

# Relief for the Indebted - An Alternative to Bankruptcy

March 2005



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# The Purpose of this Consultation

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This consultation builds on the government's ongoing strategy for dealing with the consequences of indebtedness, with the aim of seeking views on improving the provision of debt relief for those people for whom the currently available debt solution procedures are inappropriate or effectively unavailable.

A consultation during 2004 by the Department of Constitutional Affairs ("A Choice of Paths – Better Options to manage overindebtedness and multiple debt") has led us to believe that for some people who get into debt, the solutions that are available are not appropriate. Such people have a relatively low level of liabilities, no assets over and above a nominal amount and no surplus income with which to come to an arrangement with their creditors.

We believe that there is a perceived need to offer a remedy for such people. This paper looks at one way in which this could be achieved by presenting proposals for a non court based scheme of debt relief aimed at people who have no assets, a relatively low level of liabilities and no surplus income with which to pay creditors.

Issued: **31<sup>st</sup> March 2005**

Respond by: **30<sup>th</sup> June 2005**

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# Foreword

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Work has been going on across Government to address the problems experienced by the minority of individuals who find themselves with too much debt. Stakeholders have been considering both how to minimise the number of people who get into debt problems, and also to improve the support framework and processes for those whose situation has become unsustainable.

As part of this ongoing work, we recognise that most individuals are fully able to manage their debts or are able to utilise existing solutions. However, a minority of those who get into financial difficulty are unable to get out of it – and we need to look at what can be done to remedy their problems.

We want to ensure that people who can pay their creditors do so, but those who are genuinely unable to are able to draw a line under the problem within a reasonable time period and start again.

Government is committed in its belief that more can and must be done to reduce the suffering associated with debt. This consultation looks at one way that we could provide relief for some debtors from their situation.

A handwritten signature in black ink, appearing to read 'Desmond Flynn', with a large, stylized flourish at the bottom.

**Desmond Flynn**  
**Inspector General and Agency Chief Executive.**

# Executive Summary

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1. For some people who get into debt, the solutions that are available are not appropriate. Such people have relatively low levels of liabilities, no assets over and above a nominal amount and no surplus income with which to come to an arrangement with their creditors. The existing debt relief remedies either require the debtor to have assets or funds available to distribute to their creditors on a regular basis (for example individual voluntary arrangement, county court administration order or a non statutory debt management plan) or have financial barriers that make them inaccessible, and, particularly in the case of bankruptcy are in any event disproportionate.
2. We have devised a non-court based scheme of debt relief that would alleviate debt in certain cases where there is currently no realistic alternative, but which is simple and likely to be relatively cheap to administer.
3. The type of person at whom the scheme is aimed cannot pay even a portion of their debt within a reasonable timeframe. Such people are often living on very low incomes, and whilst at the time they borrowed the money they had every intention of paying it back, they simply lack the means to do so.
4. The scheme would entail the making (administratively) of a debt relief order that would result in the debtor being discharged from his debts after a period of one year. Official receivers would operate the scheme, which would not routinely require any judicial or other court intervention.
5. There would need to be an up front entry fee to cover the administration costs but this would be significantly less than the deposit required for bankruptcy proceedings to be initiated.
6. In order to keep costs to as low a level as possible, we think there would be a need to involve the debt advice sector (which would act as an intermediary to assess whether a case is suitable before the debtor applies to the official receiver) and for the facility to apply for a debt relief order to be available only online.
7. The debtor would be required to instigate his own order, and would, with the assistance of the intermediary, complete forms that detailed his financial affairs. These would then be sent to the official receiver who would make a debt relief order if the criteria were met.

8. The criteria as proposed are as follows, although the amounts stated are not yet decided upon and views are sought in this paper as to whether the amounts proposed are appropriate:
- The debtor should have total liabilities of less than £15,000, and this would include both secured and unsecured debt. As with bankruptcy, certain liabilities (for example liabilities to pay fines, debts arising under family proceedings, student loans and those incurred as a result of fraud) would be excluded.
  - The debtor should have a surplus income of no more than £50 per month after meeting his reasonable domestic needs. We are aware that what is reasonable will depend on the individual circumstances of the debtor, and there would be clearly defined guidelines as to what constitutes reasonable expenditure, which could be detailed on a form similar to the Common Financial Statement which is approved by the British Bankers Association and the Money Advice Trust.
  - The debtor should have assets of no more than £300. As with bankruptcy, certain items of modest value, such as tools and equipment necessary for use by the debtor in his employment, clothing, bedding and furniture, would be excluded.
9. If the debtor met the criteria, the official receiver would make a debt relief order, with a schedule of creditors attached, and would inform all those creditors. Any creditor who is scheduled would be prohibited from taking enforcement action and the debts would be discharged after twelve months. Any creditor not scheduled would not be bound and could take steps to enforce the debt.
10. Creditors would be able to object to the making of the order on a variety of specified grounds – particularly that the debtor had failed to disclose assets or income or liabilities, and if the objection appeared to be valid the official receiver would be able to revoke the order. We also propose that it should be an offence wilfully to fail to disclose assets, income or liabilities.
11. A record of the order would be entered on to the Individual Insolvency Register and would remain there for the duration of the twelve month period prior to discharge plus an extra three months, in common with bankruptcy.
12. There would be a right of appeal to the court for both the debtor and creditors who were dissatisfied with the way the official receiver had dealt with the case.
13. While the order was in force, the debtor would be subject to the same restrictions as in bankruptcy – for example with regard to obtaining credit or acting as a company director.

14. There would be a facility to account for windfalls and increases in income during the period the order was in force. If the debtor experienced a change in circumstances that meant he could pay some or all of his debts, he would have a duty to disclose this to the official receiver. He would then be given a reasonable length of time to come to an arrangement with his creditors and at expiry of the period, the official receiver would annul the order whether an agreement had been reached or not.

# List of Questions to Consultees

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- (1a) Do you think payment of a moderate fee to cover the costs of the debt relief scheme is acceptable?
- (1b) What do you think would be a reasonable amount?
- (1c) If you do not think a fee of any sort should be payable, do you have any suggestion as to how the scheme might be funded?
- (2) Do you think entry to the scheme should be restricted to once every 6 years? If not, what is an appropriate length of time?
- (3) Do you think that use of an approved intermediary would make the system more accessible and efficient?
- (4) What do you think the role of the intermediary should be?
- (5) Do you think that some funding should be made available to the intermediaries for performing this role? If so, from what source should the funds come?
- (6a) Do you think there should be a limit to the amount an individual can owe to obtain entry to the scheme?
- (6b) Do you think that £15,000 is an appropriate cap? If not, why is this and what would an appropriate amount be?
- (6c) Should secured debt be included as part of the total?
- (7a) Do you think there should be a cap on the surplus income that is permitted before a debt relief order would be granted? Is £50 a realistic figure?
- (7b) If £50 is not realistic, what is?
- (8) Do you think that use of the Common Financial Statement would be an appropriate way to calculate surplus income? If not, why not and how would you suggest surplus income be calculated?
- (9) Do you think that income in “NINA” cases should be defined in the same way as income in bankruptcy cases? If not why not and how should income be defined?
- (10) Do you think the proposed limit of £300 assets is reasonable? If not what do you think a reasonable figure should be?

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

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

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

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

(15a) What action do you think should be taken if the debtor receives a windfall or experiences an increase in income?

(15b) Do you agree that if the debtor benefits from a windfall close to the date at which the debts are due to be discharged that the order should be extended to allow the debtor time to deal with the matter? If not why is this and what steps do you think should be taken to protect the position of creditors?

(15c) What length of time do you think would constitute a reasonable period to enable the debtor to deal with his creditors?

(15d) Do you agree that if the debtor fails to disclose a windfall prior to discharge of the debts that the discharge should be void and creditors free to take enforcement action? If not, what action do you think should be taken?

# How to Respond:

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Responses to this consultation document should be sent to:

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21 Bloomsbury Street  
London  
WC1B 3QW

Or by DX Subscribers to:

DX 120875  
Bloomsbury 6DX

Or by e-mail to [angela.crossley@insolvency.gsi.gov.uk](mailto:angela.crossley@insolvency.gsi.gov.uk)

Please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

If you have any questions about the consultation document you can contact us at the above address or speak to us:

Angela Crossley      Telephone: 020 7637 6514

If you have any comment or complaint about the way this consultation was conducted, these should be sent to:

Nick van Benschoten  
Consultation Coordinator  
Department of Trade and Industry  
Bay 321, Kingsgate House  
66 – 74 Victoria Street  
London, SW1E 6SW

A copy of the Code of Practice on Consultation is at Annex 2.

If you would like additional copies of the consultation document you should telephone Maureen Charles on 020 7291 6740, or alternatively the document is available on the Insolvency Service website at [www.insolvency.gov.uk](http://www.insolvency.gov.uk)

Other versions of the document in Braille, other languages or audio cassette are available on request.

A list of those organisations and individuals consulted is in Annex 3. We would welcome suggestions of others who may wish to be involved.

### **TIMETABLE FOR RESPONSES**

**In order that any comments you may have can be given full consideration as part of the development of this idea, please make sure they are sent in by 30<sup>th</sup> June 2005.**

**Please note that responses may be made public unless you indicate to the contrary.** If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover will be taken to apply only to information in your response for which confidentiality has been requested.

We will handle any personal data you provide appropriately in accordance with the Data Protection Act 1998.

# Introduction

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1. There is a category of person who has fallen into debt and has no way out of it. Such people do not generally owe a great deal. They are often living on very low incomes. They have no surplus income after meeting ordinary living expenses and cannot afford to make even token payments to their creditors. They have no assets that could be sold in order to defray the debt and, because of the requirement to pay a deposit, cannot afford to petition for their own bankruptcy without help from friends or family or by obtaining a grant from a charity. Even if it were available, bankruptcy represents an arguably disproportionate response to debtors with no assets, no income, relatively few creditors and no apparent conduct issues that require investigation.
2. We think there is a need to provide a solution for people who, because of their situation, are currently unable to access any of the available debt resolution procedures to tackle their indebtedness unless a third party helps them out –for example by providing funds for a bankruptcy deposit.
3. This does not mean that people who can pay something should not do so. We believe very firmly that people who can pay (even if only a part of their debt) should do, and the new personal insolvency regime that came in on 1 April 2004 (following enactment of the Enterprise Act 2002) should make that easier by enabling the official receiver to come to a binding, out of court agreement to obtain payments out of a bankrupt's income (an "income payments agreement") for the benefit of his creditors, in addition to being able to obtain a court order in cases where the bankrupt and official receiver have been unable to agree.
4. This year, the numbers of income payments agreements and orders have increased considerably. In the year 2003/2004 there were 2,961 income payments orders obtained by the official receiver. Since April 2004 (the start of the last Insolvency Service "year" and also the commencement of the new insolvency provisions), there has been a large increase in the numbers of debtors making payments to their creditors out of income. In the period April 2004 - January 2005, official receivers have obtained 5760 income payment agreements and income payments orders (see figure 1).

### Number of Income Payments Orders and Agreements April 2004-January 2005

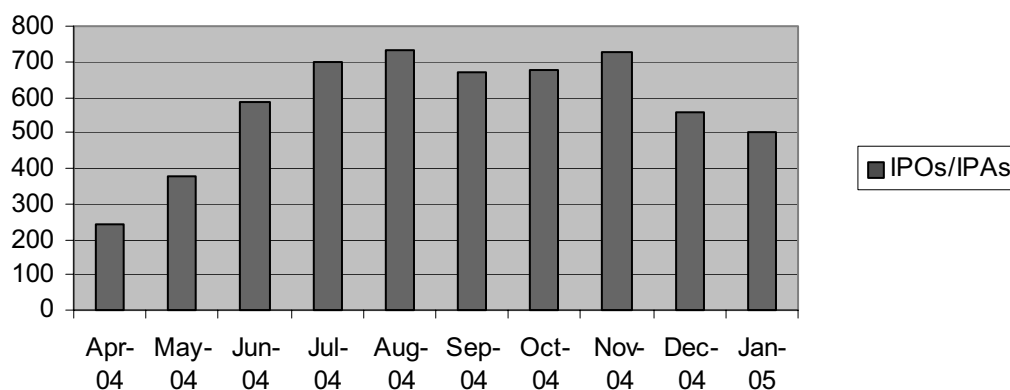


Figure 1

5. However, we acknowledge that there are some people who will realistically never be able to pay even a portion of their debt, and the only appropriate option is to provide a mechanism of relief for all interested parties.
6. Clearly, bankruptcy offers a way of providing debt relief for those people who cannot afford to make payments towards their debts. However, in order to petition for bankruptcy, a debtor must find the deposit of £310 even if he qualifies for remission of or exemption from the court fees.
7. The current fee for administering bankruptcy is £1625 and that fee represents the average cost per bankruptcy. Each bankruptcy estate should ideally cover the costs of the administration (part of the costs coming from the deposit). However, that does not happen in every case and the result is that at the moment, bankruptcies where there are assets subsidise those where there are none. If the petition deposit were waived it would mean that cross subsidisation between cases would increase, because in cases with no assets all the costs of administration would have to be met from other sources. It would not be appropriate to require creditors in other cases to further cover those costs by way of increased cross subsidy, and neither do we believe that it is appropriate that it should be met out of general taxation.
8. Many of the requirements imposed on the official receiver by the legislation after a bankruptcy order are, perhaps, disproportionate in cases where there are no apparent conduct issues and no assets to deal with, and these statutory obligations make the case more complicated to deal with than is absolutely necessary where the main aim is the provision of debt relief.

9. County Court Administration Orders provide a mechanism to give debtors respite from enforcement proceedings whilst paying off at least a portion of their debts out of their income. However, internal research by the Department for Constitutional Affairs suggests that administration orders are not successful in delivering their objectives of rehabilitation for the debtor and repayment for the creditor. They have a low success rate, with only a small percentage of orders being repaid in full (15% of those cases looked at). Research conducted by DCA into the profiles of debtors currently in the administration order scheme shows that, although the scheme was originally devised as a repayment scheme for 'can pays' as a way of avoiding imprisonment for debt, it is now largely occupied by 'can't pays', with 71% of debtors in the sample unemployed and in receipt of State benefit. The main benefit the scheme provides to its users is respite from enforcement.
10. The number of administration orders made each year is low and this is probably due to the fact that the requirement for the indebtedness to be limited to £5000 is insufficient to meet the needs of today's debtor. In addition, there is no facility to investigate misconduct, and administration orders take account only of a debtor's income, and not whether he has any assets.
11. In 1988, the Civil Justice Review recommended that the administration order scheme should be "improved and used more widely". The result was section 13 of the Courts and Legal Services Act 1990. Section 13 removed the financial limit of indebtedness, the requirement for a judgment debt and imposed a strict three-year time limit on orders. However, section 13 has not been implemented due to concerns over its feasibility. There would be very real problems with implementing section 13 as it stands—for example, there would still be no facility to investigate misconduct and the failure to bring the debtor's assets into the equation would remain. Implementation of this amendment could result in people who really ought to have their affairs enquired into escaping any sort of scrutiny. Uptake would probably be very high and there would be significant costs associated with that.
12. In 1998, The then Lord Chancellor announced a comprehensive review of enforcement of civil court judgements, including the consideration of what would be needed for the successful implementation of section 13. Since that announcement, the Enterprise Act 2002 has introduced a new regime for bankruptcy. It has streamlined proceedings for debtors who have failed through no fault of their own, including a much earlier discharge period, and the requirement imposed on the official receiver to investigate such cases has been made discretionary. In addition, The Department for Constitutional Affairs has also concluded that implementation of section 13 in its current form is unworkable and is therefore not a viable option for reform.
13. During July 2004 the Department of Constitutional Affairs issued a consultation documents entitled "A Choice of Paths – better options to

manage over-indebtedness and multiple debt”.<sup>1</sup> That consultation considered a number of options for dealing with the issues of over-indebtedness and multiple debts, and suggested that repayment schemes were inappropriate for the “can’t pay” group of debtors who have little disposable income or assets and cannot make worthwhile repayments. The consultation paper suggested that a way to deal with “can’t pay” debtors would be to offer a non-court based form of debt relief, and introduced the concept of a “No Income, No Assets” (NINA) debt relief scheme.

14. That consultation is now closed and analysis of the responses about the concept of the “NINA” scheme have led us to conclude that it would be worthwhile to consult further on the detail of the proposal, with the aim of testing whether or not it would be possible to introduce a new debt relief scheme for those who currently have no remedy.
15. We have worked further on the detail of such a scheme, which would alleviate debt for the poorest members of society, but which is simple and likely to be relatively cheap to administer. We think that if the scheme operates in the way in which we envisage, then in return for payment of a moderate up front fee by the debtor, it should be possible for it to be self-funding.

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<sup>1</sup> “A Choice of Paths – better options to deal with overindebtedness and multiple debt.” July 2004  
[www.DCA.gov.uk/consultation/debt/debt.htm](http://www.DCA.gov.uk/consultation/debt/debt.htm)

## Who are our proposals aimed at?

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16. Over the last few years, the profile of the type of person entering bankruptcy has changed, and we have found that more and more people who get into debt have financial difficulties that are not related to a failed business. They are what could be described as “consumer” debtors. Often their affairs are not particularly complicated, they have run into financial difficulty as a result of a “life accident” such as loss of employment or relationship breakdown and bankruptcy was their last resort.
17. Last year, nearly 70% of people who became bankrupt could be described as a “consumer bankrupt”, compared to about 40% in 1996. As can be seen from the chart below (figure 2), over this period there has been a sustained increase in the proportion of debtors who are “non traders”.

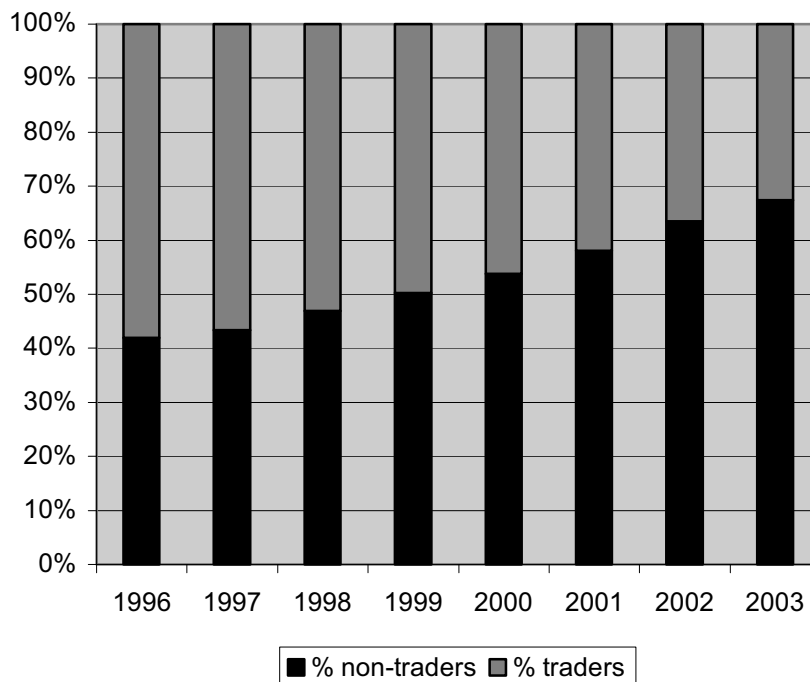


Figure 2 - Proportion of bankrupts who are “non-traders”

18. As can be seen in figure 3, over the same period, the proportion of people who present their own bankruptcy petition, in comparison to those who become bankrupt as a result of a creditor’s petition has also increased.

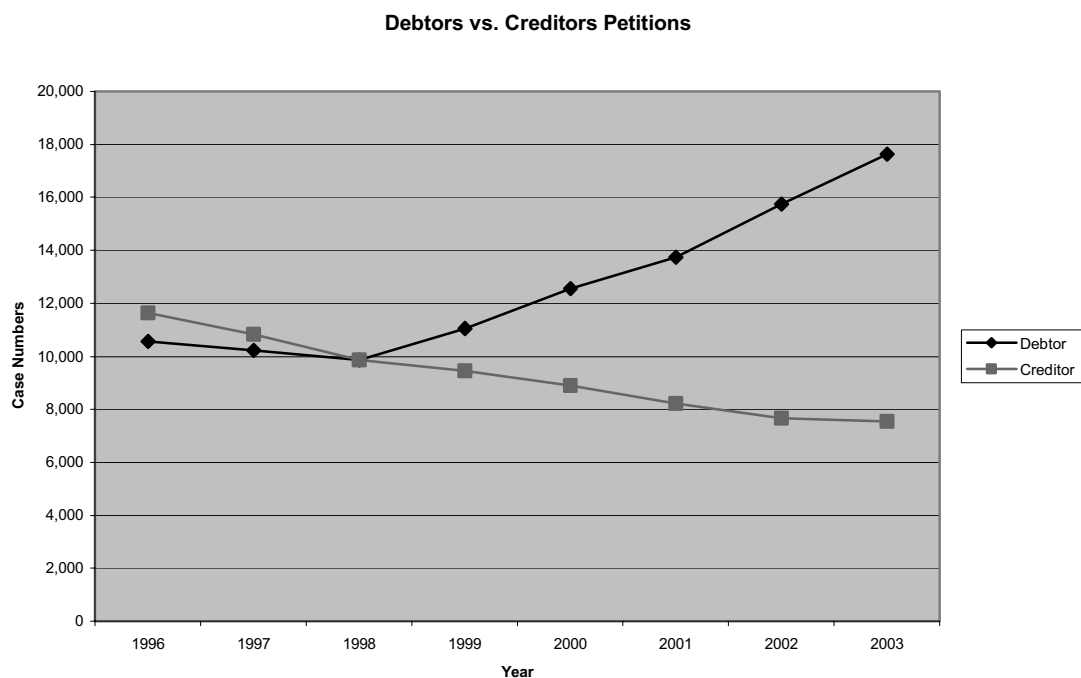


Figure 3

19. Research<sup>2</sup> has shown that “the great majority of people who fall into arrears with their household bills or credit commitments do so because they are in financial difficulty resulting from a change in circumstance or living long term on a low income.” The research also indicates that the majority of people who fall into arrears with credit or household commitments have every intention to pay on time, but simply lack the money to do so. This includes people on low incomes who face unexpected expenditure, people who have a sudden substantial fall in income leaving them unable to meet all their commitments and people with mental health problems, which impair their ability to manage their finances. These are the “archetypal can’t pays” for whom in our view the proposed scheme represents the only realistic option for dealing with their debt.

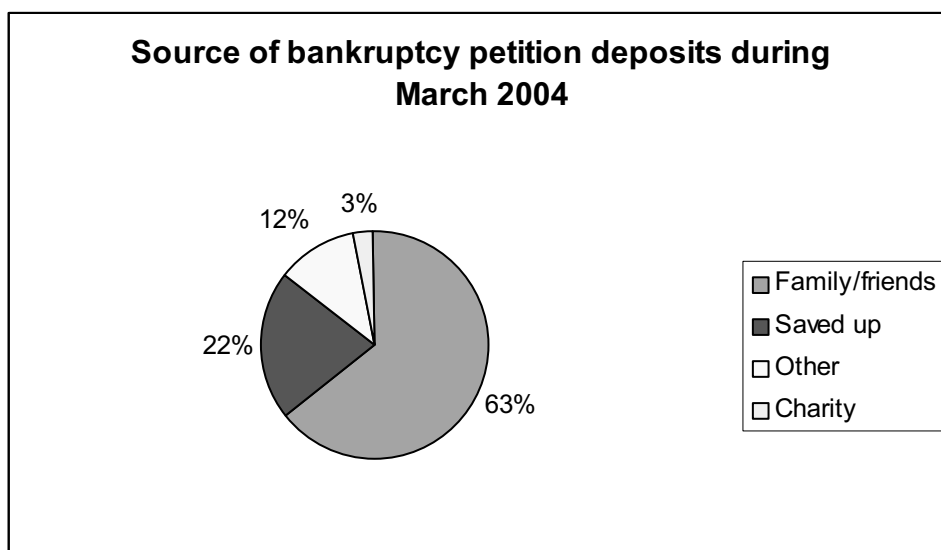
<sup>2</sup> “Can’t Pay or Won’t Pay? A review of creditor and debtor approaches to the non-payment of bills”, by Nicola Dominy and Elaine Kempson.  
For a summary please see: [www.dca.gov.uk/research/2003/4-03es.htm](http://www.dca.gov.uk/research/2003/4-03es.htm)

Reason	Column percentage
Loss of income	42
<i>Redundancy</i>	18
<i>Relationship breakdown</i>	6
<i>Sickness or disability</i>	6
<i>Other loss of income</i>	12
Low Income	15
Over commitment	9
Increased/unexpected expenses	11
Overlooked or withheld payment	12
Third party error	6
Debts left by former partner	2
Other reason	3
<i>Base: all in arrears in past 12 months</i>	208

***The reasons for arrears on household bills and credit commitments***  
***(Source Kempson 2002)***

20. The proposed “NINA” scheme is aimed at people who have no assets, very little income and a relatively low level of liabilities – that is those people who, because of their financial position, cannot access any of the debt solutions that are currently available (i.e. bankruptcy, individual voluntary arrangement, county court administration order or debt management plan). Some of these people manage to apply for a bankruptcy order, and thus obtain debt relief, by obtaining a grant from a charity or by getting the money from friends or family.

21. The Insolvency Service undertook a survey of people who petitioned for their own bankruptcy during March 2004, and according to that survey, 3% of debtors obtained the money for the petition deposit from a charity, and a further 63% obtained the funds from family or friends.



22. The proposals that we have devised would be aimed only at those who cannot pay even a portion of their debt and who have provided evidence to that effect. That is, people who are living on very low incomes, who at the time they incurred their debt had every intention of paying it back but now simply lack the money to do so, and also lack the means to fund their own bankruptcy petition or an arrangement to pay their creditors in instalments.
23. During February 2004, with the assistance of Citizens Advice, we undertook a survey of people who attended for debt advice during that month, to try and gauge how many such people would fall into this category and who would meet potential criteria for entry to our scheme (see page 25 for details of the possible entry criteria).
24. Whilst we acknowledge that absolute low income is not of itself a completely accurate yardstick to measure poverty, it is one of the measures used in the tiered approach adopted by the Department of Work and Pensions following its "Measuring Child Poverty" consultation, the results of which were published in December 2003<sup>3</sup>. The current measure for absolute low income for families with children is set at £210 a week for a couple with one child.
25. Out of the people participating in our survey with Citizens Advice who would be eligible for entry to the NINA scheme, 94.5% of the families with children had what the Department of Work and Pensions describe as an absolute low income.
26. Based on the survey, we estimate that about 31% of the people who go and see a "face to face" debt advisor at a Citizens Advice Bureau because they are in financial difficulty would be eligible for the scheme. On this basis, and taking account of people who are in difficulty but do not go to an advisor such as Citizen's Advice, we anticipate that after two years the number of people who would apply for a "NINA" order would be up to 36,000 a year. This includes people who currently enter bankruptcy but who could be eligible for the scheme were it available. The rate of increase or decrease thereafter would likely depend on the economic factors that also determine increases or decreases in bankruptcy.
27. We think that many of the people who currently use the county court administration order system as a mechanism to find relief from enforcement rather than a means to pay their debts would apply for a debt relief order if they were able to.
28. Many of those who apply for county court administration orders are people with low incomes and little in the way of assets. Research published earlier this year by Elaine Kempson and Sharon Collard "Managing Multiple Debts"<sup>4</sup> that was funded by the Department for Constitutional Affairs and

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<sup>3</sup> Measuring Child Poverty. [www.dwp.gov.uk/consultations/consult/2003/childpov/final.asp](http://www.dwp.gov.uk/consultations/consult/2003/childpov/final.asp)

<sup>4</sup> "Managing Multiple Debts –Experiences of County Court Administration Orders among debtors, creditors and advisors". Elaine Kempson and Sharon Collard. DCA research series 1 /04 July 2004. [www.DCA.gov.uk/research/2004/1-2004.htm](http://www.DCA.gov.uk/research/2004/1-2004.htm)

The Insolvency Service found that 74% of people who apply for an administration order do not own their own home, in contrast to 31% of the population generally and 55% of other people who are in arrears with their payments.

29. 38% of people with county court administration orders are lone parents, compared to 6% of the population generally and about 70% are of working age but are not working, compared with 18% of the general population.

30. The same research has also found that although some creditors suspect that many people apply for a county court administration order to avoid repaying the money they owed, there was no real evidence to support that point of view and most applicants seemed very committed to repaying the money they owed in full. However, they are often not able to do so. The majority of county court administration orders that are not completed fail because of the inability of the debtor to meet the repayment terms.

**Characteristics of people with county court administration orders, compared with those in arrears and all households (see footnote 4)**

	Column percentages		
	All*	In arrears*	Has admin order**
<b>Age</b>			
40 or under	31	56	67
Over 40	69	44	33
<b>Dependent children</b>			
Yes	29	48	70
No	71	51	30
<b>Household circumstances</b>			
Lone parent families	6	18	38
Two parent families	24	32	32
Single, no children	28	23	24
Couple, no children	30	16	6
<b>Housing tenure</b>			
Owner	69	45	17
Tenant	31	55	74
Other	-	-	9
<b>Economic activity status</b>			
Working	52	56	29
Not working	18	34	70
Retired	30	10	1
<b>Bank account</b>			
Yes	90	83	65
No	10	17	35
<b>Base</b>	<b>1,648</b>	<b>210</b>	<b>528</b>

Source: \* DTI Over-indebtedness survey; \*\* Court administrative data

31. We think that the people who would use our proposed debt relief scheme are those who are the very poorest. They are not people who would look for an easy route to avoid paying their debts, they are simply unable to pay, or unlikely to be able to within any sort of realistic timescale.

# The Proposals

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## An Overview

32. The NINA scheme would entail the making (administratively) of a debt relief order that would ultimately result in the debtor being discharged from his debts after a period of one year.
33. We think it would be more efficient and cost effective if the debt relief scheme did not routinely require any judicial or other court intervention. Official receivers attached to the court would operate it, and the order would be made by them.
34. The official receiver would carry out an investigation into the debtor's affairs if a creditor makes a *prima facie* valid objection to the making of the order on specified grounds such as the failure by the debtor to disclose assets, income or debts, but not otherwise.
35. There would be a restriction on the number of times a person could apply for an order. We have considered making entry to the scheme a once only event, but that may be unduly harsh to someone who has experienced debt problems many years before, but who in the intervening period has met his obligations. An alternative therefore might be to restrict entry for an individual to once every six years (which would fit in well with the length of time entries remain on the credit reference agency registers)
36. We envisage that there would need to be an up front entry fee to cover the costs of administering the scheme, but that this would be significantly less than the deposit required for bankruptcy (probably no more than £100) and there would be no court fee. The fee would be payable prior to consideration of the application by the official receiver and would help to deter frivolous applications and go towards covering the costs of the scheme.
37. We are aware that payment of a fee of any sort may prove difficult to those already in debt and with little income to spare, but the scheme will not be viable unless there is a mechanism to cover its costs. It has been suggested that there should be a range of fees to take account of the varying circumstances of individuals who may wish to apply for an order. However, the cost of administering the cases is not related to the personal situation of the debtor - each case will cost the same irrespective of the particular domestic or other difficulties he/she may have. Since we cannot charge a higher fee than cost in some cases in order to subsidise other cases it is not open to us to set a range of fees.

### **Questions for Consultees**

***(1a). Do you think payment of a moderate fee to cover the costs of the debt relief scheme is acceptable?***

***(1b) What do you think would be a reasonable amount?***

***(1c) If you do not think a fee of any sort should be payable, do you have any suggestion as to how the scheme might be funded?***

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

### **How the scheme would operate**

#### **Intermediaries**

38. In order to ensure that the scheme is as efficient as possible and is self-funding, we think there would, firstly, be a need to involve the face-to-face debt advice sector; and secondly, to restrict the facility to apply for a debt relief order to online applications. An approved intermediary such as one of the not for profit debt advice organisations including Citizen's Advice Bureaux could obtain the relevant information about the debtor's affairs, ensure it is completed using the appropriate forms and, where appropriate, send that information electronically to the official receiver so that he could decide whether this was a suitable case for a debt relief order. Any scheme that could be administered in a mainly electronic fashion would be likely to cost significantly less than one where face-to-face contact was routinely required at the order-making and post-order stages.

39. Routing the case through an approved intermediary would enable the official receiver's costs of administering the scheme to be kept to as low a level as possible, and would enable unsuitable applicants to be filtered out before they have expended time and effort in making an application. In some cases, there may be other, more appropriate alternatives for a debtor that an intermediary would be able to advise upon.

40. It would also enable those with literacy and numeracy problems to be given assistance in filling out the forms and providing the necessary information. The "Managing Multiple Debts" research mentioned above (paragraph 28) found that often, when debtors who apply for county court administration orders fill out the forms themselves, without assistance to complete the paperwork, they do so incorrectly.

41. The same research indicates that some debt advisors who assist people to apply for a county court administration order see their ability to help people in this way as positive because it enables them to help more people - once an order has been set up, a case can effectively be closed. In

contrast, other multiple debt cases involve negotiations with a number of creditors and can remain open for a year or more.

42. Although we are conscious that there will be training implications associated with the use of intermediaries, we think that this would be outweighed by the benefits of having an experienced debt advisor assess the circumstances of the individual debtor and that debt advisors are very well placed to establish in the first instance whether a debt relief order is the most appropriate course of action for a particular debtor and his creditors.
43. A further advantage to using an approved intermediary is that there are debt advice agencies at a greater number of locations than official receivers offices or courts and it would enable people who have difficulty in travelling or who live in remote areas to have greater ease of access to the scheme than would otherwise be the case.
44. We are aware that intermediaries would need to be properly resourced to fulfil this task. We do feel that the availability of a scheme such as that which is proposed should, overall, represent a time saving for debt advisers. In cases at present where the debtor has nothing to offer his creditors, debt advisers spend large amounts of time negotiating and attempting to persuade creditors that the debt should be written off. They also devote time to assisting debtors to apply for grants in order to petition for bankruptcy and then assisting with queries arising out of any proceedings that ensue. The proposed scheme would remove the need for much of this work, but we recognise that the availability of a new form of debt relief may, at least in the short term, result in an increased workload for debt advisers while they become accustomed to the procedure and while clients who might not previously have sought advice seek a resolution to their problems.
45. One way to ensure that the intermediaries had sufficient resources to fulfil their role effectively might be to allocate a portion of each fee that is paid to the advice organisation that dealt with the particular case – that is, payment could be linked directly to the cases that are processed.

### **Questions for consultees**

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

***(4) What do you think the role of the intermediary should be?***

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

## **Obtaining an order**

46. The debtor would be required to instigate his own order. He would complete, with the assistance of an approved debt advisor, forms that would show assets, liabilities, income and expenditure and also personal information.
47. The debtor would pay the fee possibly using an over the counter payment system, such as “Paypoint” or at the Post Office and then through the medium of the intermediary, if their particular case was suitable, provide the official receiver with his completed forms.
48. The “NINA” scheme is not a “debtors charter” that grants an easy way out to people who owe money and have made no attempt to meet their obligations. Consequently, the debtor would need to be able to demonstrate to the intermediary (e.g. by copy correspondence, which must be produced) that he has made an attempt to deal with his creditors without success. Alternatively, the intermediary must have made enquiries on the debtor’s behalf with his creditors as to whether or not they were prepared to accept, within a reasonable timescale, what the debtor had to offer, if indeed they are able to offer anything.
49. The Insolvency Service is currently developing a system to enable debtors to complete a bankruptcy petition online. We understand that it is possible to adapt this system to enable it to be used to receive NINA applications. We think it could also be possible for the system to be able to cross-check and verify automatically with other government agencies certain information supplied by the debtor about his affairs.
50. On receipt of the online application, the official receiver would check whether or not the debtor met the criteria for entry to the scheme and if so, make a debt relief order.

## **Possible Entry Criteria**

The debtor should have total liabilities of less than £15,000

51. We think that given there are other remedies available to people who get into debt and that the aim of these proposals is to meet the needs of those with relatively low levels of debt, the total liabilities for people who enter the scheme should be restricted. We also think that although the position of secured creditors would be unaffected, and they would retain their security, both secured and unsecured debt should be taken into account when considering the total amount owed by the debtor.

52. We do realise that this would exclude many homeowners, but it should often be possible for someone who has equity in a house to use that equity to defray the debt or provide security for it.
53. We recognise that the proposal may seem unfair to those people who own a property but are unable to realise its equity because of their financial position, and it may seem unrealistic to suggest that they sell their home. However, the scheme is aimed at people who have no assets, and in addition to considering the rights of the debtor we also need to take account of the interests of creditors who are owed money. It would not be right to grant debt relief to those who do have a way to repay their debts, in part or in full, over a reasonable timescale.
54. To accommodate those individuals who have property but no or very little equity would complicate the scheme and make it expensive to administer. We would need to put in place systems for valuing the property at the time of the application for the order and also to account for future increases in value. The scheme is designed to be as simple and inexpensive to administer as possible, and to complicate it in this way could mean that the entry fee would prove too high and would make the scheme unviable.
55. As in bankruptcy, certain liabilities would be excluded, including liabilities to pay fines, damages for negligence, nuisance or breach of statutory or other duty, debts arising under family proceedings, debts incurred as a result of fraud and student loans, and these would not count towards the overall total of £15,000.

***Questions for consultees:***

***(6a) Do you think there should be a limit to the amount an individual can owe to obtain entry to the scheme?***

***(6b) Do you think that £15,000 is an appropriate cap? If not, why is this and what would an appropriate amount be?***

***(6c) Should secured debt be included as part of the total?***

The debtor should have a surplus income of no more than £50 per month after meeting necessary daily living expenses

56. The debtor would be required to provide evidence of income and expenditure, and this should be detailed on the forms he completes when applying for the order.
57. We take the view that if the debtor has income to spare over and above £50 per month then it might very well be possible for him to enter a debt management plan, and come to an arrangement to pay his creditors in

instalments. This is in line with the current practice of the official receiver to ensure that, when assessing whether or not a bankrupt can make payments to his creditors out of income, he is not left with less than £50 per month surplus income.

58. We think that a considerable level of detail would need to be supplied by the debtor to ensure that the information provided is of an appropriate quality to enable the official receiver to make an informed decision about whether or not to grant the order. The forms that the debtor would be required to complete could, with some additions, be based around a combination of the current debtor's bankruptcy petition and a version of the Common Financial Statement that has been approved by the British Bankers Association and the Money Advice Trust. **A copy of the Common Financial Statement is provided at Annex 1.**

59. The guidance that accompanies the Common Financial Statement is accompanied by "trigger" figures that represent what research shows to be average spending for each category in question, and also represent maximum amounts that could be accepted without question or explanation. They have been based largely on data from the family expenditure survey compiled by the Office for National Statistics.

60. The official receiver, when calculating whether or not a bankrupt is able to make payments to his creditors out of income, does not, unless there are extenuating circumstances, allow certain items of expenditure that could be described as "luxury". These include:

- Gym membership,
- Sports expenses or club membership,
- Satellite television
- Broadband Internet costs (unless it can be shown to be necessary for paid employment)
- Private healthcare insurance
- Additional pension contributions to boost a pension
- Cleaning/gardening/ironing services.

61. In some cases, for example with satellite television, there may be a "locked" agreement in which case until such time as the agreement can be terminated, the payment would need to continue.

62. We think that the same restrictions on what constitutes permitted expenditure should be applied in "NINA" cases.

63. We are aware that there will be an element of subjectivity over what is acceptable in terms of reasonable daily living expenses, and take the view that what is reasonable will depend on the debtor's personal and family circumstances. However, we are confident that the information that the debtor will be required to supply when applying for the order, in conjunction with tightly drawn guidelines, will mean that it should not be possible for a

debtor who has the means to pay a contribution to his creditors to be granted an order.

### **Questions for Consultees**

***(7a) Do you think there should be a cap on the surplus income that is permitted before a debt relief order would be granted? Is £50 a realistic figure?***

***(7b) If £50 is not realistic, what is?***

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

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

### **Question for Consultees**

***(9) Do you think that income in “NINA” cases should be defined in the same way as income in bankruptcy cases? If not why is this and how should income be defined?***

The debtor should have no realisable assets over £300.

65. As with bankruptcy, certain items of property of a modest value (such as tools and equipment essential for use by the debtor in his employment, clothing, bedding, furniture etc) would be excluded.

66. The factors taken into consideration when assigning a value to the assets would include the costs of realising them and their likely value if sold at auction or on the second hand market, and not necessarily what the item cost the debtor to purchase.

67. We think that if assets over and above a nominal amount are available then they should be used to pay some of the debt, or be provided as security for the debt, or used to pay a bankruptcy deposit. For the official receiver to become involved with realising assets and distributing them would duplicate the bankruptcy process and would increase costs substantially. We also think that debt relief is of huge benefit to the debtor and this must be acknowledged by taking the firm line that the debtor cannot expect to be relieved of his debts if he has any means at all to defray at least part of them.

68. In common with bankruptcy, it would be an offence to transfer assets out of the reach of creditors before applying for an order.

### **Questions for consultees**

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

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

### **Making the order.**

69. If the official receiver was satisfied that the debtor was eligible for a debt relief order he would make the order with a schedule of liabilities appended to it. If the debtor did not meet the criteria, the order would not be made but the official receiver would still retain the fee or a portion of it. This would cover his costs in considering the matter, and deter frivolous applications. It would be a clear incentive for the applicant to ensure he has provided all the relevant information and meets the criteria before seeking an order.

70. Creditors scheduled to the order would be bound by the scheme and prohibited from taking any enforcement action. Any creditor not scheduled would not be bound.

71. It would be an offence for the debtor wilfully to fail to disclose assets, liabilities or income, and the official receiver may revoke the order if the debtor does not disclose the true position.

72. The effect of the order would be to grant a stay on any enforcement action in relation to the scheduled debts, which would then be fully discharged after twelve months.

73. Immediately following the making of the order, the official receiver would contact the debtor and all the creditors on the schedule and inform them that a debt relief order had been made. There would be no need for the creditors to lodge a claim or attend a meeting because there is no prospect of a dividend being paid.

74. Details of the order would be placed onto the publicly available electronic individual insolvency register<sup>5</sup> The details would remain on the register for the duration of the order, plus a three-month extra period (in common with other entries on the register.) No doubt, credit reference agencies would then make entries concerning the order in their records.

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<sup>5</sup> Available at [www.insolvency.gov.uk/guidance/leaflets/registerfrontpage.htm](http://www.insolvency.gov.uk/guidance/leaflets/registerfrontpage.htm)

75. We feel that involving the court in the making of the order makes the process onerous, cumbersome and intimidating for the debtor. It also increases greatly the cost of administering the case.

76. We are of the view that these proposals are compatible with the Convention rights set out in Schedule 1 to the Human Rights Act 1998.

***Questions for consultees:***

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

## Safeguards for Creditors

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77. We are aware that from a creditors point of view it might seem that the proposed scheme has little to offer. However, we need to acknowledge that the type of debtor who will use a debt relief order will realistically be extremely unlikely to be able to pay even a portion of his debt within a realistic timescale. The only sensible option is to provide a mechanism of relief for all interested parties and the NINA scheme is one way of doing this.
78. We recognise that the provision of debt relief has to be balanced against the rights of creditors, and further recognise that there are many responsible creditors who will write a debt off when it becomes clear that the debtor is unable to pay it. Nevertheless, there are some who do not act in such a responsible manner, and take steps to enforce their debts even when the legislation does not allow it. The “Managing Multiple Debts” research found that a third of people who were interviewed reported being contacted by one or more of their creditors after an administration order was in force, demanding full or part payment of their arrears. Only half the debtors were able to stop this action by writing to the creditors, seeking the help of the court or re-contacting the debt advisor who had helped them originally.
79. The balancing act that takes into account the rights of creditors must also seek to ensure that the rights of the debtor are protected. We think that the safeguards set out below strike the right balance.
80. As stated above, we think that it will be necessary for the scheme to operate electronically and for the application to be made online. However, safeguards would be built in to enable verification of the information supplied. The debtor would be required to apply only through the medium of a trained intermediary experienced in the provision of debt advice, who will form an assessment of the debtor’s financial position and whether an application is appropriate.
81. The fact that the application is received electronically could enable automatic cross checking with other government agencies and departments, in order that information supplied can be verified. Where there is an anomaly the official receiver would refuse to make the order without further, satisfactory clarification from the debtor.
82. The creditors would have a right to object to the making of the order for a variety of specified grounds –in particular that the debtor had failed to disclose assets, income or liabilities.
83. An objection could be lodged up to 28 days after the date of the notice to creditors, but it would have to be based on fact rather than, for example, a general statement of dissatisfaction with the making of the order.

84. If a creditor objected and had what appeared to be a valid objection relating to one of the specified grounds, then the official receiver would undertake an enquiry. If, after enquiry, the objection was found to be substantiated, then the order would be revoked, creditors informed and the debts (which had been subject to a stay) would stand. There would be an appeal route both for objecting creditors who felt their complaint had not been dealt with properly and for those debtors who felt the order had been unfairly revoked.
85. The official receiver would also have the power to make enquiries if new matters came to light from other sources and for audit purposes.
86. There would be an ultimate right of appeal to the court.
87. It would be an offence for the debtor to wilfully fail to disclose information about his affairs including details of his assets, liabilities, income and expenditure. Consideration will also be given to applying the bankruptcy restrictions order regime introduced by the Enterprise Act 2002.
88. The debtor would not be permitted to obtain credit over a prescribed amount while the order was in force without disclosing his status, and he would not be permitted to trade in another name without disclosing his status or to act as a company director. To do so would constitute an offence.
89. The details of the order would remain on the Individual Insolvency Register for its duration and credit reference agencies would be able to utilise that information in their own records.
90. In order to ensure that creditors are not excluded from any change in the debtor's fortunes, consideration is being given to including a mechanism to account for windfalls or increases in income during the "stay" period (see page 34).
91. As stated earlier, we have considered making entry to the scheme a once only event, but take the view that a person, throughout his lifetime, may encounter misfortune more than once and it seems unduly harsh to prevent entry to someone who may have experienced debt problems many years before, but who in the intervening period has met his obligations. We therefore think that entry should be restricted to once every six years, and this would fit in well with the length of time entries remain on the credit reference agency registers. However, views are sought on this point elsewhere in this paper.

### **Questions for consultees**

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

## **Misconduct**

92. We need to be able to deal with those debtors who are suspected of having committed a fraud or other offences, particularly those that come to light as the result of a complaint from a creditor. However, we need also to keep in mind that to incorporate a system of prosecution or restrictions orders would make the scheme more expensive to run and might require funding from other sources. There needs to be a balance between keeping the scheme simple and the costs low, and respecting the rights of creditors.
93. We think it unlikely that there will be a great number of people who would seek entry to the scheme who have committed offences related to the insolvency. We think that given the relatively low level of liabilities that the debtor will be permitted in order to obtain a debt relief order, it is very unlikely that there will be any greater amount of criminal activity than that in relation to bankruptcy, and in all probability that there will be considerably less.
94. Prior to the Enterprise Act 2002, the official receiver was unable to take or initiate proceedings against a bankrupt where there had been reckless or irresponsible conduct but the evidence of that fell short of the burden of proof that would be required for a prosecution to follow. The personal insolvency regime that came into force on 1<sup>st</sup> April 2004 puts in place a new system of Bankruptcy Restrictions Orders, which offer a civil remedy to protect the public from bankrupts whose conduct has been irresponsible or reckless, but not criminal. A bankruptcy restrictions order generally imposes restrictions as regards the conduct of the bankrupt (for example a prohibition on obtaining credit) that apply for between 2 and 15 years after a bankrupt has been discharged.
95. It is too early to say in how many cases the official receiver will apply for a bankruptcy restrictions order, but we think that it should be possible for anyone who applies for a “NINA” order and who subsequently proves to have acted in such a way that their reckless or irresponsible behaviour has contributed to their insolvency to be subject to a similar restriction regime using the existing systems that are already in place to tackle irresponsible bankrupts.

## **Questions for consultees**

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

## **Increases in income and windfalls**

93. We need to ensure that it is possible to secure payment to creditors should the debtor benefit from a windfall or increase in income during the period that the order is in force,
94. The debtor, in common with bankruptcy, would be under a duty to disclose to the official receiver within 21 days of becoming aware of increases in income or other “windfall” that mean he may be able to make payments to his creditors. Failure to do so would constitute an offence.
95. Under the scheme as proposed, the estate does not “vest” in the official receiver as trustee and there is no facility to appoint a trustee for the purposes of asset realisation. The official receiver therefore cannot claim any property received after the making of the order for the benefit of the creditors, as is the case in bankruptcy.
96. We propose that should the debtor experience a change in his circumstances that enables him to pay some or all of his debts, then after giving notice of this to the official receiver he should be given a reasonable period of time to come to an arrangement (for example an individual voluntary arrangement or a debt management plan) with his creditors. Once a reasonable period has elapsed, the official receiver would annul the order whether or not the debtor had come to an arrangement.
97. There would need to be safeguards to ensure that the official receiver did not annul the order prematurely thus damaging ongoing negotiations between the debtor and his creditors, whilst at the same time ensuring that the debtor proactively seeks a way forward and takes steps to meet his liabilities. The debtor would be required to provide the official receiver with details of the action he is taking to deal with the situation initially and thereafter at intervals specified by the official receiver.
98. Safeguards would also be built in to ensure that should the debtor benefit from a windfall close to the time when the order was due to be discharged, the creditors would not lose out. We propose that if the debtor receives a windfall or an increase in income at a point where he is likely to be discharged before he has had the opportunity to come to an arrangement with his creditors, the debt relief order be extended beyond the date when the debts were due to be discharged to allow the debtor a reasonable period of time to deal with the matter.
99. We also propose that should the debtor receive a windfall or increase in income during the period the order was in force which he fails to disclose to the official receiver prior to discharge, the failure to disclose would not only be an offence but may also lead to a declaration that the discharge of the debts is void. Creditors would be informed and it would be open to them to take enforcement action against the debtor.

### **Questions for Consultees**

***(15a) What action do you think should be taken if the debtor receives a windfall or experiences an increase in income?***

***(15b) Do you agree that if the debtor benefits from a windfall close to the date at which the debts are due to be discharged that the order should be extended to allow the debtor time to deal with the matter. If not why is this and what steps do you think should be taken to protect the position of creditors?***

***(15c) What length of time do you think would constitute a reasonable period to enable the debtor to deal with his creditors?***

***(15d) Do you agree that if the debtor fails to disclose a windfall prior to discharge of the debts that the discharge should be void and creditors free to take enforcement action? If not, what action do you think should be taken?***

## Other Jurisdictions

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100. We are not aware that any schemes of this nature currently operate in other jurisdictions. However, in New Zealand, the Ministry of Economic Development in conjunction with the Official Assignee's office has devised a similar process. A "No Asset" procedure has been developed to address the problem of insolvent individuals who have no formal alternative to bankruptcy because their circumstances are such that they cannot afford to repay their debt as well as maintain an acceptable standard of living. The scheme provides an alternative to bankruptcy for insolvent individuals with nominal debts, no assets and who have no means to repay the debt.<sup>6</sup>
101. A bill has been drafted and the consultation period closed in June 2004. The New Zealand administration hopes to introduce the bill into the Houses of Parliament during 2005, with the aim of enacting it in 2006.
102. The entry criteria for the scheme include a minimum debt liability threshold of \$NZ1000 (there is no entry fee) and maximum threshold of \$NZ40,000 (which is approximately £14,700). The debtor must have no means of repaying his debt, and the procedure is once only. The debtor is discharged from his debts after 12 months.
103. In Australia, Section 55 of the Bankruptcy Act 1966 makes provision for a debtor to apply for bankruptcy without the need for court involvement. The debtor may present his petition and statement of affairs to the official receiver, who may accept and endorse the petition, and in doing so, the debtor becomes bankrupt. It is open to the official receiver to reject the petition under certain circumstances – for example if it appears that the debtor will be able to pay (either immediately or within a reasonable time) all the debts specified in the statement of affairs and he appears unwilling to do so, or if the debtor has previously been bankrupt on his own petition at least three times or once in the preceding 5 years.
104. Although the Scottish "Debt Arrangement Scheme"<sup>7</sup>, launched in November 2004, is aimed more at those who are able to make some type of repayment to their creditors, it has similarities to the proposals outlined this paper – particularly in relation to the fact that entry to the scheme is via an approved intermediary, and there is electronic access. While the scheme is in force, the debtor is protected from enforcement action.

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<sup>6</sup> Draft Insolvency Law Reform Bill., Ministry of Economic Development, New Zealand.  
[www.med.govt.nz/ri/insolvency/review/draft-bill/index.html](http://www.med.govt.nz/ri/insolvency/review/draft-bill/index.html)

<sup>7</sup> Debt Arrangement and Attachment (Scotland) Act 2002 and the Debt Arrangement Scheme (Scotland) Regulations 2004

## **Annex 1 – Common Financial Statement**

# **The Common Financial Statement**

**A Partnership Approach to Dealing with Debt**

**British Bankers' Association and Money Advice Trust 2004**

# 1. Introduction – the background

Helping customers to manage their finances is core business for creditors, and this applies in good as well as bad times. When people experience an unexpected change in their circumstances, their financial plans can be disrupted and it may become difficult for them to pay back money they have borrowed. In such situations, it is important that creditors work with customers and their money advisers to help them through their difficulties.

In 2000, the British Bankers' Association (BBA) and some of its members worked with the Money Advice Trust (MAT) and its Partner Agencies to pilot a 'Common Financial Statement' (CFS) to standardise the way money advisers and their creditors communicate with each other about repayment offers.

Members of the BBA have agreed to accept the MAT/BBA financial statement principles and will accept offers (see explanatory note 7 on the back of the Common Financial Statement) when statements are sent by independent money advisers using these guidelines. Members of the Finance & Leasing Association (FLA) will be piloting the CFS for a year commencing April 2004.

Please be reassured that those who have used the CFS, both advisers and creditors, have found this system to work very well. We are confident that new users will be encouraged by the improvements it brings and will commend it to both advisers and creditors.

**IAN MULLEN**  
CEO, BBA

**ROBERT SKINNER**  
DIRECTOR GENERAL, MAT

**MARTIN HALL**  
DIRECTOR GENERAL, FLA

## 2. How to use the material

### **The issue**

Historically, a variety of formats have been used for drawing up financial statements and this has sometimes made it difficult for creditors to deal with repayment offers in a consistent way. The purpose of the CFS is to make the financial statement easily identifiable (the CFS currently carries the MAT/BBA logos), and to introduce the 'fast track' system of trigger figures (see page 4). The logic of this partnership approach is to speed up the process and reduce correspondence between creditors and advisers, benefiting creditors, advisers and, most importantly, the clients.

If you would like further information on using the CFS, please contact the Money Advice Trust on 020 7489 7796, [www.moneyadvicetrust.org](http://www.moneyadvicetrust.org) or [info@moneyadvicetrust.org](mailto:info@moneyadvicetrust.org)

### **If you are an adviser...**

If you are an adviser, the CFS is available in a format to suit your needs (see page 5 for further details). In addition, most of the information listed at the top of page 3 is available on the following websites:

[www.moneyadvicetrust.org](http://www.moneyadvicetrust.org)

[www.wiseradviser.org](http://www.wiseradviser.org)

[www.bba.org.uk](http://www.bba.org.uk)

[www.flas.org.uk](http://www.flas.org.uk)

- **Guidance notes** (Outline the process)
- **Common Financial Statement** (Form with MAT/BBA logos – to be sent to creditors)
- **Budget forms** (Comprehensive checklist for advisers)
- **Trigger figures** (Figures to facilitate ‘fast track’ acceptance of offers)
- **Frequently asked questions** (Answers to many of the questions that have been raised by users)
- **Contact details** (For positive and negative feedback)
- **Different formats** (Paper version/software/spreadsheet – see flow chart on page 5)
- **An explanation of the FLA pilot and what you can expect from FLA members**

#### **If you are a creditor...**

When you receive a financial statement that has been compiled using the CFS (in any of the formats listed in the flow chart) you can be confident that a proven and consistent method has been used by the adviser in helping the client to make a sustainable repayment proposal. Paper and Excel versions should display the MAT/BBA logos as on the attached sample. The ‘PGdebt 8’ software incorporates the MAT/BBA logos, and CASE versions (Citizens Advice’s software) will also be clearly identified as being based on the MAT/BBA principles.

**If you have any queries, please contact MAT or BBA.**

## **3. The Trigger Figures**

For areas of discretionary expenditure and to speed up the process, ‘trigger figures’ have been devised. It must be stressed that the trigger figures are not target spending levels (budget figures). They represent what research shows to be average spending for the category in question. As such, the figures serve, in cases where the client has higher than average spending levels, as an indication to the adviser that it would be useful to the creditor if additional information was supplied that explained why the client’s higher spending was necessary. The trigger figures have been agreed by money advisers and creditors. They represent the maximum amounts that can be accepted without question or explanation and are based on monthly expenditure.

Where expenditure falls outside of the trigger figures, creditors may ask the adviser for an explanation. In some cases, it may simply be that these ranges do not take into account specific details such as, for example, families with lots of children, retired people, people with disabilities. Where this is the case, it is vital that advisers make clear the circumstances.

It is important that advisers complete the budget forms with the client without reference to the trigger figures, as there is no point trying to fit within these ranges unless this is realistic for the client. Trigger figures can be shared with clients once the budget forms have been completed.

Not all areas of expenditure have set triggers. Mortgage and rent payments have been excluded, for example. This is because areas of expenditure such as these are likely to vary widely. It is also unlikely that clients will have any real control over these expenditure levels.

The CFS working party, made up of money advisers and creditor representatives, has agreed revised trigger figures, which came into effect on 1st January 2004. They have been based largely on data from the Family Expenditure Survey compiled by

the Office for National Statistics (ONS). There are four sets of figures for different household types. Advisers will tell clients where comment is necessary.

The CFS working party has made the following assumptions/recommendations:

- the layout of the CFS should not be amended in any way
- the group considered whether the trigger figures should be amended to state the actual number of children in the category 'couple with children'. The ONS figures do not allow for such amendment
- and the group considered it inappropriate to add an arbitrary figure for additional children
- the guidance notes to the CFS confirm that the 'with children' category refers to average family size, and that any spending over the trigger figures by a large family should be explained by the adviser in the space provided on the back of the CFS form
- the trigger figure for fares and motoring has been based on AA figures that suggest that 16.8% of the median income for each type of family is the most appropriate means of determining average travel expenditure

### **Non-discretionary expenditure**

There are a number of other categories of expenditure on the CFS that do not have trigger figures. This is because it is considered that clients would not have discretion or control over these categories, so the actual level of expenditure would have to be accepted.

These items are:

Rent	Mortgage	Other secured loans
Council tax	Other housing costs	Court fines
Maintenance/child support	Pension payments/AVCs	Life assurance
HP/Conditional sale	TV licence	

**Are you a money adviser who uses the  
Common Financial Statement?**

To find out more about the benefits  
to you and your clients contact:

**Money Advice Trust**

Bridge House  
181 Queen Victoria Street  
London EC4V 4DZ

**Tel: 020 7489 7796**

**Fax: 020 7489 7704**

**www.moneyadvicetrust.org**

**email: info@moneyadvicetrust.org**

No

Yes

What format do you use?

Software

Paper version

Excel spreadsheet

Do you use PGdebt, Information System or CASE?

Do you have internet access?

PGdebt 7

PGdebt 5 or 6

IS/CASE

Yes

No

See Information System  
13.15.14.11 (B)  
CASE currently being rolled out  
and will incorporate the CFS

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**email: info@pgcomputing.co.uk**

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**email: info@pgcomputing.co.uk**

Visit:  
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**www.bba.org.uk**  
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to download CFS Excel  
spreadsheet and budget forms

Contact  
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Advice  
Trust** to  
obtain  
a copy

**Money Advice Trust (MAT)**

MAT is a registered charity (number 1099506) founded in 1991 to increase the quality and availability of free, independent money advice in the UK. It works in partnership with government, the private sector and the UK's leading **money advice agencies** to:

- increase the availability of money advice
- improve its quality
- improve the efficiency and effectiveness of its delivery

For further information on MAT and our work, visit our website at [www.moneyadvicetrust.org](http://www.moneyadvicetrust.org)

**British Bankers' Association (BBA)**

The British Bankers' Association is the principal representative body for the banking and financial services sector in the UK. The diversity of its membership – encompassing over 295 banks from 60 countries – reflects the varied nature of the UK banking market. We work with our members to create a competitive environment in which financial services can prosper and are valued. For further information on the BBA and our work, visit our website at [www.bba.org.uk](http://www.bba.org.uk)

**Finance & Leasing Association (FLA)**

The FLA is the major UK industry body for the asset finance, consumer finance and motor finance sectors.

Our full members provide asset finance to business, consumer credit, point of sale, credit card and installment finance. Our associate members provide services or goods to those industries and support the Association's vision. FLA's mission is to advance the interests of its members and their customers by promoting an open, competitive and fairly regulated marketplace.

Members of the FLA's consumer finance division have agreed to pilot CFS for a year commencing April 2004. The objective of the pilot is to establish the CFS within member firms, to assess whether there are any issues that need to be resolved before the Statement is adopted fully, and to compare use of the Statement against existing procedures for accepting offers from their customers.

The FLA would like to be clear that the pilot procedure might not at this stage generate the kinds of benefits that might be associated with full adoption of the CFS procedure. The FLA does wish to approach this process openly, which is why their involvement has been recorded in this brochure. For further information on the FLA and our work, visit our website at [www.flas.org.uk](http://www.flas.org.uk)



### **Explanatory notes to Common Financial Statement (CFS)**

1. Trigger figures of expenditure are available for shaded items.
2. If you need to add any comments, please asterisk the relevant section and write comments in the space provided below. If necessary continue onto a separate sheet of paper and attach sheet to the CFS before sending to the creditor.
3. BF numbers relate to the Budget Forms which can be found at [www.moneyadvicetrust.org](http://www.moneyadvicetrust.org), [www.wiseradviser.org](http://www.wiseradviser.org), [www.flc.org.uk](http://www.flc.org.uk) and [www.bba.org.uk](http://www.bba.org.uk)
4. BF85 (Total travel) relates to all expenditure relating to travel – fares and motoring.
5. BF95 (Total housekeeping) includes clothing and footwear.
6. BF124 (Total other expenditure) relates to items such as membership/professional subscriptions, postage, hairdressing/haircuts, TV/video/satellite/cable, other appliance rental, pub/outings, lottery, hobbies (e.g. gardening), religious and charitable giving, gifts (e.g. Christmas, birthdays, etc).
7. Banks will accept offers which are made via the CFS where the expenditure limits fall within the expenditure (trigger) figures set out in the CFS (provided there is no legal or regulatory impediment to doing so) unless the bank is aware of a history of fraud or other information which would raise concerns about the validity of the information in the CFS. In the latter case banks may request further information to establish the true financial position of their client.

**If you have additional information relating to your client's expenditure, please give details here.**


## **ANNEX 2**

### **The Consultation Code of Practice Criteria**

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address <http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>.

## ANNEX 3 –LIST OF ORGANISATIONS CONSULTED

Abbey National plc	Community Development Finance Association
Aberdare County Court	Confederation of British Business
Access Europe	Consumer Credit Association
Advice Services Alliance	Consumer Credit Trade Association
Advice UK	Council of Mortgage Lenders
AGILISYS	Counsumer Credit Counselling Service
Alliance and Leicester PLC	Credit Services Association
Anthony Sharp Associates	Credit Today
Apex DCM Limited	Dane Housing (Congleton) Ltd
Association of Business Recovery Professionals	Davies Arnold Cooper
Association of District Judges	Ddavolie and Reedsmith
Baines & Ernst Ltd	Debt Buyers and Sellers Group
Bank of Scotland	Debt Free Direct
Bankruptcy Advisory Service	Debt Managers Standards Association
Bankruptcy Association of Great Britain and Northern Ireland	Debt Solutions
Barclays Bank PLC	DG (solicitors)
BCHA	Dickinson Dees (solicitors)
BDO Stoy Hayward	Direct Auto Financial Services Ltd
Birmingham City Council	Direct Debt line
Birmingham Civil Justice Centre	Drydens (solicitors)
Bournemouth and West Hampshire Water	Dyfed Powys Central Finance Office
Brachers (solicitors)	E Delivery Group (DCA)
Bradford & Bingley	E.ON UK
Bradford Council	East Yorkshire CAB
Bristol Debt Advice Centre	Edf Energy
British Bankers Association	Edwards Geldard (solicitors)
British Cheque Cashers Association	Enforcement Law Reform Group
British Gas	Enforcement Services Association
Burges Salmon (Solicitors)	Environment Trust
BWH Water	Equidebt Limited
Cambridge Magistrates Court	Equity Housing Group Ltd
Cambridge, County Court Manager	ERT (solicitors)
Cambridgeshire Magistrates Court	ESD
Cardiff Civil Justice Centre	Eversheds LLP
Cardiff County Court	Experian
Carshalton & Wallington CAB	Federation of Small Business
Cattles PLC	Finance and Leasing Association
Charis Limited	Foot Anstey Sargent
Cheshire Building Society Group	Forum of Private Business
Cheshire City Council	GE Consumer Finance
Chiltern Debt Management	Gemstone Financial Management Limited
Chiltern UK	Geoffrey Parker Bourne
Christians Against Poverty	Geoffrey Parker Bourne
Church Action on Poverty	GHW Corporate
Citi Capital	Gloucestershire Money Advice Service
Citizens Advice	Grant Thornton UK LLP
Citizens Advice Bureaux	Gregory Pennington Limited
City of Bradford	HARP
City of Bristol	Harrison Clark (Solicitors)
City of Salford (Debt Advisor)	Haygarth
Civil Courts Users Association,	HBOS
Civil Justice Council	HBS Service
Clark Willmott	Hegarty & Co (solicitors)
Clifford Chance (solicitors)	Hertfordshire County Council
Commercial Collection Services	High Court Enforcement Officers Assoc

## Annex 3

Housing Manager, Mosscafe	Northumbrian Water
HSBC Bank	Office Depot International (UK) Ltd
Incasso, Cobbetts (solicitors)	Ofgem
Insolvency Court Users Association	OFWAT
Insolvency Creditors Association	Oldham Council
Insolvency Practices Council	On:line Finance Limited
Institute of Credit Management	P&A Receivables services PLC
Institute of Directors	Paypoint
Judge & Priestley (solicitors)	Preston City Council
Keoghs - debt recovery manager	Pricewaterhousecoopers
Kingston University	Provident Financial Services
Knowsley Housing Trust	Provident Personal Credit Ltd
KPMG LLP	Putsman.wlc (solicitors)
Law Reform Committee of General	R F Financial Services
Council of the Bar	Reedsmith LLP
Law Society	Registry Trust Ltd
LB of Newham	Robinson Way & Co Ltd
Legal and Trade Collections Ltd	Roxburghe PLC
Legal Services, City of York	Royal Bank of Scotland
Lloyds TSB Bank plc	Royds Community Association
Local Authority Civil Enforcement	Salford City Council
Logic Group Plc	Severn Trent Water PLC
London Advice Services Alliance	Sheffield Homes Lts
London Scottish Bank	Shergroup Solicitors
Loop Customer Management	Shoosmiths (solicitors)
Lupton Fawcett (solicitors)	Shop Direct Financial Services
Mail Order Traders Association	South Staffordshire Water
Manchester Advice	Southern Focus Trust
Manchester City Council	Stoke on Trent City Council
Maplesolutions	Student Loans Company
Marks and Spencer Financial Services	Surrey CC Trading Standards
PLC	Sydney Mitchell (solicitors)
Martineau Johnson (solicitors)	Tameside Council
Matson Neighbourhood Project	Thames Credit Limited
Max Recovery	Thames Water Utilities Ltd
MBNA	The Advice Centre
Members of the Advisory Group on Over-	The Law Society
indebtedness	The Lewis Group
Menai	Trading Standards Institute (Leicester)
Merton Money Advice Service	United Utilities PLC
Money Advice & Community Support	University of Wales –School of Business
Money Advice Association	and Regional Development
Money Advice Trust	Institute of Credit Management
Moorcroft Group	Walker Morris (solicitors)
Morgan Allen Moore	Ward Hadaway (solicitors)
Morgan Automation Ltd	Warrington Combined Court
Morgan Stanley Law Division	Water UK
Mosscafe	Welsh Consumer Council
National Australia Bank Europe Ltd	Wessex Water
National Consumer Council	White Horse Mortgage Services Limited
National Debtline	Wilkes Partnership
netCUDA (Credit Union Development	Wragge and Co.
Agency	Yorkshire Housing
New Court Chambers	Yorkshire Water
Newcastle CCC	Zacchaeus 2000 Trust
Newcastle City Council	
Newsome Vaughan (solicitors)	
Northampton Bulk Centre	Various Government Departments
Northern Counties Housing Assoc	And other interested parties
Northern Region Money Advice Unit	

## **Partial Regulatory Impact Assessment**

**NB: This section has a separate response form**

## **ANNEX 4 – Partial Regulatory Impact Assessment**

### **1. Title of proposal**

Relief for the indebted – an alternative to bankruptcy?

### **2. Purpose and intended effect of measure**

#### **(i) The objective**

The proposal is designed to provide debt relief for the financially excluded who have no income and no assets and are therefore unable to avail themselves of any of the current remedies available to people with serious debt problems.

#### **Devolution:**

Any legislation in this area would apply only to England and Wales. Scotland has its own personal insolvency regime, as does Northern Ireland.

#### **(ii) The background**

At present, if people fall into debt, there are a number of remedies available to them.

They can try to formulate a debt management plan, whereby they come to an agreement to pay their creditors a specified amount at regular intervals – usually every month. This requires the person concerned to have an amount of money over and above what he needs to live on to set aside to pay off his debts. Similarly if the debtor applies for an individual voluntary arrangement under the provisions of the Insolvency Act 1986, or a county court administration order, he or she needs to have funds with which to pay monthly instalments, or in the case of an individual voluntary arrangement, assets that can be sold to raise money to repay the debts either in part or in full.

There is also the option of bankruptcy. However, this is an arguably disproportionate response for someone who has a relatively low level of debt, no assets, no income, and no apparent conduct issues that need to be investigated by the official receiver. Additionally, the debtor has to find the petition deposit (currently £310) and in many cases court fees too.

There is a category of person for whom none of these remedies is appropriate – he or she has no spare money to make monthly payments, no assets that can be sold to defray even some of the debt and they cannot afford the petition deposit.

We think there is a need to plug this gap, and provide a form of relief for people who have fallen into debt, who do not owe a great deal but who have no reasonable prospect of ever being able to pay off even part of the debt.

The government is committed to contributing to social justice and prosperity for all by tackling over-indebtedness and financial exclusion. Part of this commitment includes access to help for those in financial difficulty, and improving the support and processes for those who have fallen into debt.

In 2004 a partnership between the voluntary sector, the credit industry, the Government and consumers drew up a strategy for dealing with over-indebtedness and this was published in July 2004.<sup>8</sup> The Action plan arising out of that strategy included a commitment that, depending on the results of a consultation by the Department for Constitutional Affairs entitled "A Choice of Paths – proposals for providing better assistance to the over-indebted and those in multiple debt"<sup>9</sup>, the Insolvency Service would consult on the detail of a proposed non court based system of providing debt relief for the socially excluded.

The "Choice of Paths" consultation closed on 20<sup>th</sup> October 2004, and responses to it have led us to believe that we should consult on the detail of a proposed debt relief scheme.

We envisage a scheme that would allow people who meet strict entry requirements (currently suggested to be debts of less than £15,000, realisable assets of less than £300 and no surplus income over about £50 a month after meeting necessary domestic expenses) to obtain debt relief. It would entail the making (administratively) of a debt relief order that would ultimately result in the debtor being discharged from his debts after a period of one year.

Please see Annex A for an outline of how the proposals would work.

#### **(iv) Risk assessment**

As evidenced in the White Paper published in December 2003 "Fair Clear and Competitive; the Consumer Credit Market in the 21<sup>st</sup> Century"<sup>10</sup>, the consequences of over-indebtedness are often worst for people in the lowest income groups. Such people are more likely to have priority debts (rent, utility bills, council tax and mortgage arrears). In serious cases that can lead to eviction, imprisonment, disconnection or repossession. Being in debt can lead to increased stress and associated medical conditions. There is also a clear link between stress and absenteeism from work. This leads to additional costs on government, businesses and on the economy generally through lower productivity and growth.

Because of the nature of the problem, it is very difficult to quantify the number of people who are unable to access any of the debt relief solutions that are currently available. However, many people who get into financial difficulty do try and seek help from a debt advisor, and Citizens Advice is one major organisation that gives such advice.

During February 2004 we conducted a survey of people who attended a sample of 63 Citizens Advice Bureaux for help with their debt problem and have used that survey to try and estimate how many people nationally would met the criteria for entry to our proposed scheme.

We have extrapolated from the survey results and other sources of information<sup>11</sup> an estimated take-up rate for the scheme. The conclusions take account not only

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<sup>8</sup> Available at [www.dti.gov.uk/ccp/topics1/pdf1/overdebt0704.pdf](http://www.dti.gov.uk/ccp/topics1/pdf1/overdebt0704.pdf)

<sup>9</sup> Available at [www.dca.gov.uk/consult/debt/debt.htm](http://www.dca.gov.uk/consult/debt/debt.htm)

<sup>10</sup> Available at [www.dti.gov.uk/ccp/topics1/consumer\\_finance.htm#review](http://www.dti.gov.uk/ccp/topics1/consumer_finance.htm#review)

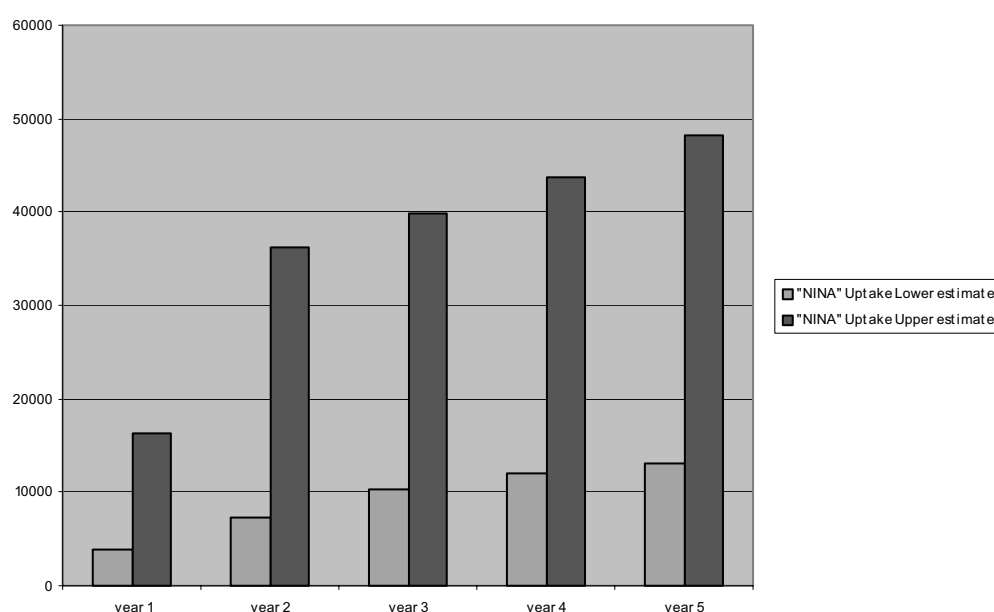
<sup>11</sup> (i) The Distribution of Unsecured Debt in the United Kingdom; survey evidence, by Merxe Tudela and Garry Young of the Bank of England's Domestic Finance Division available at: [www.bankofengland.co.uk/qb/qb030402.pdf](http://www.bankofengland.co.uk/qb/qb030402.pdf)

of people who seek advice about their difficulties but also those who have problem debt but do not seek help – for example because they think that nothing can be done - and also people who currently present a bankruptcy petition but would possibly apply for a debt relief order if it was available.

Although we have made use of a variety of sources of information and looked at published research in trying to establish how many people might want to use the scheme, clearly we can do no more than estimate the number of people who get into financial difficulty but do not seek help, and also those who do seek help but would not wish to apply for a debt relief order. The number of people who might want to use the scheme is shown in the chart below, expressed as a range where the upper and lower estimates are necessarily far apart. In order to ensure that we do not under estimate how much the scheme is likely to cost, we have used the upper estimates.

We think that if a scheme such as the one we are proposing were to be put in place, the number of people wishing to obtain a debt relief order would plateau at between 34,000 and 36,000 a year after two years, but would then increase (or decrease) in line with the number of bankruptcies, which is largely driven by economic factors such as outstanding unsecured credit.

Chart to show estimated uptake for "NINA" scheme



### **Question for Consultees:**

***(1) Do you have any further information that would help us to estimate the likely numbers of people who might want to use the proposed scheme?***

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(ii) "In Too Deep" CAB Clients' experience of debt", by Sue Edwards, Citizens Advice.  
[www.citizensadvice.org.uk/in-too-deep.pdf](http://www.citizensadvice.org.uk/in-too-deep.pdf)

There may be some risk associated with proceeding with implementation of the scheme. For example, it is possible that the provision of accessible debt relief might mean that the people at whom the scheme is aimed, or who might qualify for entry to the scheme would find it more difficult to obtain credit. There are initiatives across government to tackle the issues arising out of debt and the causes of it, and the "Tackling over-indebtedness" Action Plan 2004 emphasises that the government wants to ensure that the most vulnerable customers have access to affordable forms of credit. The government is working with the Credit Union movement and others to ensure that the framework in which they operate has the flexibility to allow credit unions and others to focus on tackling issues of financial exclusion including affordable credit and support for the most vulnerable.

***Question for Consultees:***

***(2) Do you think that the existence of the proposed scheme would reduce lenders willingness to lend to people who may qualify for entry to the scheme? How might this risk be mitigated?***

***(3) What additional risks do you think might be associated with proceeding with this proposal?***

**3. Options**

Option 1: Do nothing.

This would maintain the status quo but would leave vulnerable people without any protection from their creditors.

Option 2: Remove the requirement for those people without assets or surplus income to pay a deposit when presenting their own petition for bankruptcy.

Each bankruptcy costs in the region of £1625 to administer, and part of that cost is met from payment of the deposit of £310. If the petition deposit were waived then it would mean that all the costs of case administration in such bankruptcies would have to be met from other sources. It would not be fair on creditors in other cases to require them to further cover those costs by way of cross subsidy, and neither do we believe that it is appropriate that it should be met out of general taxation.

Option 3: Try to persuade creditors to use a voluntary code of practice whereby in cases where there is clearly no prospect that the debt will be repaid within a reasonable timescale because the debtor is just too poor, that the debt is written off.

We have consulted with the OFT and they are firmly of the view that a code of practice is not a substitute for legislation. It is an entirely voluntary process and even in an ideal situation, not everyone would be signed up to it. It is simply a tool for consumers to identify better traders.

Even if it were possible to get the organisations most likely to be creditors to sign up to a voluntary code as regards responsible collection practices, the type of people at whom the scheme is aimed – many of whom would be desperate to borrow money from whoever is willing to lend it, and a proportion of whom have literacy and numeracy problems, would not be likely to make their borrowing decisions based on which entities had signed up to it.

Even if there were an accompanying information campaign aimed at assisting people to make informed choices about whom they borrow from, there are also general problems with using a code to obtain the type of help for debtors that we want to achieve. It is possible that not enough lenders would sign up to the code, rendering it ineffective, and that there would be insufficient levels of code compliance to make it a worthwhile exercise. Whilst we recognise that there are many responsible creditors who will write a debt off when it becomes clear that the debtor is unable to pay it, there are some who would not act in such a responsible manner, and take steps to enforce their debts even when the legislation does not allow it. Research by Elaine Kempson and Sharon Collard that was funded by the department for Constitutional Affairs and the Insolvency Service "Managing Multiple Debts"<sup>12</sup> found that a third of people who were interviewed reported being contacted by one or more of their creditors after a county court administration order was in force, demanding full or part payment of their arrears. Only half the debtors were able to stop this unwanted (and illegal) action by writing to the creditors, seeking the help of the court or re-contacting the debt advisor who had helped them originally.

We do not think that in the case of a scheme such as that proposed, where the objective is to provide debt relief for the socially and financially excluded, the use of a code of practice would be a suitable way to proceed.

#### Option 4: Introduce legislation to enable people who are financially excluded to access a system of debt relief

We think that if the object is to provide debt relief, it can be only achieved on an equitable basis if there is legislation in place to determine the manner in which the debt relief is granted and policed.

### **4. Benefits**

#### Option 1: (No change)

There is no discernable benefit for the indebted or for society as a whole in doing nothing, aside from the fact that there would be no additional costs to government in initiating the new scheme.

There may be a marginal benefit for some creditors who find in a few cases that they are able to recover their debt after some years should the debtor experience a change in circumstances that meant (s)he was able to meet his liabilities.

#### Option 2: (removal of the need for a petition deposit)

There would be a benefit to the indebted individual in that he would be able to obtain debt relief at no cost to himself, and there would be benefits to debt advisors in that they would not need to familiarise themselves with a new regime. There would also be an indirect benefit to charitable organisations that would not have to make funds available in hardship cases to fund the petition. Any benefit to creditors in not having to familiarise themselves with the new procedures would in our view be more than offset by the financial implications associated

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<sup>12</sup> Managing Multiple Debts –Experiences of County Court Administration Orders among debtors, creditors and advisors, Elaine Kempson and Sharon Collard, DCA Research series 1 /04. July 2004. [www.Dca.gov.uk/research/2004/1\\_2004.htm](http://www.Dca.gov.uk/research/2004/1_2004.htm)

with the increased costs of case administration leading to reduced returns to creditors overall.

#### Option 3: (introduce a code of practice)

It is likely that reputable lenders would be prepared to discuss voluntary codes of practice, and this option would not require legislative change. However, since it is unlikely that all lenders would sign up to it, the relief from enforcement offered would be at best sketchy, and therefore would not achieve the aim of the provision of relief from enforcement action for those who most need it.

Many debtors would owe amounts in addition to those owed to the credit industry, for example utility bills, council tax and rent as well as to other creditors outside these main categories.

We do not think a voluntary code of practice is a viable option.

#### Option 4: (legislation for a new scheme).

Clearly not everyone who is over indebted would benefit from a debt relief order, nor would everyone qualify. However, the type of consumer at whom such orders are aimed amongst the most financially and socially excluded members of society.

We think that although amounts are difficult to quantify, the benefits of providing debt relief to those people would include the following:

##### *Benefits to the individual*

The Consumer Credit white paper "Fair, Clear and Competitive" sets out very clearly the effects on the individual of too much debt, and we think our proposals would benefit the indebted individual in terms of reduced stress and the effect on health that accompanies it. It would also offer a basis for the individual to make a fresh start and learn to manage their finances on a more even basis.

##### *Benefits to business*

There may be a reduction in costs associated with chasing unpaid debt that is never going to be paid. There would be a register of people who have previously been and are currently subject to a debt relief order allowing lenders to make an informed choice about whether to grant further credit.

##### *Benefits to charities and debt advisors.*

A recent Insolvency Service survey of people who applied for a bankruptcy order during March 2004 indicated that roughly 2.6% of people who present their own bankruptcy petition obtain the deposit from a charity. A simple extrapolation would indicate that based on last year's figures of 17,624 debtors own petitions, charities made grants in the region of £114,556 ( $.026 \times 17,624 \times £250$ )<sup>13</sup> to help people petition to make themselves bankrupt. Although our proposed scheme will need to have an entry fee, it will be far smaller than the £310 deposit that is now required for bankruptcy. Even if the fee was £100 and every person who applied for an order received a full charitable grant (which we do not think is likely) and

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<sup>13</sup> Although the current deposit is £310, in the year to April 2004, it was £250.

there was an anticipated uptake of the scheme of 36,000 a year then the charitable grants would total no more than £93,600 annually.

In addition to these savings there are savings on the time spent with debtors and benefits to the advisor in that they would be able to offer a solution to the debtor that is not currently available.

The previously mentioned research "Managing Multiple Debts" found that some debt advisors who assist people to apply for a county court administration order see their ability to help people in this way as positive because it enables them to help more people - once an order has been set up, a case can effectively be closed. In contrast, other multiple debt cases involve negotiations with a number of creditors and can remain open for a year or more.

#### *Benefits to Government and the taxpayer:*

The current county court administration order regime does not recover the full costs of its administration and is subsidised by other court users and the taxpayer. The proposed scheme would eliminate the need for people seeking relief from enforcement to use an administration order as a means of resolving their problems when they do not actually have the ability to meet the repayment terms set. It would also free up court time in those cases where enforcement action is being taken by creditors but where there is no hope of repayment.

We estimate that 11% of people who currently present their own bankruptcy petition would be eligible for a "NINA" debt relief order. That means that assuming everyone who was eligible chose to apply for a debt relief order rather than a bankruptcy order, there would be in the region of 11% fewer debtors petitions which would also free up bankruptcy court time and also time spent by the official receiver administering the cases once the order has been made. Clearly the official receiver would need to deal with the "NINA" cases instead, but we anticipate that the time spent administering these would be very considerably less.

#### *Benefits to society:*

Debt is linked to both poverty and social exclusion, and insurmountable debt can only compound that. Around 1 in 8 Citizens Advice Bureaux debt clients have started treatment for stress, depression or anxiety since their debt problem started<sup>14</sup>

The consequences of debt related stress and mental health problems and eviction can contribute to crime and reoffending. Debt can also lead to tensions in family relationships, leading to breakdown of the family unit.

Although our proposed scheme is aimed at a small proportion of the over indebted, we envisage that it should go some way at least to alleviating debt related stress and its associated problems.

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<sup>14</sup> Action on Debt – An Introduction p 4, Social Exclusion Unit, Office of the Deputy Prime Minister, Social Exclusion Unit.

### **Question for consultees:**

***(4) Do you think there would be benefits associated with this proposal in addition to those outlined above? Are you able to assist us in quantifying the benefits we have identified?***

### **Business sectors affected**

We think that it is unlikely that there will be an adverse effect on the credit and lending sector as a whole. What we are proposing does offer relief from enforcement but it does not alter the fact that the relief would be offered to people who are in debt and who have no reasonable prospect of paying that debt, whether there is a mechanism to provide formal relief from enforcement or not.

According to figures from the Bank of England, in 2003 UK resident banks wrote off credit card lending to individuals of £1570 million<sup>15</sup>, some of which is owed by people who would potentially use the proposed scheme.

According to research conducted by Citizen's Advice<sup>16</sup> about 70% of the amounts owed by their clients constitute credit card/consumer type debt. If every applicant for a NINA order owed the full permitted amount of, say, £15,000 and there was an uptake of the scheme of 36,000 cases a year, then this would amount to an annual debt write off of £378 million (70% X £15,000 X 36,000).

The banking and credit card sector is estimated to spend £3.4 billion every year chasing, recovering and writing off debts<sup>17</sup>. There could in fact be savings to the credit industry in terms of decreased recovery costs.

A continuing feature of household debt is the amount owed to utilities, this is problematic for water companies especially, as they do not have the option to discontinue domestic supplies to non-payers. Data obtained from Ofwat suggests that in the year 2003/2004, water companies wrote off revenue of £93 million and that the water companies spent operating expenditure of £58 million on outstanding revenue collection.

Generally water companies will only write off outstanding revenue when all attempts to recover the debt have been exhausted –for example where a customer has absconded and agents cannot successfully locate them or where it is uneconomic to pursue the debt<sup>18</sup>

The survey we conducted with Citizen's Advice during February 2004 included questions on amounts owed to utilities. Out of the people participating in the survey and who were eligible for the NINA scheme, only 2 people (1% of the total) were recorded as owing money in respect of unpaid gas charges, in the total sum of £392, 1 person owed money in respect of unpaid electricity (£296) and that same person together with one other owed monies in respect of water or other utility charges (total £1045). So overall, 4 people who participated in the

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<sup>15</sup> [www.bankofengland.co.uk/Links/setframe.html](http://www.bankofengland.co.uk/Links/setframe.html)

<sup>16</sup> "In Too Deep" CAB Clients' Experience of Debt, by Sue Edwards, May 2003

<sup>17</sup> Action on Debt- Social Exclusion Unit Office of the Deputy Prime Minister – Business and Debt. Taken from Evaluation of Money Advice Debtline pilot (Deloitte and Touche 2003) p44

<sup>18</sup> Letter to Directors of all water and sewage companies and water only companies – Industry Information on the level of Household Revenue Outstanding.  
[www.ofwat.gov.uk/aptrix/ofwat/publish.nsf/Content/rd1804](http://www.ofwat.gov.uk/aptrix/ofwat/publish.nsf/Content/rd1804)

survey and who would be eligible for our proposed debt relief scheme, owed monies to utilities. This is just over 2% of the total eligible people.

On a straightforward extrapolation basis, and using £500 as guide for the amounts owed, this would indicate that in the region of £378,000 ( $.021 \times 36,000 \times £500$ ) would need to be written off annually in respect of amounts due to utility companies. Set against an annual write off by water companies of £93 million, we think this is a negligible impact.

If 36,000 people obtained an order, and every single person who did so owed £500 in respect of unpaid water charges, which we do not think is likely, the total write off would be £18,000,000 ( $36,000 \times £500$ ).

It should be reiterated that the people at whom the scheme is aimed are genuine "Can't Pays" and as such the facility of offering debt relief should make no overall difference as it is unlikely that they would pay anyway. It is likely that the write offs arising as a result of a debt relief order relate to debts that would have to be written off irrespective of whether or not there is a formal order.

Low income groups are three times more likely than the general population to be in arrears with rent, council tax, utility bills or mortgage payments<sup>19</sup>

Out of our survey group, about 11% owed monies in respect of unpaid rent. We envisage that, in common with bankruptcy, landlords will retain a limited right to levy distress against the debtor's goods and effects.

#### ***Question for Consultees:***

***(5) Do you think there would be impacts on business in addition to those outlined above? If so what are they and are you able to quantify the impact?***

#### **Other Sectors Affected**

There will be an impact on the advice sector through the need to familiarise staff with the new procedure, and also the time that will need to be spent dealing with clients who want to apply for the order. However, we feel that this will potentially be offset by the fact that such advisors would not have to spend time entering into protracted correspondence with creditors on behalf of their clients, and also that they will be able to offer a solution that is not currently available.

Clearly if a debt advisor deals with an individual in good faith who then turns out to have provided false or misleading information, then no liability would attach to the advisor.

Any initial training for debt advisors to provide familiarisation with the scheme will be undertaken by officials from the Insolvency Service.

#### ***Question for Consultees:***

***(6) Do you think that would be additional impacts on other sectors not outlined above? If so what are they and are you able to quantify them?***

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<sup>19</sup> From Action on Debt – An Introduction. Social Exclusion Unit, ODPM. Source –Kempson "Over-indebtedness in Britain , a report to the department of Trade and Industry (2002).

## **Issues of equity and fairness**

It might be argued that people who get into debt should pay their dues and not escape having to meet their liabilities. However, the scheme is aimed at people who are in a distressing situation and have no prospect, at least in the foreseeable future, of being able to pay off even a reasonable portion of the debt. It is unfair that they are currently excluded from any of the debt relief remedies that are available.

It might also be perceived as unfair that the scheme is aimed at people who owe less than a certain amount –but there are other remedies already available for people who cannot pay their debts and we take the view that for people who owe more than a fairly small level, bankruptcy is not such a disproportionate response. There needs to be a cut off at some point if the scheme as envisaged is to operate effectively. There is a need to look into the cause of insolvency of debtors who incur very large debts but who have nothing to show for them in terms of assets, and that need would not be met automatically should a debt relief order be granted.

## **5. Costs**

### **Costs of implementation**

#### Option 1: Do nothing

There are no new costs associated with doing nothing

#### Option 2: Abolish the requirement for the poorest debtors to pay a deposit when presenting their own petition for bankruptcy.

As mentioned earlier, each bankruptcy costs in the region of £1625 to administer, and part of that cost is met from payment of the deposit of £310. If the petition deposit were waived then it would mean that all the costs of case administration in such bankruptcies would have to be met from other sources.

Our research suggests that there would be an initial plateau after two years of in the region of 34,000-36,000 people a year would want to use the NINA scheme. If the petition deposit were waived in these cases, and such people were offered the opportunity to present a bankruptcy petition without any cost to themselves then in order to offset part of this cost, the fees charged in cases where there are assets would need to rise substantially.

The principle of the Insolvency Service's financial regime is that creditors will pay for the full costs of the official receiver's administration via a single administration fee funded in part from the petition deposit and also a general Secretary of State's administration fee (chargeable only in bankruptcies and compulsory liquidations) This involves some cross subsidy between case administrations. At present, all cases have a deposit, and a proportion of cases have sufficient assets to pay all of or part of the "administration" fee, currently fixed at £1625. Cases which have assets over £2,000 are used to pay for those cases that have few or no assets and this is done by charging a "Secretary of State" fee. This fee is currently set at 17% of all chargeable receipts over £2,000 relating to the bankruptcy.

The additional "NINA" cases would have no assets, no income and no deposit to defray any of the costs and therefore we would need to increase the Secretary of State fee on those cases that did have assets to a much higher level to cross subsidise the extra "no asset" cases. We think that, under the current fees regime, the Secretary of State fee would have to increase to between 35% and 40% to pay for these cases if they were dealt with through the current bankruptcy proceedings and the deposit was waived.

There is an additional risk that the overall costs of case administration would rise because of the need to add in a further process of means testing to establish which debtors ought to pay a deposit and which would be entitled to an exemption.

### Option 3: (introduce a code of practice)

The costs associated with introducing a code of practice would include consultation with the various trade bodies, training and advertising. We have not taken steps to quantify these in detail. However, the consultation process for such a code is likely to be lengthy and therefore costly. Since we do not think it likely that there would be 100% take up by lenders of the code and we would therefore not achieve our objective of the provision of debt relief, we do not think the costs of introducing a code of practice can be justified given the likely outcome.

### Option 4: (legislation for a new scheme of debt relief):

There will be costs to set up the scheme initially, but if the debtor pays an upfront fee (substantially less than the current bankruptcy deposit) then we think it will be possible for the ongoing administration costs to be met from the fee and for the scheme to therefore be effectively self-funding.

#### *Set up costs*

##### 1. Information Technology

The Insolvency Service is currently developing a system to enable debtors to complete a bankruptcy petition online. We believe that it would be possible to adapt this system to enable it to be used to receive debt relief applications.

Expenses associated with IT can be apportioned out over the terms of the contract to supply the equipment and services and therefore the initial cost does not have to be paid at the start.

##### 2. Training costs

There will need to be a significant amount of training prior to the scheme being operational, particularly in relation to the use of debt advisors.

The Insolvency Service has experience of the training required for the implementation of new insolvency legislation. It designed and ran extensive training courses when the insolvency provisions of the Enterprise Act 2002 came into force during 2004. On that occasion, we ran 32 courses of 3 days each and each course required 8 man days. This meant that in the region of 1,000 people received training, and we think that a comparable number of debt advisors would need to receive training on the legislation and their role as intermediaries.

There was also the cost and time of designing the course, which took approximately 10 days. This involved a large number of people but we think it should be possible to reduce the number of people involved in the design of the course to 2 or 3.

It would be possible to use Insolvency Service premises throughout the regions and therefore the major cost would be in terms of staff time.

If the training was designed and carried out by Insolvency Service staff and Insolvency Service premises were used wherever possible, then based on the time spent for the Enterprise Act training, the overall cost would be in the region of £150,000

### 3. Publicity/information

There would be a need to produce explanatory leaflets and provide information about the scheme.

If leaflets are produced that are similar to those used for bankruptcy - "A guide to Bankruptcy"<sup>20</sup> the costs would be as follows:

To produce 100,000 leaflets:

Printing (£6,000 per 25,000 copies)	£24,000
Plain language translation (Urdu, Chinese) £3000 per translation	£6,000
Distribution	£5,200
Total	<u>£35,200</u>

There would be additional costs in terms of time taken to write the leaflet and obtain lawyers clearance.

#### *Ongoing costs of administering the scheme*

We think that for there to be a real prospect of implementing the scheme, it will need to be self funding, and that this should be possible if there is a moderate up front fee.

Clearly until such time as the consultation has been completed and the exact way in which the scheme will operate has been clarified, it is difficult to quantify exactly how much it would cost the scheme to run, and we have not undertaken a formal exercise to establish the precise number of staff that would be needed for the scheme to work effectively. The staffing model we have used for our assumptions is based on that of The Insolvency Service's Redundancy Payments Offices, where each office deals with in the region of 30,000 applications a year.

We need to be sure that we set the fee at a level sufficient to cover the costs of running the scheme. The grid below sets out a number of possible cost scenarios and the fee that would be needed to cover those costs. It should be possible for us to be able to alter the fee should the level at which it is set initially prove to be

<sup>20</sup> "A Guide to Bankruptcy" The Insolvency Service. [www.insolvency.gov.uk/pdfs/gtbweb.pdf](http://www.insolvency.gov.uk/pdfs/gtbweb.pdf)

too high or too low, but we would not wish to set the fee at an unrealistic level and then have to raise it very shortly after commencement of the legislation.

Annual number of cases	20,000	25,000	30,000	35,000	40,000	45,000	50,000
	£	£	£	£	£	£	£
Salaries	1,000,000	1,000,000	1,250,000	1,250,000	1,500,000	1,500,000	1,750,000
Overheads	500,000	500,000	625,000	625,000	750,000	750,000	875,000
IT	150,000	150,000	150,000	150,000	150,000	150,000	150,000
Miscellaneous	200,000	250,000	300,000	350,000	400,000	450,000	500,000
Total	1,850,000	1,900,000	2,325,000	2,375,000	2,800,000	2,850,000	3,275,000
Cost per case	92.5	76	77.5	67.85	70	63.33	65.5
Fee	95	80	80	70	70	65	65

## 6. Consultation with small business: the Small Firms' Impact Test

On the advice of the Small Business Service, we have taken soundings from the federation of small business and small firms, and we do not think that the scheme will have a noticeable impact on small business.

The majority of debt included with a debt relief order is of the type that is owed to large institutions and lenders, and we expect that most people wishing to apply for an order will be "consumer" debtors rather than business failures.

### **Question for Consultees**

***(7) Do you agree with this assessment? If not please provide details of what impacts on small business there may be as a result of this proposal***

## 7. Competition Assessment

Not all regulations will affect the competitive process, and it is our view that the introduction of this proposal will not have an adverse effect on any particular market.

There may be some lenders who lend disproportionately to the financially excluded – particularly, for example, in the "home collected" credit market. Since our proposal is aimed at people who are not in a position to pay what they owe, with or without the provision of debt relief and are not likely to be within a realistic timescale, we do not think that introduction of the proposal should have an adverse effect.

***(8) We welcome views from consultees on this competition assessment, and in particular any information that would help to clarify the effect of the proposal on lenders (if any) who lend disproportionately to the financially excluded.***

### **Monitoring and review**

Should the proposal to provide debt relief for the financially excluded be translated into legislation we propose to keep under review its effectiveness and

report three years after commencement whether or not it achieves its objectives of assisting the financially excluded to obtain debt relief whilst at the same time monitoring the effect of the proposals on the business sector.

We will also keep under review the levels at which the entry criteria are set.

## **10. Consultation**

### **(i) Within government**

We have consulted with the following government departments:

Department of Trade and Industry  
Department for Work and Pensions  
Department for Environment, Food and Rural Affairs  
HM Customs and Excise  
Inland Revenue  
Department for Culture Media and Sport  
Legal Services Commission  
FSA  
Home Office  
Scottish Executive  
HM Treasury  
Office of the Deputy Prime Minister  
Office of the First Minister and Deputy First Minister Northern Ireland  
Office of Fair Trading  
Department for Education and Skills

### **(ii) Public consultation.**

We will be consulting with representatives of the debt advice sector, the credit industry, business, insolvency practitioners and the general public. The consultation will be open for twelve weeks and will take the form of a consultation paper that will require written representations together with a series of meetings with interested parties.

## 11. Summary and recommendation

A summary of the various options and their advantages and disadvantages is contained in the table below.

Option	Monetary Costs	Benefits	Disadvantages
Do nothing	No new costs would be incurred	There would be no need to legislate  Some creditors may eventually recover their debts.	There would be no provision of debt relief for those that need it.
Removal of the need to pay a deposit to petition for bankruptcy in certain "hardship" cases	<ul style="list-style-type: none"> <li>Losses to creditors in terms of reduced returns in insolvency cases and increased Secretary of State fee.</li> <li>Costs associated with introduction of means testing</li> </ul>	<ul style="list-style-type: none"> <li>Provision of debt relief at no cost to the debtor.</li> <li>Aside from the means testing, no need for debt advisors or creditors to familiarise themselves with a new procedure</li> <li>Less legislation required than would be the case if option 4 were introduced</li> <li>Benefits to society from the reduction of stress associated with being in debt.</li> <li>Benefits to charities who would not need to make grants for bankruptcy deposits</li> </ul>	<ul style="list-style-type: none"> <li>The Insolvency Service does not have the funds to administer the extra cases.</li> <li>Bankruptcy is disproportionate</li> </ul>
Introduce a code of practice for creditors	<ul style="list-style-type: none"> <li>Consultation with the various interested parties</li> <li>Training</li> <li>Advertising and information campaign</li> </ul>	<ul style="list-style-type: none"> <li>There would be no need to legislate</li> <li>The creditors involved would be voluntary participants</li> </ul>	<ul style="list-style-type: none"> <li>There would be no statutory protection offered to the debtor</li> <li>The scheme is not compulsory and not everyone will sign up to it</li> </ul>
Legislation for a new scheme of debt relief	<ul style="list-style-type: none"> <li>Set up costs that include IT, training, information and leaflets, estimated to be in the region of: IT £150,00 pa Training £68,500 Leaflets £40,000</li> <li>Once the scheme is implemented we expect it to be self funding</li> <li>Fee to debtor</li> </ul>	<ul style="list-style-type: none"> <li>Statutory provision of debt relief to those that need it</li> <li>Far lower cost than bankruptcy.</li> <li>Register of people who obtain an order will enable creditors to make informed choices about lending.</li> <li>Benefits to society from the reduction of stress associated with being in debt.</li> </ul>	<ul style="list-style-type: none"> <li>The debtor will need to pay a fee</li> </ul>

We think that in order for the provision of debt relief to be fair and equitable to all parties, it will be necessary to legislate. The options outlined above that would

require legislation include waiving the bankruptcy petition deposit requirement in hardship cases, and the proposed new scheme.

Waiving the deposit would cost a great deal and would not offer a solution that was proportionate to the problem

We therefore recommend introduction of the new scheme of debt relief, the detail of which is contained in Annex A.

## **12. Declaration**

***I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.***

**Signed .....** (This remains blank until the legislation is to be sent to Parliament. It then becomes a final RIA)

**Date**

***Minister's name, title, department***

**Contact point**

### **Summary of questions to Consultees**

1. Do you have any further information that would help us to estimate the likely numbers of people who might want to use the proposed scheme?
2. Do you think that the existence of the proposed scheme would reduce lenders willingness to lend to people who may qualify for entry to the scheme? How might this risk be mitigated?
3. What additional risks do you think might be associated with proceeding with this proposal?
4. Do you think there would be benefits associated with proposal in addition to those outlined above? Are you able to assist us in quantifying the benefits we have identified?
5. Do you think there would be impacts on business in addition to those outlined above? If so what are they and are you able to quantify the impact?
6. Do you think that would be additional impacts on other sectors not outlined above? If so what are they and are you able to quantify them?
7. Do you agree with this (small business impact) assessment? If not please provide details of what impacts on small business there may be as a result of this proposal
8. We welcome views from consultees on this competition assessment, and in particular any information that would help to clarify the effect of the proposal on lenders (if any) who lend disproportionately to the financially excluded.

## **ANNEX A**

### Outline of how the proposed scheme would operate

The proposed scheme would not routinely require any judicial or other court intervention and a debt relief order, that would ultimately result in the debtor being discharged from his or her debts after one year, would be made administratively by the Official Receiver or his deputy.

There would need to be an up front entry fee to cover the administration costs, but this would be significantly less than the £310 deposit required for bankruptcy (probably no more than £100) and there would be no court fee. We are aware that payment of a fee of any sort may prove difficult to those already in debt, but the proposed scheme will not be viable unless there is a mechanism to cover its costs.

In order to keep the scheme as streamlined as possible, we believe it would be desirable to involve the debt advice sector, and to restrict the facility to apply for the order to online applications only. An approved intermediary such as one of the not-for-profit debt advice organisations or Citizen's Advice could obtain the relevant information about the debtor's affairs and then, where appropriate, make an online application to the official receiver for a debt relief order.

Although we realise there are training implications associated with the use of debt advisers, we think that they are very well placed to establish whether a debt relief order is the most appropriate course of action for a particular debtor and his or her creditors. In addition, the diverse locations of debt advice agencies would enable people who have difficulty in travelling or live in remote areas to have greater ease of access to the scheme than would otherwise be the case.

To obtain a debt relief order, the debtor would complete, with the assistance of an approved adviser, forms that showed his or her assets, liabilities, income, expenditure and also personal information. He or she would make payment of the fee possibly using an over the counter payment system, such as "Paypoint" or at the Post Office and then through the medium of the intermediary, provide the official receiver with the completed forms.

The Insolvency Service is currently developing a system to enable debtors to complete a bankruptcy petition online. We believe that it would be possible to adapt this system to enable it to be used to receive debt relief applications.

On receipt of the application, the official receiver would check that the debtor met the criteria for entry to the scheme and if so, make a debt relief order.

**The entry criteria are as follows** (the amounts shown are for illustrative purposes only):

- The debtor should have total liabilities of less than £15,000
- The debtor should have a surplus income of no more than £50 per month after meeting necessary daily living expenses
- The debtor should have no realisable assets over £300.

If the Official Receiver was satisfied that the debtor met the criteria, he would make a debt relief order with a schedule of liabilities attached to it. Scheduled

creditors would be bound, and prohibited from taking any enforcement action. Any creditor not scheduled would not be bound.

The effect of the order would be to grant a stay on the scheduled debts, which would then be fully discharged after twelve months.

Following the making of the order, the official receiver would write to the debtor and all the creditors on the schedule and inform them that a debt relief order had been made. There would be no need for the creditors to lodge a claim or attend a meeting because there is no prospect of a dividend being paid.

Details of the order would be placed onto the publicly available electronic individual insolvency register and safeguards would be built in to provide the debtor and creditors with a right of appeal to the court if they are dissatisfied with the way in which the official receiver dealt with the application.

Creditors would be able to object to the making of the order on a variety of specified grounds (for example that the debtor had failed to disclose assets, liabilities or income) and if the objection proved to be well founded following the official receiver's investigation, the order would be revoked and the debtor would be open to enforcement action by his or her creditors. It is possible that the making of a false application would be a criminal offence and that the "Bankruptcy Restrictions Order" regime introduced by the Enterprise Act 2002 will be applied.

During the period which the order is in force, the debtor would be subject to the same restrictions as in bankruptcy –for example with regard to obtaining credit or acting as a company director.

There would be a facility to account for windfalls and increases in the debtor's income during the period the order was in force.