

National Debt Relief

Submission on the Authorisation Requirements and Standards for Debt Management Firms

20 September 2013

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nationaldebtrelief**

After enquiring of the Central Bank the regulatory requirements for offering Debt Management Plans (DMPs) in Ireland, National Debt Relief (NDR) began to offer DMPs to indebted individuals in 2009 prompted by the large number of enquiries they were receiving for their services.

Since 2009 NDR has distributed over €3m to creditors, provided free advice to thousands of individuals and has thereby helped many people see light at the end of the tunnel.

In this time there has been no complaints made about NDR's service and in fact NDR has had many glowing testimonials from relieved debtors.

Why are debt management plans needed?

What has long been required by Irish Consumers who are in financial difficulty is a regulated debt management industry that allows indebted individuals to pay back what they can afford to their creditors in a way that relieves them from the enormous pressure that creditors can bring to bear.

There are many reasons why DMPs are needed to be offered for people in financial difficulty in Ireland.

- It is clear that the unprecedented level of personal debt in Ireland has become unmanageable for many individuals.
- The required criteria to avail of the insolvency options available under the Personal Insolvency Bill means that they are not suitable in all cases. Sometimes a more flexible, informal DMP is more suitable option for a debtor to deal with his creditors.
- In the UK there are estimated to be around 300,000 people in debt management plans and that is despite the UK having had operational personal insolvency legislation in place since the 1980s. This illustrates the fact that DMPs will be needed even when the Personal Insolvency Bill 2012 is fully operational.
- Under the Personal Insolvency Bill 2012 before an individual can avail of a Debt Scheme of Arrangement (DSA) or a Personal Insolvency Arrangement (PIA) they will have needed to have been trying to come to an agreement with their creditors for at least 6 months. This is where an informal DMP would perfectly compliment the Personal Insolvency Bill.
- MABS cannot cope with the demand for debt advice they are currently receiving from indebted individuals. A common complaint from new debtors of NDR is that they could not get a meeting with MABS for a number of weeks, or months, and even if they do get a meeting it is still left to the individual to deal with their creditors. Not all debtors are equipped to do so.
- DMP companies are able to offer this service without cost to the taxpayer (unlike MABs) and they can offer the independent perspective required as they are a third party in the situation, unlike some of the charitable organisations which are actually funded by the banks and which have already been shown in the UK to push debtors into solutions that suit the banks, not the individuals.

- The UK has no Debt Management Regulation; they have guidelines as laid down by the Office of Fair Trading. Any company offering debt management plans is expected to follow these guidelines.

What are the issues with the proposed DMP legislation?

Issue	Comments
<i>It appears that a DMP firm will need to apply for authorisation under debt management legislation and under the European Payment Services directive</i>	<p>It is completely unnecessary to require Debt Management firms to comply with two different sets of regulation.</p> <p>This adds ‘compliance costs’ which may be passed onto the debtor meaning that less money is passed onto creditors and can mean that it takes an individual longer to repay their creditors.</p> <p>One set of regulations to comply with will save costs and help avoid confusion.</p>
<i>A charitable organisation is excepted person</i>	<p>From experience the charitable organisations are usually paid for by the banks and therefore act in the best interests of the bank.</p> <p>Such ‘Charitable organisations’ in the UK also began to provide formal insolvency solutions in the UK but still continued to recommend DMPs, as this gave the best return to the banks.</p> <p>Everyone providing this service should be authorised to the same standard and by the same regulations.</p>
<i>Minimum Competency Code requirement for a ‘Qualified Financial Advisor’</i>	<p>While we would agree with the need for training of all staff that will be providing debt advice, one must avoid creating additional cost that any licensed firms will be forced to pass onto their debtors.</p> <p>Another option is that some industry qualification be created.</p>
<i>1.3 ‘All debt management services must be conducted within the state’</i>	<p>This is in complete contradiction to the EU directive on freedom of trade and individuals between member states. We think you should take some legal advice on this matter.</p>
<i>3.1 A debt management firm shall have professional indemnity insurance in place (PII)</i>	<p>We would be in agreement that all firms should have PII cover.</p>
<i>3.2 The level of coverage shall be at least the equivalent to all the total value of all the debts of the consumers related to the services of the debt management firm subject to a minimum cover of</i>	<p>Why would the level of coverage have to be in excess of the amount of funds paid into a debt management plan? This is a suggestion completely devoid of rationality, commerciality and reality.</p> <p>The level of cover required clearly shows that the Central Bank has absolutely no interest in regulating a debt management company and just wishes that there was no need for such an industry.</p>

<p>£1,500,000</p>	<p>The required level of cover should be related to the total monies that the Debt Management company can hold at any one time. Protection does need to be in place to ensure that payments are made to creditors on time and as expected.</p> <p>This is something that should be reviewed on an annual basis to see if cover is adequate for the service being provided.</p> <p>This level of coverage is far too high and is prohibitive for firms considering providing debt management services.</p>
<p><i>4.6 Internal audit function and compliance officer</i></p>	<p>This again adds costs to an industry that, while providing an essential service, does not generate large fees.</p> <p>A well defined control environment with the appropriate management oversight would address the same concerns at a fraction of the cost.</p>

What regulation is required?

What is required is regulation that requires any debt management firms to;

- Have an approved software package that allows a full audit of any case to be performed;
- Have adequate controls around debtor funds;
- Debtor funds to be distributed within 7 days;
- Have PII cover sufficient to cover 6 months' worth of debtor contributions;
- Perform daily bank reconciliations of debtor funds.

Summary

-There is a clear need for Debt Management Services in the Republic of Ireland. There will still be a need for Debt Management plans even after the full implementation of all of the insolvency options available under the Personal Insolvency Act 2012.

-Unfortunately, our dealings with the Central Bank thus far and impression from the proposed legislation have led us to believe that the Central Bank does not want a DMP industry in Ireland, despite the need for such an industry already been proven by the thousands of enquiries that NDR received and continues to receive.

- We believe that the costs of full compliance with the regulations are deliberately prohibitive given the level of fees that we charge for this crucial service and we believe that this by design. The unfortunate consequence of this attitude is that many indebted individuals will be unable to avail of a DMP and will continue be left in economic limbo with all of the associated mental and societal costs.

-What is proposed is 'regulatory over kill' designed to kill off a solution much needed by indebted individuals.

-It appears the Central Bank is overreacting in the face of the allegations of being 'found sleeping at the wheel' in the previous financial crash

-In putting up regulatory hurdles for private firms designed to form barriers to entry although at the same time exempting supposed 'charities' from the UK who are funded by the banks. The *raison d'être* of these charities seems to be to keep debtors in informal solutions so the banks can 'window dress' their accounts and minimise making appropriate provisions. One would expect that this would be of paramount concern to the Central Bank.

-We do not believe that these proposals have been put forward in the interests of the debtor, or indeed the creditors. A Debt Management Plan is better for both than having nothing.