



The Debt Arrangement Scheme *Update*

Presentation
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DAS and Personal and Corporate Insolvencies, October to December 2018 (2018 - 19 Q3)

DAS DPPs approved



15-16 Q1 18-19 Q3

668
DAS DPPs approved in 2018-19 Q3

17%
since 2017-18 Q3



417
DAS DPPs completed in 2018-19 Q3

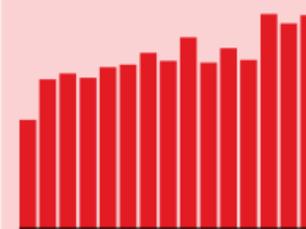


£9.1 million repaid through DAS in 2018-19 Q3



12,333
DAS live cases at the end of 2018-19 Q3

Personal insolvencies

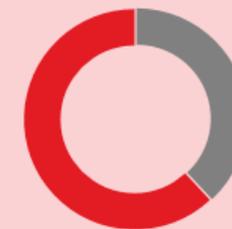


15-16 Q1 18-19 Q3

3,198 personal insolvencies in 2018-19 Q3

18% since 2017-18 Q3

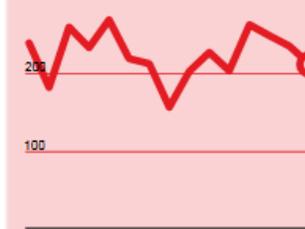
PTDs and bankruptcies



62% of personal insolvencies were PTDs

38% were bankruptcies in 2018-19 Q3

Corporate insolvencies

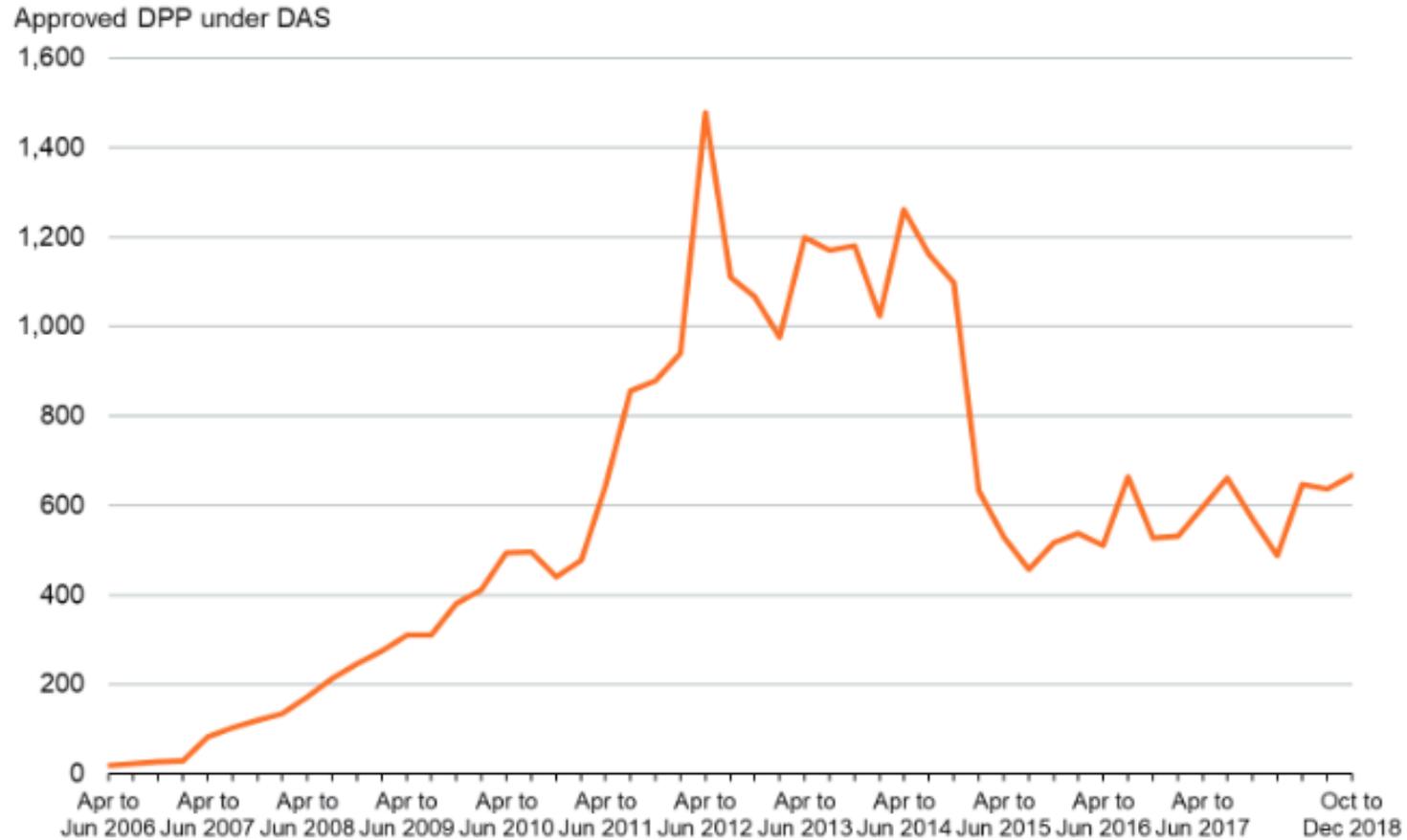


15-16 Q1 18-19 Q3

209 total corporate insolvencies in 2018-19 Q3

4.0% since 2017-18 Q3

Approved DPPs under DAS from April 2006 to Dec 2018



Background – Scottish SME Market

As at March 2018, there were 363,535 SMEs which accounted for:

- 1.2 million jobs
- 99.3% of all private sector enterprises
- 54.9% of private sector employment
- 41.5% of private sector turnover

SMEs play a pivotal role in our economy and communities

Challenges for SME's

- Cash flow represents one of the biggest challenges
- Once creditors are chasing for payment a small business owner has two options:
 - try to save the business while attempting to settle outstanding accounts
 - allow the business to fail by implementing an exit strategy that minimises the financial consequences



Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

Explanatory Notes have been produced to assist in the
understanding of this Act and are available separately

Bankruptcy and Debt Advice (Scotland) Act 2014, Bankruptcy Scotland Act 2016

BADA(S) aims to:

- ensure debtors have access to a fair and just process of debt management
- that those who can pay their debts do so; and
- that the best possible return are secured for creditors

Introduction to Debt Arrangement Scheme



- Solution to address increase in consumer debt
- offers a better return for creditors
- DAS formally introduced in 2004
- Debt Payment Programme
- Allows individuals to repay debt
- Removes the threat of court action from creditors
- Number of further amendments

What is the Business Debt Arrangement Scheme?

SCOTTISH STATUTORY INSTRUMENTS	
2014 No. 294	
DEBT	
The Debt Arrangement Scheme (Scotland) Amendment Regulations 2014	
Made	5th November 2014
Coming into force	
for the purpose of regulation 1(2)	11th December 2014
for the purpose of regulation 1(3)	1st April 2015
<p>The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 2(3)(d), 4(5), 5(4), 7 and 62(2) of the Debt Arrangement and Attachment (Scotland) Act 2002(a) and all other powers enabling them to do so.</p> <p>A draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament in accordance with section 62(4) of that Act(b).</p> <p>Citation and commencement</p> <p>1.—(1) These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Amendment Regulations 2014.</p> <p>(2) Subject to paragraph (3), they come into force on 11th December 2014.</p> <p>(3) Regulations 8 except paragraph (3)(a) and (c), 9(1), 10, 21(5)(a), 22, Schedule 1 and Schedule 2 in respect of form 1 come into force on 1st April 2015.</p> <p>Interpretation</p> <p>2. In these Regulations, “the DAS Regulations” means the Debt Arrangement Scheme (Scotland) Regulations 2011(c).</p> <p>Amendment to the DAS Regulations</p> <p>3. The DAS Regulations are amended in accordance with regulations 4 to 22.</p>	
<p>(a) 2002 asp 17. Section 5(4) was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”), section 212. Section 7 was amended by the 2007 Act, section 212 and by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11) (“the 2014 Act”), section 53. Section 9(1) contains a definition of “prescribed” relevant to the exercise of statutory powers under which these Regulations are made. Section 9(1) was amended by the 2014 Act, Section 53.</p> <p>(b) As amended by paragraph 38 of schedule 3 to the 2014 Act. The powers used in this instrument include section 7(2)(b) of the Act, inserted by section 3(2) of the 2014 Act. The powers to make these Regulations are exercised together by virtue of section 3(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.</p> <p>(c) S.S.I. 2011/161, as amended by S.S.I. 2013/225.</p>	

The innovative application, by some advisors, of the DAS for sole traders and partnerships inspired the Government to develop and launch the “Business DAS”

Our Credentials

Adapted the DAS to help small businesses, experiencing financial difficulty, to manage their debt and survive.

3 fully qualified insolvency practitioners, complemented by a highly competent and experienced team.

Ian personally has 10 years experience of working with the Debt Arrangement Scheme both in public and private sector.

Invited to represent the Insolvency Practitioners Association in the Scottish Government's BDAS working group

Helped contribute to BDAS legislation

How does DAS work?

Pro-rata Payment Plan

- Multiple debt
- Disposable Income
- Assets/Wage at risk from diligence

DAS

- Multiple or Single debts
- Disposable Income
- Assets/Wage not at risk from diligence

Business Das - Key Facts

Qualifying businesses must be in Scotland or formed under Scots Law:

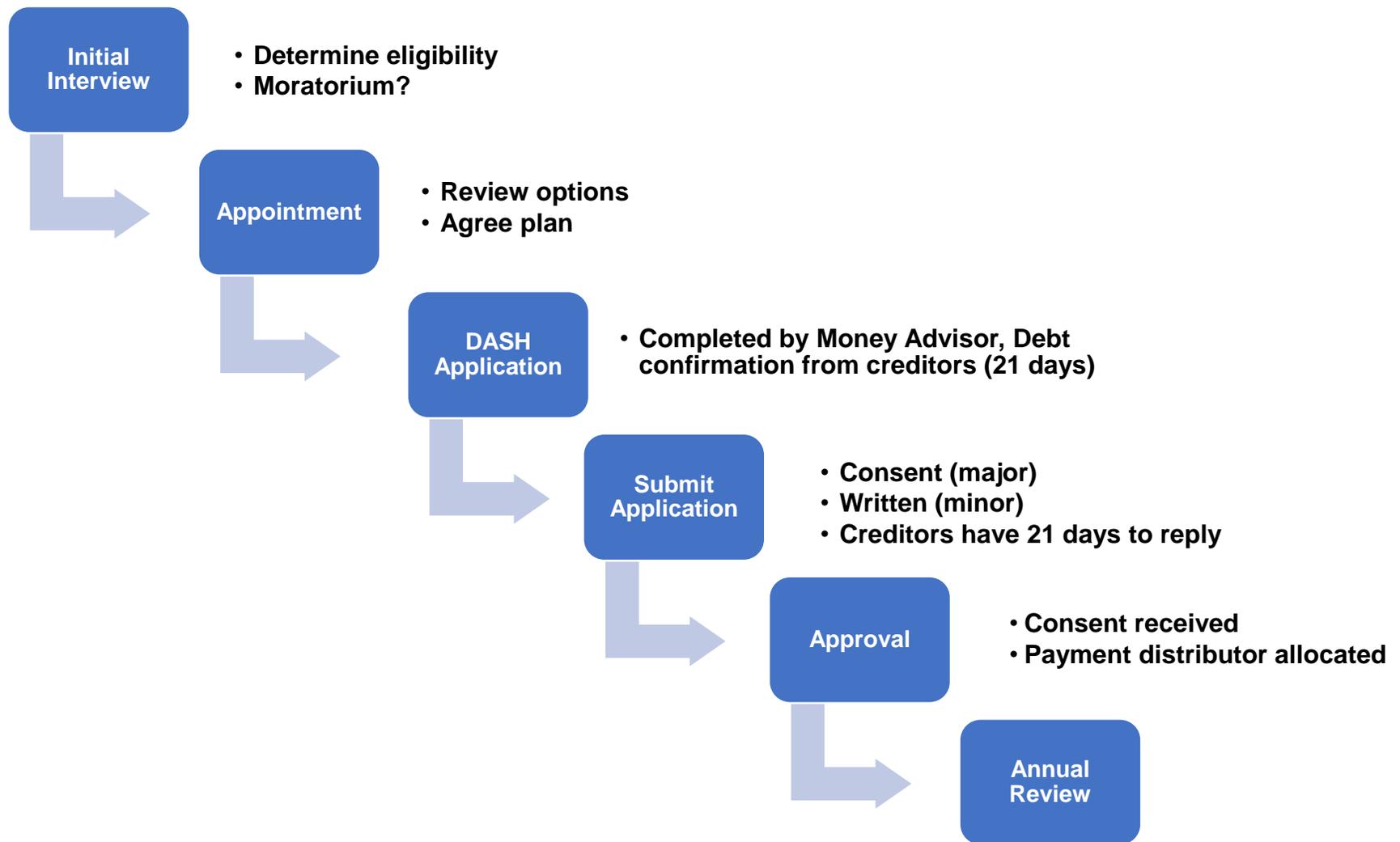
- Partnerships
- Limited partnerships
- Corporate bodies
- Trusts
- Unincorporated body of persons

Business Das - Key Facts

- Business DAS Money Advisers must be qualified Insolvency Practitioners
- Proposals must receive relevant consents from interested persons
- All qualifying debts must be included at the time of application
- A declaration of viability must be submitted with a Business DAS application
- Case can be referred to Accountant in Bankruptcy if creditors do not accept the proposal

Business Das - Key Facts

- Insolvency Practitioners must review the viability of the business every 12 months and must apply for revocation where no longer viable
- All cases must be completed within 5 years
- No offer of composition may be made
- The DAS register has been updated to allow for searches for Business DAS cases



DAS and BDAS Timeline

DAS
Stakeholders



Updates to DAS and BDAS

DAS

- Removed requirement to include all debts in a Debt Payment Plan (DPP)
- Debtor's monthly contribution to DPP no longer has to be their full surplus income as calculated by the Common Financial Tool (CFT)
- Debtor's choice to exclude rent and mortgage arrears
- Access to credit while in a DPP to mirror restrictions in bankruptcy
- Inclusion of the family home as a discretionary condition
- Improved transparency by requiring the continuing money advisor's fee to be disclosed to creditors as part of the DPP proposal
- Option for those at risk of violence to keep their name off the DAS Register.

Business DAS

- Requirement to have at least two debts removed
- Payment break of up to six months introduced for the duration of the DPP, providing the total length of the DPP remains within the five year maximum period.

Recent DAS consultation

- Proposed changes to payment structure



When to use DAS?

- Equity in property or other assets
- Unsecured debts
- Divorce settlement
- Discretionary condition re selling family home or other property
- Unsecured business debts
- Directors personal loan if Ltd co in liquidation (dependent on level of debt)
- Personal Guarantees
- Unsecured Partnership Debts (BDAS)
- Employee Benefit Trusts and similar schemes



Case Study 1

Background

- Individual
- Employed (Formerly self – employed)
- Debt
 - £34k owed to HMRC
 - £2k owed to other creditors
- Assets
 - Owns property equity of £172,000
 - Other assets: property now being lived in by soon to be ex -wife



Case study 1 – Outcome

- Plan approved with discretionary condition set by AiB
- £400 monthly contribution for 7.5 years (5 years with DC applied)
- Debt to HMRC, lenders and other debts to be cleared in full
- No impact on property equity.

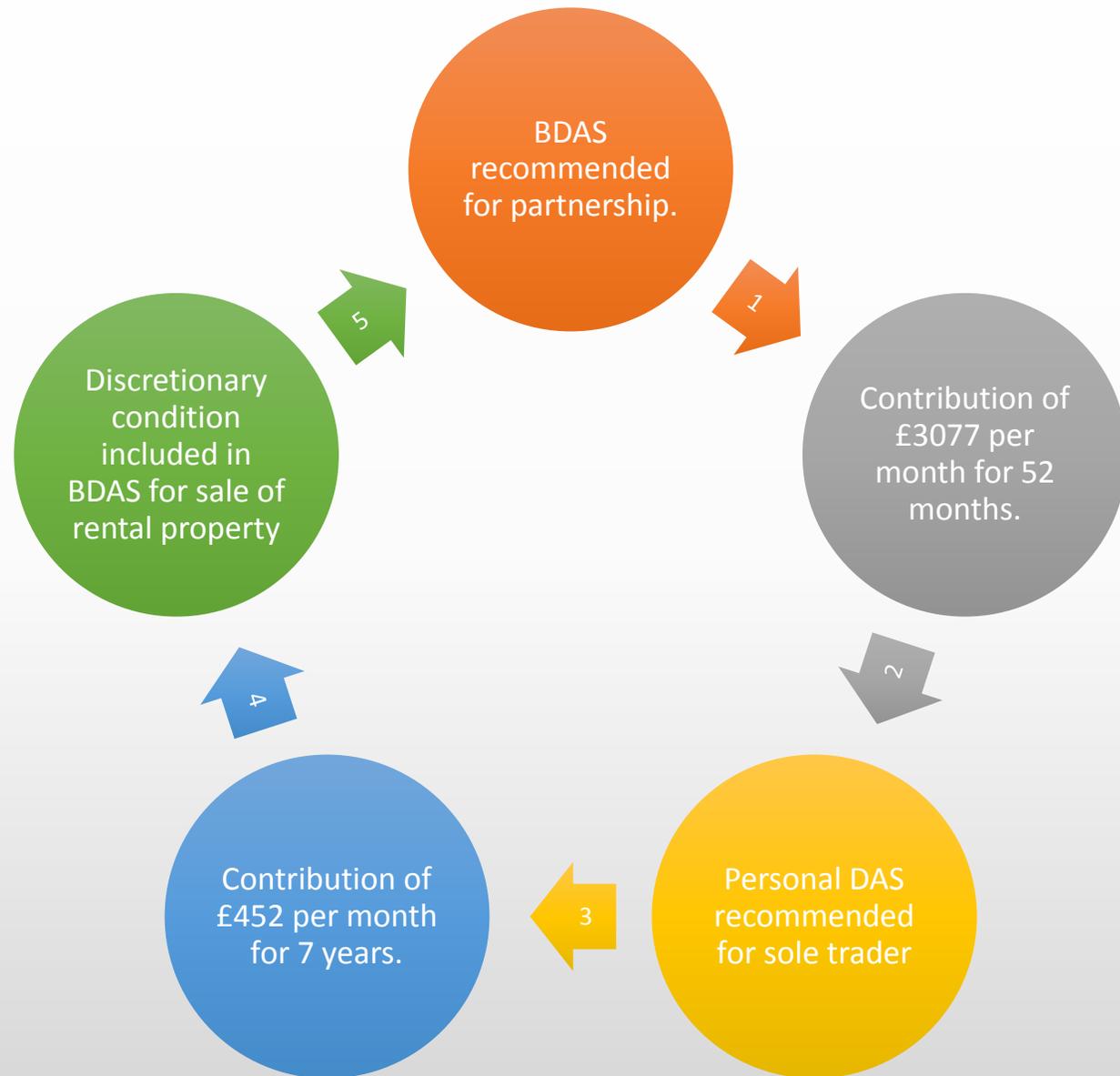




- Garden Centre and Landscaping Business
- Garden Centre operates as a partnership for husband and wife
- Landscaping business as sole trader under husband's name.
- Garden centre debts to HMRC of £160,000
- Landscaping business debts to HMRC and other creditors of £38,000
- Husband and wife own a residential property valued at £230K with equity of £100k / Garden centre valued at £350K with equity of £50k / Rental property valued at £130k with equity of £70K

Case Study 2 - Background

Case Study 2 Solution



Case Study 2 – Outcome

- HMRC objected to both BDAS and Personal DAS application.
- Other creditors in personal DAS accepted.
- AiB overturned objections in Fair and Reasonable Test and approved both.
- HMRC asked for a review of decision on basis client was not maintaining ongoing liability.
- Client brought on-going liability up to date and review rejected.
- Client continues to trade



Conclusions

- BDAS has not taken off as expected
- Changes should improve usage and accessibility of DAS and BDAS
- Still a demand for DAS
- DAS will continue to be a viable solution for individuals, sole traders and BDAS for partnerships
- Financial Inclusion Commission recommendation to "adapt Scotland's Debt Arrangement Scheme (DAS) for the whole United Kingdom"



Questions?