



Northern Ireland  
Assembly

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**COMMITTEE FOR  
ENTERPRISE, TRADE AND  
INVESTMENT**

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**OFFICIAL REPORT  
(Hansard)**

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**Debt Relief Bill**

13 May 2010

**NORTHERN IRELAND ASSEMBLY**

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ENTERPRISE, TRADE AND  
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**Members present for all or part of the proceedings:**

Mr Alban Maginness (Chairperson)  
Mr Paul Butler (Deputy Chairperson)  
Mr Gregory Campbell  
Mr Leslie Cree  
Ms Jennifer McCann  
Mr Stephen Moutray  
Mr Sean Neeson  
Mr David Simpson

**Witnesses:**

Ms Sinéad Campbell )      Advice NI  
Mr Bob Stronge      )

**The Chairperson (Mr A Maginness):**

Appearing before the Committee are Mr Bob Stronge, the chief executive of Advice Northern Ireland, and Ms Sinéad Campbell, the money advice project manager of the same organisation. Both are welcome. Departmental officials are on standby to address the Committee's concerns if necessary.

**Mr Bob Stronge (Advice NI):**

Good afternoon, members. I hope that we will not keep you as long as the previous, very

interesting discussion. I felt like I was back in the Economic Development Forum.

First, we support the Debt Relief Bill. It is an important piece of legislation that will protect very vulnerable people with whom advice networks such as ours and others deal. Sinéad Campbell will run through some of the key issues in the Bill that we feel that the Committee may want to address. After that members will have the opportunity to question us.

**Ms Sinéad Campbell (Advice NI):**

The legislation aims to benefit vulnerable people who are already experiencing considerable stress due to their debt situation. Advice NI is concerned that no timelines are given for objections and investigations, as described in proposed new articles 208K(5) and (6). That could mean that an investigation could be carried out at any time after discharge, which could be several years. That could place further stress on the debtor, so Advice NI wants clear guidance and timelines for investigations.

Although Advice NI supports responsible spending and debtors taking ownership of their actions, it is concerned about the upper time limits of debt relief restriction orders that are referred to in paragraph 9(2)(b) of proposed new schedule 2ZA. We seek clarification regarding the application of the 15-year restriction and information on how decisions will be made to enforce the two-year or 15-year restrictions or anything in-between.

Paragraph 5 of proposed new schedule 2ZA clearly defines the six-year rule for reapplying for a debt relief order. Advice NI believes that an exceptional circumstances clause should be added to take account of unforeseen changes in an individual's situation; for example, a life event such as illness or the death of a partner, which may leave a person unable to cope with their financial situation. We feel that such cases should be considered on their merit and the circumstances.

Advice NI is keen to act as an approved intermediary and to seek clarification on the process and remuneration related to that. We also recommend that any registration fee identified in proposed new article 248A(11)(a) and (b) be proportional to the status of the organisation seeking to become a designated body.

I will now outline some issues that have been encountered in England and Wales. The expected take-up rate was around 36,000 claimants; however, to date, only 1,978 debt relief

orders have been issued, which is less than 5.5% of the anticipated uptake. That seems to highlight the possibility that there is something fundamentally wrong with the eligibility criteria. Advice NI recommends that that issue be fully researched before debt relief orders are implemented in Northern Ireland.

We recognise that the estimated target group of beneficiaries is quite small, standing at approximately 1,000 people. We believe that amending the qualifying criteria slightly would lead to the legislation having a greater impact and would ensure that borderline cases do not slip through the net. We propose that the debt liability be increased to £20,000 and that the requirement to have less than £50 in surplus income should be flexible, to take circumstances into account and allow for some protection for those who fall just outside the threshold.

Our initial response gave the example of a single parent with four children and a surplus income of £51 who would be excluded from the order, compared with a single person who has no children and a surplus income of £49, who would be eligible. However, we envisage that the use of the common financial statement will provide some safeguards in that area.

Advice NI has previously highlighted concerns around the realisable assets limit of £300, which includes occupational and private pensions. Our sister organisation, AdviceUK, has found that 90% of those seeking a debt relief order had pension pots and, therefore, were excluded. A pension is necessary to provide older people with an income when they are no longer earning a regular income from employment. We seek an assurance that private and occupational pensions are not included as an asset when deciding the criteria for a debt relief order.

The £1,000 limit for the value of vehicles is another issue that concerns us in relation to realisable assets. Anecdotal evidence from debt advisers in our organisation suggests that average car values are above that limit. We suggest that the limit for the value of vehicles is raised to £3,000, which is equivalent to that available under bankruptcy proceedings and is more realistic.

We understand that in England and Wales a van that is used for business purposes will not be classed as a tool of the trade in the order and will, therefore, count towards the limit. If a client's only transport is a van, it must be worth less than £1,000. If a client owns a car for personal use and a van, the van would only be worth £300, meaning that a debt relief order is unsuitable. That

is unfair and penalises tradespeople, who have been among those most affected by the economic downturn in Northern Ireland.

Our understanding is that in England and Wales, disability benefits count as income for applicants seeking a debt relief order. Those benefits are awarded specifically to help the recipient cope with their disability and should not be counted as income. Advice NI seeks assurance that benefits will not be regarded as income.

We understand that numerous changes to the guidelines have been published in England and Wales. That has created confusion among applicants and intermediaries. Advice NI seeks assurance that the Insolvency Service thoroughly researches and publishes one clear set of concise guidance on debt relief orders.

Since the introduction of the scheme in England and Wales there have been many problems with the online application forms. In their current format, the forms have proved difficult for the clients and intermediaries to complete. It was originally envisaged that the online forms would allow the clients to fill in some details, such as balances, and an intermediary could assist with the overall completion of the form. However, the design is such that the first page must be fully completed before moving on to the next page. That has caused difficulties for clients and intermediaries and has resulted in the intermediaries having to complete the application form themselves. That disempowers the client and adds to the role of the intermediaries.

Advice NI is keen that the Insolvency Service enters into a meaningful partnership with the debt advice sector and that it does not see the voluntary sector as a cheap option. Advice NI is also keen that intermediaries are adequately remunerated for obtaining the relevant information about the debtors' affairs, forming an opinion as to whether the debtor would be eligible, ensuring that the application is completed correctly and, where appropriate, sending the form electronically to the official receiver.

We ask that consideration be given to the additional workload created as a result of the order assessment, as not all assessed cases will be suitable for the order. We ask also that a remuneration scheme similar to that in operation for benefit uptake campaigns with the Social Security Agency is applied. In other words, we seek a two-tier system whereby payment is made for advice and information and for applications.

We also have concerns over the focus on closed cases. That has the potential to move the focus from client need on to statistical outcomes. That does not fit with the current systems-thinking approach being applied across the UK. That approach is client-need driven, rather than target driven. There is a danger that the order could become more about targets and moneys than about actual client need. That should be considered in any evaluation or review of the implementation of the order.

Advice NI is willing to be designated as a competent authority to nominate, train and monitor the performance of the intermediaries to implement the scheme, provided that the necessary support and liaison with the Insolvency Service is available. We seek reassurance that the commercial sector is prohibited from acting as intermediaries, as the incentive might be to get the client through the door and sell them other services that may not be in their best interests.

Our further recommendations include reassurance that intermediaries are not held accountable for falsely declared assets by the debtor; reassurance that the initiative will not lead to further financial exclusion; the up front fee to be fixed for a three-year period, with consultation on any proposal to increase it; and that the order be reviewed annually rather than every three years. That review should take account of the impact and relationship with the debt advice sector. Advice NI is keen to engage with the Insolvency Service in the implementation and review of the order in Northern Ireland.

**The Chairperson:**

Thank you; that has been helpful. You stated that proposed new article 208K(5) of the Bill provides that creditors are permitted to object to the making of debt relief orders. You also said that you would like clear guidance and timelines on the investigations. Is that in any way different to the English legislation and, if not, why should we differ on that point?

**Mr Stronge:**

It is about being clear about the timelines in relation to that. That is a weakness. We looked at the experience of the order as it stands in England, so we are picking out areas where improvements could be made when making the order here.

**The Chairperson:**

Has that aspect given rise to any problems in England?

**Mr Stronge:**

I will have to check that.

**The Chairperson:**

Is yours a more precautionary approach?

**Mr Stronge:**

Yes.

**The Chairperson:**

What is your view on the 15-year restriction? The Department states that it will be possible for someone who is subject to a debt relief order to be placed under continuing restrictions following the ending of the moratorium period that ensues after the making of the order. Is the point that you are making not, therefore, unnecessary?

**Mr Stronge:**

The point regarding the application of the 15-year restriction is about how decisions will be made about the enforcement of that and the timelines between two and five years. It is a cautionary thing that we are —

**The Chairperson:**

Is it precautionary?

**Mr Stronge:**

Yes.

**The Chairperson:**

So it would be desirable in the circumstances, but not absolutely essential?

**Mr Stronge:**

Yes.

**The Chairperson:**

Paragraph 5 of proposed new schedule 2ZA states that a person may not reapply for a debt relief order within six years. You believe that an exceptional circumstances clause should be added. Is there an exceptional circumstances clause in the English legislation?

**Mr Stronge:**

There is not.

**The Chairperson:**

Has that given rise to any problems?

**Mr Stronge:**

It has. There have been some examples of people being unable to cope with their financial situation due to an illness or the death of a partner, for example. We are asking for some flexibility, such as an exceptional circumstances clause that may provide some relief.

**The Chairperson:**

In proposed new articles 248A(11)(a) and (b) as set out in clause 4, the schedule contains minor consequential amendments to provide that the Department of Enterprise, Trade and Investment may designate approved intermediaries. I assume that you are interested in participating in that.

**Mr Stronge:**

Yes.

**The Chairperson:**

It appears that the Department has no plans to charge a fee in connection with the granting or maintenance of designation as a competent authority. In that sense, what you are asking for does not really apply.

**Mr Stronge:**

That is fine. We were not aware of whether the Department was doing that.



**The Chairperson:**

That seems to be the Department's view, unless there is any change.

**Mr Butler:**

Thank you for your presentation. You mentioned the legislation in England. I am not too sure how long it has been in place there.

**Ms S Campbell:**

It has been in place since April 2009, so it is early days.

**Mr Butler:**

It is too early to get an independent assessment of how it has operated. I have a concern about the £50 threshold. That seems quite restrictive. What if someone has £51 or £52? Perhaps that will be dealt with in subordinate legislation. There are different views of the liability level of £20,000. I know that credit unions say that that is too high. The vehicle value limit in the legislation is £1,000, but you think that that should be £3,000.

**Mr Stronge:**

It should be the same level as the bankruptcy terms.

**Mr Butler:**

Is it £1,000 in the English legislation?

**Ms S Campbell:**

Yes.

**The Chairperson:**

However, the bankruptcy threshold is £3,000.

**Mr Butler:**

Yes, and Advice NI wants it to follow the bankruptcy legislation.

I am also concerned about the £50 limit. How can we get around that? The legislation will obviously set some limit on it.

**Mr Stronge:**

Yes, it will. That figure is calculated on the basis of whether an individual has a disposable income of £50 or more each month. When calculating a person's income, the common financial statement — that is, that a person must be allowed a certain amount to live on, to spend on food and pay their bills — must also be taken into consideration. That situation can never be got around through legislation.

We have given the Committee the example of a single parent with four children with a surplus income of £51 being ineligible and a single person with no children an a surplus income of £49 being eligible. If a limit must be set, it will be difficult to have flexibility and people will always be excluded. The nature of the legislation will exclude those with more of a surplus income, but that can be very unfair. It is hit and miss, and we are not sure how to find a way around that.

**Ms J McCann:**

You are very welcome to the Committee. I agree that the decision should not be based on disposable income but on a person's circumstances. Benefits should also not be used to calculate a person's disposable income, because people are on benefits because they have a low income.

Did you say that only 5.5% of people have taken up orders in England?

**Ms S Campbell:**

The information that we received from AdviceUK is that 36,000 people were expected to take up orders in England, yet only 1,978 orders were granted. That is less than 5.5% of the expected uptake.

**Ms J McCann:**

Are you concerned that the same thing will happen here if the threshold is not changed?

**Ms S Campbell:**

Yes.

**Ms J McCann:**

I agree that some aspects of the Bill must be reconsidered.

**Mr Stronge:**

AdviceUK has told us that the biggest problem is the inclusion of the £300 limit on pensions. Most people have a stakeholder pension of that amount, and it is about how a pension pot is treated. This legislation says that a pension above £300 would exclude an individual from getting an order, even though they may not be able to access the pension until later in life. AdviceUK has told us that around 90% of those trying to claim a DRO had pension pots above £300 and were excluded as a result. There is a big issue about how benefits are treated generally and whether pensions should be included, given that they are for use in later life.

There is another issue with disability benefits being included as income, as they are designed to meet the particular circumstances of an individual's disability. Whether those should be included is another question.

**The Chairperson:**

There are no further questions. I thank the witnesses for their participation, it has been most helpful.

The Committee has received a written response from the Department, and departmental officials have been present at today's meeting. I am not going to ask them to comment today, because we had quite extensive business this morning. However, if the Committee were to ask officials to appear before it next week, it would be helpful if they could attend.