

## Debt Management Plan (DMP) Protocol

BBA/IS draft <u>(with DRF suggestions and amendments)</u>	DRF Comments
Compliance with the terms of this protocol should be regarded as an appropriate business practice towards compliance with relevant Office of Fair Trading (OFT) consumer credit guidance.	<u>Does this imply that all traders and group licensees with debt counselling CCLs must follow the protocol to be compliant with the OFT's Debt Management Guidance? If so this seems to diminish the OFT's opportunity to focus enforcement against traders who decide to stay outside the protocol and provide less of an indication to consumers and creditors as to which providers might be "trusted".</u>
<u>DMP Providers standards</u>	
<b>1. Adverts &amp; marketing</b>	
1.1 Marketing of debt advice services, including DMPs, should be clearly distinguishable as such and have regards to the OFT Debt Management Guidance and all relevant codes of practice, in particular, to the principles of legality, decency, honesty and truthfulness.	
1.2 DMPs should not be promoted in such a way or to such an extent as to amount to harassment or in a way that causes fear or distress <del>(e.g. by 'cold calling')</del> .	<p><u>The OFT has accepted (CAB Super Complaint) that Debt solutions companies do not generally "cold call". We agree this happens, however, this is usually a call where informed consent has previously been obtained and forgotten by the consumer. Indeed, the OFT's report stated that there could be consumer benefit in this.</u></p> <p><u>Deleting "cold calling" softens the implication that compliant debt solutions companies do this but removes nothing from the effect of the paragraph that Protocol-compliant solutions providers should do nothing that harasses or causes fear or distress.</u></p>
1.3 Any fees and charges quoted for the DMP must be clear, truthful, complete and transparent.	
1.4 Subscribers to the DMP Protocol may make customers, prospective customers and creditors aware that their services are offered in	<u>DRF agrees, but believes the protocol must distinguish compliant companies with a clear badge or kite-mark with</u>

<p>compliance with a 'self-regulatory DMP Protocol', but should not claim that their services are endorsed by the government and/or any other parties to the Protocol agreement.</p>	<p><u>which consumers will become familiar. This is a benefit to both consumers and compliant companies and would be an important incentive to debt solutions providers to join the scheme.</u></p>
<p>1.5 Subscribers to the DMP Protocol <u>and any associated organisations must</u> not offer both Protocol compliant and non-compliant DMPs.</p>	<p><u>DRF believes some organisations or individuals may set up a second organisation to offer non-compliant debt plans, unless this proposed amendment is accepted.</u></p>
<p>1.6 Subscribers to the DMP Protocol will alert their clients to the fact that free-to-consumer debt advice and debt management services are available. This will be done in an easily understood format and will be neutral in expression.</p>	<p></p>
<p><b>2. Advice &amp; Proposals</b></p>	<p></p>
<p>2.1 A DMP should only be offered following a full assessment of the client's circumstances and only where this assessment indicates that a DMP is <u>the most</u> sustainable and appropriate course of action to resolve the client's debt problem. Full account should be taken of the client's preferences at this stage of the process and of the full suite of debt management/debt relief options that are available, not just those that the provider can offer.</p>	<p><u>To require a DMP only to be offered where it is "the most" sustainable and appropriate solution does not allow for the clients preferences and runs contrary to the second sentence in the clause.</u></p>
<p>2.2 <u>By sustainable is meant that the DMP can be maintained at a certain rate or level as has been identified in the clients Income &amp; Expenditure (I&amp;E) for the period of the plan.</u></p>	<p><u>DRF believes it is appropriate to try and define what is meant by "sustainable" and opposite is its attempt.</u></p>
<p>2.3 A DMP should only be offered if:</p>	<p></p>
<p>➤ The plan would include <u>two or</u> more unsecured debts</p>	<p><u>Surely only a person with a relationship with just one creditor should not be able to avail themselves of a P-DMP? Otherwise a small number of debtors will only be able to seek advice from non-compliant providers.</u></p>
<p>➤ There is a budget surplus (and it is less than the sum of the contractual payments)</p>	<p></p>
<p>➤ The DMP is projected to pay off each debt within 10 years (or there is potential that improved circumstances will reduce full repayment to within 10 years)</p>	<p><u>If a client is unable or unwilling to progress with a formal insolvency solution this would restrict the client's options. This may also have the unintended consequence of pushing</u></p>

	<p><u>a debtor towards a non-compliant provider.</u></p> <p><u>If client acknowledged in writing that they understood the plan would exceed 10 years and still wished to proceed (providing a reason) would this not be sufficient?</u></p> <p><u>A Similar process is adopted in IVAs where bankruptcy is the better option.</u></p> <p><u>In any case, the requirement to regularly review advice and solutions will provide clients with appropriate assurances.</u></p> <p><u>Consideration should be given to creditors either reducing balances in marginal cases to allow completion within ten years or forgiving remaining debt if 120 payments are made.</u></p>
<p>2.4 The Common Financial Statement (CFS) <del>or guidelines</del> should be used to complete the client's financial statement. All unusual items should be explained.</p>	<p><u>DRF believes that only one set of guidelines should be used, as we are aware that each has particular advantages and disadvantages. To adopt one would give consistency to debtor and creditor.</u></p>
<p>2.5 DMP proposals should be completed in compliance with the applicable requirements and guidance issued by regulatory authorities (e.g. OFT) and relevant trade associations (e.g. DEMSA; DRF)</p>	
<p><b>3. Administration</b></p>	
<p>3.1 Following appointment as the client's third-party agent, DMP providers should, without delay, inform the client's creditors of their appointment (including the client's informed consent) and its purpose.</p>	<p><u>We believe it would be helpful to specify a period (say 30 days) rather than "reasonable" which is subjective and arguable.</u></p>
<p>3.2 DMP proposals should contain <u>(standard –deleted)</u> information <u>which should, (including – deleted) include</u>: Provider details, Client's personal details, all creditors <u>(names and amounts owing)</u>, summary of budget analysis, proposed monthly contribution, duration of DMP <u>and why it is an appropriate solution</u>, details of any other assets. This will ensure transparency, consistency and efficiency.</p>	<p><u>We agree, but believe that the specifics of this should be subject to further work by the proposed standing committee.</u></p>
<p>3.3 All information provided to creditors must be objective, complete and accurate.</p>	
<p>3.4 DMP agreements must include a 14-day cooling off period and be made in writing.</p>	<p><u>Given that this is included in the OFT guidance (and will presumably be included in future FCA rules) it may avoid possible conflicts in</u></p>

	<u>interpretation not to specify a time period but to refer to the OFT guidance.</u>
3.5 Consumer client funds must be held in a ring-fenced client bank account and paid to creditors at the earliest opportunity <sup>1</sup> . <b>Withholding payments in pursuit of making a full and final settlement will be considered a breach of this protocol.</b>	<u>We understand the reasoning for the highlighted sentence but would suggest this becomes a matter for early resolution by the proposed standing committee.</u>  <u>There may easily be circumstances, for example, where mis-selling can be proven, and a full and final settlement may be in the client's best interests. Not allowing this, may push certain clients towards non-compliant plan providers</u>
3.6 DMPs <del>(should – deleted)</del> must be reviewed by the provider <del>within the first six</del> <u>between the fifth and seventh</u> month and thereafter annually. Any amendments proposed to reflect changes in the client's circumstances should be explained to creditors without delay and before instigation. The DMP Provider should bear the cost of the review.	<u>"Within six months" may encourage early and an inappropriate review.</u>
3.7 At least every 3 months, the client should receive a statement of account from the DMP Provider showing (as a minimum) payments made and outstanding balances for each debt subject to the plan [assume this is only possible if interest and charges are frozen and account suspended]	<u>We agree. But, this is an important area that will contribute to sustainability and creditors and compliant solutions providers must be encouraged to exchange information (perhaps as part of the MI commitments suggested later). Without creditor cooperation it will be impossible to show accurate outstanding balances. This should also show which creditors have agreed to freeze interest and charges.</u>
3.8 Providers should not sell on any products to the client that <u>are not necessary to the client's financial well-being and which</u> would delay or damage payments to existing creditors or extend the client's over-indebtedness.	<u>There are circumstances where clients' needs are best served by providing a product that will damage payments to creditors – a bank account, pre-paid card or insurance product might be necessary (Advice UK's debt advice trial programme acknowledges the need to have payment/money storage and transmission mechanisms in place for example.)</u>
<b>4. Fees</b>	
4.1 All DMP fees information should be	<u>Change made for consistency with</u>

<sup>1</sup> As per the OFT Debt Management Guidance

<p>provided to the <u>(consumer – deleted) prospective client</u> at the initial point of enquiry and be clear, transparent and complete. DMP fees information should be confirmed in writing to the <u>(consumer – deleted) prospective client</u> <del>before conclusion of the contract</del> <u>in pre-contract documentation</u> and set out clearly so that the client knows what the total cost to him/her of the DMP will be.</p>	<p><u>OFT guidance.</u></p>
<p>4.2 DMP fees should be reasonable, consistent and structured to promote the sustainability of the plan.</p>	
<p>4.3 DMP Providers should not charge any <del>up-front fee(s)</del> <u>fees before the contract is concluded</u> <u>has been entered into and signed by both the DMP Provider and the client.</u></p>	<p><u>DRF believes that the doctrine of sustainability (and 4.4, below) will encourage different fee models to emerge. However, there is still a common misunderstanding that “up-front” fees where no value is given are the same as the initial set-up fees reflecting the cost of initiating the plan.</u></p>
<p>4.4 Any costs for the set up of the plan should be charged as <u>an additional percentage</u> of the client’s monthly contribution, <u>for a fixed number of months in addition to the normal monthly fee charged as a percentage over the duration of the plan</u>, beginning <u>when the first payment has been received from the client.</u> <u>(Disbursements – deleted) Distributions</u> to creditors should begin <u>in the month following confirmation of client account details by all creditors. The fee structure should be designed to be sustainable.</u></p>	<p><u>It needs to be made clear that no contribution can be remitted until the DMP Provider has received and cleared funds from the client.</u></p> <p><u>Much more importantly, it should be noted that balances and account references, etc., provided by a client are frequently wrong and need to be confirmed by each creditor. Practically, no DMP Provider is in a position to distribute funds until these details have been confirmed by every creditor in the plan.</u></p> <p><u>We believe the doctrine of sustainability will evolve as a result of the work of the standing committee and should be written into the protocol wherever it is relevant.</u></p> <p><u>DRF believes that it is right that the costs of setting up a plan should be borne in the initial stages of a sustainable plan.</u></p>
<p>4.5 If a client moves from a DMP to another form of debt <u>(management – deleted) solution</u> offered or recommended by the DMP Provider, the fee charged for such a move should reflect only the additional work needed. Any additional fee should be justified by the DMP Provider and by the relevant provider of the other solution if not by the original DMP Provider.</p>	
<p><b>5. DMP data</b></p>	

5.1 DMP Providers should retain DMP records for ongoing monitoring purposes to demonstrate compliance with relevant regulatory guidance and the terms of this Protocol (see section 6 below)	<u>A time period for retention of data should be agreed.</u>
5.2 Data to be recorded and retained should include:	<u>The protocol standing committee should provide definitions for each data point. DRF offers to provide an independent mechanism for collecting this data, through <a href="http://www.debtsector.org.uk">www.debtsector.org.uk</a> to be funded by a small per case charge.</u>
- Client records (e.g. I(+ - deleted)&E) and agreements	-
- Total number of plans in operation	-
- Total value of plans in operation	-
- Projected length of individual plans in operation	-
- <u>Number of early completions</u>	- <u>Many people finish plans early because they believe they have attained financial capability. Defining and separating these cases is important in the search for an improved definition of "sustainability".</u>
- Number of breakages (and reasons why)	- <u>This needs further work by the protocol standing committee. Plans often break due to non-payment by clients who cannot afford repayments for a period of months and who then try to put a new plan in place, is this a new plan under the protocol, or a continuation?</u>
- Number of completed plans	-
- Number of consumers declined for plans (and reasons why)	-
- Details of any non-compliant creditor actions	-
5.3 As requested, this data should be made available to the Money Advice Service (MAS) under its remit to collect and integrate consistent data on debt advice and debt management.	<u>We would want the standing committee to have a role in agreeing how this data should be aggregated and published.</u>
<b>6. Monitoring</b>	
6.1 DMP Providers should be independently (audited – deleted) monitored at least every 12-9-	<u>Some leeway in a monitoring cycle is necessary to enable the monitor to</u>



<p><u>15</u> months to demonstrate compliance with relevant regulatory guidance and the terms of this Protocol. This will include vetting of the Provider's initial advice interview with a client and must demonstrate that the advice given was appropriate and balanced and that the client's surplus income was calculated correctly.</p>	<p><u>meet its obligations and to allow for re-examination of providers who are found to be <u>seriously non-compliant</u>.</u></p>
<p>6.2 Evidence of any deviation from the relevant regulatory guidance should be submitted to the OFT within 3 months of completion of such monitoring and by such monitor.</p>	<p><u>Minor non-compliance is not uncommon and not usually the result of anything other than oversight. We believe the DMP Provider should be given the opportunity to correct minor issues and be required to demonstrate to the monitor that the issue has been put right. Only in cases of more serious non-compliance (or uncorrected minor compliance) should the issue be reported to the OFT.</u></p> <p><u>In the case of any DMP Providers who are members of trade associations; the trade association should be encouraged to take it's own disciplinary action against wilful or repeated non-compliance.</u></p>
<p>6.3 Summary results of all <u>(audits – deleted) monitoring visits</u> should be reported to the OFT <u>(by the monitor)</u> who can then determine whether regulatory intervention is appropriate.</p>	<p><u>This could be achieved by compliance with the requirement for annual reports by members of the OFT's consumer codes approval scheme (CCAS).</u></p> <p><u>If CCAS is to play a role, then consideration should be given to involving the Trading Standard's Institute, who are inheriting the scheme from <u>the OFT</u>.</u></p>
<p><b>7. Complaints Procedure</b></p>	
<p>7.1 DMP Providers <u>are required to should</u> operate a free and transparent complaints procedure and <u>must</u> ensure that customers are provided with details of the procedure both prior to and on conclusion of the DMP <u>(agreement – deleted) arrangement</u>. <u>The procedure must not prevent customersclients from using either the DMP Provider's trade association's conciliation procedure or from taking their complaint to the Financial Ombudsman Service.</u></p>	<p><u>This area must be regarded as unfinished and should be taken up by the protocol standing committee as a number of providers are already regulated by different bodies, including professional institutions. Consideration of the move to FCA regulation needs to be part of this process.</u></p>
<p style="text-align: center;"><u><b>Training</b></u></p>	
<p><u>1. In order to offer P-DMPs a DMP Provider must have in place a formal</u></p>	<p><u>We have taken these paragraphs from <u>the IS's</u> initial draft (and have not renumbered them in order to preserve</u></p>

<p><u>training process for its staff. Verification of the policies, practices and procedures in relation to training will be included in the regular monitoring by the independent third party monitor.</u></p> <p><u>2. This will include working with Money Advice Service MAS and those appointed by them to work up the best practice standards in debt advice delivery.</u></p>	<p><u>the document's integrity for other users.</u></p> <p><u>We believe continuing training makes a major difference to the quality of advice given and solutions provided. It also raises a "good" barrier to entry for new organisations and formalises guidance from the OFT, making this a requirement.</u></p> <p><u>The overall benefit to consumers is immense and we believe this should be restored to the protocol.</u></p>
<p><b><u>Creditor standards</u></b></p>	
<p>Compliance with the terms of this protocol should be incorporated within the appropriate best practice lending code to which the creditor subscribes. Compliance with the terms of this protocol should be regarded as an appropriate business practice towards compliance with relevant OFT consumer credit guidance.</p>	<p><u>Some creditors do not subscribe to any code. How can these be bound?</u></p>
<p><b>8. Breathing space</b></p>	
<p>8.1 On receipt of appropriate evidence that a customer is engaged with a DMP Provider to develop a protocol-compliant plan, creditors should extend to customers an initial breathing space of at least 30 days <u>(or until the debtor's details are confirmed to the DMP Provider)</u> (with the possibility of extension where demonstrable progress is being made but is not yet complete).</p>	<p><u>This breathing space should be extended to the point where it is possible for the DMP Provider to begin to make distributions to creditors.</u></p>
<p>8.2 Breathing space will include the suspension of all collections activity relating to the debts under consideration with the DMP Provider.</p>	<p><u>Will this apply to all creditor actions, including bailiff actions, charging orders, HMRC petitions, etc.?</u></p> <p><u>What if legal action has commenced? We don't think it appropriate that the debtor should use a P-DMP as a delaying tactic.</u></p>
<p><b>9. Cooperation with DMP providers</b></p>	
<p>9.1 Creditors should fully and constructively cooperate with Protocol-compliant DMP providers and endeavour to provide all relevant and reasonably requested material within 10 working days of request (with receipt of the customer's informed consent).</p>	



<p>9.2 If a creditor becomes aware of a subscriber's wilful non-compliance with the Protocol then it should, where available and where relevant to non-compliance with the OFT Debt Management Guidance, provide evidence of this non-compliance to the OFT <u>and/or to the trade association of which the provider is a member.</u></p>	<p><u>It may be, in some circumstances, that a trade association is able to take effective action, such as dismissal from membership, more quickly than is possible than by the OFT.</u></p>
<p>9.3 In accordance with section 3.48 of the OFT Debt Management Guidance, creditors may refuse to deal with a DMP provider if that provider fails to comply with relevant legislative requirements and/or the OFT Guidance. [Failure to comply with the Protocol may be regarded as a justifiable basis for refusing to deal with a DMP provider – <b>OFT view please</b>].</p>	<p><u>We agree, but point out that there must be an effective route for the debtor to be made aware that the creditor has taken this action.</u></p> <p><u>In addition, debtors should be informed of the protocol as well as signposted to sources of free advice, when this action is taken.</u></p>
<p>10.1 A creditor should accept a protocol-compliant DMP proposal unless the creditor has additional information that might materially affect the suitability of the proposal. Where this is the case, the additional information should be shared with the DMP Provider and customer unless inappropriate to do so (e.g. legal, privacy implications).</p>	
<p><b>11. Administration</b></p>	
<p>11.1 Creditors will not commence (and will cease) all collections and enforcement activity against debts within the DMP, whilst the plan continues to operate in accordance with its terms.</p>	
<p>11.2 Creditors will place a DMP flag<sup>2</sup> on the customer's credit file for the duration of the arrangement to record the customer's participation in, and progress of the plan.</p>	<p><u>Not all creditors can do this or use a credit file when undertaking collections activity. If the flag is against the debt, rather than the consumer, this may help indicate where debts have not been included.</u></p>
<p>11.3 Creditors will ensure that the customer is removed from their credit-related marketing lists for the duration of the DMP.</p>	
<p>11.4 If the creditor chooses to sell a debt that is subject to a protocol-compliant DMP, the debt-buyer must be contractually obliged to honour the existing plan for as long as it operates in accordance with its terms.</p>	
<p><b>12. Management Information</b></p>	
<p>12.1 Creditors should retain data on the terms</p>	<p><u>The standing committee should work</u></p>

<sup>2</sup> Compliance is subject to implementation of DMP Flags, currently being developed by the CRAs

and performance of DMPs to which their customers are subject.	<u>toward an information interchange for creditors and plan providers to share appropriate data.</u>
12.2 This data should be made available to the MAS as requested under its remit to collect and integrate consistent data on debt advice and debt management.	

CONFIDENTIAL