



Advice NI Response to the BIS consultation paper on Managing Borrowing and Dealing with Debt

Deadline: 16th December 2010 (granted extension from original deadline of 10th)

Advice NI welcome the opportunity to respond to the consultation paper on Managing, Borrowing and Dealing with Debt – Call for evidence in support of the Consumer Credit and Personal Insolvency Review. We welcome the broad scope of this call for evidence which looks at the decision to borrow, the life of a loan and what happens when things go wrong. We have been actively involved in responding to government consultation papers on debt including the recent review of the lending code.

Section 1 includes background information on Advice NI and a general overview. **Section 2** then highlights our response to consultation questions, including evidence from Debt Action NI advisers.

1. Background:

Advice NI is a membership organisation which exists to provide leadership, representation and support for independent advice organisations to facilitate the delivery of high quality, sustainable advice services. Advice NI provides its members with the capacity and tools to ensure the delivery of effective advice services. This includes: advice and information management systems, funding and planning, quality assurance support, NVQs in advice and guidance, social policy co-ordination and ICT development.

Membership of Advice NI is normally for organisations that provide significant advice and information services to the public. Advice NI has over 65 member organisations operating throughout Northern Ireland, providing information and advocacy services to over 100,000 people each year and dealing with over 227,000 enquiries on an extensive range of matters including: debt, social security, housing, consumers and employment issues. For further information, please visit www.adviceni.net.

Advice NI's Debt Action Project, aimed at helping the most financially vulnerable in Northern Ireland has provided free independent debt advice to 1816 consumers and dealt with nearly £31million pounds in debt for the period November 09-December 2010. The Debt Action project is funded by DETI, who fund a number of front line advice posts for both Advice NI and Citizens advice in Northern Ireland. However this funding is due to come to an end on 31st March 2011 so further investment is needed for debt advice in Northern Ireland to address financial capability including provision of debt advice.

It has long been known that banks have not always operated in the best interest of consumers in the past, with a clear link between the causes of economic downturn and regulatory failure in the financial services sector. With the current deep economic recession, many people are finding it hard to make ends meet. Insolvency figures report¹ there were 1741 individual insolvencies in Northern Ireland for Jan-Sept 2010. This consisted of 772 individual voluntary arrangements and 969 bankruptcies. It is also expected that the number of unemployed² in Northern Ireland will rise above 70,000 by 2012, with a warning that Northern Ireland would continue to have a more negative jobless record than the rest of the UK.

The cost of credit has increased despite record low levels of base rate, and the need for good quality free independent debt advice is needed now more than ever. There is also a greater need for those in debt, particularly the most vulnerable such as people on low incomes, older people and those with learning disabilities to have more control over their finances and to reduce the amount they repay on loans and credit cards. Advice NI therefore welcomes this review, as the need to improve the consumer credit industry to ensure consumers receive fair and transparent information, has never been greater.

¹ <http://www.insolvency.gov.uk/otherinformation/statistics/201011/table6.pdf>

² <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/unemployment-to-rise-above-70000-14904526.html>

Comments within Consultation Paper

Decision to Borrow:

Q1 Should the Government extend regulations on advertising for credit products beyond the cost of credit?

Advice NI agrees that the Government should extend regulations on advertising for credit products. We believe the regulations should look at all stages of the cost of credit separately as different circumstances apply at various stages. As advertising is essential in promoting and selling credit products to appropriate consumers it is vital these channels of promotion are used in compliance with the rules and regulations governing the advertising of credit, and therefore regulation is essential. Multiple methods are used to advertise credit products. Advice NI recommends that Government extend regulations to all forms of advertising, including in print (letters, flyers, newspapers, catalogues or billboards), television, radio, internet, teletext and telephone.

Evidence:

www.crystalstart.co.uk – suggests they offer free advice and included links to not for profit debt advice providers which could potentially misled the user.

Evidence:

The Direct Marketing Association³ state that when advertising and marketing credit products it is forbidden to use such expressions as “overdraft, interest free, no deposit, loan guaranteed, pre-approved etc...However Advice NI members report that their clients often receive leaflets through the post offering pre-approved credit, near the end of an existing loan. This contradicts the regulations which aim to ensure that credit advertisements give a clear and balanced view of the nature and costs of the credit on offer, so consumers can compare different credit offers in an informed way and make a balanced choice. This example reinforces the need for advertising on credit products to be regulated.

Evidence:

Tesco Finance loan agreement saying HIREP LOAN giving the client the impression they had HP agreement when in reality it was a personal loan.

³ Direct Marketing Association is an independent body that monitors industry compliance within the marketing and communications sector.

Evidence:

After 6 months on a Debt Management Plan paying Black Horse £4.95 per month on an outstanding loan balance of £3K, my client received a letter from them advising her she had been pre-approved for a further loan of £1800. Client is retired with pension and benefits income and does not own her home.

Q2 Should consumer credit advertising rules be aligned with those which the FSA applies to secured credit?

Advice NI would welcome consumer credit rules being aligned with those which the FSA applies to secured credit. We consider there needs to be protection around the “softer issues” to prevent credit being advertised in a way that promotes well-being. This should be in addition to the current protection offered by Consumer Protections 2008. This is needed particularly for the high credit market.

Q3 What would the impact of a 7-day cooling off period for stored cards on (a) consumer behaviour and (b) store card providers?

Advice NI would like to highlight that the EU Consumers Credit Directive, due to be introduced in February 2011 and incorporated into UK law may have implications on this, in particular around the right of withdrawal within 14 days of the conclusion of the agreement, and around the need to carry out an assessment of a borrower's creditworthiness prior to making a regulated consumer credit agreement. However from our experiences whilst store cards are an issue due to the interest rates being charged and the incentives being offered, our clients are more likely to have problems with credit cards, bank loans and overdrafts. Advice NI's Debt Action Project dealt with £227,866 store card debt for the period Nov 2009-Dec 2010, compared with £5,025,912 credit card debt, £1,049,677 bank loans, and £884,863 overdrafts.

If the 7 day cooling off period means that consumers would be unable to use the store card during this period, it may give consumers the chance to think whether there are other forms of credit to suit their needs better, and may help to prevent accumulating debts.

One of the main problems with store cards is the way they are sold. Often sales assistants pressurise people (mainly women) at the tills by offering 10% discount if they sign up immediately. This means that people are often more focused on the discount for their purchase than on the terms and conditions of the store card. Store card interest is often very

high with Wallis⁴, Dorothy Perkins, Toys R Us and Argos charging high rates of 29.9%. People who sign up for the store cards are often unaware that if they spend their credit and they only pay back the minimum amount of 4% monthly, it will take them much longer, and they will end up paying back a much higher amount on the amount borrowed. We believe if these incentives were withdrawn, then it would allow the consumer to make a better informed decision of whether the credit product was the best option for them, and not be misled by discount incentives.

It is also our view that stores often receive commission for every card sold from the bank that provides the credit. If this incentive was withdrawn, as we suggest, we think sales assistants would not be trying to push store cards as much.

We recognise that there may be occasions where there will be emergencies and access to instant credit through a store card will be vital. We are concerned that for some consumers this would take away access to their only source of instant, mainstream street credit, and push consumers to high cost credit.

Q4 We would welcome your views on the following OFT recommendations?

4.1- that the Government works with lenders to provide information on high-cost credit loans to consumers through price comparison websites.

Advice NI believes it is imperative for Government to work with lenders to provide information on high cost credit loans to consumers through price comparison websites. The high- cost sector includes pawn broking, payday loans, doorstep lending and rent-to-buy.

However, the recent OFT Review of High Cost Credit Report⁵ highlights that a number of high-cost credit users will not have access to the internet. One of the recommendations within the report was the need to help consumers make informed decisions on high cost credit. Given that 7% of high-cost credit users do not have internet access, we consider this information needs to be made available to consumers in other formats as the impact of any price comparison site will be restrictive.

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<http://www.wallis.co.uk/webapp/wcs/stores/servlet/StaticPageDisplay?storeId=12557&catalogId=33058&identifier=w12-cardholder>

⁵ <http://www.of.gov.uk/OFTwork/credit/review-high-cost-consumer-credit#named2>

Evidence:

Client had borrowed £325 two years previously from an illegal lender /Loan shark and had been making payments at £25/£30 per week since. Due to continual churning of the loan, the loan escalated to £1600, which is extremely high given the relatively small original loan amount.

Evidence:

Client had a Log Book loan, and borrowed £1,480.00 over 78 weeks @445.44% APR, total charge for credit £2,674.28. The loan was secured against the client's car, and when a payment was missed, he incurred a £50 late payment fee, which is very excessive in addition to the high churning of the loan.

4.2 - that the Government explores whether there is scope under the European Consumer Credit Directive for a requirement that high-cost credit suppliers must include 'wealth warnings' statements on advertisements for high-cost credit

Advice NI would support "wealth warning" statements for high cost credit advertisements, similar to the Health warnings advertised on cigarette packets as a requirement imposed by the E.U regulations. From our experiences these forms of credit for those on lower incomes can often help to make ends meet, pay household bills and cope with problems relating to ongoing income inadequacy.

This is particularly the case in Northern Ireland where sometimes people on low incomes are often declined credit from mainstream lenders, and have to avail of pay day loans and other high cost credit options available to them. Also, given that one of the recommendations within the report was that consumers tend to focus on how quickly and easily they can access credit and the affordability of the repayments rather than the total cost compared to other products, this reinforces the need for wealth warnings. It is essential that consumers know that high cost credit will cost more than other forms of credit, to allow them to make an informed choice.

4.3 – that the Government works with credit reference agencies to explore ways in which payday lenders and rent-to-buy suppliers could provide suitable information to credit reference agencies about the payment performance of their consumers, in turn allowing those with good payment records to use mainstream lenders more easily in the future.

In theory NI would welcome this initiative however, we would have concern that if clients had difficulties making the payments this could have a negative effect on their credit rating, and adversely prevent them from accessing any forms of credit in the future (even high-cost

credit). Referring again to the OFT Review of High Cost Credit Report⁶, the report found that, these markets work reasonably well in that they serve borrowers not catered for by mainstream suppliers, and for some products, lenders do not levy charges on consumers who miss payments or make payments late. We would therefore have concerns that these people could be excluded from accessing any forms of credit.

4.4 -that the OFT collects essential information on the high cost Credit sector, such as the volume, value and pricing of credit, levels of repeat business and defaults among consumers as needed. This will help OFT understand the effect of its recommendations and provide better evidence for future policy making

Advice NI would support the collection of this information. It is widely known that creditors have access to a wealth of consumer management and behavioural data, and we would support greater sharing of this information between the credit and advice sector. From our experience this can often provide improvements for the debtor.

4.5 - that the relevant trade associations for home credit suppliers, payday lenders and pawnbrokers establish a code of practice covering best practice policy including on: complaints and advice to consumers, policies on rolling over of loans, limits for amounts to lend to consumers, avoiding misleading consumers through advertisements and ensuring that consumers are aware of the ultimate owners of brand names.

Given the nature of the interest rates for home credit suppliers Advice NI considers a code of practice establishing best practice policy imperative for home credit consumers. A code of practice can offer a valuable resource for both debtors, creditors and the advice sector, and is often useful when resolving problems and complaints. Given the high levels of interest rates charged by home credit suppliers, and that home credit is mainly accessed by vulnerable people who cannot access cheaper forms of credit, it is essential to provide protection for these consumers. We suggest this code of practice is consistent with other codes of practice including the Lending Code and the Banking Code, and is in plain English that is clear and transparent about consumer's rights, and lender's obligations.

Q5 Is there a need for greater sharing of data between the consumer credit industry and other bodies, including utility companies, local authorities and HMRC?

⁶ <http://www.offt.gov.uk/news-and-updates/press/2010/63-10>

Advice NI believe there are risks attached to greater sharing of data between the consumer credit industry and other bodies as listed above and that any such initiatives should ensure information being shared is relevant and accurate. We believe sharing of data could potentially help credit industry and other bodies identify consumers who may be at risk of getting into financial difficulties so that help can be provided.

We are however unsure of whether a “Big Brother” approach would improve the quality and accuracy of the lending decision or over-indebtedness. We also suggest that the current quality of data held by creditors is improved before it can be shared with other bodies. It is important that the data held is accurate and that inaccurate data sharing does not penalise the consumer or affect their credit rating. We would suggest safeguards such as a proactive process for informing consumers of the content of the data held and appeals procedures are put in place to protect the consumer, otherwise we run the risk of individuals unable to access credit and facing financial exclusion, through no fault of their own.

There is also the need to ensure that access to information for individuals is for responsible lending purposes only. Information must not be used to discriminate against (1) consumers who are likely to be unprofitable (provide low revenue, for example a consumer who clears their credit card balance each month, and does not incur interest payments) and (2) consumers who may be profitable (i.e. only pay minimum credit card payments and incurs high interest charges as a result) It is imperative that consumers applying for credit products are not exploited by other credit providers, so we suggest this is closely monitored.

We would also query whether information will be passed from the industry to the bodies listed above and the risks involved in the interpretation of such data.

Q6 It has also been suggested that there needs to be greater transparency around credit scoring and the impact of credit scores on charges? Do you agree?

Absolutely, it is our view that many banks fail to offer consumers **quotation searches** that let consumers shop around for cheap deals without leaving damaging footprints on their credit file.

The quotation search for personal loans or credit cards launched some five years ago by credit reference agencies to solve this problem, lets consumers call a lender to ask if the credit has been granted and leaves no footprint. However this quotation search option is not widely known as being available when consumers are seeking credit.

Many people in Northern Ireland often have difficulty accessing consumer credit even though they have a good credit rating and are able to meet the repayments. Multiple credit application searches leave footprints on a consumer's file and can damage their credit score. Often consumers will shop around for the best credit deal available, however lenders may misinterpret their need to shop around for the best-priced loan or card as fraud or desperation, and mark them down accordingly. However in many cases the consumer may have decided not to proceed with the credit offer, rather than being turned down because they had too much credit card debt.

Quite often in loan or credit card advertisements the rates quoted as "typical"⁷ will not be offered to every borrower. This could then affect the form of credit and interest rate offered to these consumers, who may not be offered the best deal. Advice NI recommends that quotation searches should be mandatory for all lenders as they will not affect consumer's chances of being given credit in the future, and that consumers should be informed of this option at the earliest opportunity. This would help consumer access fairer and more transparent credit deals.

We also suggest making it a requirement that subscribers provide consumers with the Information Commissioner Booklet "Credit explained."

http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/credit_explained_leaflet_2005.pdf

Q7 Which of these stakeholder proposals do you consider would bring benefits to industry or consumers

Advice NI would require a further opportunity to explore the proposals before giving a definitive response to this.

Life of a Loan:

Q8 Do you believe that the current voluntary, market-driven initiatives to address concerns about unarranged overdraft charges are delivering, or will deliver, sufficient improvements for consumers? If not, what would the wider implications of limiting bank charges be? Please provide evidence in support of your views.

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<http://www.wallis.co.uk/webapp/wcs/stores/servlet/StaticPageDisplay?storeId=12557&catalogId=33058&identifier=w12-cardholder>

From our experience accounts often fall into an overdrawn situation due to direct debits and cheques clearing after close of business. This seems very unfair as the consumers cannot address this situation. The account enters into an overdrawn situation and can attract unfair charges. Advice NI advocate an approach whereby transactions should not be conducted out of business hours (evenings or weekends) and ideally take place in the mornings so as to afford consumers the opportunity of lodging funds to keep the account in credit. From our experience it is often the bank charges and interest that leads to consumers' debts becoming unmanageable rather than the initial debt itself. Also, we believe that there would be value in including additional guidance on the circumstances in which flexibility should be applied, for example, where financial difficulties are identified charges should be reduced or removed from an account.

Recent news⁸ highlights that consumers are paying the highest ever overdraft charges of 19% since records began, 38 times the Bank of England base rate, despite the Bank of England base rate being at an all time low.

Q9 Should interest rates on credit and store cards be subject to a cap? If so, should this apply to all interest rates or only those which apply to existing borrowing?

Advice NI believes there could be a cap on credit and store cards providing it has the client's interest at heart. As highlighted earlier in our response Burtons, Wallis, Dorothy Perkins, Argos, Toys R Us are only some of the credit providers who charge 29.9% on their store cards. And even credit card providers such as Barclaycard, HSBC & Nationwide charge 16.9%⁹ on their credit cards despite the Bank of England base rate being at a historical low since March 2009.

However we do have concerns that the imposition of a cap on interest rates could have unintended consequences by either (1) credit card providers offering lower interest rates increasing their interest rate to the capped rate if this rate is higher meaning more profit for lenders, and less choice for consumers or (2) interest rate cap may not be economic for some credit card providers and potentially force them out of the market, resulting in less

⁸ <http://www.dailymail.co.uk/news/article-1336281/Bank-overdraft-charges-soar-record-19--Borrowers-pay-38-times-base-rate.html#ixzz17bOS4TsBhttp://bit.ly/f90079>

⁹ http://www.moneysupermarket.com/credit-cards/?p=0&source=GOO-0041E6A6&keywords=credit+cards+comparisonexact&ef_id=PsdNB1VOAgAABzo:20101214113022:

choice for the client, forcing them into other forms of high costs credit, door step lenders etc...

Advice NI's Debt Action Project, aimed at helping the most financially vulnerable in Northern Ireland has provided free independent debt advice to 1816 consumers and dealt with nearly £31million pounds in debt for the period November 09-December 2010. Of this amount, £5,025,912 was credit card debt, and £227,866 was store card debt. The average credit card debt was £9039, and average store card debt was £1753 (for clients with these types of debts). As 16% of the £31 million pounds serviced was accrued on credit card debt this imposes a bigger worry for us than store card debt.

Whilst we believe that by introducing a cap on interest rates could provide consumers with more affordable forms of credit including credit cards, and help strengthen protection for consumers, particularly the most vulnerable, we have concerns it will have a more negative effect. We refer to the recent DWP research¹⁰ which suggests that there are at least 1.8 million people in the UK on low incomes with no access to affordable credit. We would have concerns a cap may further increase the number of people without access to affordable credit. We suggest this is investigated further to explore the implications for the consumer of the consequences of both options, before any decision is taken to cap/uncap interest rates.

Evidence: In 2009 client suffered a severe stroke which has left him unable to communicate either verbally or in writing. His wife spoke to Barclaycard regarding his credit card as she was alarmed at the high interest rates and charges being added to his account. She asked Barclaycard to freeze interest being charged and was offering them a £150 per month repayment. Barclaycard refused to discuss any of his account details with her unless she had power of attorney or a disclosure certificate signed by him. Due to the nature of his illness he is unable to give his consent or sign any type of document. A letter was provided from his GP stating that he was no longer able to manage his affairs but nothing seemed to affect the ongoing charges being added to his account nor would Barclaycard agree to paying off the debt by instalments. Inevitably this caused a lot of distress for the client. We would suggest where creditors are informed client in financial difficulties they

¹⁰ New challenges for third sector and social lending, Policies research for Friends Provident Foundation 2010, pending publication

should be more willing to freeze credit card interest charges in situations like this, and be able to apply flexibility if required.

Q10 Are there any alternative measures which would reduce the scope for consumers to be exposed to higher interest rates on credit and store cards?

We believe there are some situations that are more likely to expose consumers to high interest credit and store cards. We consider a piece of work is required to understand when consumers are exposed to such high interest credit products and we would be happy to participate in this.

We believe that if more creditors exercised responsible lending, this would reduce the scope for consumers to be exposed to high interest rates. From our experiences loans issued to people who cannot afford the repayments can often have a detrimental effect on their mental health and can also cause relationship difficulties. From our experiences many clients on benefits will be offered multiple store cards. As these people are on low incomes and do not have the ability to repay the debt we question if the appropriate credit checks were done by the store card providers.

In Northern Ireland Credit Unions as third sector lenders, play a pivotal role in providing affordable credit alternatives and loans to those excluded from conventional facilities. There are approximately 184 Credit Unions in Northern Ireland with membership levels equivalent to 26% of the population or 370,000 members. We would welcome a consumer awareness initiative which would inform consumers of where they can access affordable credit including sign posting to better forms of affordable credit such as Credit Unions.

Evidence:

Client is a married homeowner on long term Incapacity Benefit and Disability Living Allowance. She has 4 store cards with Sigma Bank (Creation at the time of issuing) totalling over £6.5K. Two of these store cards were JJB Sports store cards and the others were Adams and MK One. Client was on benefits and listed down "housewife" as her occupation as the time of completing the store card application.

Evidence:

Client 2: Client has 4 store cards with Santander Cards totalling almost £7000. Client is a married homeowner working part-time (as a school dinner lady, so very much “part-time”) with a very low individual income.

Q11 How effective have the Competition Commission’s remedies been at improving prices for home credit consumers? Is further action needed to ensure that consumers of home credit get a fair deal?

Advice NI is particularly concerned with the rising use of ¹¹payday loans. A recent Consumers Focus report highlights that the number of people taking out payday loans has quadrupled to 1.2 million over four years. It estimates that employees borrowed £1.2bn in 2009 alone. Interest charges on these often ranges from 13% but can be as high as 2000%.

Evidence:

One of our members reports a scenario whereby a consumer received 2 payday loans from different providers, one for £600 and one for £500. The consumer was long term unemployed and in receipt of jobseekers allowance at the time of taking the loans. He also had other loans. The payday loans providers did no background checks on the consumers and did not look at the consumer’s ability to repay the loans. As payday loans providers normally charge extortionate interest it is imperative that subscribers conduct background checks to assess whether they feel the consumers will be able to meet the repayments.

Evidence:

One client was issued with 5 Pay Day Loans without any background checks being conducted to check their method to repay. The interest rates are set at an extortionate 3092.2% APR.

Evidence: We refer to the pay day loan price comparison website which highlights the extortionate interest rates charged from 1200-2000%

<http://www.moneysupermarket.com/payday-loans/>

¹¹ A payday loan is a small, short-term loan that is intended to cover a borrower's expenses until his or her next payday.

What happens when things go wrong:

Q12 What role should the court play in the debt recovery process? Should it be restricted to genuine points of law and disputes between the parties?

The court process in Northern Ireland is different than in England and Wales. We do not have bailiff law here in Northern Ireland. Instead the Northern Ireland court service consists of the Enforcement of Judgement's Office which has the power to enforce judgments of the Magistrates, Small Claims, County and High courts. It is presided over by a Master however responsibility for staff lies with the Chief Enforcement officer. The EJO enforces judgments lodged with it and maintains a register containing the details of judgments lodged for enforcement. There are set procedures for enforcing a judgment and the EJO has a variety of powers to enforce the recovery of a debt. These powers and procedures are laid down in the Judgments Enforcement (NI) Order 1981

Currently the court plays a vital role in debt recovery in Northern Ireland, particularly in the area of insolvency, but it may be fruitful to debtors if creditors had a timescale in which a debt collection solution is sought and if that fails then the courts involvement becomes automatic. This would be particularly advantageous to those who have no income/no assets to stop the continual debt recovery/harassment from collection agencies. From our experiences lenders often harass borrowers using other forms of contact aside from telephone calls and home visits, which can have a detrimental effect on one's mental health. Lenders should also be required to inform debtors of interest charges they may incur after a judgement.

Advice NI welcomes the Pre- Action Protocol on Possession proceedings which came into effect in Northern Ireland on October 2009. The protocols sets out the steps that lenders are expected to take before bringing a claim in the courts to ensure that repossession is a last resort. We believe these protocols will provide protection for the debtor, at this time of economic downturn, where more people are falling into mortgage arrears and there is increased likelihood of possession.

Evidence:

GE Money Home Lending continually phone clients numerous times a day demanding payment even when they have been informed the adviser is acting on their behalf and where court proceedings are ongoing. When adviser asks them both verbally and in writing to stop harassing the client it does not make a difference.

Evidence:

A couple received automated calls from Tesco Finance to both landlines and mobiles in the early hours of 6-7am. Complaint had to be raised using the OFT Debt Collection Guidance before calls and harassment stopped.

Q13 Are court-based enforcement mechanisms fit for purpose? If not, how would you like to see them improved or added to?

Advice NI considers the court based enforcement mechanisms are quite effective though there currently is no legal aid available for admitted debt proceedings in NI nor publicly funded "Help at Court" unlike the schemes which are available in England, Scotland and Wales.

In NI as soon as a debtor comes in front of the EJO, an interview may often decide the best course of action for the creditor to take, in many instances unenforceability may be the only solution. Advisers within our membership highlight they have a great working relationship with the Enforcement of Judgements Office, who are very willing to work with the adviser to help, debtors in financial difficulties.

Advice NI is represented on the EJO user Forum, a forum established in 2005 to:-

- Allow representative key users to work together to improve service delivery to all users, including the promotion of Legislative change
- Promote the effective operation of enforcement through improved information sharing;
- Support the development of best practice in all areas of EJO work
- Identify, discuss and propose solutions to barriers to improvement
- Promote improved advice on debt management throughout society.

Legal aid is currently undergoing review in Northern Ireland in the form of The Northern Ireland Funding Code and the Review of Access to Justice in Northern Ireland. Hopefully this provides an opportunity to align arrangements for help at court to those that are in place in England and Wales as the current situation is having a detrimental impact on their ability to save their home from repossession.

We welcome the Housing Rights Service Preventing Possession Initiative¹² launched in 2009, which aims to prevent homelessness as a consequence of debt related possession action and provides an in-situ Court Representation Service for people facing the imminent threat of possession.

Q14 What impact would a £25,000 threshold have on your ability to enforce unpaid debts by means of 1) charging orders and 2) orders for sale? What alternative action might you take?

Advice NI has not answered this question as it is lender focused.

Q15 How can debtors be encouraged to seek early support to help manage their debt problems?

Services must be available for debtors to seek support in managing their debt and for this reason there is a need to sustain the debt advice expertise and infrastructure that has been developed across the UK in recent years.

A number of front line advice posts for both Advice NI and Citizens Advice are due to come to an end on 31st March 2011 so further investment is needed for free face to face debt advice in Northern Ireland to continue.

Research carried out by Insolvency Trade Body R3 found a number of reasons why people in financial difficulties were not seeking debt help. This is broken down as follows;-

- 44% believed debts were too small to require debt advice
- 25% thought debt problems would only be short term
- 20% did not know where to go for debt advice
- Half of the people put off seeking debt advice as they thought it would cost money

It is apparent we need to inform people within all areas of the UK of;-

- where to go to access free debt advice
- the consequences of what happens when small debts are left unpaid

¹² <http://www.housingrights.org.uk/about-us/whatwedo/innovations/64-preventing-possession-initiative.html>

We therefore believe an industry funded advertising campaign on where to access free debt advice needs to be done in every part of the UK, and would be very effective in raising consumer's awareness, and assisting those in financial difficulties. This could involve an intense advertising campaign initially which could gradually ease off as people became more aware of the debt advice. However it is worth highlighting that advice agencies are already under considerable strain to maintain their current level of debt advice services, never mind an increasing number of clients, who have lost their jobs, are in debt and are unable to pay their mortgages. Debt queries for Advice NI members in 2010 were 22,301 and we would expect this will increase significantly in 2011. Future funding along with sustainability of current funding for face to face debt advice is therefore required.

There is also a stigma attached to people in financial difficulties which needs to be removed to help those in financial difficulties feel more comfortable in seeking assistance and support to solve their debt. A survey carried out by Sainsbury Finance shows that many people often try to hide their debts, either due to embarrassment or because they are worried.

We recommend better relationships between creditors and the free debt advice sector, along with better resources to the free debt advice sector so that appropriate referrals systems can be established. This would enable creditors to signpost/refer clients when they detect signs of defaulting.

We believe a carefully marketed advertising campaign could help remove the stigma associated with debt. As part of the campaign all creditors should issue debtors contact details of a range of debt advice services who offer free, confidential and independent advice. This should be monitored though, to ensure demand does not exceed capacity. Whilst consumer providers have done a lot in the last five years in terms of providing literature to consumers, we suggest more is needed. We also suggest that consumer providers include a section within their websites signposting people to independent free debt advice. A good example of this can be seen on Ulster Bank's website ¹³

We consider improvement of financial capability key to assisting individuals in dealing with financial matters, especially those at risk of social or financial exclusion such as the more financially vulnerable groups i.e. people on lower incomes, older people and those with learning disabilities. There is a relatively poor level of both financial literacy and financial capability in Northern Ireland particularly for the most vulnerable groups such as people on

¹³ <http://www.ulsterbank.co.uk/ni/personal/borrowing/managing-debt.ashx>

low incomes, older people and those with learning disabilities. A 2004 Consumer Council report entitled "Taking the Credit" highlighted that only 43% of people knew that APR stands for Annual Percentage Rate.

Improving financial capability will help people in Northern Ireland develop the skills and confidence to be aware of financial opportunities, know where to go for help, make informed choices and take effective action to improve their financial well-being.

In Northern Ireland a Financial Capability Partnership Group exists and is committed to promoting financial capability. This partnership is led by the Consumer Council and the Financial Services Authority and includes representatives from Advice NI, and other voluntary, public and private sectors. This group aims to take forward priority areas identified in the FSA UK strategy within the Northern Ireland context such as the Lifetime Opportunities – Government's Anti Poverty and Social Inclusion Strategy for Northern Ireland.

Some of the initiatives currently being looked at by the Partnership group include;

- Schools, learning money matters
- Young adults; Helping young adults make sense of money, - ensuring that students in higher education and young adults not in education/training have access to guidance on managing their money.
- Workplace; Make the most of your money- provides financial education and seminars to employees in their place of work

Q16 Do the current debt relief options strike the right balance between the needs of the debtor and the rights of creditors?

Whilst there are currently a range of options the balance is not always struck. We support the Codes of Practice and the exploration of sanctions should creditors breach them, particularly where clients with mental health issues are involved.

Advice NI welcomes the proposed Debt Relief Scheme as a new alternative for people experiencing over-indebtedness which is expected to be introduced in Northern Ireland in middle 2011. We have been actively involved in the DRO consultation process to date and have made presentations in the Assembly to MLA's, outlining our concerns with the proposed legislation in a bid to request change. These include:-

- Proposed limit of £300 is too low and would exclude many people from the scheme.
- Income from state benefits such as Working and Child Tax Credits, Disability Living Allowance and Attendance Allowance should not be included. These benefits are issued by Government for specific reasons and therefore should not be used for payment to creditors.
- We feel £15,000 of debt as a proposed cap to be eligible for the scheme is too low. Our concern is that people with no income and no assets would be unable to apply for the scheme if they had debts greater than 15k. Therefore, many who need the scheme have to find an alternative. This could result in them having to borrow more money possibly to seek bankruptcy hence adding to their debt. We requested that that 20k be considered as an appropriate cap to cover areas like inflation.

We were concerned that private or occupational pensions would count as an asset, so anyone who had a pension over £300 would be excluded from the scheme, and welcome the recent decision taken by the Minister for Business and Regulatory Reform, to omit pensions as an asset. Given that a debt relief order and pensions funds survey conducted in February 2010 by competent Authorities in England showed that 96% of people would solely be ineligible for the DRO because of pension, it was imperative this decision was taken. It is also imperative that in Northern Ireland lessons are learned from the problems encountered with the DRO's in England and Wales.

Q17 What problems are encountered with the current range of debt solutions and how could they be improved to ensure all debtors have an option and that the choices are clear?

Token payments are only a very short term solution, pro rata payments only work for smaller debts and only if the interest and charges have been stopped. IVA is very expensive and complex area for a debtor to understand, and needs to be thought out thoroughly before a debtor makes a decision, simplifying this option would have advantages for the debtor.

Bankruptcy is what it is, and so long as the client is aware of the implications for them, it is a straightforward process

Q18 Is there sufficient flexibility within the current range of debt solutions to allow for debtors changing circumstances?

Improvements in flexibility could be made where a debtors circumstances change for the worse. We would welcome the introduction of a form of compulsory breathing space to support debtors in addressing any issues. We recognise the value of existing initiatives including the Homeowners Mortgage Support Scheme which helps people who are having difficulties meet their mortgage repayments. An IVA requires modification and from our experiences this is often not made easy for the debtor. A change in circumstances during the 12 months in bankruptcy is easily notified to the Official Receivers office. Change in circumstances to pro rata and token payments to creditors can be difficult, with a lot of paperwork involved.

Q19 Do the current options allow and encourage those who are in a position to repay their debts to do so? If not, why not, and how might any incentives be improved?

Depending on the option the debtors chooses, will dictate whether debts are paid or not.

Q20 Do the current options allow a person to deal effectively with a temporary income shock' and if not, what is needed?

Advice NI believes, that when people through no fault of their own experience financial difficulties, which is likely to be a short term thing, lenders should offer them the option to pay token payments while they sort out their problems. However from our experiences, few creditors are willing to accept token payments. It is also widely known that a lot of creditors, particularly Credit Unions will not freeze interest on loans for client's having difficulty making their loan repayments. Advice NI would welcome a similar approach adopted as other lenders including where they freeze interest on loans for those in financial difficulties.

Whilst the Debt Relief Order is not a current option available in Northern Ireland, we welcome the introduction of this option, which is expected to be sometime mid 2011. We believe the Debt Relief Order will act as a more viable debt solution for many people, particularly the vulnerable with no income & no assets.

Q21 Is some form of moratorium on creditor action required to a) allow a short time period for a debtor to seek and act on advice from a qualified adviser and b) allow a more extended period for a debtor suffering from a temporary difficulty to recover and start making repayments once more. If so, how might such an arrangement work?

Advice NI believes that a moratorium will allow the debtor to make payments towards his/her debts, by providing them with breathing space, without having to worry about creditors

pursuing court action. However we would like to refer to the new legislation introduced by Credit Services Association in May 2009¹⁴, which required debt collectors to give debtors 30 days breathing space, after being told the adviser is working on the case. Whilst this initiative will help debtors, we do not consider the time frame is sufficient.

Evidence: Some creditors, i.e. Santander, have failed to co-operate when a moratorium has been requested, e.g. when the client is trying to sell their property and there should be efforts made to put into place a formal moratorium in these cases, similar to an Interim Order.

Q22 How does a person find out where to go for debt advice and assistance? What are the advantages and disadvantages of each method?

There are many methods through which a person can avail of debt advice including face to face (which is necessary for vulnerable clients with particular needs and for dealing with complex cases), telephone and online debt advice (both of which are useful for providing basic information and signposting).

Advice NI's Debt Action Project is accessed through a range of entry points – face to face, telephone, letter and email and a range of self-help materials and information is available on www.debtaction-ni.net which can be accessed through over 30 kiosks located in local communities, shopping centres and public places across NI.

The site operates an online Debt Help Request facility¹⁵, whereby people can enter their details online, and when received an adviser in their local area will contact them.

We also provide self-help materials through our website with multiple factsheets for anyone facing financial difficulties. Factsheets are available on multiple topics including mortgage arrears, debt collection agencies, debt advice for line parents and debt advice for people with mental health problems.

Q23. How does a person know that he/she has been given the right advice?

The free advice sector provides client centred services. There are no drivers for advisers to provide anything other than the right advice to clients as there are no financial or personal gains for pushing one option over another. Advice NI advisers are trained to wiseraadviser

¹⁴ <http://news.bbc.co.uk/1/hi/business/8402393.stm>

¹⁵ <http://www.debtaction-ni.net/#Home>

standards and we undertake quality technical audits with the Debt Action NI advisers to assess the quality of advice. We also carry out regular customer satisfaction surveys and experience 'mystery shopper exercises' to ensure services are delivered to the highest standard.

For profitable debt management companies the incentive to make a profit may sometimes override the importance of the quality of the advice provided and the need to act in the best interests of their client.

Q24 What evidence do you have that suggests that debtors end up in the wrong solution and what is the scale and impact – for the debtor, the creditors, the economy?

As highlighted above, there can sometimes be a couple of solutions for the person in financial difficulties, and the debt adviser can only advise on the solutions available, including pros and cons of each method. It is effectively the client's decision. However we are under no illusion that sometimes, the solution the client takes may not be the right solution for their circumstances.

We refer to a CCCS response to an Insolvency Service consultation¹⁶, which highlighted that 20,000 people were recommended bankruptcy as the best solution for them, however only 8,000 people went down this route. Their paper goes on to state that the gap between the best option to the clients and their decision to proceed was influenced by the stigma of bankruptcy. Also contained within the paper as a barrier sometimes to bankruptcy was the costs associated with it, which can sometimes be too expensive for some debtors who would benefit from this solution. In Northern Ireland, bankruptcy has a bad stigma associated with it, as it is made public and client's details are placed on the Bankruptcy Register which is maintained by the Department of Trade & Industry and The Insolvency Service.

From our experience the bankruptcy process is overly complicated which is often a deterrent to clients. Another problematic area is the idea of clients losing their bank account as a result of the bankruptcy. Many clients are obviously extremely concerned at the prospect of having no bank account and the difficulties they could face with cash flow regards having wages/benefits paid. Also anyone who the client is associated with financially such as banks, mortgage companies, loan companies, landlords etc. will be informed of their bankruptcy, and in some occupations their employment may be at risk. From our advisers experiences

¹⁶ CCCS response to Insolvency Service consultation on reforming debtor petition for bankruptcy and early discharge from bankruptcy 2009

clients will often not choose bankruptcy as the best solution for them due to either cost, stigma, or/and fear of losing their bank account and will often choose a debt management plan, or token payments.

In light of this and given that there were 290 individual bankruptcies in July-Sept 2010, an increase of 92 orders from the same period previous year, we would suggest a piece of research is done to look at barriers to debt solutions, to ensure people do not end up in the wrong solution simply due to stigma, fear of withdrawal of bank account or indeed cost.

Evidence:

Elderly couple has £10,000 unsecured debt and a Hire Purchase (HP) agreement on their vehicle for around £4,000. They have a disposable income of £100 per month however when they pay £85 towards HP they are only left with £15 per month to make payments to 7 creditors. As both clients are in their 70's and are in poor health bankruptcy would be the best option, however they have refused this option as they will lose their vehicle and they don't have the money to cover the cost of bankruptcy. In Northern Ireland the costs for bankruptcy can be excessive for those with no disposable income. For instance the debtor has the cost of £345 to the Official Receiver, a £115 Court Fee and £5-10 to get the solicitor to sign the petition forms. The elderly couple in question instead opted for a debt management plan as a means of repaying, despite it will take them 55 years to repay the debt, which is well in excess of their lifetime. Unfortunately these clients do not meet the DRO eligibility criteria as they have more than £50 surplus income.

Evidence:

One of our advisers, has 20 clients who are better suited to bankruptcy however chose Debt Management Plans, as reduced cost, less stigma, and they get to keep access to their bank account.

Evidence:

An elderly client in receipt of Disability Living Allowance and Pension Credit owes approximately £17,000. The client has been advised to become bankrupt as he has no disposable income to pay his debts however refuses to go bankrupt because of fear of his name appearing in the local papers. The client has decided to enter into a Debt Management Plan where he is only able to pay £40 per month, which means he will be paying his debts until 2044. It is not expected his level of disposable income will increase for the foreseeable future.

Evidence:

Clients are making token payments to service £63k worth of unsecured debt. The couple own their home which has considerable equity, and the debt is causing relationship difficulties. The clients do not want to go bankrupt, as they do not want to lose their home, and are unable to sell their house in the current housing market, as a means of releasing the equity to serve the debt.

Q25 Is it clear in all circumstances what the right solution should be?

In some circumstances the right solution is extremely clear however this is not always the case as in some instances multiple solutions may be suitable. As highlighted earlier in this paper the debt adviser can only advise on the solutions available, including pros and cons of each method. It is effectively the client's choice and the client's decision.

Q26 How often do debtors move from one remedy to another and could the costs be reduced in any way?

Anecdotal evidence suggests that when people fall into financial difficulties they often panic and then consolidate their debts. In some way this may appear to help the client as there is only a single instalment to pay and they only have to deal with one creditor. However debt consolidation loans are not always the best solution to a very indebted person. These clients will often re-use the credit card to meet household expenses and their debt once again spirals out of control.

Our advisers inform us that clients on token payments may be better suited with the Debt Relief Order when it is introduced into Northern Ireland next year, as it will be a better solution for someone with no income or assets, and no likelihood of ever being able to repay the debt.

We believe the costs could be reduced if there was an education/consumer awareness initiative that informed the indebted of all debt remedies, and of the advantages and disadvantages of each option. This would help the client make a more informed decision.

Q27 Should there be more consistency on how a debtor's income, assets and expenditure are calculated and treated in different procedures?

Advice NI considers consistency is essential when considering how a debtor's income, assets and expenditure are calculated. For this we would like to refer to and suggest the

Common Financial Statement¹⁷, as an excellent budgeting tool, which has been approved by the Money Advice Trust and British Bankers Association and is promoted through Advice NI Wiseradviser training in Northern Ireland. It is widely accepted by the majority of creditors.

By using standard definitions on income and expenditure, both money advisers and creditors have a common understanding which helps fast track correspondence and the acceptance of offers. Banks will accept offers which are made via the CFS where expenditure limits fall within the trigger figures¹⁸ set out in the CFS. If the expenditure falls outside of the trigger figures, they often will request further information. There is also a creditor and adviser best practice checklist, which outlines best practice and consistency in how advisers and creditors communicate regarding repayment arrangements.

Q28 Should any changes be made to improve the consistency of investigation action in relation to debtors entering insolvency procedures?

Advice NI has not identified any changes that we would like to see made to improve the consistency of investigation action relating to debtors entering insolvency procedures

Q29 What outcomes should such investigations be looking to achieve- for example, should they just relate to restrictions on future conduct or should they also impact on discharge from liabilities?

Advice NI sees no benefit in delaying a debtors discharge from liabilities, particularly if they have complied with the insolvency offices process and procedures.

Q30 Are the practical effects of entering the different debt remedies satisfactory e.g. future access to financial services? Should this be influenced by the outcome of any investigation/enforcement?

It is widely known that people entering debt remedies will have a consequential effect on their credit rating, and will affect their future ability to access credit/borrow money etc... However we feel this has gone too far. It is often difficult for people to even obtain credit for £50 or more (e.g. overdraft) without revealing that they are an undischarged bankrupt. Whilst

¹⁷ http://www.cfs.moneyadvicetrust.org/faqs.asp?page_id=31

¹⁸

Trigger figures are not target spending levels (budget figures). They represent what research shows to be average spending for the category in question.

The trigger figures have been agreed by money advisers and creditors.

we appreciate, protections need to be in place for both the debtor, and creditor, to ensure they do not end up in financial difficulties again, we consider this amount should be considered on a case by case basis.

Another practical effect on consequences of entering a debt remedy is access to basic financial services. From our experiences, undischarged bankrupts are sometimes even unable to access basic bank accounts with press claiming that only 2 out of 17 banks¹⁹ allow bankrupts to open a basic bank account. Advice NI believes basic bank accounts should be open to the most financially vulnerable people in society, and serve as a necessity for people to manage their money, receive wages, benefits, pay bills etc... We believe the Insolvency Service is looking at this with the British Bankers Association, which we clearly welcome.

Q31 Is there a role for a “gatekeeper to provide a common entry point to all formal insolvency procedures? If so, what would be the benefits and costs, who would perform such a function and how would the system operate?

The voluntary advice sector already provides an invaluable and cost effective entry point to formal insolvency procedures. Advice NI believes the expertise and professionalism within this sector should be supported and resourced to ensure debtors receive impartial advice that meets their needs and provides them with the most suitable options. Indeed, as Debt Relief Orders are introduced in NI we will adopt the role of Competent Authority.

Useful contacts

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¹⁹ <http://www.bbc.co.uk/news/10598343>