

**THE ASSOCIATION OF HER MAJESTY’S DISTRICT JUDGES RESPONSE TO THE  
DEBT MANAGEMENT SCHEMES CONSULTATION PAPER**

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The Association of Her Majesty’s District Judges represents all District Judges of the County Courts and District Registries of the High Court in England and Wales. We welcome the invitation to comment of this Consultation Paper.

In considering our replies to the questions posed, we have refrained from commenting on matters that are clearly for Government to decide and have limited our consideration to those options and questions that might concern our jurisdiction as District Judges.

With this in mind, it may be helpful for us to preface our responses to the questions with two specific observations that are relevant to our management of “debt matters” under the current regime.

Firstly, we look forward to the further implementation of the Tribunal Courts and Enforcement Act 2007. The success of the further implementation of its provisions will depend to an extent upon the availability of a modernised and adequate I T system. The management of “debt claims” will in our view become more efficient when the provisions of the Act are fully implemented.

Secondly, the District Bench would welcome clarification of the entitlement of a judgment creditor to apply for a charging order (usually in respect of the debtor’s beneficial interest in the family home) in circumstances where there is an instalment order that is being complied with. Court hearings in respect of instalment orders, where there is (a) an asset that could provide security and (b) a Debt Management Plan in place, take up a significant amount of court and judge time that would not be required if the legal position were to be clearly and unequivocally defined. We appreciate that S.93 Tribunal Courts and Enforcement Act will deal with this point, but in the meantime there remains the conflicting interpretations of S86(1) County Courts Act 1986.

Our replies to the questions are as follows:

*Q.1 Are these objectives reasonable and attainable?*

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

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

Comments – When a debt is the subject of the court process, it is always helpful to the court if the debtor has had the benefit of advice. Debt Management Scheme operators play a part by providing informative financial statements.

*Q.4 Would this approach meet any/all of the objectives in paragraph 43?*

*Q.5 Should the Government follow Option 1 and do nothing beyond measures underway?*

Comments – We do not wish to comment on unregulated non-court based schemes since this must be a matter for Government policy.

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

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

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

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

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

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

Comments – Non statutory Codes of Practice/Best Practice Models are not subject to court scrutiny or sanctions, so we do not comment.

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

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

Comments – A regulated scheme governed by statute would provide the consistency and certainty that unregulated schemes cannot. Regulated schemes would be subject to court scrutiny where necessary.

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

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

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

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

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

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

*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)?*

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

Comments – Imposing a time limit or an asset cap may be counterproductive. The majority of Debt Management Plans that District Judges see suggest that the debtor will never discharge full payment of the listed debts (let alone any accumulating contractual or statutory interest). Perhaps a simple and sensible pre-requisite to a DMP facility should be that the debtor is insolvent..

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

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

Comments – We agree that any minimum payment rate should align with the surplus income allowable in a Debt Relief Order.

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

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

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

Comments – We doubt that creditors can be compelled to write off part of a debt without the debtor disclosing and making available capital assets. If part of a debt is to be written off, the appropriate procedure would be an IVA. If the creditors will not agree a partial write off, the ultimate sanction is a bankruptcy order.

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

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

Comments – We agree that a DMP would not be appropriate where there is a single creditor.

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

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

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

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

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

Comments – Regulated schemes should allow reasonable charges with guidelines being set to judge what is reasonable

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

Comments – We have no view save that we remark that if creditors are to bear any part of the fee, that would widen the scope to challenge the reasonableness of the fee.

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

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

Comments – We agree that a standard formula for calculating repayment rates would be sensible. The formula would need careful consideration, since it must provide for realistic and workable figures.

*Q.37 Should the above debts be excluded?*

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

Comments – The exclusion of any debt from a DMP should be consistent with other debt relief facilities

*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?*

*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?*

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

Comments – We suggest that a sensible arrangement would require a debtor to update the financial statement within 28 days of the debtor’s “surplus income” changing by more than 10%. For example, a debtor may be made redundant, become unemployed by reason of illness, become employed, obtain better remunerated employment or receive an inheritance. Any of these or other events may indicate a good reason to revise the payment figure. Otherwise, we suggest that an annual review would be appropriate.

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

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

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

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

Comments – We observe that IVAs and CVAs are subject to court scrutiny

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