



Your options Debt solutions for Scotland



Thomas Fox is licensed in the UK to act as an Insolvency Practitioner by the Insolvency Practitioners Association.

Harper McDermott Ltd is authorised and regulated by the Financial Conduct Authority (Ref no 820851)

DPA registration no ZA212015 | Company Number: SC 538101

Registered Office: 1st floor, 7 West Regent Street, Glasgow, G2 1RW

Professional Indemnity Insurance: Travelers Insurance Company Limited No: UC SCR 5606691

Trust Deed Scotland® is a trading name of Harper McDermott Limited

Page 3-9

Trust Deeds

- What is a Trust Deed?
- Qualifying criteria
- What debts can be included?
- What debts cannot be included?
- How does a Trust Deed work?
- Advantages of a Trust Deed
- Disadvantages of a Trust Deed
- How much does a Trust Deed cost?
- What happens to a home or car in a Trust Deed?
- Trust Deed case studies

Page 10-15

Sequestration

- What is Sequestration?
- What are the various routes into Sequestration?
- What are the qualifying criteria for each route into Sequestration?
- How does Sequestration work?
- Advantages of Sequestration
- Disadvantages of Sequestration
- How much does Sequestration cost?
- What happens to a home or car in Sequestration?
- Sequestration case studies

Page 16-20

Debt Arrangement Scheme (DAS)

- What is DAS?
- Qualifying criteria
- How does DAS work?
- Advantages of DAS
- Disadvantages of DAS
- How much does DAS cost?
- What happens to a home or car in DAS?
- DAS case studies

Page 21-22

Other solutions

- Debt Management Plan
- Full & final settlement
- Informal negotiation
- Debt write-off
- Debt consolidation
- Re-mortgage/Secured loan/Equity release

Page 23-24

Comparison of Scottish debt solutions

Page 27

Contact information

Trust Deeds

What is a Trust Deed?

A Trust Deed is a legally binding voluntary agreement between an individual and a licensed Insolvency Practitioner (IP, who acts as the Trustee) and is for the benefit of all unsecured creditors. A trust deed is an alternative to other forms of debt relief such as the Debt Arrangement Scheme (DAS) or Sequestration (Bankruptcy).

Would are the qualifying criteria for a Trust Deed?

To be able to sign a Trust Deed an individual must meet the following criteria:

- The individual currently lives in or has lived in Scotland within the last 12 months, or has a place of business in Scotland
- The individual has unsecured debts of £5,000 or more
- The individual can pay a monthly contribution from income and/or has realisable assets that will enable a return to creditors
- The individual is insolvent (the individual is unable to pay the debts as they fall due and/or their liabilities are greater than their assets)

What debts can be included?

All unsecured debts can be included, such as:

- Personal loans
- Credit cards
- Overdrafts
- Catalogues/Store cards
- Pay day loans
- Council tax arrears
- Over paid tax credits due to HMRC
- HMRC debts (PAYE, NIC & VAT)
- Over payment of DWP benefits
- Rent arrears (although may be a problem if still living in the property)
- CSA arrears (must pay ongoing maintenance)
- Car parking charges (not fines issued by the Police/Court)
- Shortfall on mortgage or car HP, following repossession
- Personal guarantees, if crystallised

What debts cannot be included?

- Fines, penalties, compensation and forfeiture orders imposed by any court
- Any liability due to fraud
- Student Loans
- Money owed to someone who holds a security on their property, such as a mortgage, secured loan, hire purchase for a vehicle etc.

How does a Trust Deed work?

If the individual decides a Trust Deed is their best option to deal with their debts, then the paperwork will be signed and the Trustee will attempt to have the Trust Deed protected.

Protection is achieved in the following way:

- The Trustee places a Notice in the Register of Insolvencies (ROI).
- No later than 1 week from publication of the Notice, the Trustee will present a proposal to the creditors based on the individual's assets and liabilities and the income and expenditure.
- After a period of 5 weeks from publication of the Notice, if the Trustee has not received written objections from a majority in number of the creditors or any creditor(s) owed more than one third in value of the total debt, then the Trust Deed will be registered as protected.
- The Trust Deed becomes protected from the date it is registered on the ROI by the Accountant in Bankruptcy (AiB).

By obtaining protected status, this means that the creditors cannot take any further action against the individual for the recovery of their debts - they are legally bound by the terms of the Trust Deed.

Once protected, the Trustee's main duty is to realise the assets and/or collect regular contributions from the individual's income, for a minimum period of 4 years, in order to make the agreed dividend payment to the creditors. The agreed contribution is subject to review at least annually or any time when an individual experiences a change in circumstances.

It is essential that the individual co-operates fully with the Trustee for the duration of the Trust Deed by providing all requested information, keeping the Trustee up to date with any changes to their income or expenditure, advise of any changes to their contact details and, as far as possible, maintaining the agreed payments.

At the end of the Trust Deed the individual will be discharged from all debts included in the Trust Deed and can hopefully look forward to a debt free future.

Advantages of a Trust Deed

- Once protected, the creditors cannot take legal action against the individual for recovery of any debt outstanding as at the date the Trust Deed was signed.
- The individual no longer deals with the creditors – the Trustee will negotiate with the creditors for the individual, taking away the pressures of the constant phone calls and distressing mail.
- Interest, fees and charges are frozen – the creditors can only claim for the outstanding balance due to them as at the date the Trust Deed is signed.
- The individual makes one affordable monthly payment, calculated after an allowance has been made for all their general living expenses and household bills.
- If the individual is in financial difficulty, a Trust Deed can be signed immediately.
- A Trust Deed does not involve court proceedings.
- An earnings arrestment will be removed on protection of the Trust Deed.
- The home and other assets can be retained, subject to value and circumstances, advice must be taken prior to proceeding.
- The individual will normally make payments for a 4-year period; however, in certain circumstances that period could be extended.
- After successful completion of the Trust Deed, the individual will be discharged from the Trust Deed and all remaining debts will be written off.

Disadvantages of a Trust Deed

- Creditors may object to the Trust Deed proposal in sufficient number or value, causing it to fail to achieve protected status, as a result, sequestration (bankruptcy) becomes an alternative solution.
- The individual's credit rating may be adversely affected.
- Granting a Trust Deed may result in the individual being refused credit, before or after their discharge is granted.
- The individual may not be able to act as a Director of a limited company, unless the company's articles of association allow it.
- Student loans are not discharged in a Trust Deed (or a Bankruptcy).
- Equity in the individual's property and/or other assets the individual own may have to be realised for the benefit of the creditors, subject to value and circumstances, advice must be taken prior to proceeding.
- The individual's current employment or future employment prospects may be affected by entering into a trust deed.
- A trust deed normally requires a minimum return of 10p in the £ to creditors, if the circumstances will not allow this then sequestration becomes a viable alternative.
- A trust deed has a 4-year acquirenda term i.e. the trustee has claim on assets acquired for a period of 4 years from the date of signing the trust deed e.g. inheritance, lottery win etc.

How much does a Trust Deed cost?

- The Trustee's fee and costs are met from the funds received into the Trust Deed; there are no payments due by the individual over and above the agreed contribution from the income and/or assets.
- We do not charge set up fees and we would advise against using any company who does.
- Creditors agree the level of the Trustee's fee at the beginning of the Trust Deed and monitor that level throughout.
- There is no cost to the individual if the individual decides against signing a Trust Deed after taking advice but deciding not to proceed.
- More information relating to fees can be found here:
<https://www.harpermcdermott.com/fees-key-information/>

What happens to a home and car in a trust deed?

- The home

In a Trust Deed, the individual can keep their home, although the individual may need to release some of the equity for creditors as part of the agreement. If the individual is a homeowner, the level of equity (difference between the value of the house and any loans secured on it) is calculated and fixed (provided the individual co-operates) at the start of the Trust Deed. The equity, if applicable, must be realised for the benefit of the creditors but this is normally done without having to sell the home – it is extremely unusual to sell the home in a Trust Deed, unless the individual wants to do so.

Equity, if applicable, can normally be realised by the following methods:

- Extending the payment period of the Trust Deed, normally by one or two years, depending on the level of equity
- Third party payments e.g. family, friend etc.
- Re-mortgage or secured loan
- Mortgage to Rent scheme
- Sale by private bargain or open market

- The car

In the vast majority of cases the individual will be able to keep their car, especially if it is required for work purposes.

Key points in relation to cars are:

- If the car is valued at less than £3,000 then it will not be considered as a realisable asset of the trust estate.
- If the car is subject to a Hire Purchase agreement or another type of secured finance agreement, the individual will be allowed the contractual repayment within their monthly expenditure (provided it is not excessive) and, in most cases, the individual will be able to keep the car.

- If the car is new and/or worth a significant amount then the individual may have to trade it in for a less expensive car, potentially releasing income and/or a lump sum from the sale proceeds to the Trust Deed.
- Any individual with a finance agreement secured on the vehicle should check their terms and conditions before entering into a Trust Deed with creditors, it is possible that their contract could be terminated and their vehicle repossessed if their contract does not allow for our individual to enter into an insolvency arrangement.
- In cases where the car is valued at more than £3,000 (whether it is subject to credit or not), the car will be valued again at the end of the TD period and if it is valued at more than £3,000 then the car will be deemed a realisable asset of the Trust. The car can be realised by extending the debtor's monthly contribution payments until the agreed sum has been paid. Like a home, it is highly unusual to sell a vehicle in a Trust Deed.

Trust Deed Case studies

Scenario 1

- Married couple with 2 children of school age, Mr & Mrs in full time employment, Mr earns £2,000/m, Mrs earns £1,200/m.
- Mr has debts of £40K, Mrs has debts of £25K, £20K of the debts are joint, total repayments are £1,300/m.
- Home is jointly owned with £5,000 of equity.
- Jointly owned Term Life Assurance policy.
- Motor vehicle on HP, Mr is registered owner & uses the car for work purposes.
- Debts were incurred for home improvements and then to supplement the household income when Mrs took time off work to look after their children before they started school, a large consolidation loan was obtained in an effort to reduce their monthly outgoings but they continued to utilise other credit and their level of debt spiralled out of control. They then sought financial advice.

Solution:

Both Mr and Mrs signed Trust Deeds; Mr pays £250/m, Mrs pays £150/m for a 4 year period; Mrs's parents are paying 20 monthly payments of £250 to acquire the Trustee's interest in the property - £2,500 to each Trust Deed; the premium for life assurance policy is an allowable expense; Mr has also been allowed the HP payment as an expense and the HP company is willing to allow the agreement to continue. At the end of the Trust Deeds creditors will have received a payment of approx. 20p in the £ from Mr and a payment of approx. 17p in the £ from Mrs, all remaining debts will be written off. The joint debts will receive approx. 37p in the £ in total from both Trust Deeds.

Scenario 2

- Divorced male, self-employed tradesman, 1 dependant who lives with his ex-wife and for whom he has visitation rights, earns approx. £1,800/month.
- Debts of £35,000, including £10K shortfall due to mortgage lender from repossessed family home and self-assessment tax debt of £8K.
- Now lives in rented accommodation, family home was solely owned.
- Works van, owned outright, poor condition, high mileage.
- Debts were incurred in previous marriage to maintain his family's standard of living, ex-wife was unemployed, loans and credit cards were used to supplement his income, marital breakdown followed and the family home was repossessed, he struggled to maintain his repayments but his income was insufficient to pay his daily living expenses, child maintenance, household bills and his creditors. He then sought financial advice.

Solution:

He signed a Trust Deed, paying £190/m for a 4 year period; the van will be kept as it is required for work purposes; an allowance has been made for child maintenance payments, ongoing self-assessment tax and NI contributions (he must pay his ongoing tax liabilities); the property shortfall will be treated in the same way as all other debts; at the end of the Trust Deed all creditors will have received a payment of 10p in the £, all remaining debts will be written off.

Sequestration

What is Sequestration?

Sequestration is the Scottish legal term for Bankruptcy. Sequestration is an option if an individual is unable to pay their debts as they fall due and can allow for up to 100% of the debts to be written off. A Trustee would take control of the assets and collect an income contribution (if affordable) towards the insolvent estate for a 4-year period. It is an alternative to other forms of debt relief such as the Debt Arrangement Scheme (DAS) or a Trust Deed.

What are the various routes into Sequestration?

There are various methods of applying for bankruptcy in Scotland, these are:

- Certificate for Sequestration; issued by an authorised person e.g. an Insolvency Practitioner or a Debt Adviser with your local Citizen's Advice Bureau.
- By showing apparent insolvency e.g. via an expired charge for payment
- Minimal Asset Process (MAP)

Regardless of the route into bankruptcy, all involve taking advice from an approved money adviser and making an application to the Accountant in Bankruptcy (AiB).

The above routes are for an individual to make an application, it is also possible for a creditor to take legal action against an individual that would end with that individual being declared bankrupt.

What are the qualifying conditions for Full Administration Sequestration?

To apply for full administration sequestration, the individual must meet the following criteria:

- The individual currently lives in or has lived in Scotland within the last 12 months, or has a place of business in Scotland
- The individual has debts of over £3,000
- The individual has Apparent Insolvency and/or the individual is unable to pay their debts as they fall due and has been granted a Certificate for Sequestration by an authorised person
- The individual must have received advice from an Approved Money Adviser
- The individual has not made themselves Bankrupt in Scotland within the last 5 years
- Pay the application fee of £200 to the Accountant in Bankruptcy (AiB)

What are the qualifying conditions for MAP?

To apply for the MAP route into bankruptcy, the individual must meet the following criteria:

- The individual must owe a total debt of at least £1,500
- The individual must not owe more than £17,000
- The individual does not own a single asset worth over £1,000 (this excludes a vehicle which does not exceed £3,000 and is reasonably required)
- The total value of assets does not exceed £2,000
- The individual must have received advice from an Approved Money Adviser
- The individual must be living in Scotland or have lived in Scotland within the last 12 months
- The individual must not have been made bankrupt in the last five years
- The individual must not have been made bankrupt through the Minimal Asset Process within the last 10 years
- The individual must pay the application fee of £90 to the AiB
- The individual must have a certificate for sequestration signed by an authorised person
- The individual must have been in receipt of benefits only, for the last six months; or
- A money adviser has assessed the individual's income and expenditure using the common financial tool and the individual has no surplus to pay a debtor's contribution.
- The individual does not own any land or property

How does Sequestration work?

If the individual decides sequestration is the best option, the individual will complete an application form and send it to the AiB. Once the sequestration has been awarded the individual is protected from any creditors taking legal action for the recovery of debt.

The Trustee's main duty in the sequestration is to take control of the assets and, if required, realise them for the benefit of the creditors. The individual's disposable income is reviewed at the application stage and a contribution is set for a 4 year period using a Debtor Contribution Order

(DCO). The DCO is subject to review at every anniversary of the bankruptcy. Both duties are very similar to the responsibilities assumed by a Trustee under a Trust Deed.

The individual is discharged from Sequestration normally after 1 year, subject to co-operation and asset realisation; however, if the individual can afford a contribution then the individual will be required to make a monthly payment to the sequestration for a period of 4 years, as described above.

Advantages of Sequestration

- 100% debt relief is possible
- Creditors do not have an opportunity to reject the Sequestration
- Once sequestrated, creditors cannot take legal action to recover their debt
- The individual no longer has to deal with the creditors – the Trustee will do this for the individual, taking away the pressure of the constant phone calls and distressing mail
- Interest, fees and charges are frozen – the creditors can only claim for the outstanding balance due as at the date of sequestration
- If the individual is asked to pay a contribution, then it will be an affordable monthly payment that is calculated after an allowance has been made for all the general living expenses and household bills.
- The individual will normally be discharged from the sequestration after 1 year (assuming the Trustee does not have cause to delay the discharge)
- The application to the AiB does not involve court proceedings
- Sequestration stops or removes the effect of existing diligence e.g. an earnings arrestment or an Inhibition

Disadvantages of Sequestration

- Assets of a significant value are likely to be sold for the benefit of creditors
- Unable to act as a director of a limited company or be involved in the formation, promotion or day-to-day financial management of a limited company.
- It may harm the individual's employment prospects, both now and in the future
- Student Loans are not discharged by Sequestration
- Adverse effect on credit rating
- £200 or £90 (MAP) application fee to be paid to the Accountant in Bankruptcy
- For a 6-month period after discharge, the individual cannot apply for credit of £2,000 or more, without telling the creditor that they have been made bankrupt and are under this restriction.
- For a 6-month period after discharge, the individual cannot apply for credit of any amount when they already have debts of £1,000 or more, without telling the creditor that they have been bankrupt and are under this restriction.
- If they are self-employed, they must tell anyone that they do business with the name of their business when they went bankrupt.
- Unable to act as a Member of Parliament or a Justice of the Peace.
- An individual may be in breach of certain contractual obligations by being made bankrupt e.g. tenancy/lease agreements, various licences, employment contracts, HP agreements, insurances etc
- Bankruptcy has a 4 year acquirenda term i.e. the trustee has claim on assets acquired for a period of 4 years from the date of sequestration e.g. inheritance, lottery win etc

How much does Sequestration cost?

- The individual must pay an application fee of £200 (Full administration)/£90 (MAP) to the Accountant in Bankruptcy when applying for the sequestration.
- The Trustee's fees are based on the time spent by the Trustee and their staff on the administration of the bankruptcy. Fees and other costs are then met from the funds received into the Sequestration through the realisation of assets and the monthly contributions; there are no payments due by the individual over and above the agreed contributions from the income and/or the assets.
- We do not charge set up fees and we would advise against using any company who does.
- Creditors are given the opportunity to accept or reject the level of the Trustee's fee at each anniversary of the sequestration.
- There is no cost to the individual if the individual decides against making a sequestration application after having taken advice from one of our advisers.

What happens to a home and car in sequestration?

- The home

In sequestration the individual may be able to keep their home, but this is dependent on the level of equity. The individual may need to release some of the equity for creditors as part of the process. The key point to consider is the level of equity. If the individual is a homeowner, the level of equity (difference between the value of the house and any loans secured on it) is calculated and the Trustee will be required to realise that amount for the benefit of creditors. If there is significant equity in the individual's home, then it may be necessary to sell the property to realise the equity for the benefit of creditors. However, it is not automatic that the individual's home will be sold.

Generally, a Trustee will sell a property where there is equity to be realised for creditors that cannot be realised through any other means. A trustee will consider negotiating with an individual to avoid the sale of a property, provided an amount is being paid equivalent to the equity, therefore, still benefitting the creditors.

Equity, if applicable, can be realised by the following methods:

- **Third party payments e.g. family, friend, business associate etc.**
- **Extending the payment period of the sequestration**
- **Re-mortgage or secured loan**
- **Mortgage to Rent scheme**
- **Sale by private bargain or open market**

If the home has nil or minimal equity, then the Trustee may request a nominal sum to relinquish their interest in the home. This payment would normally be £550, as per the AiB guidelines.

- The car

In most cases the individual will be able to keep their car, especially if it is required for work purposes.

Key points in relation to cars are:

- If the car is valued at less than £3,000 then it will not be considered as a realisable asset of the sequestrated estate.
- If the car is new and/or worth a significant amount then the individual may have to trade it in for a less expensive car, potentially releasing income and/or a lump sum from the sale proceeds to the sequestration.
- If the car is subject to a Hire Purchase agreement or another type of secured finance agreement, the individual will be allowed the contractual repayment within their monthly expenditure (provided it is not excessive) and, in most cases, the individual will be able to keep the car.
- Any individual with a finance agreement secured on the vehicle should check their terms and conditions before entering into a Trust Deed with creditors, it is possible that their contract could be terminated and their vehicle repossessed if their contract does not allow for our individual to enter into an insolvency arrangement.

Sequestration case studies

Scenario 1

- Divorced Male who works in a Call Centre, earning a wage of £1,300 per month.
- Debts of £40,000 which consist of a £20,000 shortfall from the sale of his repossessed marital home and a £12,000 personal loan for a car which he sold last year and various credit card debts and pay day loans. The funds received for the car were used to pay off other debts. His ex-partner who he jointly owned the property with has already applied for her own sequestration, she now lives in rented accommodation with their 2 children.
- He now lives in a property which he rents from the council.
- He has no other assets.
- Other than the shortfall and car loan, the debts were incurred whilst he lived with his ex-partner mainly for home improvements & general living expenses. When their relationship broke down, he could not maintain the payment to the mortgage and the bank repossessed their home. With the added burden of the shortfall for the mortgage along with his existing debt, he eventually sought financial advice.

Solution:

He has disposable income of £120 per month after living expenses and household bills are deducted, including child maintenance payments. He has applied for his sequestration rather than sign a Trust Deed. The Trust Deed would not be suitable because his disposable income is insufficient to repay at least 10% of his debts, therefore, his creditors would reject a Trust Deed proposal. He would still be required to pay a contribution of £120 for 4 years, however, he would be discharged from his debts after 12 months, subject to him co-operating with the Trustee. The creditors may receive a very small dividend payment at the end of the 4 years, with the rest of the debt legally written off.

Scenario 2

- Married couple with a 3yr old child, Mrs unemployed and Mr in full time employment. Mr earns £2,100 per month.
- There are joint debts of £22,000 and Mr also has additional debts of £43k.
Home is jointly owned with negative equity of £8,000
- Motor vehicle is owned outright by Mr, and is valued at £2,900
- Debts were incurred, initially, to maintain their standard of living when Mrs stopped working before the birth of their child. Mr also had his own business (sole trader) however due to a downturn in trade, the business ceased trading last year, and he went into full time paid employment. Unfortunately, he received a tax bill of £10,000 and was also personally liable for a £20,000 overdraft from his ex-business account. They struggled on only one salary with a reduced income to maintain their repayments and Mr used credit cards to service his debt. This only made his situation worse and he sought financial advice.

Solution:

He signed a Trust Deed, paying £190/m for a 4 year period; the van will be kept as it is required for work purposes; an allowance has been made for child maintenance payments, ongoing self-assessment tax and NI contributions (he must pay his ongoing tax liabilities); the property shortfall will be treated in the same way as all other debts; at the end of the Trust Deed all creditors will have received a payment of 10p in the £, all remaining debts will be written off.

Debt Arrangement Scheme

What is the Debt Arrangement Scheme?

The Debt Arrangement Scheme (DAS) is a statutory debt management plan introduced by the Scottish Government in 2004 to help individuals repay their debt(s). The legislation has been updated several times since its inception with the most recent changes commencing on 4 November 2019. Under DAS, the individual can apply for a Debt Payment Programme (DPP) that allows the individual to pay off their debt free from interest, fees and charges over an extended period of time, ensuring payments are set at a realistic and affordable level whilst giving the individual protection against legal action from their creditors and safeguarding their assets, like the family home. It is an alternative to other forms of debt relief such as a Trust Deed or Sequestration (Bankruptcy).

What are the qualifying criteria for DAS?

The individual may be eligible to participate in DAS if the individual meets the following criteria:

- the individual lives in Scotland
- the individual has one or more debts
- the individual has a reasonable level of surplus income after meeting the normal living costs
- the individual is not bankrupt, subject to a bankruptcy restrictions order or undertaking, or in a protected trust deed

All debts can be included except for child support payments and court fines.

Mortgage/secured loan arrears can be included; however, ongoing mortgage/secured loan payments cannot be included, and the individual must continue to make these out with the DPP.

How does DAS work?

- If the individual chooses DAS, the individual commits to a debt payment programme (DPP) based on all their creditors receiving regular payments of their share of whatever the individual can reasonably afford each month. A DPP can last for any reasonable length of time (normally up to 10 years), depending on the amount of debt and how much the individual can pay.

A DPP under DAS is proposed to creditors in the following way:

- Proposals are sent to all the creditors and they have 21 days to respond if they wish to object to them.
- If no creditors object, then the DPP is approved automatically.

- If creditor(s) object and they are owed up to 10% of the total debt, then the DPP application will be automatically approved.
- If one or more creditors object and they are owed more than 10% of the total debt, then the DPP can still be approved if it is judged to be “fair and reasonable” by the DAS Administrator (Accountant in Bankruptcy).
- It is possible that the circumstances may change whilst the individual is repaying the debts under DAS, in which case the DPP may be varied to accommodate this change without penalty.
- The continuing money adviser will help the individual produce an alternative debt payment programme based on the current situation and send this for approval.
- The same 10% rule (described above) applies for approval of variations to already approved DPPs
- So long as the amended proposal is fair, the creditors will not be able to stop the debt payment programme being approved.
- If the DPP is refused, the individual has the right to appeal against the decision. However, the individual may need to look at other options, such as a protected trust deed or bankruptcy.

Only qualified money advisers can advise on and manage a DPP under DAS. A money adviser can be employed in the free advice sector, such as with the local Citizens Advice Bureau or local authority money advice team or the Money Adviser can be an insolvency practitioner (or a suitably qualified member of his/her staff).

Once the DPP is approved, the individual only has one affordable payment to make, therefore, their monthly outgoings should be drastically reduced and the pressure from creditors should stop.

Advantages of DAS

- It is legally binding on the creditors and is supervised by the DAS Administrator, an agency of the Scottish Government (unlike an informal Debt Management Plan which creditors can choose to end at any time)
- The creditors are forbidden from taking legal action against the individual to recover the debts owed to them
- The individual makes one affordable regular payment which is distributed by the payment distributor between the creditors on a monthly basis.
- DAS freezes all interest, fees and charges on debts from the date the DPP application is made and these are written off when the DPP is completed
- Any assets the individual owns are unaffected, including their home, even if there is significant equity in it

- An earnings arrestment is stopped on approval of a DPP
- If creditors do not accept the proposal but are owed up to 10% of the total debt, then the DPP will be automatically approved
- Creditors that do not accept the proposals and are owed more than 10% of the total debt can be forced to comply with the arrangement if it is judged to be “fair and reasonable” by the DAS Administrator
- It is possible to set up a joint DPP, the joint applicants do not need to be jointly and severally liable for any debts – this goes for individuals who are married or cohabitants (living together as if married)
- It is possible to set up a single debt DPP
- The payment to be made by the individual into their DPP has an element of flexibility i.e. the individual does not have to offer their full disposable income, a reduced amount can be offered to allow the individual more affordability for their general living expenses
- Mortgage and secured loan arrears as well as rent arrears can be excluded from the DPP
- If an individual’s circumstances change then the DPP can be varied to reflect these changes without putting the DPP at risk

Disadvantages of DAS

- A DPP may be rejected by creditors and deemed not ‘fair and reasonable’ by the DAS Administrator, meaning a DPP is not possible and the individual would need to look at other options.
- If the individual does not comply with the conditions of the DPP then it may be revoked. Creditors are then free to pursue legal action and to add back on their interest, fees and charges if they wish.
- An individual’s credit rating may be adversely affected, in a similar way to a Trust Deed or Sequestration
- There is no debt being written off, only relief from further interest, fees and charges, therefore a DAS may take considerably longer to complete than an insolvency option such as a Protected Trust Deed or Sequestration

How much does a DAS cost?

There are no fees payable by an individual entering into the DAS. This is the same for all individuals whether they use a private sector firm (e.g. Harper McDermott Ltd) or a public sector organisation (e.g. CAB or local authority Money Adviser).

The costs of administering the scheme are borne by the creditors i.e. from every £ received into the scheme, 22p is used to pay for the costs; this 22p is paid to the DAS Administrator (2p) and the Money Adviser (20p). The remaining amounts are distributed amongst all creditors on a pro rata basis and a successfully completed DPP deems all debts to be repaid in full.

What happens to a home and car in DAS?

- The home

As long as the individual continues to pay their mortgage payments and any loans secured on their home then their home is entirely unaffected by entering into DAS, regardless of whether the individual has significant equity in the property or not.

Unlike an insolvency procedure such as a Trust Deed or sequestration, under DAS the individual is repaying their debts in full and their assets are not included in the DAS.

If the individual has arrears on a mortgage or secured loan it may be possible to include these arrears in the DPP and repay them along with the unsecured debts.

- The car

The individual's car would be totally unaffected by entering into DAS. The car would be kept and if it is on a HP or another type of finance agreement then the monthly repayment would be allowable as an expense when calculating the payment to the DPP.

DAS Case Studies

Scenario 1

- Married Couple, with 2 young children. Mr is in full time employment and Mrs is unemployed.
- Mr has credit card debts totalling £7k, Mrs has debts of £4k and there is £5k of joint council tax arrears (i.e. total household debts of £16k)
- They had been paying minimum payments on their debts, totalling around £300 per month, which was just affordable but due to high interest rates the outstanding balances were reducing very slowly. Unfortunately, Mr's wages were then arrested for non-payment of council tax. As a result of this, they could afford only £150 per month for all their other debts, and they fell into arrears.

Solution:

Mr & Mrs Y set up a joint DAS. As the earnings arrestment is lifted upon approval, they can afford to pay £300pm. All further interest and charges are frozen and their debts will be repaid in full in around 4.5 years.

Scenario 2

- Single man in full-time employment. Owns home worth £140k, with outstanding mortgage £80k.
- Owns car worth around £7k. Did not wish to lose car or sell his home as has elderly parents living nearby, who require help getting around.
- Had unsecured debts totalling £25,000 due to previous business failure. He could afford to pay £350 pm to his unsecured debts and attempted to set up a payment arrangement with his creditors on this basis through a Debt Management Company.
- Unfortunately, one former business supplier is owed £8k and is not willing to agree to any payment proposals via the informal DMP, insisting that the individual must pay the full debt or face legal action. The creditor is aware of the equity in the house and the debtor fears that this creditor may eventually seek to have him made bankrupt and force a sale of his home.
- He has tried to re-mortgage to release funds but was rejected.

Solution:

Application for a DPP under DAS is made, paying £350pm to his creditors. This means his debts will be fully repaid within 6yrs and his home and car will remain protected.

The difficult creditor objected to the proposals, but they were deemed “fair and reasonable” by the DAS Administrator. This means that the creditor was forced to accept the arrangement and is no longer able to take any enforcement action as long as the individual successfully completes his DPP.



Other Solutions

Debt Management Plan

A Debt Management Plan (DMP) is a way of paying back debts at a rate the individual can manage rather than the amount that the creditors contractually demand. Usually the individual has much of the interest and fees frozen, and the individual only has one monthly payment to make. Also, their assets are not affected. A DMP is not legally binding so the individual can opt out of it at any point.

However, the creditors are also free to review the arrangement as often as they wish and to charge interest and fees once again. No debt is written off via a DMP and there is no definitive end date. If the individual is concerned about legal protection from the creditors, it may be wise to consider another solution such as the Debt Arrangement Scheme, a Trust Deed or Sequestration. Given the advantages of DAS, it should be highly unlikely for an individual to choose to do a DMP instead of DAS.

Full and Final Settlement

A full and final settlement offer involves making a one-off lump sum payment to the creditors, in return for having the remainder of the debt written off. This type of offer is a suitable solution for managing the debts only if the individual has access to a lump sum of money. The lump sum could come from the parents or any other willing person, redundancy funds, inheritance, the sale of any assets or any other appropriate source. It is also more common where the individual has a very small number of individual debts, meaning a negotiation of this sort is manageable.

Informal Negotiation

This solution works very much like a Debt Management Plan but does not involve an organisation acting on their behalf. The individual would contact the creditor(s) and come to an informal arrangement with them which would involve repaying the debt at an amount and frequency the creditor(s) is happy with. To do this the individual must be prepared to deal directly with the creditor(s) as it would be their responsibility to implement and ensure they fulfilled the terms of the arrangement.

Debt Write-Off

This solution involves contacting the creditors to request that they write-off all the debt that the individual owes them. It is likely that this will work in specific circumstances only, such as, when an individual suffers from a long-term illness and has no prospect of returning to employment.

Debt consolidation

This solution involves borrowing a large amount of money from one lender to pay off all existing debts. This is a risky solution and should be considered very carefully before proceeding. It can often be the case that the large loan repayment is unaffordable and/or the individual continues using other forms of credit, therefore, worsening their situation instead of helping solve their debt problems.

Re-mortgage/Secured loan/Equity release

These solutions are only applicable to homeowners and involve borrowing against the value of the home. Often this can be done to repay debts in a similar way to debt consolidation. The individual should consider the circumstances carefully before proceeding with one of these options and should seek independent financial advice from a suitably qualified financial adviser.

A comparison of Scottish debt solutions


Debt Solution	Statutory Process	Min Monthly Contribution	Debt Level	Payment Term	Dividend to Creditors	Total Cost (inc fees & outlays)	No. of creditors	Joint Application	Social Security Benefits	Homeowner	Employment
Protected Trust Deed	✓	No legal minimum - calculated based on CFS guidelines	£5,000 legal minimum	Min 48 months	No legal minimum, but normal level for creditors acceptance is minimum 10p in £	Fixed fee max £2,500 + max of 20% of realisations + outlays (AiB etc)	1 or more	✗ must be individual	Payment cannot come solely from benefits	Yes, Equity must be realised, but more flexibility allowed compared to sequestration, if nil/negative no payment required	Should be in permanent employment with ability to pay contribution unless assets are being realised
Sequestration FA = Full Administration MAP = Minimal Asset Process	FA ✓ MAP ✓	FA No legal minimum - subject to DCO, calculated based on CFS guidelines MAP No contribution to be made	FA £3,000 legal minimum MAP Min £1,500, max £17k as per legislation	FA 48 months, payment break could extend period MAP No payment to be made	FA No dividend required, but can be as high as 100p in £ MAP nil	FA Time costed; Trustee's fee + outlays (AiB etc) MAP only AiB costs	FA 1 or more MAP 1 or more	✗ FA must be individual MAP must be individual & only one in any 10 year period	FA Payment cannot come solely from benefits MAP qualify if in receipt of only benefits for previous 6 months	FA Yes, equity must be realised, if nil/negative £550 nominal sum required. MAP cannot own property or land & cannot own assets with value > £2k, no single asset > £1k – car ok if < £3k	FA no restrictions on employment status at time of application MAP qualify if unable to pay a contribution per CFT, regardless of income from employment
Debt Arrangement Scheme	✓	No legal minimum - based on CFS guidelines - can be less than full DI	No legal minimum	Normally max10 years, longer in certain circumstances & if creditors agree.	100p in £ (less costs borne by creditors)	Free to individual – all costs are borne by the creditors – max 22% of the total debt	1 or more	✓ joint debts not required	Acceptable, but only if individual unsuitable for MAP	Yes; all assets excluded, major benefit of DAS is that it protects equity	Should be in permanent employment with ability to pay contribution
Debt Management Plan	✗ voluntary for debtor and creditors	Subject to DMC criteria – would normally follow standard guidelines	No legal minimum	No legal minimum Normally max10 years,	100p in £ (excluding fees, if applicable)	Free public sector/charity or setup fee + monthly fee via private sector	2 or more	✓ joint debts not required	Acceptable, but only if individual unsuitable for MAP	Yes, all assets excluded.	Should be in permanent employment with ability to pay contribution

A comparison of Scottish debt solutions

Debt Solution	Self Employed	Credit Rating	Public Register (online)	Can creditors refuse terms	Are parents affected	Application Fee	Earnings Arrestment	Inhibition	Debt Write-off	Interest, fees & charges stopped
Protected Trust Deed	✓ income must be evidenced	Likely adverse effect – all notices remain for 6 years from date of entry on credit file	✓ Register of Insolvencies	✓ If majority in number or greater than 1/3 in value	✗ can 'disassociate' if required and not linked financially	Free	Stops on protection of TD	Does not defeat inhibition unless lodged within 60 days before TD being signed	✓ anything up to 90% write off is normal, excluding fees etc.	Stopped on signing of Trust Deed, subject to protected status being achieved, anything charged thereafter is written off.
Sequestration FA = Full Administration MAP = Minimal Asset Process	FA ✓ MAP ✓ income must be evidenced	FA & MAP Likely adverse effect – all notices remain for 6 years from date of entry on credit file	✓ FA & MAP Register of Insolvencies	✗ FA & MAP once awarded, creditors have no say in award or decisions made thereafter	✗ FA & MAP can 'disassociate' if required and not linked financially	FA £200 per application MAP £90 per application	FA & MAP Stops on award of SEQ	FA & MAP Inhibition defeated	✓ FA & MAP Up to 100%, excluding fees etc.	FA & MAP Stopped on award of sequestration, anything charged thereafter is written off.
Debt Arrangement Scheme	✓ income must be evidenced	Likely adverse effect – all notices remain for 6 years from date of entry on credit file	✓ DAS Register	✗ If one or more object and up to 10% of debt then automatically approved ✓ If one or more object and greater than 10% of debt, AiB applies fair & reasonable test	✗ can 'disassociate' if required	Free for all, regardless of provider	Stops on approval of DAS DPP	Does not defeat inhibition but property excluded & creditors paid via DAS	✗ Deemed 'payment in full'	Stopped on date of application for DPP, subject to DPP being approved, anything charged thereafter is written off.
Debt Management Plan	✓ income must be evidenced	Likely adverse effect – all notices remain for 6 years from date of entry on credit file	✗	✓ Each creditor will make decision based on their own internal criteria.	✗ can 'disassociate' if required	Free public sector/charity, private sector will charge fee	Subject to creditor, does not stop automatically	Does not defeat inhibition but property excluded & creditors paid via DMP	✗ 'payment in full'	Not automatic, subject to each creditor and could be added back on at any time.

Contact

 0141 221 0999 (Mon-Fri 9am-8pm)

 Harper McDermott Ltd t/a Trust Deed Scotland,
1st Floor, 7 West Regent Street, Glasgow, G2 1RW

 enquiries@trustdeedscotland.net

www.trustdeedscotland.net/contact