Debt Arrangement Scheme Review 2011

ACCOUNTANT IN BANKRUPTCY
SCOTLAND'S INSOLVENCY SERVICE

The Scottish Government

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1. Executive Summary

The Debt Arrangement Scheme(DAS) is a debt management tool which allows debtors to repay multiple debts over a period of time.

DAS was introduced in November 2004 but take up of the Scheme was disappointingly low in the first two years of operation. This led to refinements being made to the Scheme by provisions in The Bankruptcy and Diligence etc. (Scotland) Act 2007. Amongst other things, the changes introduced freezing of interest and charges on debts at the date of approval.

A review of the Scheme, conducted in 2008, found that the changes had increased participation in the Scheme, but the uptake of DAS was still lower than anticipated.

This report examines the continued uptake of DAS since the 2007 changes were made.

Results show that DAS continues to be an effective tool for those debtors who are struggling with their debts, but are able to repay them in full using a Debt Payment Programme under DAS.

The report finds that geographical differences still exist in DAS, but to a lesser extent than were reported in 2008.

The report also finds that more debtors in Scotland are using DAS year on year as a solution to their debt problem.

Stakeholder feedback obtained during the development of legislative changes in 2010 suggests that creditors engagement has improved, but remains an area of some concern.

It is hoped that changes commenced on 1 July 2011 will address the issues with access and engagement and will greatly increase the number of debtors who are able to access DAS. Details of the legislative changes are included in **ANNEX B** of this document.

2. Background

DAS was introduced on 30 November 2004 as a debt management tool to allow debtors to repay their debts in full over a reasonable period of time without the threat of diligence from their creditors.

Debtors make a single regular payment to an approved payments distributor for the duration of their Debt Payment Plan (DPP). So long as they do so, no action can be taken against their home for debts included in the DPP. If a debtor experiences a change in their financial circumstances, the programme can be varied in order to accommodate it.

When a DPP is approved, all interest and charges on debts included in the DPP are frozen. If an approved DPP becomes unsustainable and is revoked, interest and charges which were frozen will be added on to the debts, but the failed DPP provides the debtor with apparent insolvency and a route into bankruptcy.

Although introduced in November 2004, take up of DAS was limited. The original expectation for DAS take up was 1,500-2,000 cases by March 2006, but uptake of the Scheme fell far short of these estimates. In light of this, work was undertaken to consider changes to the Scheme which would encourage greater participation.

The changes to DAS were introduced in June 2007 as part of the Bankruptcy and Diligence etc. (Scotland) Act 2007. These froze interest and charges on debts included in a DPP on the date of approval. The take up of DAS increased as a direct result of these changes. Table 1 shows the uptake of DAS year on year since its introduction in November 2004.

Table 1: Number of DPPs approved by financial year

DPPs by financial year							
Year	2004/05*	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
No of DPPs	1	149	134	442	386	1,417	1,910

* Part year from November 2004 to 31 March 2005.

Previous reviews of DAS are also published on the AiB website (www.aib.gov.uk)

3. The current DAS process (pre 1 July 2011)

To access DAS, a debtor must first meet with an approved money adviser. This adviser is a debt advice specialist who has undergone accredited training to allow them to work with the Scheme.

The approved money adviser is responsible for providing financial advice to the debtor and assessing the debtor's suitability for a DPP. If the debtor is suitable and wishes to proceed, the adviser proposes the DPP to creditors and arranges for it to be set up.

The adviser then sends the DPP to the DAS Administrator who has responsibility for overseeing the Scheme. The DAS Administrator also applies a 'fair and reasonable' test to DPPs where creditors do not consent to the programme. Once the DPP is approved it is recorded in a public register which has the effect of protecting the debtor from legal action from their creditors while the DPP is in place. Interest and charges are frozen on debts included in the DPP on the date of approval.

DAS is a flexible repayment tool which takes account of the debtor's circumstances. If a debtor has a change in their financial circumstances, their DPP can be varied to reflect the change. If a variation is not an option because the debtor cannot continue to make payments, or for any reason does not keep to any other agreement they made when signing the DPP application, the DPP can be revoked upon application by a money adviser or creditor. If the DPP is revoked any interest, fees, penalties and other charges which were frozen become payable.

A full explanation of the process can be found in **ANNEX A** of this document.

Changes to the DAS Scheme have been introduced from 1 July 2011. A summary of the main changes is at Annex B.

4. Payment Distribution Process

On approval of a DPP, the debtor will begin making a single payment, usually weekly or monthly, to a payments distributor, who apportions the funds and distributes them to creditors. In accordance with legislation, the payments distributor may deduct up to 10% from each payment received as a fee for their work. Creditors can expect to receive all the money they are owed minus the payments distributor's fee, i.e. they can expect to receive repayment of at least 90% of the total debt due.

There are at present 5 companies currently approved to distribute DAS payments.
Some payments distributors charge more for their services than others. Table 2 below shows each distributor and their fee charged as of 1 March 2011.

Table 2: Payments Distributors approved as of 1 March 2011

Payments Distributor	Fee charged to creditors
Gregory Pennington	6%
Carrington Dean	10%
MLM CPS Ltd.	10%
First Choice Finance Scotland Ltd.	7%
PayPlan	10%

It should be noted that for the purposes of this review, Gregory Pennington, Carrington Dean and Payplan were approved as payment distributors during the entire reporting period. MLM CPS Ltd. and First Choice Finance Scotland Ltd. became payments distributors during the 2010/11 reporting year.

Methodology

Data used in this report was taken from:

- DAS Review 2007/08, published on the AiB website at: http://www.aib.gov.uk/guidance/publications/consultations/dasreview

- AiB Statistical data sets of all approved DPPs:
  - 1,000 DPPs from 1 July 2008 to 30 June 2009;
  - 1,586 DPPs from 1 July 2009 to 30 June 2010;
  - 1,650 DPPs from 1 July 2010 to 31 May 2011.

- Case studies from live DPPs.

All figures used in this report are based on the statistical data sets outlined above, except where noted otherwise.

In addition to this the following activities were also undertaken:

- Statistical examination of the three datasets outlined above.

- An analysis of demographic information relating to debtors and approved money advisers. Factors such as volume of debt, repayment arrangements, duration of DPPs and age of debtors were considered.

- Some views were obtained from workshops and other meetings with stakeholders in relation to the need for regulatory reform during 2010.

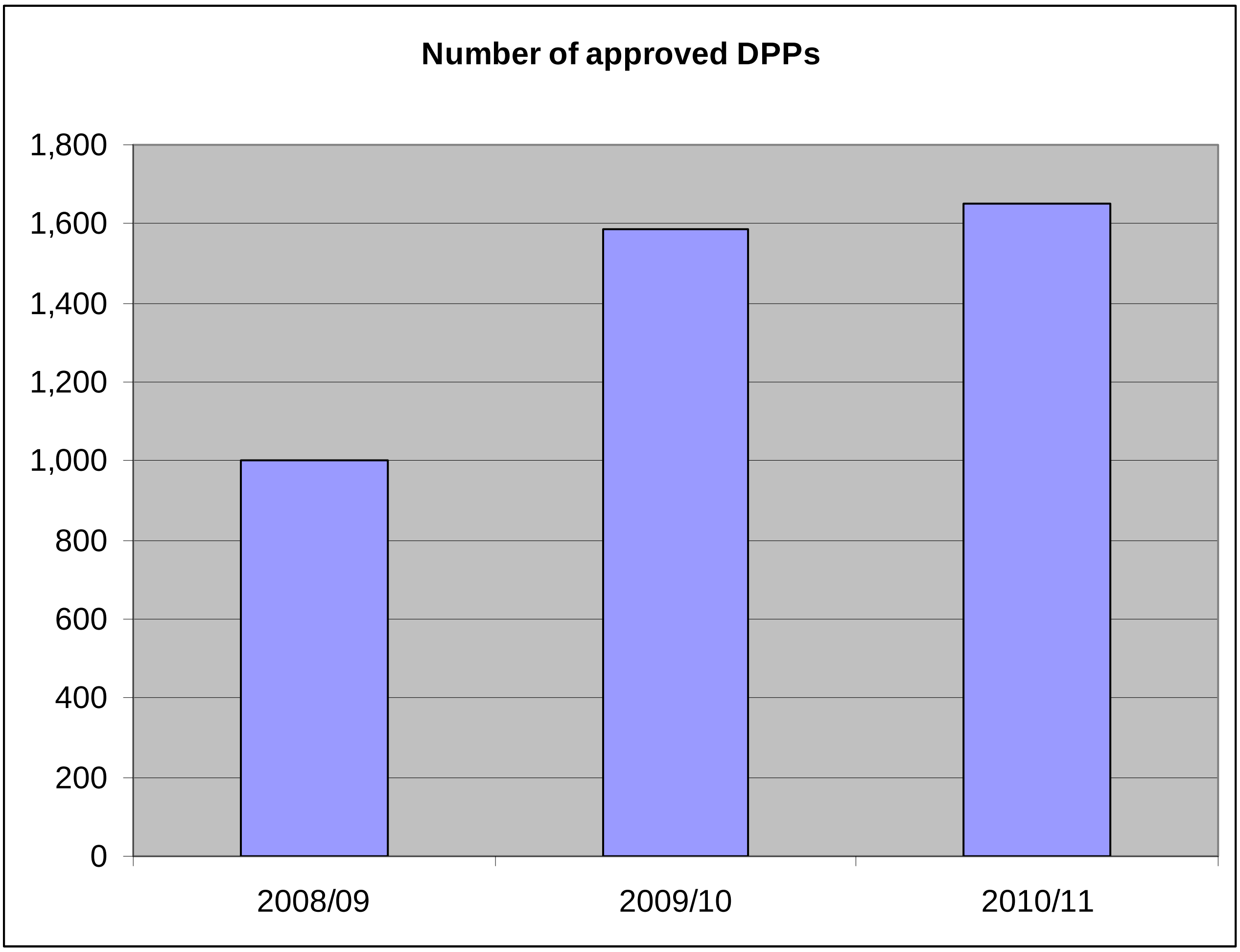
5. Findings

5.1 Level of take up

Statistics show that the take up of DAS continued to increase steadily since the introduction of the changes in 2008. There were exactly 1,000 DPPs approved in the reporting period 2008/09, 1,586 approved during 2009/10 and 1,650 approved between 1 July 2010 and 31 May 2011. This represents a 63% rise in 2009 and a forecasted rise of 12 percent rise in 2010 (based on the 11 month sample divided into a monthly amount and multiplied by 12).

DAS has become a more attractive solution for debtors who can repay their debts. The increase in take up from 2008 is significant, but still does not reflect the number of debtors who could benefit from the Scheme. This is supported by stakeholder feedback obtained during the development of legislative changes to DAS in 2010/11 where stakeholders indicated that key changes around access and streamlining administration of DAS would open it up to more debtors in Scotland. Chart 1 shows the number of approved DPPs over the reporting period.

Chart 1: Number of approved DPPs



5.2 Creditor Profile

During the set-up phase of a DPP creditors are notified that the debtor wishes to include the debt owed to them in their DPP. Creditors are asked to reply within 21 days either consenting or objecting to the programme. If the creditor fails to respond to the proposal they are deemed to have consented to it. Statistics show that 87% of DPPs were approved with deemed rather than active consent of creditors.

AiB has worked with creditor groups in establishing key contacts within creditor organisations to encourage greater engagement. It is hoped that changes being introduced in July 2011 where creditors can register on the new DAS administration system will encourage greater creditor participation.

The top three creditors by total value of debts and number of individual debts have remained unchanged since 2008. MBNA, Barclays and Marks & Spencer have steadily increased in both the value and number of debts owed to them whereas Capital One, Clydesdale Bank and Egg have decreased by both value and number of debts year on year. Blackhorse, which is part of the Lloyds Group remained fairly consistent in 10th place by both number and value of debts.

Over the entire review period, the top ten creditors are owed a total of £60,494,450. The three main creditors, HBOS, RBS and Lloyds TSB are owed 36% of the total value of debt in all DPPs. This equates to £35,594,940 out of a total debt owed to all creditors of £98,874,836. The other seven largest creditors in the top ten are owed £27,822,854. The largest creditor, HBOS is owed an average of 16.8% of the total debt. Table 3 shows the total amount of debt owed to all creditors year on year.

The top three creditors by value and number of debts in DAS are consistent with findings in the recent review of Protected Trust Deeds.

Local authorities are owed 4.6% of the total number of debts but are due 1.8% of the total value of debt. Credit Unions are owed 0.2% of the total number of debts but are due 0.1% of the total value of debt.

There were a total of 25,819 individual debts included in the review period owed to over 730 creditors. Of that number, 55.5% of the debts due by number are owed to the top ten creditors. Charts 2 and 3 shows the top ten creditors by percentage of total debt by value and number respectively.

Table 3: Total value of debt in DPPs

Reporting period	2008/09	2009/10	2010/11
Value of debt	**£27,621,896**	**£34,076,289**	**£37,176,651**

Chart 2: Top ten creditors by percentage of total debt by value.

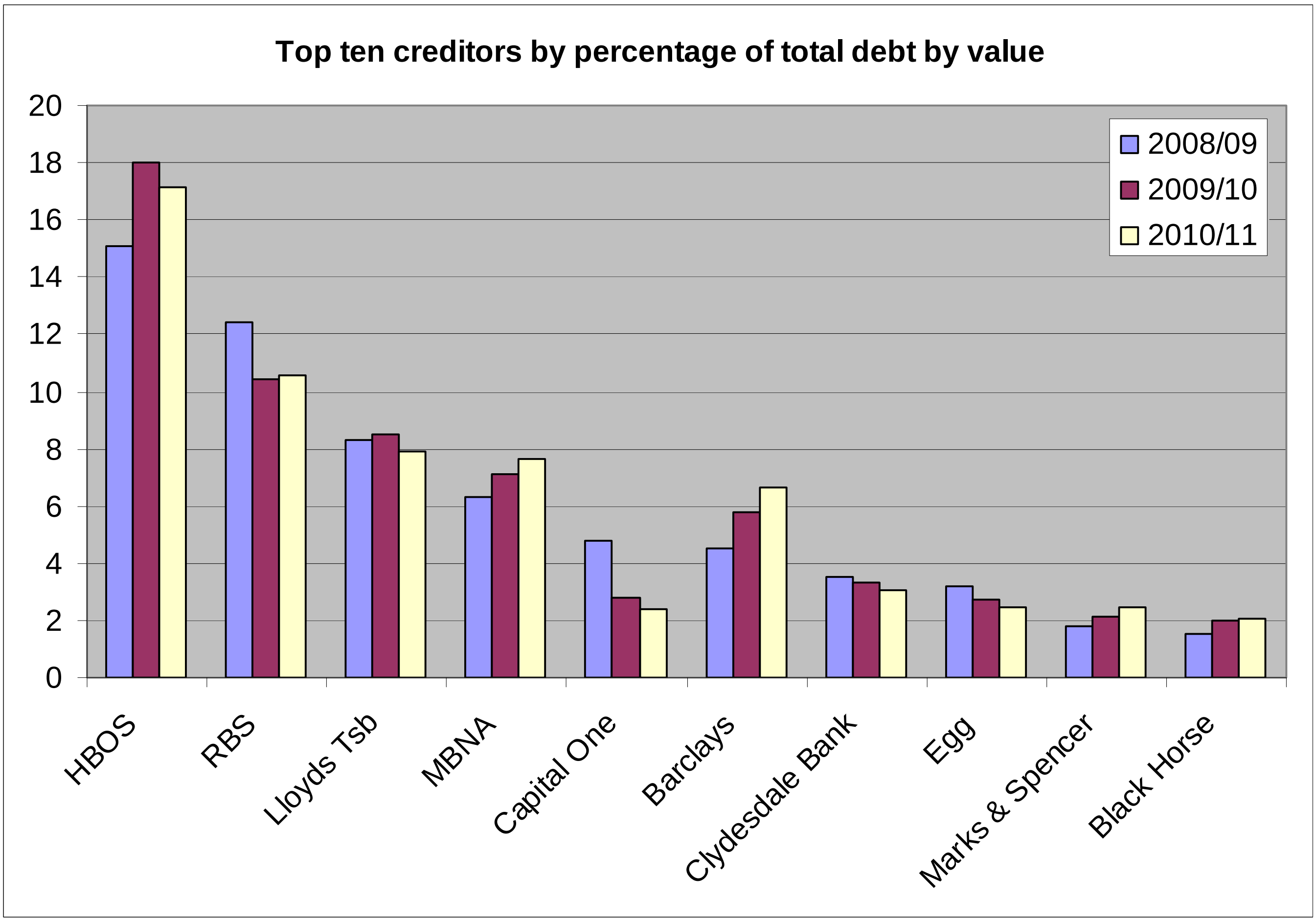
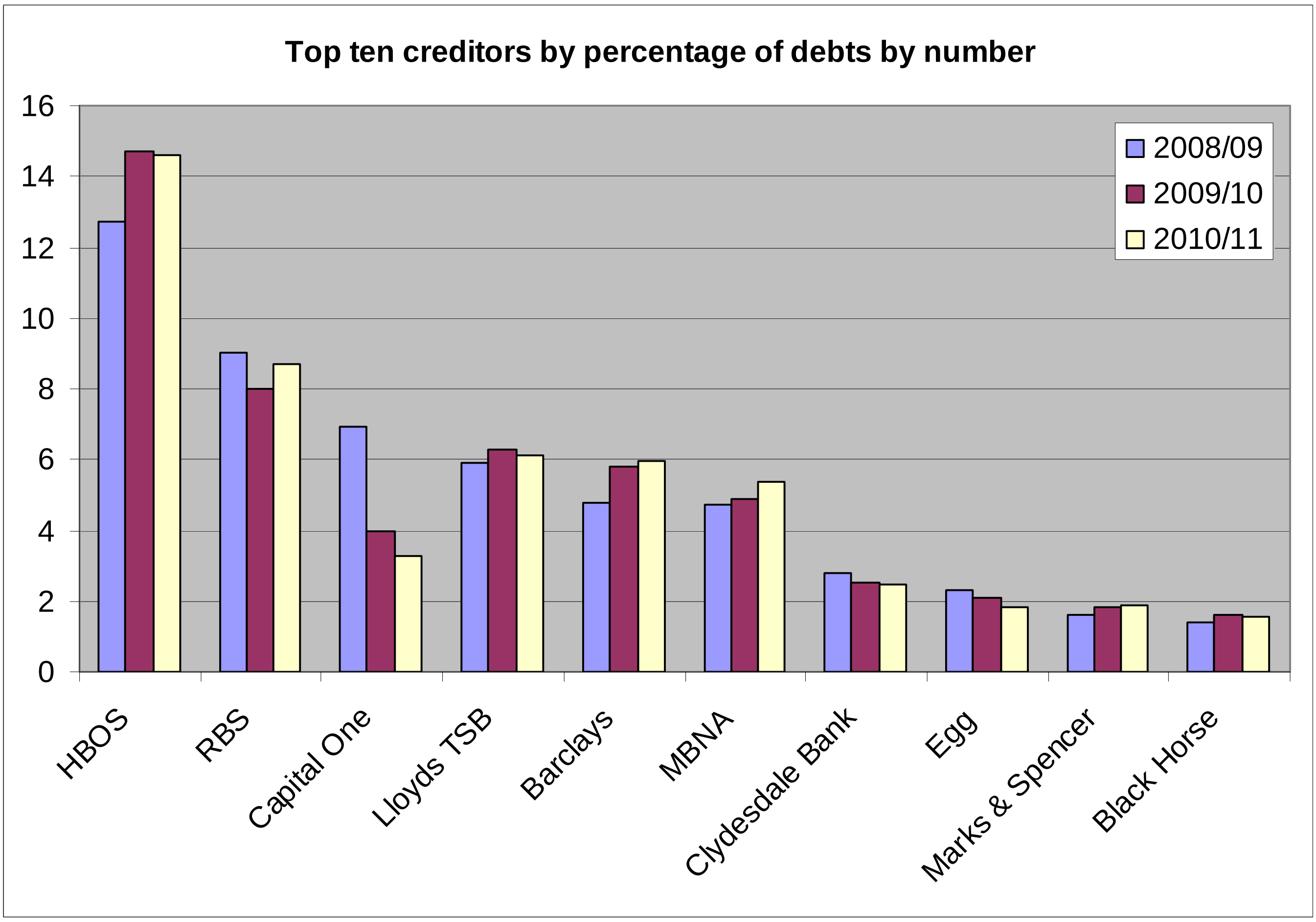


Chart 3: Top ten creditors by percentage of total debts by number.



5.3 Approved Money Advisers

There were differences in the volume of DPPs set up by approved money advisers across the country. During the review period between 35% and 42% of approved money advisers did not submit any DPPs.

Stakeholder feedback suggests that the same problems exist with DAS as were found in previous reviews. Those problems with the ongoing administration of cases and a high level of scrutiny on casework resulted in some advisers being reluctant to propose DPPs to their clients. Table 4 shows both the number of approved money advisers in total and the number of approved money advisers who submitted at least one DPP during the review period.

Table 4: Number of approved money advisers

	2008/09	2009/10	2010/11
Approved money advisers	144	160	135
Approved money advisers who submitted at least one DPP	70	91	94

The percentage of cases from private sector money advisers increased by almost 10% in 2010/11 from 4.2% in 2008/09 and 4% in 2009/10 to 14% in 2010/11. This is mainly due to an increase in the number of money advisers in the private sector from 2 advisers in 2008/09 to 6 advisers in 2010/11.

5.4 Geographical information

In order to examine geographical differences the findings in this review relating to areas throughout Scotland are reported by 'sheriffdom'. This is to allow comparisons against Protected Trust Deeds and Bankruptcy. There are 6 sheriffdoms in Scotland each comprising the various courts in its area.

The review of DAS published in 2008 found that there were some radical differences in the uptake of DAS across Scotland. This review however found that although there were significant improvements in the general take up across Scotland, there was still a significant differences in approved DPPs between geographical areas.

The areas with the highest number of DPPs are Tayside, Central and Fife; South Strathclyde, Dumfries and Galloway; and North Strathclyde. These areas also remained fairly consistent with no more than a 6 percentile increase or decrease in the proportion of DPPs being approved year on year within the review period.

Lothian & Borders had the lowest number of DPPs being approved across the entire reporting period, but it should be noted that the percentage of DPPs increased in the 2010/11 reporting period. Table 5 shows the number and percentage share of DPPs by area.

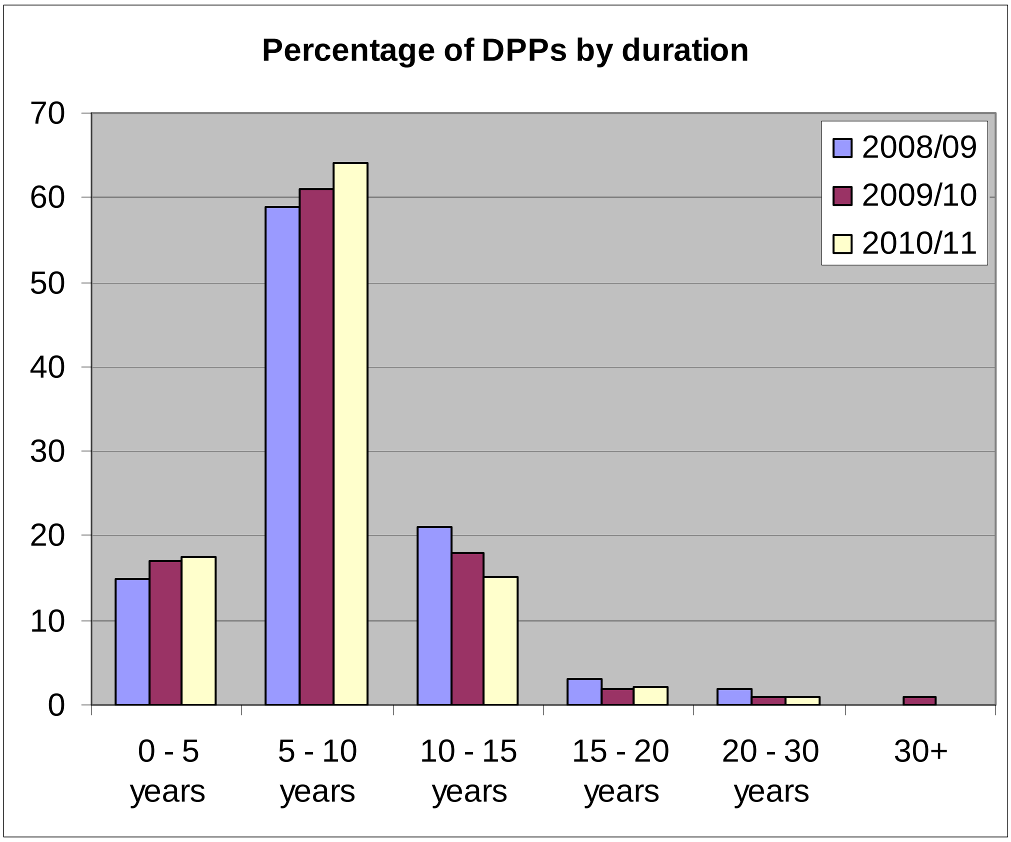
Table 5: Number of approved DPPs by area

Distribution of DPPs throughout Scotland						
Sheriffdom (Sheriff Court)	**2008/09**		**2009/10**		**2010/11**	
Tayside, Central and Fife	244	24%	395	25%	475	29%
South Strathclyde, Dumfries and Galloway	224	22%	318	20%	261	16%
North Strathclyde	206	21%	382	24%	363	22%
Glasgow and Strathkelvin	160	16%	239	15%	204	12%
Grampian Highland and Islands	106	11%	154	10%	189	11%
Lothian and Borders	60	6%	96	6%	158	10%
National Total	**1,000**	**100%**	**1,586**	**100%**	**1,650**	**100%**

5.5 Profile of Debt Payment Programmes

On average a DPP lasts 8 years 5 months. Over the entire review period there was an increase of two percent in DPPs which are scheduled to last between 0 and 10 years. The percentage of DPPs lasting between 5 and 10 years also increased by five percent from 59% to 64%. There has also been a reduction of six percent from 21% to 15% in DPPs lasting between 10 and 15 years. The percentage of DPPs lasting more than 15 years decreased by two percent from five percent to three percent. Chart 4 shows the percentage of approved DPPs by duration.

Chart 4: Percentage of DPPs by duration



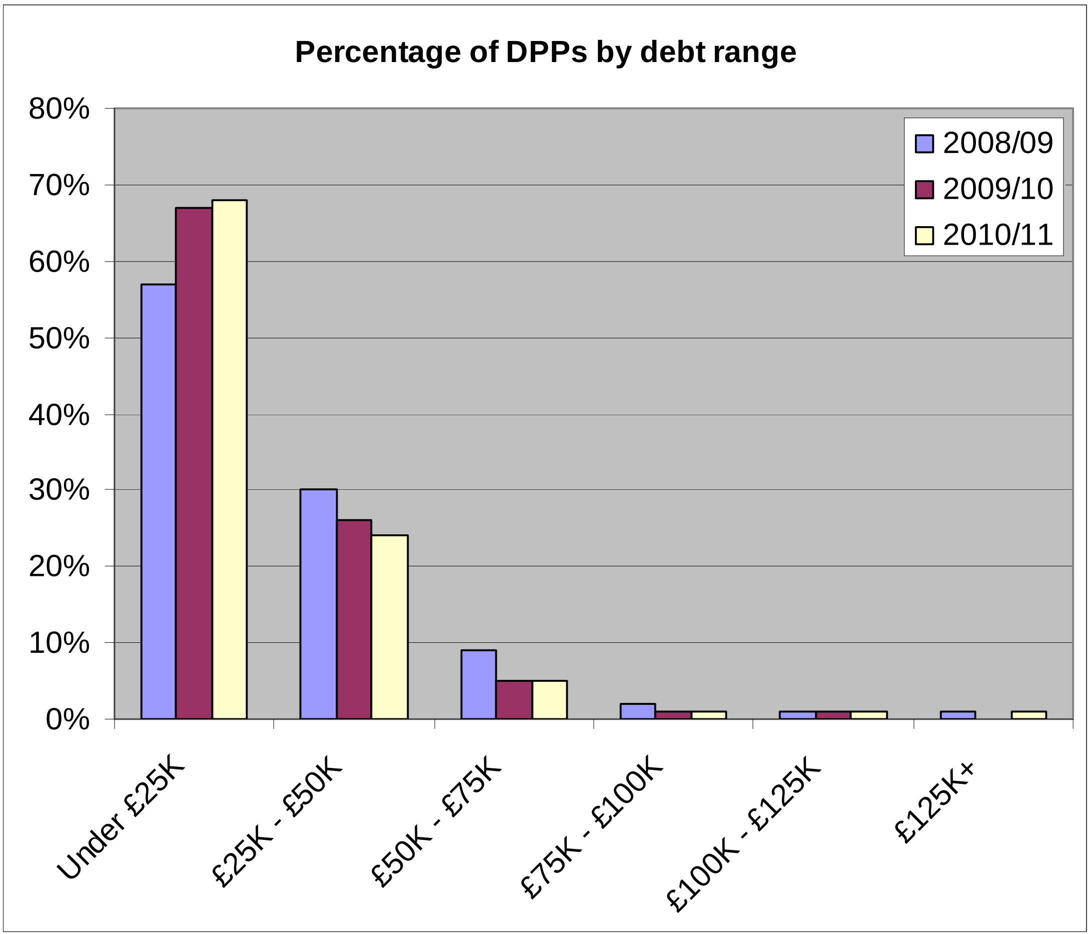
5.6 Debt

The average total debt included in DPPs over the review period is £24,194. However, the flexibility of DAS benefitted many different debtors with diverse debt profiles. This can be seen in case studies 1 and 2 below.

The majority of DPPs include debts of less than £25,000. The percentage of DPPs with debts of under £25,000 increased from 57% in 2008/09, to 67% in 2009/10 and 68% in 2010/11. The percentage of DPPs with a total debt value of more than £25,000 reduced by 11% over the entire review period.

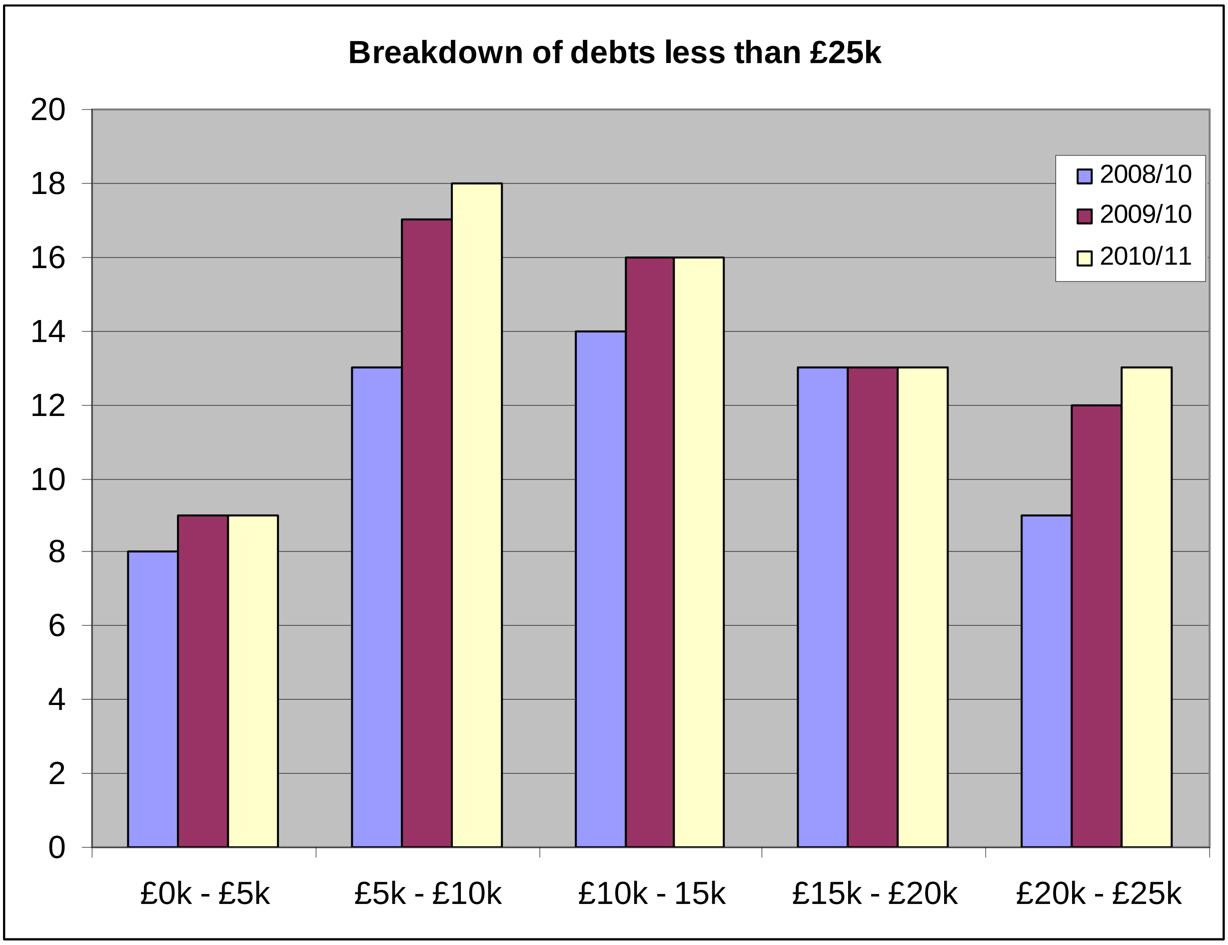
The percentage of DPPs with total debts of between £25,000 and £50,000 reduced by 4% in 2009/10 and a further 2% in 2010/11. The percentage of DPPs with debts of over £50,000 reduced from 13% of DPPs in 2008/09 to 7% in 2009/10 and 8% in 2010/11. The percentage of DPPs for total debts of less than £50,000 increased from 87% of all DPPs in 2008/09 to 92% in 2010/11. Chart 5 shows the percentage of DPPs by debt range.

Chart 5: Percentage of DPPs by debt range



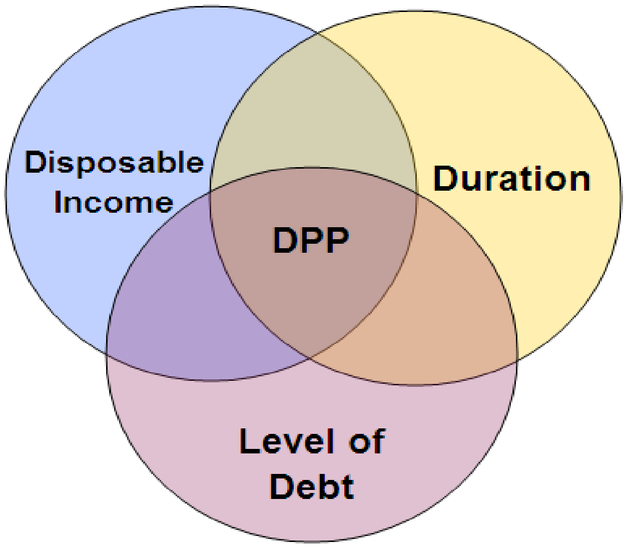
Over the entire review period, 64% of all DPPs were for debts of less than £25,000. Chart 6 shows a percentage breakdown of all DPPs with total debts of less than £25,000.

Chart 6: Breakdown of DPPs with debts of less than £25,000.



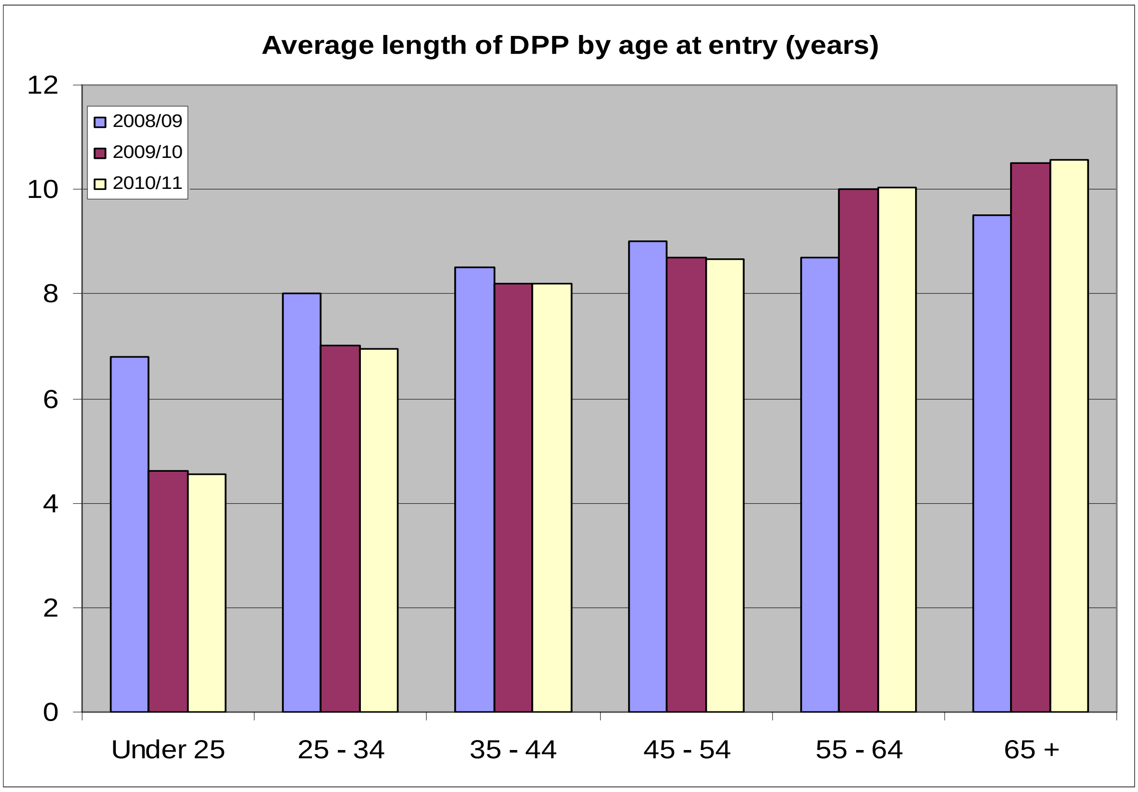
Profile of Debtors

There is a relationship between the uncommitted income, duration and the level of debt in a DPP.



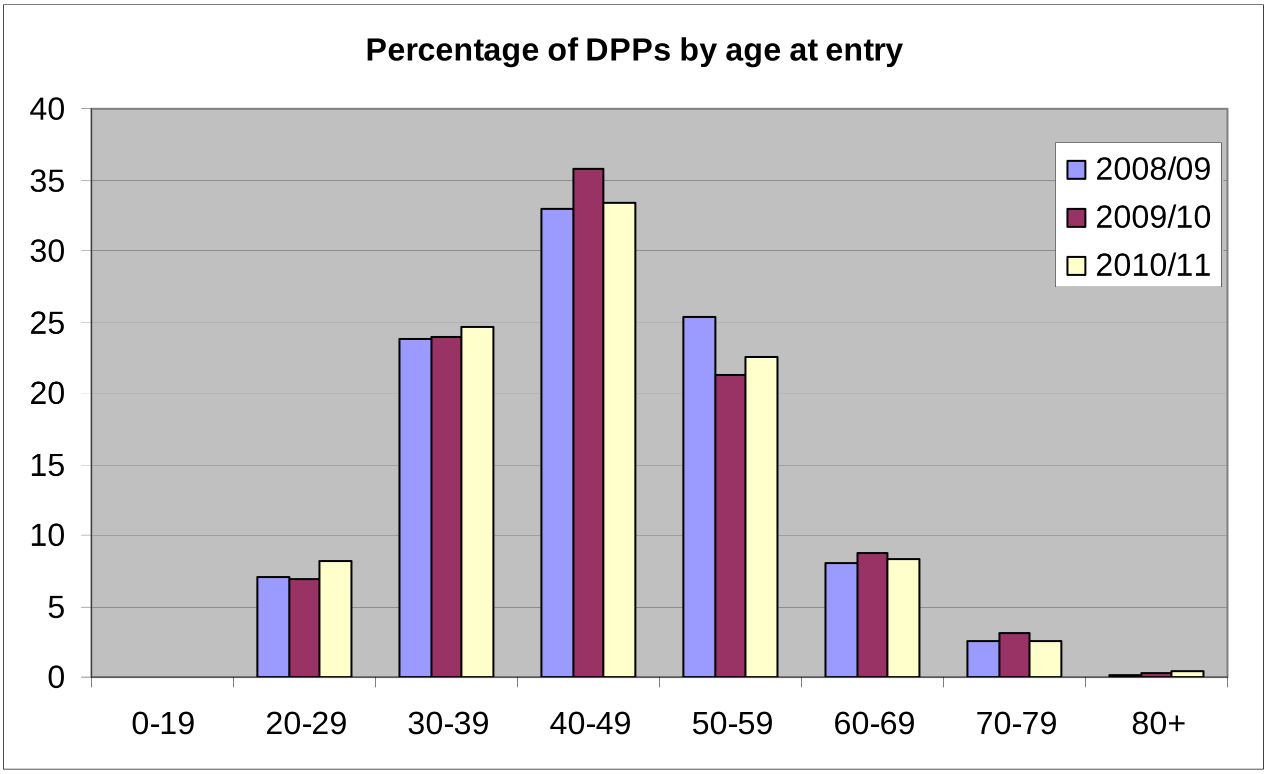
The shortest DPPs with the lowest average payments and total debt are for the under 25 age group. Debtors between the age of 55 and 65 tend to use a longer DPP paying higher monthly payments for a larger value of debt. The data revealed a number of disproportionately long DPPs for debtors over the age of 65, but this is mainly due to the value of an asset being released at a future date, or a future sum of money expected which will be put towards the DPP. Chart 7 shows the average length of a DPP against the debtor's age at entry to DAS.

Chart 7: Average length of DPPs by age at entry



During the review period, no DPPs were approved for any debtors younger than 20 years of age. The age demographic of debtors remained fairly consistent with around one third of all debtors between the age of 40 and 49 years of age. Chart 8 shows the percentage of DPPs by the debtors' age at entry.

Chart 8: Percentage of DPPs by age at entry



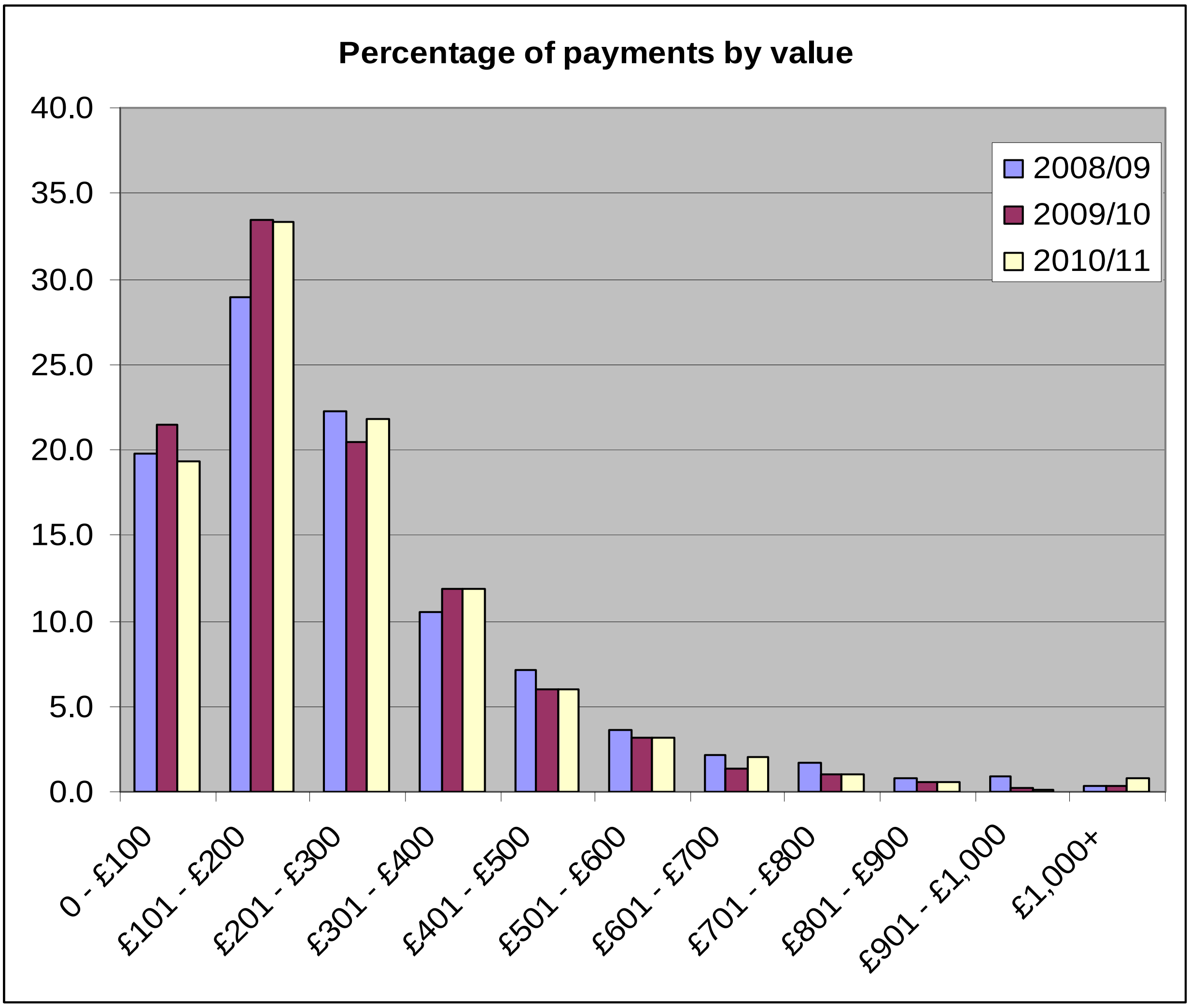
As has been highlighted above, the flexibility of DAS allows debtors to pay almost any amount of debt over any period of time. There are also a broad range of regular payment amounts being paid towards DPPs. The value of monthly payments across DPPs also remained consistent during the review period with almost a 33% of debtors paying between £101 and £200 per month in their DPP. 74% of debtors make payments of less than £300 per month in a DPP. There was a slight difference in the average value of monthly payments in DAS which is shown in Table 6.

Table 6: Average monthly payment by year

Year	**2008/09**	**2009/10**	**2010/11**
Average monthly payment	£277	£232	£249

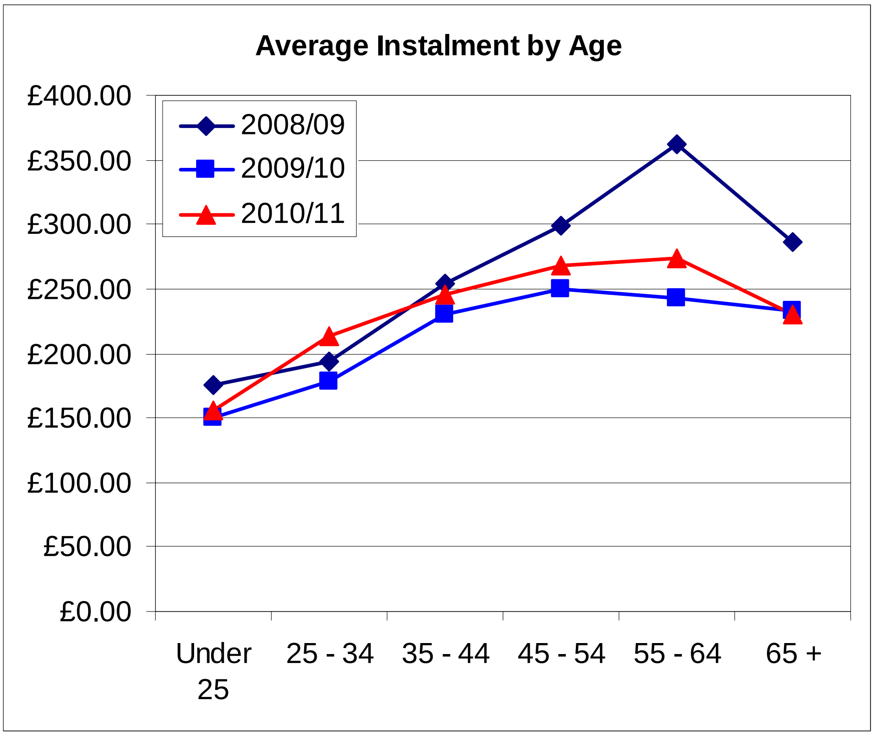
Chart 9 shows the percentage of DPPs by the value of monthly payment.

Chart 9: Percentage of payments by value



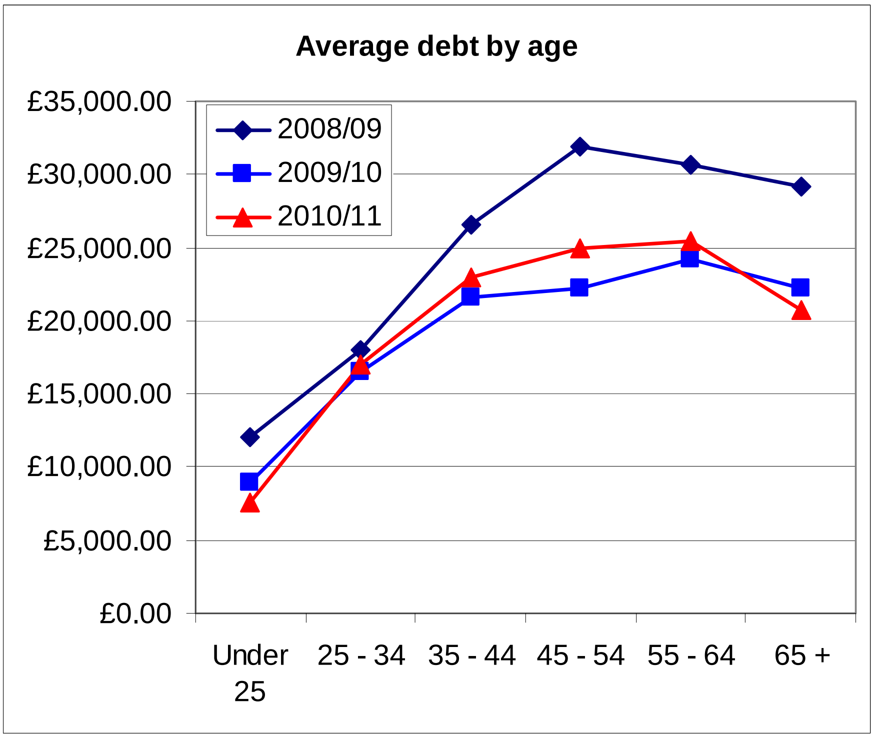
Debtors between the ages of 55 and 64 pay the highest average monthly payment (£293) towards their DPP. This is £43 more than a debtor of over 65 years of age and £132 more than a debtor under the age of 25.

Chart 10: Average instalment by age



Debtors between the ages of 55 and 64 owe the highest average total amount of debt (£26,814) to their creditors. This is £2,756 more than a debtor of over 65 years of age and £17,292 more than a debtor under the age of 25.

Chart 11: Average total debt by age



6. Summary of Findings

Specific findings about DAS –

- 87% of DPPs were approved with deemed rather than active consent of creditors.
- There were a total of 25,819 individual debts included in the review period owed to over 730 creditors.
- The total value of all debts included in the review period is £98,874,836.
- 55.5% of the debts due by number are owed to the top ten creditors.
- 61.1% of all debts by value are owed to the top ten creditors.
- Local authorities are owed 4.6% of the total number of debts but are due 1.8% of the total value of debt.
- During the review period between 35% and 42% of approved money advisers did not submit any DPPs.
- The areas with the highest number of DPPs are Tayside, Central and Fife; South Strathclyde, Dumfries and Galloway; and North Strathclyde.
- The area with the lowest number of DPPs is Lothian and Borders, but numbers there are increasing.
- DAS applicants are almost exactly evenly split between genders – 49% are male and 51% are female.
- At the date of approval the average debtor in a DPP is 45 years and 7 months of age.
- On average, debtors owe £24,194 of debt to their creditors.
- The average DPP lasts for 8 years and 5 months.
- There are no DPPs for debtors of 20 years old or younger.

7. Conclusions

A number of conclusions have been drawn from the findings:

1. There is a growing market for DAS within a range of methods to deal with debt e.g. Debt Management Plan, Time to Pay, Protected Trust Deeds and Bankruptcy.

2. DAS is a flexible solution for a broad range of debtors as there are no restrictions on the duration, value of debt or repayment amounts in any DPP.

3. Access continues to be a problem, but participation has improved across all areas of Scotland.

4. Debtors under the age of 25 make little use of DAS.

5. Take up of DAS continues to be affected by factors such as money adviser engagement and availability of advisers.

6. The private sector led DPPs have increased significantly over the past three years.

7. Most debtors use a DPP to pay consumer debt such as loans, credit cards and catalogue accounts.

ANNEX A - The DAS Process

The initial process

Upon meeting the debtor, the approved money adviser will:

- Explore all debt management options and discuss DAS with the debtor to assess their suitability for the Scheme;
- Establish the debtor's level of debt;
- Examine the debtor's income and expenditure;
- Check how much money the client can spare each week/month to pay their debts.

Setting up a Debt Payment Programme (DPP)

If the client wishes to proceed with an application for a DPP, the approved money adviser makes a formal proposal to creditors who then have 21 days to respond. Creditors can take one of three course of action. They can:

1. Consent – The creditor replies within 21 days and agrees to the proposal;

2. Do nothing – The creditor fails to respond and is deemed to have agreed to the proposal;

3. Non-consent – The creditor writes back within the timescale to disagree with the proposal. This information is taken into account should the DAS Administrator require to make a decision whether the programme is 'fair and reasonable'.

The fair and reasonable test

If a creditor refuses to consent to the DPP, they should provide evidence to allow the DAS Administrator to apply a 'fair and reasonable test' to the DPP.

The DAS Administrator will consider various factors when considering whether the DPP is fair and reasonable, including:

- The total amount of debt;
- The length of time over which the programme will operate;
- The method and frequency of payments;
- The extent to which creditors have consented;
- Comments made by the approved money adviser;
- Assets the debtor may own which could be realised to pay debts included in the programme;
- Any other factor considered to be appropriate.

Approval

Upon approval of a DPP the following action is taken:

- The DPP is recorded on a public register.
- The debtor pays a pre-agreed sum to a payments distributor at intervals, usually weekly or monthly.
- The payments distributor distributes this money to creditors and can deduct a fee of up to 10% for making the payments.

Effect of approval

When a DPP is approved:

- Any interest, fees, penalties or other charges are frozen;
- Creditors should not provide further credit to the debtor (except for specified exceptions such as funeral expenses);
- The debtor is protected against diligence for debt.

Variation and revocation

Either the debtor or the creditor can apply to vary a DPP. A DPP can be varied by consent or by the DAS administrator if the variation is 'fair and reasonable'. Grounds for variation can include:

- changes in the debtors circumstances;
- reassessment of debts due at the date of approval;
- the debtor needs to apply for credit for some essential requirement.

If the debtor does not make payments or does not keep to any other agreement they made when signing the DPP application, a creditor can apply to revoke the DPP. If the DAS Administrator revokes, the DPP based on an application, any interest, fees, penalties and other charges which were frozen are reinstated.

Review of debtor's circumstances

The approved money adviser maintains contact with the debtor periodically throughout the duration of the DPP. This allows the approved money adviser to review the debtors circumstances and to request a variation if appropriate.

Completion

A DPP is completed when all the payments due under the programme are made or when the creditors give written consent to early completion. The approved money adviser sends written notice of completion to the debtor and the creditors. On completion of a DPP any interest, fees, penalties or other charges which were frozen when the programme was approved are written off.

ANNEX B - Legislative changes to DAS

Outline of Proposed Changes to DAS

The Debt Arrangement Scheme (Scotland) Regulations 2011 is intended to increase access to allow more debtors to apply for a DPP under DAS.

These regulations provide for more categories of money adviser to be approved for the purposes of giving advice to debtors in respect of DAS; allow single debt DPPs as well as joint DPPs for couples who are jointly and severally liable for at least one debt and removes the burden of ongoing administration of the approved DPPs from free sector money advisers, thus freeing them to assist more debtors. These Regulations also allow debtors to apply for a payment holiday variation of 6 months if they are experiencing short-term income shock. DAS will be the only statutory debt management or relief mechanism in the UK which provides a payment holiday whilst giving protection from creditor action to recover debts.

To improve creditor awareness and engagement with DAS, the Regulations simplify the process, forms and notices to and from creditors and allow (but do not require) increased use of electronic transfer of information. These Regulations also propose a change to the way that a Payments Distributor is appointed. Approved Payments Distributors will be appointed by an open and transparent tender exercise, to support delivery of a better service, increase competition and reduce costs to creditors. The Regulations also amend the amounts the Payments Distributor can charge the creditors for processing the payments, from a maximum of 10% to a maximum of 8% of the sum due. The regulations introduce an application fee of 2% of the sum distributed to creditors to be paid to the DAS Administrator.

These Regulations remove obsolete provisions which were very rarely, if ever, used. This includes the ability for a debtor to pay a continuing liability, such as rent, gas or council tax, through a payments distributor. They also remove the ability for the debtor to agree with their creditor, prior to submitting their application for approval, that part of the debt they are due is waived. If a creditor is prepared to waive part of the debt due following the approval of the DPP can be achieved through a variation of the DPP.

Proposed Improvements to the current DAS

New regulations will introduce two new types of DPP which will address the needs of debtors with a single debt and couples with joint debts. These changes will allow debtors who previously could only access a voluntary or temporary debt repayment option to access DAS and the protection it offers.

The new regulations will benefit individual creditors and the broader Scottish economy. As the number of DPPs increase, more creditors will receive what is due to them. In the larger economy, changes to the Scheme will aid economic recovery with obvious benefits for businesses in both the private and public sectors respectively.

New Regulations will offer a modern and viable alternative to voluntary debt management plans. It is hoped that these changes will help stimulate a further improved uptake of DAS and help provide recourse to effective debt management to a greater number of debtors by:

- widening the Money Advice Gateway, allowing more individuals to be approved as DAS advisers;
- introducing joint Debt Payment Programmes (DPP) for couples struggling with shared debts;

- introducing a DPP for single debt cases;
- introducing a payment holiday variation of six months for debtors experiencing a short term income shock;
- reviewing the payment distribution mechanism through a fair and open tender exercise;
- allowing the DAS Administrator to conduct the post-approval administration in cases proposed by free sector money advisers. As a result of this, the administrative burden, currently imposed on free sector advisers will be removed;
- allowing the DAS Administrator to recover the costs of the DPP application process; modernising the DAS IT system and supporting statutory forms.