Economy Energy and Fair Work Committee

Debt Arrangement Scheme (Scotland) (Amendment) Regulations 2019

By Alan McIntosh

I would like to thank the Committee for the opportunity to submit further comments, now that I have had the opportunity to reflect on the oral evidence of the Accountant in Bankruptcy (AIB) and also the letter that the Minister has sent to the Committee.

I have been a money adviser for 20 years, and I am a LLB (Hons) graduate from the University of Aberdeen. I was one of the first DAS qualified money advisers in Scotland and was also the first DAS approved money adviser to work in the private sector. I have been a trainer and policy officer (Money Advice Scotland) and also a qualified Personal Insolvency Practitioner in Ireland. I have previously held Senior Management roles in Carrington Dean, the largest private sector provider of the Debt Arrangement Scheme, who are also Payment Distributors. I am currently the Senior Money Adviser for Inverclyde Council and manage four specialist money advisers who provide the Debt Arrangement Scheme to our clients.

The views expressed below are my own.

First, as someone who sat on the Debt Arrangement Scheme Regulatory Working Group (DASRWG) that carried out the work that led to these Regulations, I want to say there is wide agreement on the fundamentals that underpin these Regulations.

Many of the points made, therefore, by both the Minister and Dr Richard Dennis I would agree with and are not in dispute as to the benefits for consumers of these Regulations.

However, Regulation 4 in my opinion should be fatal for these Regulations and I would ask the Minister to withdraw them, amend Regulation 4 and resubmit them. I am confident if that was done, there would be wide support for them.

As Mike Holmyard explained, Regulation 4 leaves “a black hole” as to how much the free sector gets paid and how it gets paid (I am using the AIB’s definition of free sector as meaning Citizen Advice Bureaux, Local Authorities and Independent Advice agencies).

I do not believe this omission is accidental, but intentional and is designed to, as it does, place the free sector at a disadvantage in delivering the Debt Arrangement Scheme. It will mean free sector agencies will have no statutory right to be paid, unlike Stepchange and private sector providers that are payment distributors.

I believe the patent unfairness of this should be apparent to all Committee members and is reason enough why they should not be passed.

The proposed fee structure only gives a right to be paid to the Payment Distributors and the Debt Arrangement Scheme Administrator and includes no money adviser

fee; therefore, no financial statutory value is placed on the work that Money Advisers do.

This is intentional (there is no suggestion it is an accidental omission) and I believe the reason why is to drive more clients towards organisations like Stepchange and private sector firms. There is no other logical reason that I can think of why Regulation 4 would omit an express fee for Free Sector Money Advisers. The effect is to place Payment Distribution Firms in a powerful position in relationship to the Free Sector Money Advisers.

If this is not the case I would ask the Minister fills this “black hole” with detail, which would satisfactorily reassure me this is not the intention.

I believe why the AIB wants to do this is because they believe people find it confusing dealing with two organisations and have been lobbied to adopt such a model.

There is no substantive evidence to suggest consumers want their money adviser and payment distributor to be one and the same. Some clients may feel this way and if so can choose a provider that offers both services, but in my experience many clients like the face to face contact they have with their Free Sector advisers, that they don’t have with their Payment Distributor.

I would suggest a more obvious and just model would have been to adopt a three pillar fee structure that allowed a Money Adviser Fee, a Payment Distributor Fee and also a Debt Arrangement scheme Administrator fee.

It is worth noting that if such a three pillar fee structure was adopted, rather than the two pillar structure being proposed, there would be widespread support for these Regulations.

Such a structure would also have no detriment for the private sector or Stepchange, quite correctly, as both providers of money advice and payment distribution, they would still be entitled to take both the payment distribution fee and the money adviser fee.

The current proposal places the free sector at a disadvantage and makes “winners” of organisations like Stepchange, as Sharon Bell admitted, and “losers” of the free sector.

I acknowledge the AIB has proposed to return 15% to Free Sector providers , but I am not convinced that this provides enough certainty for Free Sector providers as it is not included in Regulations. I suspect there will be pressure applied to the AIB to reduce the percentage returned to the Free Sector by other Payment Distributors, as I believe Stepchange has already done in their written submissions to the Committee, as they will not be able to compete with the AIB. I would also not be surprised if some revisit this issue in their follow up comments.

This is understandable, as they will want to increase their share of the market by winning Free Sector cases and minimising what they return to the free sector.

I believe this pressure will grow once these Regulations are passed.

I believe other Payment Distributors will want to pressurise the Free Sector to give them the full case so they can keep the full 20%. I believe the proposed two pillar fee structure places the Free Sector in a weak position to withstand that pressure. A three pillar fee structure removes that pressure, by including a Statutory Money Adviser Fee and removes the need for the Free Sector to negotiate with other Payment Distributors.

I would ask the Committee to exercise caution, as the Debt Arrangement Scheme market will be lucrative and I don't believe the two pillar fee model maximises choice for clients and benefits certain providers.

In terms of maximising choice for consumers, it is true that the current proposals will enable consumers to choose between private and free sector providers, without the fear of having to pay punitive fees and this is to be welcomed; but equally a three pillar fee structure would also have allowed for this, whilst still ensuring Free Sector providers have the protection of a Statutory right to receive a fee .

This is important as Free Sector providers are often the only face to face providers operating across large swathes of Scotland.

For example, in 20 of Scotland's 32 local authorities, there are no private sector providers of the Debt Arrangement Scheme geographically based in those locations. This will mean in large parts of Scotland, these Payment Distributor services will only offer telephone services.

Contrary to what Dr Dennis suggests, it will not be as simple as a money adviser saying "go down the road and see my friend".

The fact is Regulation 4 and the model of delivery that Dr Dennis envisages will see a reduction in the provision of face to face Debt Arrangement Scheme services. This will bring no benefits for them or for their creditors (as they will still pay 22%). The only beneficiaries will be the Payment Distribution Debt Arrangement Scheme services.

This will make services more remote and disadvantage vulnerable clients who have complex issues underpinning their financial problems, as many of them benefit from the support that only face to face services provide. This is an important factor to consider as currently 40% of Debt Payment Programmes will fail in their first five years and we do not want to see this increase.

I have also a number of other points in relation to Dr Dennis' evidence I would like to touch on.

The six week waiting times he quoted is not representative of the Free Sector, as a whole, and I believe is based on selective anecdotal evidence.

Alan McIntosh

The average Debt Arrangement Scheme payment is not £400 per month, but I believe less than half that.

Also although Universal Credit is a major issue, it is not true to suggest we are dealing predominantly with this issue and not debts. This demonstrates a poor understanding of the importance that the causes of debt plays in the work of money advisers in developing sustainable budgets for clients.

The particular problem Universal Credit presents money advisers with is fluctuating incomes and waiting periods that make it difficult to help clients budget. This, however, impacts on private sector providers and Stepchange also, and is not unique to the Free Sector .

Although the FCA authorises Payment Distributors, the AIB play a significant role in monitoring their performance, so I would submit my oral evidence about conflicts of interest was correct. I am prepared to accept it is possible to manage this, but to do so we first need to acknowledge it exists.

In relation to the Minister's letter, I would like to add I believe it is a robust defence of these Regulations and one I would support, if it was not for Regulation 4. I, however, also believe it in many areas is misinformed.

To suggest these Regulations were never intended to help fund the Free Sector is wrong.

Unfortunately, the purpose of these Regulations changes frequently when you speak with different stakeholders, as the AIB's pitch was often varied. Sometimes it was to help fund the free sector, sometimes it was for the AIB and the Free Sector to work in partnership, other times it was to allow private sector firms to come into Free Sector agencies and take their cases off them. Sometimes the AIB wanted to be the Payment Distributor for the Free Sector; other times they only wanted to be a default Payment Distributor.

My understanding was the purpose of these Regulations was to increase take up of the Debt Arrangement Scheme to benefit consumers. I have always approached them from that starting point.

They do that by transferring the cost of the Scheme to the Creditors, and should have been drafted in a way that ensures those funds levied are then re-diverted back to the providers of the Scheme (or an assignee of their choosing).

These Regulations do not guarantee that or provide the certainty required by the Free Sector because of the "black hole" in Regulation 4.

Where I believe I differ from some is I still believe the Free Sector have a central role to play in the DAS in years to come, as it has since 2004. I don't believe these Regulations acknowledge that future role and instead are biased towards a model where the future belongs only to large volume Payment Distributor providers. I believe this is a case of the Payment Distributors over-selling their ability to meet the often complex needs of our clients.

It has never been suggested that this fee, on its own, would solve the funding crisis for the Free Sector, but by excluding the Free Sector Fee from Regulation 4, that funding crisis is only exacerbated.

In relation to the Minister comments regarding the “Taxi Rank” system, I believe the evidence provided by Mike Holmyard is more authoritative than that provided by the AIB, as he has intimate knowledge of the Citizen Advice network and, therefore, I defer to his evidence .

Also in relation to the suggestion that the “Taxi Rank” System is not attractive to private sector providers is not true. The current 7,000 Free Sector cases return £15 million per year to creditors. The contract was fiercely competed for in both 2011 and 2015, with some firms tendering as low as 4%.

Departing from the “taxi rank” system, will only allow private sector providers to cherry pick cases.

This will likely lead to lower paying cases being given to the AIB, as conceded by Dr Dennis, which I believe in time, will lead to the AIB having to revise their current proposal of returning 15% to the Free Money Sector.

In terms of the issues of whether Regulation 4 should be applied to current cases, I have gave evidence on this previously, but would add of the current 4,000 private sector cases, these clients will currently be paying private sector fees. There is no way under Regulation 4 to transition them onto the new fee structure, but as Dr Dennis conceded, for all of them this would be more beneficial and allow them to repay their debts sooner.

This may, therefore, create a perverse outcome in that clients will be encouraged to default on their current Programmes with a view to having it revoked, in order to reapply under the new fee structure. They may even see their debts increase as on revocation, interest and charges can be reapplied.

Surely this is not a desirable consequence of these Regulations?

In summary, I would add these Regulations are on the whole to be welcomed, but should be withdrawn and only re-tabled once Regulation 4 is amended.

I believe the intention behind these Regulations by the AIB are genuine and are driven by desire to help people. Dr Dennis’ evidence convinced me of this although we disagree on a number of points. However, the “black hole” in Regulation 4 will re-shape the debt advice landscape and create “winners” and “losers” and have no benefit for consumers or creditors. The Minister says it creates flexibility, but it is certainty that the Free Sector requires from Regulation 4, not flexibility. The “black hole” only weakens the position of Free Sector providers.

All the benefits of these Regulations can be preserved by amending Regulation 4. Doing so will make them representative of what the DASRWG Intended, so I urge

the Minister and Committee to ensure that intention is preserved by withdrawing, amending and relaying these Regulations.