current debt management plans

23. Where a DMP is the chosen course the operator establishes income and expenditure in order to calculate surplus income before negotiating repayment terms with the creditors, often involving the freezing/lowering of interest and other charges. This allows debtors to repay their debts over time by making a single monthly repayment to the operator from disposable income. This payment is then distributed amongst the creditors until the debts are paid in full.
24. An indebted person can have multiple debts and may be pursued by several creditors at the same time. An agreed DMP can help to prioritise repayments, and ensure that the debtor is able to pay his/her most important debts, such as secured debts like mortgage payments, first.
25. Ideally, for the long term sustainability of individual plans, monthly repayment offers should be made from verified surplus income which debtors can afford.
26. Neither debtors nor creditors benefit where individual DMPs cease soon after inception. For debtors, a large proportion of payments they have made will be used to cover the operator's set-up fee (if applicable) rather

⁴ 'An independent review of the fee-charging debt management industry', June 2009

than to repay their debts, while creditors will receive repayment of only a small percentage of their debt.

27. Where a DMP is the appropriate solution, its sustainability benefits both debtors and creditors. This allows debtors to repay their debts in a controlled way, free from the stresses caused by constant enforcement attempts, and ensures that creditors recover the maximum possible amount of their debt while substantially reducing their recovery costs.
28. There are of course other reasons why DMPs do not reach the planned conclusion, including:
 - changes in a debtor's circumstances do not allow the plan to be maintained;
 - debtors improve their budgeting skills or their financial circumstances improve and they feel that they can manage their affairs without the need for third party involvement;
 - debtors may prefer to seek consolidation loans to deal with problems;
 - other debt remedy/relief options become more attractive or appropriate (e.g. bankruptcy, IVA); or
 - debtors lose interest in maintaining the plan.
29. Commercial sector operators generally charge a set-up fee to cover the costs of initiating the DMP. This set-up fee is generally an amount equal to two monthly repayments into the scheme, and therefore varies between individuals depending on the amount of surplus income. In addition, all charge a monthly administration fee to cover operating costs and to provide a profit element. Research by the Money Advice Trust (MAT) suggests this varies from 7.5% to 17.65% with the most common charge being 15%. In commercial sector DMPs, debtors repay debts in full and, in addition, pay the set-up and administration charges, with monies paid by debtors passed on to creditors after these fees have been deducted.
30. In the case of Consumer Credit Counselling Service (CCCS) and Payplan, the two largest free-to-client operators of DMPs, a set-up fee is not charged and administration charges are between 10-12%. Under these schemes, creditors are also repaid in full but then make a payment back (a charitable donation in the case of CCCS) to the operator to cover their costs. This is commonly known as the "fair share" contribution.
31. The non-statutory basis of current DMPs means that creditor involvement is voluntary and they are not bound to the scheme or the terms of individual plans. Whilst many creditors voluntarily freeze interest, and/or significantly lower the interest rate and any additional charges, they are not obliged to do so or to continue to do so for the life of an individual plan.

Current regulation of debt management

32. There is currently no direct regulation of the debt management industry. However, some aspects, which can be relevant to debt management, such as the provision of debt counselling, do require traders to be licensed by the OFT under the Consumer Credit Act 1974. In effect, this does mean that most if not all debt management providers do need to be regulated by the OFT.
33. In the absence of specific regulation of the sector, and as the market began to develop, the OFT issued guidance for the sector in 2001. This guidance is limited to the minimum standards to demonstrate fitness to hold a credit licence and therefore relates to generic issues such as fairness and transparency. Within the current statutory and regulatory framework, there is no specific regulation concerning what a debt management plan itself should contain or achieve.

Potential problems with current plans

34. A recent survey conducted by the MAT⁵ reports that some customers of commercial sector DMP operators said they were only informed of fees late in the relationship with their debt company, while others said they were left in a worse financial position than they were before they contacted the company.
35. Customers also said they were not provided with enough information about free-to-client services early enough in the process, with several customers saying they would have used a free service if they had known about it. However, they were reluctant to switch once they had committed to using a fee-charging service.
36. Alongside the MAT report, there has been ongoing concern amongst stakeholders in both the credit and advice sectors that debtors approaching some fee-charging operators do not necessarily receive comprehensive information about the full range of potential options available to them. As a result, they are not necessarily advised of the most appropriate and sustainable solution for their circumstances.
37. However, it is generally acknowledged that there is a shortfall in the provision of advice about potential options for debtors in the free-to-client sector. As the demand for debt advice is expected to increase as a result of the current economic downturn, the quality of advice given by fee-charging DMP operators could become an increasingly important issue.
38. With regard to the sustainability of DMPs, we have been told by a commercial operator that it is common practice to manipulate income and expenditure figures to arrive at a monthly repayment that they know

⁵ 'An independent review of the fee-charging debt management industry', June 2009

will be acceptable to creditors. This may be a contributory factor to what appear (though there are no industry-wide figures to confirm this) to be a large number of plans that do not reach conclusion, many of which are exited within six months of set up.

39. For example, the MAT research found that the projected length of a DMP from a fee-charging operator was between 60 and 120 months, with figures produced by the debt management industry indicating that the average term to repay debts through a DMP is 12 years. However, evidence suggests that many DMPs are unlikely to run their full term – the average actual duration for fee-charging operators was 36 months or less, with 12-24 months the most common response.
40. There is anecdotal evidence, supported by Payplan case studies, of a growing tendency for some creditors to apply interest after DMPs have operated for some time. Other operators have indicated that it can sometimes be difficult to secure creditor agreement to suspend interest and charges in the first instance. This 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.
41. The voluntary nature of DMPs means that partial debt write-off (composition) 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 and can be detrimental to the interests of other creditors by putting an otherwise viable DMP in jeopardy.
42. Concerns have also been expressed by debtors and free-to-client advice operators about the level of fees and charges that some DMP operators, particularly those that are fee charging, are applying.

Intended outcomes

43. It is recognised that a suite of statutory measures already exists to support debtors who do not have the ability to repay what they owe. In considering whether action is required, the Government will be guided by the following objectives;
 - helping people who could, but are struggling to, repay their debts;
 - ensuring that fees charged by debt management schemes 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 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.

Q.1 Are these objectives reasonable and attainable?

Yes/No

Comments

Q.2 Is there evidence of problems in the current system?

Yes/No

Comments

Q.3 If so, how significant and frequent are these problems?

Comments

The proposals

44. This paper looks at three possible solutions for providing better practical assistance for those with debt problems. The options that have been considered are discussed below. These are:

- Option 1 continue with measures underway to raise awareness about current schemes and enforce existing rules with operators;
- Option 2 improve current schemes by the introduction of best practice codes or other non-statutory regulation
- Option 3 commence the powers in Chapter 4 of Part 5 of the Tribunals Courts and Enforcement Act 2007 to introduce statutory debt repayment plans.

Option 1: Do nothing beyond measures underway

45. Insolvency statistics show there were 106,544 individual insolvencies in 2008 (67,428 bankruptcies and 39,116 individual voluntary arrangements (IVAs). The lowest estimate for current non-statutory DMPs is 100,000 per year. This suggests that there is a considerable demand for this type of support/assistance.
46. The current economic downturn has highlighted the increase in the number of distressed consumers along with a parallel increase in actual consumer harm that exists. This is reflected partly by the fact that the number of debt management businesses against whom the OFT has used its requirements powers since April 2008 accounts for a higher percentage of the OFT's Consumer Credit Group's overall total. Operators must have a current consumer credit licence, including the license categories covering debt counselling, debt adjusting and/or credit information services⁶. Taking enforcement action such as imposing 'requirements' on a debt management business to modify its conduct is one of the ways OFT tackles consumer detriment and achieves behavioural change in businesses. Another has been to issue guidance to business.
47. In 2008/2009, OFT has increased enforcement action against businesses operating in the debt management sector, which have included interventions and warnings about misleading IVA mailings, 'look alike' debt advice websites, cold calling and other forms of bad practice. This action was designed to enforce compliance with the OFT's Debt Management Guidance issued in 2001 (updated September 2008), which all consumer credit licence holders who advertise, promote and provide debt advice, adjusting and credit information services to consumers when providing debt management services must adhere to. The Guidance sets out minimum standards of behaviour that the OFT expects from those offering debt management services.
48. Pro-actively tackling problems in the debt management sector remains a high priority because of the significant risk of consumer harm. To this end, the OFT plans to launch a compliance review of its Debt Management Guidance in later this year. An earlier review in 2003 found a 70% decrease in complaints made to the OFT about the behaviour of debt management businesses. However, the market has changed significantly since then.

⁶ http://www.of.gov.uk/shared_of/business_leaflets/credit_licences/of366.pdf

The overall aims of the new review will be to use its findings to:

- identify the nature and scale of any non-compliance within the debt management sector and adjust OFT's future regulatory strategy accordingly; and
 - prepare a revised version of the debt management guidance for public consultation.
49. Given the safeguards inherent in the current regulatory regime, some interested parties have suggested that there is no or insufficient demonstrable need to make radical changes to the existing regime, especially if the risk of unforeseen consequences might be too great. Consequently, it could be argued that the current regime already adequately balances the needs of debtors and creditors and that there is no real need for Government intervention, which could introduce unintended consequences.
50. To some extent there are already market-led efforts to provide a cohesive statement/code of practice for operators. Currently there are two organisations who seek to promote professional standards in this area:
- the Debt Managers Standards Association (DEMSA);⁷ and
 - the Debt Resolution Forum (DRF).⁸
51. The DRF code includes a published set of standards⁹ covering issues such as the standards that should be applied for interaction between its members and debtors and creditors; members' training and qualifications; client funds; advertising; fees and charges and complaints. The DEMSA code¹⁰ covers similar issues.
52. The DRF standards require that the training provided for DRF members' management and staff on debt consolidation, DMPs, IVAs and bankruptcy should all include a comparison with other options, in financial terms and personal implications. The DEMSA code specifies that "Members must demonstrate that they act solely in their clients' best interests. In doing so they must help clients to clear their debts as quickly and efficiently as possible, and must not use high pressure selling tactics."
53. Both organisations are promoting good practice and the highest standards in delivering DMPs. For example, DEMSA's code of practice

⁷ <http://www.demsa.co.uk>

⁸ <http://www.debtresolutionforum.org.uk/>

⁹ <http://www.debtresolutionforum.org.uk/standards.php>

¹⁰ http://www.demsa.co.uk/wp-content/uploads/DEMSA%20Code%20of%20conduct.Feb%2009_no_banner.pdf

has recently been approved by the OFT under its Consumer Codes Approval Scheme while the DRF is working towards seeking similar accreditation. Consequently some might say those efforts should be enough to raise standards.

54. However, not all DMP operators belong to these organisations. The research by MAT reports that, among the customers who terminated their DMP due to poor service, most had used a fee-charging operator that was not a member of any of the existing organisations promoting codes of conduct. Results from this research indicate that, of the approximately 150 operators of debt management services, only a maximum of around 40 are currently signed up to an existing code.

Potential benefits of doing nothing include beyond measures underway:

- allowing the industry to respond voluntarily to changing conditions;
- avoiding adding a further layer of complexity; and
- avoiding costs of new regulation.

Potential disadvantages of doing nothing beyond measures underway include:

- not providing debtors with the possible additional protections which might be delivered by either a non-statutory code/best practice model or a statutory scheme (although it should be recognised that non-statutory schemes could still be operated regardless of whether it was agreed that either Options 2 or 3 were adopted).
55. 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:
- 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.

Q.4 Would this approach meet any/all of the objectives in paragraph 43?
Yes/No
Comments

Q.5 Should the Government follow Option 1 and do nothing beyond measures underway?
Yes/No
Comments

Option 2: Improving current schemes without regulation

56. The second option to be considered is to build on current best practice and develop some form of non-statutory code of practice/best practice model (BPM) for operators and creditors. In doing so, it is important that Government considers what is already in place to address, or that could address, any identified problems.
57. Some of the issues around current DMPs (e.g. freezing interest and binding creditors) might be addressed through a code of practice. This was the approach taken for improving access to IVAs through the introduction of the Straightforward Consumer IVA protocol¹¹ (IVA protocol), where the Government has power to bring forward legislation if the agreement does not work as intended.
58. As discussed earlier, both the DRF and DEMSA have each published a code of practice for their members. Evidence from DEMSA's annual report indicates that customer complaints have dropped steadily, from 16 in 2003 to 4 in 2008, while customer satisfaction has increased, with 50% of customers rating DEMSA as 'excellent' in 2005, rising to 59% in 2008¹². In addition, during 2008 action was taken against 2 members for breaches of the code.
59. Although recent research by MAT suggests that the credit industry representatives that were surveyed generally welcomed the introduction of these codes of practice, some wanted to see an industry-wide kitemark that was easily recognised by debtors and creditors. In addition, neither the DRF nor the DEMSA code currently covers other (potentially desirable) features of DMPs, such as an asset cap, time limits, or minimum payment rates.

Q.6 How well are the existing codes of practice working?
Comments

Q.7 How effective is the enforcement of existing codes of practice?
Comments

¹¹ <http://www.insolvency.gov.uk/insolvencyprofessionalandlegislation/policychange/forum2007/plenarymeeting.htm>

¹² <http://www.demsa.co.uk/about-us/annual-report-2008/>

Q.8 Are there any features which you would like to see as part of the existing codes of practice?

Yes/No (please specify)

Comments

60. Whilst the IVA protocol has yet to be formally evaluated, a recent newsletter issued by the DRF said “We believe the IVA Protocol has had an effect on the relationship between creditors and IVA operators. Creditors are voting more frequently and are generally providing reasons for rejections and are prepared to liaise¹³.”
61. A code of practice/BPM has the benefit of being flexible and so it could be modified to deal with any further changes in conditions that might emerge in the market.
62. In October 2006 the OFT issued a “Review of impact on business of the Consumer Codes Approval Scheme”¹⁴. Whilst the marketplace for the current regime is different from the codes examined by the OFT, some of the conclusions in the report might be used to assess possible costs and benefits of this approach. This is explored, and questions are asked, in the initial Impact Assessment.
63. However, the benefits of a code of practice/BPM would be diluted unless a higher proportion of operators subscribed to the code and unless there were effective sanctions against parties who fail to comply that are linked to some form of redress where culpable conduct is proved. The recent MAT research indicates that sanctions for DEMSA members who breach its code of practice include written warnings, undertakings by members to improve or change their practices or procedures, fines, and suspension or expulsion from DEMSA. Sanctions for DRF members that breach its standards include warnings, fines, restrictions and removal from membership.
64. However, a self-regulatory approach could potentially be quicker and cheaper than implementation through regulation. Indeed some interested parties are already actively exploring setting up a protocol to improve the delivery of DMPs. In addition, this approach may be more flexible and responsive to changes in the marketplace.

Possible features

65. A number of improvements to the existing situation could be included in a code of practice/BPM. It could, for example, require operators to examine debtors’ income and expenditure using the Common Financial Statement (CFS –a standardised way for money advisors to

¹³ http://www.debtresolutionforum.org.uk/DRF_Newsletter_July_09.pdf

¹⁴ http://www.of.gov.uk/advice_and_resources/publications/approved_codes/

communicate with creditors) and for creditors to accept this assessment of a debtor's financial circumstances. This standard set of income and expenditure guidelines has already been adopted in the IVA Protocol and is already widely used and recognised by interested parties. It is also identified as an area of best practice in the recently-issued 'A Better Deal for Consumers: Delivering Real Help Now and Change for the Future'¹⁵.

66. A code of practice/BPM could also include a requirement to provide debtors with appropriate and impartial advice about all of the options that are available to them for dealing with their individual circumstances.
67. A code of practice/BPM might also be used to standardise the layout of DMPs as presented to creditors. This could promote transparency and consistency. Again this approach is already in use under the IVA protocol.
68. Such an approach might also be able to give an indication of the range of fees that might be reasonably charged. Neither the DRF nor the DEMSA code sets a cap on fees, but the DEMSA Code of Conduct¹⁶ specifies that: **“When providing pre-contractual advice and information the consumer must always be given advice that is in their best interests and should include a clear explanation of all available options open to them, such as bankruptcy, debt management plans.”** DRF standards also make clear that **“full disclosure is made of all fees and charges levied by the member”**.
69. A code of practice/BPM could also cover issues such as ensuring that distribution of a debtor's payments meets the requirements in the current OFT debt management guidance.
70. To ensure that a code of practice/BPM works well, it would need to:
 - apply to all operators so that, whoever they approach for help, debtors receive consistent and appropriate advice on the options available to deal with their over indebtedness;
 - ensure that each operator has a procedure in place that deals with complaints/redress for creditors and debtors, such as that already embodied in the published code/standards of DEMSA and the DRF; and
 - require creditors to freeze/lower interest and refrain from taking enforcement action where a debtor has signed up to a plan.

¹⁵ <http://www.berr.gov.uk/files/file52072.pdf>

¹⁶ http://www.demsa.co.uk/wp-content/uploads/DEMSA%20Code%20of%20conduct.Feb%2009_no_banner.pdf

71. The code of practice/BPM should also recognise that the needs of the debtor and creditor should be adequately balanced. On behalf of the debtor, it could require interest to be frozen and creditors to be bound to the terms of DMPs. Creditors would also need to be assured that the DMP is the right option for the debtor and that it has been drafted to maximise the efficient repayment of their debt (at a rate that is achievable for the debtor).
72. A code of practice/BPM for DMPs could thus:
- introduce a requirement to provide appropriate and impartial advice;
 - introduce a standard format for the presentation of financial and other information;
 - introduce a standard approach to assessing income and expenditure and disposable income;
 - indicate average costs for setting up and administering a DMP so that debtors can avoid operators who charge excessive fees;
 - specify additional arrangements to ensure that operators and creditors comply with the code, and enable action to be taken where they do not ;
 - refer the debtor to an approved leaflet setting out a comprehensive guide to debt options that are currently available. The Insolvency Service published such a guide on 2 July 2009; and
 - provide that details of all plans (rather than some, as currently) are routinely placed on credit reference agency files so that more data on the performance of plans can be collected and possibly shared with interested parties.

Potential benefits of improving current schemes by means of a best practice code or other non-statutory regulation include

- driving up of standards in the industry, including greater transparency for debtors, while retaining flexibility in the way schemes operate;
- improving experience for both debtors and creditors, through a least-cost approach that allows for flexibility and responsiveness to changes in a dynamic environment, and
- potentially quicker and cheaper than regulation.

Potential disadvantages of improving current schemes by means of a best practice code or other non-statutory regulation include

- the possibility that not all operators would subscribe to a voluntary code;
- given the numbers who will have an interest in this area, a voluntary code might take a long time to set up. On the other hand, because

some groups are already considering the possibilities of a code of practice, it is hoped that the process could be completed more quickly in this instance; and

- a voluntary code may be difficult to enforce.

73. This approach would need a strong commitment from Government and all interested parties in the setting up of a Board/Committee to oversee the development of the code/Best Practice Model.

Q.9 Would this approach meet any/all of the objectives in paragraph 43?

Yes/No

Comments

Q.10 Should the Government follow Option 2 and promote a code of practice/non-regulatory approach?

Yes/No

Comments

Q.11 How should such a code of practice/BPM be monitored and by whom?

Comments

Option 3: Introduce approved Debt Management Schemes

74. Chapter 4 of Part 5 of the TCEA 2007 contains a series of enabling powers that provide a framework for the operation and supervision of approved Debt Management Schemes, allowing the detailed features to be defined in secondary legislation. The intention behind this approach was to allow maximum flexibility to devise an effective scheme and to adapt it over time if necessary.
75. The TCEA 2007 provides that statutory debt repayment plans set up under an approved Debt Management Scheme must:
- be open to 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, (s132);
 - 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 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 (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
 - 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).

Operation of an approved Debt Management Scheme

76. Paragraphs 23 to 42 set out the current situation regarding debtors who are struggling to repay their debts and the problems the Government considers currently exist in relation to existing DMPs.
77. In broad terms, it is expected that, if introduced, where an approved Debt Management Scheme operator recommends that a statutory debt repayment plan is the correct course of action, a proposal showing the date that the plan would come into force would be sent to creditors to consider. This would include details of income and expenditure and any assets that the debtors might have. Enforcement action and interest would be frozen from the date that the debtor requests that a statutory debt repayment plan be arranged. However creditors would be able to take bankruptcy proceedings against the debtor until the date that the plan first has effect.
78. Individual creditors would then be given time to confirm balances, discuss the terms of the plan and/or raise objections with the operator. Assuming that no objections are raised, the statutory debt repayment plan would automatically come into force on the date fixed in the notice sent to creditors. At that point a notification could be sent to the RJOF.
79. Any objections to a plan would be considered by the operator. Where a creditor's objection was rejected the creditor would have the right to appeal to the court about the existence of the statutory plan, their debt being included in it or the terms of the plan.
80. As with any proceedings, where an appeal was made a court fee would be payable by the creditor and it would be for the court to decide who should meet any costs incurred by the debtor, creditor and the approved Debt Management Scheme operator. This provides a certain amount of assurance against frivolous challenges by creditors and should also act as a further incentive for operators to ensure that the correct process has been followed and the correct decision made.
81. As happens in current non-statutory DMPs, operators would decide when urgent domestic needs, such as a need to replace major household goods, warranted a payment holiday and inform creditors of this. If approved, any such breaks in payment would extend the length of the plan.
82. Debtors with a statutory debt repayment plan would be required to provide the operator with statements updating the details of their financial circumstances at regular intervals. Where a required statement was not made, the operator would be required to terminate the plan and, if the plan had been registered, ensure that the RJOF records were marked as 'terminated due to failure to update information'.
83. It would also be for approved Debt Management Scheme operators to terminate plans when a specified number of payments were missed.

Operators would again need to notify the RJOF of this action if the plan had been registered.

84. The powers set out in the TCEA 2007 would allow the legislation to prescribe the mechanisms that operators would use to assess debtors' eligibility for such a scheme. For example, this could include requiring operators to discuss all available options (including their effects) with debtors before plans are suggested/come into operation and that debtors should be encouraged to choose the option(s) that best meet their circumstances.
85. A statutory scheme could also include capping fees at specified levels (though it should be recognised that this will have an impact on competition, as noted in the initial Impact Assessment) and operators could be required to adopt a specified mechanism for assessing ability to pay, for example, the CFS. Taken together these should provide assurance to creditors that, if adopted, a regulated debt repayment plan was the best option for a particular debtor and that debtors would be repaying the maximum sustainable sum towards their debts.
86. It is important to note, however, that even if such a scheme were commenced, existing schemes could continue to operate as now. It would not be mandatory for operators to apply for approval and, even where they did, they would still be able to offer non-statutory plans alongside regulated plans.

Potential benefits of introducing approved debt management schemes

- standard treatment for all debtors in approved schemes (e.g. procedures for receiving advice, the calculation of surplus income)
- clear standards for operators and creditors (e.g. how surplus income is to be calculated, when information is to be updated, how information is to be presented)
- possibly improved returns for creditors.

Potential disadvantages of introducing approved debt management schemes

- potential impacts on creditors' capital requirements
- not all operators could be forced to become members of a statutory scheme
- necessary legislative changes to set up the scheme could take at least 12 months and so would not necessarily provide any short-term relief to debtors
- there could be unintended consequences

Q.12 Would this approach meet any/all of the objectives in paragraph 43?

Yes/No

Comments

Q.13 Should the Government follow Option 3 and introduce a regulated approach?

Yes/No

Comments

Additional features

87. In addition to the mandatory features for approved Debt Management Schemes, the TCEA 2007 provides that further provision can be made in regulations on any or all of the areas explored below. Such features could, alternatively, apply to improved DMPs under the non-statutory code of practice/best practice model. We would welcome your views on the following areas, if either option 2 or option 3 were introduced.

Advice

88. Discussions with stakeholders strongly indicate that an important element of any scheme should be an impartial discussion between the debtor and the operator covering all available options before a statutory debt repayment plan is suggested/put in place. Debtors should be encouraged to choose the option that best meets their circumstances, including options that are not necessarily available through the approved Debt Management Scheme operator.
89. As explained earlier in this paper, recent research conducted by MAT¹⁷ reports that some customers of commercial sector DMP operators said they were only informed of fees late in the relationship with their debt management company. Others said they were left in a worse financial position than they were before they contacted the company.
90. Customers also said they were not provided with enough information about free-to-client services early enough in the process, with several customers saying they would have used a free service if they had known about it. However, they were reluctant to switch once they had committed to using a fee-charging service.
91. Alongside the MAT report, there has been ongoing concern amongst stakeholders in both the credit and advice sectors that debtors approaching some fee-charging operators do not necessarily receive comprehensive information about the full range of potential options available to them. As a result, they are not necessarily advised on the most appropriate and sustainable solution for their circumstances.
92. Therefore, it has been suggested that if debtors are to be encouraged to choose the option that best meets their circumstances, including options that may not necessarily be available through a particular approved Debt Management Scheme operator, operators should complete a comparison table for each debtor to show the advantages/disadvantages and likely returns to creditors from each available debt solution. This could be made available to the debtor and all creditors. Such a

¹⁷ 'An independent review of the fee-charging debt management industry', June 2009

comparison is already part of existing codes of practice for both DEMSA and DRF.

93. If this proposal is adopted the Government will work closely with all advice operators to develop guidance on what information needs to be given to debtors and how the suggested comparison table would operate.

Q.14 If option 2 or 3 is introduced, should advice, including the use of a comparison table, be provided as a requirement?

Yes/No

Comments

Total debt limit

94. The introduction of a total debt limit could be used as a method of ensuring that debtors face the reality of their situation and do not enter into schemes that would run for many years and lead to debtors finding themselves in a rut which they could find almost impossible to come out of. This feature is not currently part of either the DRF or DEMSA code of conduct and could be unattractive to creditors in situations where debtors have few or no assets.

Q.15. If option 2 or 3 is introduced, should there be a limit on the total amount of debt included in a plan?

Yes/No

Comments

Q.16 If Yes, what should the total debt limit be?

Comments

An asset cap

95. Entry to improved DMPs or 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 choose a debt solution that may be inappropriate for them.
96. However, if this was introduced it would not necessarily 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. As with the debt limit proposal above, this feature is not currently part of either the DRF or DEMSA code of conduct.

Q.17 If option 2 or option 3 is introduced, should plans have an asset cap?

Yes/No

Comments

Q.18 If Yes what should the asset limit be?

Comments

Q.19 If an asset cap is introduced, how should assets be valued?

Comments

Time limits

97. Improved DMPs under option 2 or statutory debt repayment plans under option 3 could be time limited to provide a fixed end date; with a maximum period of say 10 years. Setting a time limit could also be another means of ensuring that debtors face the reality of their situation and do not enter into schemes that would run for many years.
98. Unless there is an element of debt write-off (discussed at paragraph 104 below), the introduction of a time limit for improved DMPs or 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.
99. A time limit would protect creditors from long periods of time during which interest is frozen. On the other hand, it could lead to debtors entering other schemes (e.g. bankruptcy) and such schemes might bring diminished returns when compared to a DMP or a statutory debt repayment plan.
100. Arguably, where a debtor cannot repay his debts within a reasonable period, serious consideration should be given to alternative ways of dealing with the debts, and this would be integral to providing the debtor with appropriate advice. However, the view of sections of both the advice and creditor communities is that debtors should be allowed to repay their debts over possibly long periods as circumstances can and do change.

Q.20 If introduced, should statutory debt repayment plans be time limited (option 3) or should a time limit be included in a code of practice (option 2)?

Yes/No

Comments

Q.21 If Yes, what should the maximum time limit be?

Comments

Minimum payment rate

101. Anecdotally, we understand that the majority of commercial sector operators currently operate a minimum payment requirement of between £70 and £150 per month to ensure commercial viability. However, there is some evidence which shows that certain operators manipulate income and expenditure figures to achieve a certain repayment level that would be acceptable to creditors.
102. It would be possible to introduce a minimum payment rate to ensure that statutory debt repayment plans were only available to those who can genuinely repay their debts. If this were to be adopted it would seem sensible to set the limit at £50 p.c.m. so that it aligns with the maximum amount of surplus income allowable in a Debt Relief Order (DRO) scheme, although this would not take account of the DRO's criteria for total debt or assets. A minimum payment rate could also be included under a code of practice for improved DMPs without regulation.
103. If a minimum rate was not specified, other operators might be encouraged (possibly from the free-to-client sector) to offer schemes where much lower repayment rates than exist now would be accepted. This could offer protection for those who need time for their circumstances to improve and need relief from collections pressure during that time.

Q.22 If option 2 or 3 is introduced, should there be a minimum payment rate?

Yes/No

Comments

Q.23 If Yes, what should the minimum repayment be?

Comments

Debt Write-Off

104. An important element of the IVA regime is the balancing of the needs of the debtor and his/her creditors, with creditors' voting on whether or not to accept the proposal at all. In an IVA, debts can be written off in part, but this is balanced by creditors voting on whether or not to include or exclude assets. It is arguable that, given the provision of write-off in the IVA, it would be inappropriate to offer debt write-off in a DMP or statutory debt repayment plan as assets would not be included and creditors could be forced to comply without a choice. Voluntary debt write-off could be an option, but this is unlikely to be necessary if statutory debt repayment plans are introduced primarily for those who can repay their debt.

Q.24 If either option 2 or 3 is introduced, should any repayment plan have an element of debt write-off?

Yes/No

Comments

Q.25 If Yes, how could this be balanced against the needs of creditors?

Comments

Q.26 If Yes, would requiring creditors to agree to any debt write-off achieve this balance?

Comments

Number of debts

105. Statutory debt repayment plans would be aimed at people who need help managing multiple debts, i.e. at least two. As is the case with the proposed reformed Administration Order, a requirement could be imposed that a debtor must have multiple outstanding debts, at least one of which they are unable to repay. A similar requirement could be included in the BPM for non-statutory DMPs.

Q.27 If either option 2 or 3 is introduced, should access be restricted to those with multiple debts?

Yes/No

Comments

Q.28 If Yes, what should be the criteria for the minimum number of debts?

Comments

A cap on charges

106. Section 124 of the TCEA 2007 allows for operators to recover reasonable costs from the debtor, the creditors or both.
107. Currently, private sector operators usually levy a monthly administration charge of between 7.5% – 17.65%, which is paid by the debtor (in addition to the total amount of their debt).
108. The Government would be keen to ensure there was a cap on administration charges set at a percentage to recover reasonable costs of possibly between 7.5% –15%.

Q.29 If option 2 or 3 is introduced, should administration charges be capped?

Yes/No

Comments

Q.30 If Yes, do you agree that the cap on charges should be between 7.5%–15%?

Yes/No

Comments

Set-up fees

109. Some operators do not apply set-up charges and use all of the debtor's monthly contribution to repay the creditors. Creditors are then asked/free to make a voluntary contribution to the operator to cover the operator's operating costs. This is generally known as the "fair share" contribution.
110. However, in addition to the administration charge, the vast majority of commercial sector DMP operators currently charge a set-up fee in addition to ongoing monthly administration charges. It is understood that the set-up fee is levied to cover the costs of discussing the debtor's circumstances, advising on a course of action and, where appropriate, negotiating with creditors on behalf of the debtor.
111. The set-up fee is generally calculated as a multiple of the amount debtors will repay each month, rather than based on the work done by

the operator to set up the plan. Although the number varies between operators, this is normally two monthly instalments collected over the first three months of a plan. This leads to some debtors paying much greater set-up fees than others.

112. It is arguable that the introduction of a statutory scheme would reduce the need for preliminary negotiations with creditors and therefore that set-up fees would be unnecessary. This would effectively allow operators to earn fees only from administration charges for sustainable long term arrangements.
113. However, the provision of advice on all options in every case would clearly incur costs and these costs would not be recovered unless the result of the advice was to put a viable statutory debt repayment plan into place. It could therefore be argued that a relatively small, fixed set-up fee should be chargeable to cover costs generally, and specifically for those who received advice but did not proceed with a statutory plan.

Q.31 If option 2 or 3 is introduced, should operators be permitted to charge a set-up fee?

Yes/No

Comments

Q.32 If Yes, should a set-up fee be a fixed amount?

Yes/No

Comments

Q.33 If Yes, what do you consider to be a reasonable amount?

Comments

Payment responsibility

114. Debtors currently meet the costs and charges of the large majority of commercial sector operators themselves in the same way as other users of fee charging services. However, creditors do meet the costs and charges of other operators from the private and not-for-profit sectors under the fair share contribution. Any change to this position could compromise the charitable status or operating procedures of some current operators.

115. However, it seems that the mechanism by which the “fair share” contribution is actually paid differs between operators and also individual creditors. In some cases creditors are invoiced, others are asked for a charitable donation while others are prepared to allow operators to ‘top slice’ from repayments made. Additionally, it is not clear that all creditors consider their debt to be settled when the fair share contribution is applied and that some may pursue the debtor for the fee element. If approved schemes are introduced, the powers under section 114 of the TCEA 2007 would be used to discharge debts when the required payments have been paid to the scheme operator, in order to overcome this problem.

Q.34 Who should meet the fees and charges of scheme operators?

Comments?

Calculating debtors’ ability to pay

116. Approved Debt Management Scheme operators could be required to use the CFS to assess debtors’ surplus income potentially available to make repayments. It is also suggested that a common formula for calculating repayment rates based on a fixed percentage of surplus income should be applied in order to ensure consistency.

Q.35 Should a standard formula/fixed percentage be applied when calculating repayment rates?

Yes/No

Comments

Q.36 If Yes, what percentage of surplus income should form the repayment rate?

Comments

Excluded debts

117. It is suggested that the following debts should also be excluded from a statutory debt repayment plan (in addition to secured and business debts):
- those debts considered to be non-provable in bankruptcy (fines, confiscation orders, orders in family proceedings or under the Child Support Act 1991 and student loans);
 - rent arrears where the debtor is still in possession of the property;
 - future payments in respect of ongoing commitments (e.g. council and other tax liabilities, utilities).

118. All other debts could be included in a statutory debt repayment plan.

Q.37 Should the above debts be excluded?

Yes/No

Comments

Q.38 Are there any other debts that should be excluded?

Yes/No

Comments

Provision of information

119. Discussions with stakeholders have confirmed that an essential feature for creditors to have confidence in any DMP or statutory debt repayment plan would be for there to be regular updates on the debtor's financial circumstances. This would enable the operator to vary the plan if necessary and therefore ensure that it is current and relevant to the debtor's circumstances whilst still allowing debts to be repaid.

Q.39 If either option 2 or 3 were introduced, how regularly do you feel that debtors should be required to update information on their means? Should this apply under a code of practice?

a) Six-monthly

Yes/No

b) Annually

Yes/No

c) Other (please specify and give reasons)

Improved circumstances

120. The purpose of a DMP/debt repayment plan is to provide support to debtors who can pay towards their debts but who are currently unable to meet all of their commitments. It is therefore arguable that where a debtor's circumstances change sufficiently to allow all their contractual commitments to be met (although not where this is due solely to the total debt balance reducing as a result of payments made into a plan), the plan should be terminated and normal repayment terms should recommence.

121. It would be up to the operator to carry out any assessment of 'change of circumstance' as part of their reassessment of the individual's ability to repay when updated financial information was provided. As creditors also receive copies of the same updated information, they could raise the matter with the operator themselves. If normal repayment terms recommenced, then creditors could choose to impose the interest, charges and fees that the debtor would have accrued during the period of the plan.

Q.40 Do you think that, if option 2 or 3 is introduced, plans should be terminated if circumstances improve sufficiently to allow normal commitments to be met?

Yes/No

Comments

Time between debt repayment plans

122. It is envisaged that where a statutory debt repayment plan is terminated by the operator due to non-compliance, a debtor would not be able to apply for a further plan until at least 12 months after the original plan was terminated. This is aimed at preventing an unscrupulous debtor setting up a plan with the intention of letting it fail and then setting up another plan immediately in order to take advantage of the protection from the enforcement of debts.

Q.41 Is 12 months an effective barrier against potential misuse?

Yes/No

Comments

The Supervisory Authority

123. If option 3 were to be introduced, the legislation envisages that there would be a Supervisory Authority, which would consider applications for approval and carry out appropriate checks on operators to maintain standards. If there is support for the introduction of approved schemes, the Government would want to see a thorough and effective supervising regime.
124. Sections 111 and 129 are the principal sections in the TCEA 2007 relating to a Supervising Authority and provide wide scope for determining the power and duties of a Supervising Authority, and there are therefore a range of possible options.

125. Recent individual stakeholder meetings have suggested a broad consensus on some aspects of how a Supervising Authority might operate. These are:
- operators should arrange for all available options to be discussed with a debtor, and not just the debt repayment scheme;
 - in order to ensure that the supervisory regime is effective, an operator's failure to comply with the terms of approval set by the Supervising Authority could result in termination of the operator's approval to offer plans under Debt Management Schemes; and,
 - the Supervising Authority should have sufficient funding to ensure compliance visits are conducted regularly (possibly at least annually). This funding could come from plan operators, possibly by an application fee paid in instalments throughout the term of approval. More work is needed to establish how much funding would be needed to ensure that checks of sufficient quality and frequency are carried out.
126. The accompanying initial Impact Assessment contains a number of further questions relating to the role of a Supervising Authority.
127. Given the broad parameters for the role of a Supervising Authority set out above there are a number of options that might be explored before a decision is made on the way to proceed.

Q.42 Do you have comments on the powers, sanctions or funding mechanism for the Supervisory Authority?

Yes/No

Comments

Q.43 Who should be considered to be authorised by the Lord Chancellor for the role of Supervising Authority?

Comments

Q.44 Is there an existing regulatory regime that might be adapted to take on the Supervising Authority role?

Yes/No

Comments

Q.45 How should the Supervising Authority carry out its functions?

Comments

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Q.1	Are these objectives reasonable and attainable? Yes /No Comments
Q.2	Is there evidence of problems in the current system? Yes /No Comments
Q.3	If so, how significant and frequent are these problems? Comments
Q.4	Would this approach meet any/all of the objectives in paragraph 43? Yes/No Comments
Q.5	Should the Government follow Option 1 and do nothing beyond measures underway? Yes/No Comments
Q.6	How well are the existing codes of practice working? Comments
Q.7	How effective is the enforcement of existing codes of practice? Comments
Q.8	Are there any features which you would like to see as part of the existing codes of practice? Yes/No (please specify) Comments
Q.9	Would this approach meet any/all of the objectives in paragraph 43? Yes/No Comments

<p>Q.10</p>	<p>Should the Government follow Option 2 and promote a code of practice/non-regulatory approach?</p> <p>Yes/No</p> <p>Comments</p>
<p>Q.11</p>	<p>How should such a code of practice/BPM be monitored and by whom?</p> <p>Comments</p>
<p>Q.12</p>	<p>Would this approach meet all of the objectives in paragraph 43?</p> <p>Yes /No</p> <p>Comments</p>
<p>Q.13</p>	<p>Should the Government follow Option 3 and introduce a regulated approach?</p> <p>Yes/No</p> <p>Comments</p>
<p>Q.14</p>	<p>If option 2 or 3 is introduced, should advice, including the use of a comparison table, be provided as a requirement?</p> <p>Yes/No</p> <p>Comments</p>
<p>Q.15</p>	<p>If option 2 or 3 is introduced, should there be a limit on the total amount of debt included in a plan?</p> <p>Yes / No</p> <p>Comments</p>
<p>Q.16</p>	<p>If Yes what should the debt limit be?</p> <p>Comments</p>
<p>Q.17</p>	<p>If option 2 or 3 is introduced, should plans have an asset cap?</p> <p>Yes /No</p> <p>Comments</p>
<p>Q.18</p>	<p>If Yes what should the asset limit be?</p> <p>Comments</p>
<p>Q.19</p>	<p>If an asset cap is introduced, how should assets be valued?</p> <p>Comments</p>

Q.20	<p>If introduced, should statutory debt repayment plans be time limited (option 3) or should a time limit be included in a code of practice (option 2)?</p> <p>Yes/No</p> <p>Comments</p>
Q.21	<p>If Yes, what should the maximum limit be?</p> <p>Comments</p>
Q.22	<p>If option 2 or 3 is introduced, should there be a minimum payment rate?</p> <p>Yes / No</p> <p>Comments</p>
Q.23	<p>If Yes, what should the minimum repayment be?</p> <p>Comments</p>
Q.24	<p>If option 2 or 3 is introduced, should any repayment plan have an element of debt write-off?</p> <p>Yes / No</p> <p>Comments</p>
Q.25	<p>If Yes, how could this be balanced against the needs of creditors?</p> <p>Comments</p>
Q.26	<p>If Yes, would requiring creditors to agree to any debt write-off achieve this balance?</p> <p>Comments</p>
Q.27	<p>If either option 2 or 3 is introduced, should access be restricted to those with multiple debts?</p> <p>Yes/No</p> <p>Comments</p>
Q.28	<p>If Yes, what should be the criteria for the minimum number of debts?</p> <p>Comments</p>
Q.29	<p>If option 2 or 3 is introduced, should administration charges be capped?</p> <p>Yes / No</p> <p>Comments</p>

Q.30	<p>If Yes, do you agree that the cap on charges should be between 7.5%-15%?</p> <p>Yes /No</p> <p>Comments</p>
Q.31	<p>If option 2 or 3 is introduced, should operators be permitted to charge a set-up fee?</p> <p>Yes/No</p> <p>Comments</p>
Q.32	<p>If Yes, should a set-up fee be a fixed amount?</p> <p>Yes/No</p> <p>Comments</p>
Q.33	<p>If Yes, what do you consider to be a reasonable amount?</p> <p>Comments</p>
Q.34	<p>Who should meet the fees and charges of scheme operators?</p> <p>Comments</p>
Q.35	<p>Should a standard formula/fixed percentage be applied when calculating repayment rates?</p> <p>Yes/No</p> <p>Comments</p>
Q.36	<p>If Yes, what percentage of surplus income should form the repayment rate?</p> <p>Comments</p>
Q.37	<p>Should the above debts be excluded?</p> <p>Yes/No</p> <p>Comments</p>
Q.38	<p>Are there any other debts that should be excluded?</p> <p>Yes/No</p> <p>Comments</p>
Q.39	<p>If either option 2 or 3 were introduced, how regularly do you feel that debtors should be required to update information on their means? Should this apply under a code of practice?</p> <p>a) Six-monthly</p> <p>Yes/No</p> <p>b) Annually</p> <p>Yes/No</p> <p>c) Other (please specify and give reasons)</p>

Q.40	<p>Do you think that, if option 2 or 3 is introduced, plans should be terminated if circumstances improve sufficiently to allow normal commitments to be met?</p> <p>Yes/No</p> <p>Comments</p>
Q.41	<p>Is 12 months an effective barrier against potential misuse?</p> <p>Yes / No</p> <p>Comments</p>
Q.42	<p>Do you have any comments on the powers, sanctions or funding mechanism for the Supervisory Authority?</p> <p>Comments</p>
Q.43	<p>Who should be considered to be authorised by the Lord Chancellor for the role of Supervising Authority?</p> <p>Comments</p>
Q.44	<p>Is there an existing regulatory regime that might be adapted to take on the Supervising Authority role?</p> <p>Yes /No</p> <p>Comments</p>
Q.45	<p>How should the Supervisory Authority carry out its functions?</p> <p>Comments</p>

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 18 December 2009 to:

Ghulam Chowdhury
Ministry of Justice
Civil Law & Justice Division
Post Point 4:21
102 Petty France
London
SW1H 9AJ

Tel: 020 3334 3171

Email: ghulam.chowdhury1@justice.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available online at www.justice.gov.uk

Alternative format versions of this publication can be requested from Ghulam Chowdhury, telephone 020 3334 3171 or email ghulam.chowdhury1@justice.gsi.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published by 31 March 2010. The response paper will be available online at www.justice.gov.uk

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as

confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Julia Bradford, Ministry of Justice Consultation Co-ordinator, on 020 3334 4492, or email her at consultation@justice.gsi.gov.uk

Alternatively, you may wish to write to the address below:

Julia Bradford
Consultation Co-ordinator
Ministry of Justice
102 Petty France
London
SW1H 9AJ

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper at page 51.

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Ghulam Chowdhury, 020 3334 3171, ghulam.chowdhury1@justice.gsi.gov.uk