



# DAPA Scheme Newsletter

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## Welcome

### Inside this issue:

Spotlight—Debt Pre-Action Protocol	1
News and Legal Updates	3
Financial Statements	2
Confirmation of Advice—Language Barriers	3
Confirmation of Advice—Tailored Factsheets	3
Case Closure—Good Practice	4
Mortgage Repayment Vehicles	4
DRO's and Credit Reports	4
Benefit Checks	4

Welcome to the first DAPA Scheme newsletter aimed at supporting both Lead Organisations and Participants with the principles of the DAPA Scheme. The purpose of the newsletter is to share information, good practice and ideas with organisations, in addition to general information and guidance regarding the DAPA Scheme, to improve

the quality of MaPS funded debt advice. We hope you find the updates informative and accessible. If you have any ideas for future issues, please share these via your Lead Organisation or by email to

peerreview@recognisingexcellence.co.uk



## Spotlight—Debt Pre-Action Protocol

Few organisations appear to be mentioning the pre-action protocol and it has been questioned whether it should be advised upon when discussing enforcement. How DAPA views this depends on the stage of the debt.

If Court Action is likely or imminent, then it is expected that full and detailed advice would be provided on the Protocol e.g. a default notice has been issued or the creditor/debt collector of the debt is stating that court action will be started.

Where there is a clear indication that court action is likely in the future and the case record does not evidence that advice has been given on this issue, this would be an Area of Concern.

If there is no debt close to County Court proceedings then DAPA will expect the protocol to be mentioned briefly as part of the advice on possible enforcement sanctions for non-payment.



## News and Legal Updates—Quarterly Account (August 2019, Page 26)

There is an article in the above literature which discusses whether a Tax Credit overpayment should be addressed as a priority or a non-priority debt and we have been asked the question whether the position of the DAPA Scheme remains the same.

The answer to this question is that yes it does remain the same. The Debt Advice Handbook categorises a tax credit overpayment as a priority debt because of the provisions of s.29 and in particular the – admittedly unlikely - possibility of imprisonment. In addition, bailiffs collecting tax debts for HMRC are able to apply for a warrant to force entry in prescribed circumstances. Lorraine Charlton of the EAT argues strongly that tax credit overpayments should be treated as a non-priority (square peg) debt because COP 26 does not refer to committal proceedings or bailiffs as possible enforcement options. This of course, is a matter of policy and the DAPA Scheme continues to follow the Debt Advice Handbook.

Where clients claim UC and have a tax credit overpayment, this is transferred to the DWP for collection as if it were a benefit overpayment – a non-priority debt. The Q&A quotes the DWP's Benefit Overpayment Recovery Guide on Migrated Tax Credit overpayments as confirming that these will continue to be recovered as benefit overpayments, even if the client is no longer in receipt of benefits rather than reverting to Tax Credit overpayments which seems to indicate that the categorisation should change in those circumstances. It is clear from the Benefit Overpayment Guide that even if no benefit is in payment the debt will remain a benefit overpayment and not revert to being a Tax Credit overpayment.

### Financial Statements



The DAPA Scheme often sees deficit financial statements and on occasion, financial statements with large surpluses. The Scheme expects that in both situations the financial statement is investigated.

With regard to the large surplus financial statement, the Scheme would expect that the client be asked if the statement is correct and whether they have savings, the bank account is in credit or overdrawn. Advisers could examine bank statements to verify expenditure, and/or recommend the client keep a spending diary.

For deficit financial statements, the Scheme expects the deficit to be investigated. Is the deficit temporary, short term/long term, how is the deficit being maintained, are friends/family assisting with financial help, are the debts a result of this deficit budget and/or has the client taken any steps to rectify the deficit? Income Maximisation and a benefit check are part of the DAPA Scheme's essential criteria and this is a situation where it would be extremely important to consider these matters. Also, in this situation the Scheme would expect some financial capability advice to be given to the client.

Recently, it has been suggested to the Scheme that there could be two financial statements completed for the same client, for the same period of time and the same circumstances with a different outcome for different audiences i.e. a deficit financial statement for a DHP application and surplus financial statement for making a payment offer to a creditor. If this was presented for assessment, there would need to be some explanation of how this has happened within the case records. If there is no note or explanation, then the Scheme will view the financial statement as inaccurate as a surplus and a deficit financial statement cannot happen at the same time. The Scheme would refer to FCA CONC Rules in this situation which state at Rule 8.5.1 (1) 'is accurate and realistic and must present a sufficiently clear and complete account of the *customer's* income and expenditure, debts and the availability of surplus income;'

## Confirmation of Advice (COA)—Language Barriers

In the situation where the client's first language isn't English, the Scheme does not specify that full advice has to be in a COA letter. Examples of written information resources include a Confirmation of Advice letter, copy of Case Record, Tailored Fact Sheet or a combination of these. The DAPA assessment considers the whole case record so as long as the advice is recorded somewhere in the case file, DAPA will accept the evidence presented.

Where the clients have difficulties understanding English, the COA letter could be shorter and targeted as long as the other relevant advice is recorded elsewhere in the case file. This would allow the COA letter to be translated at a reduced cost to the organisation, if the client has nobody to assist them with its translation. The Scheme would expect the client to be asked how they manage other written correspondence they receive; Do they have family or friends that translate documents for them?

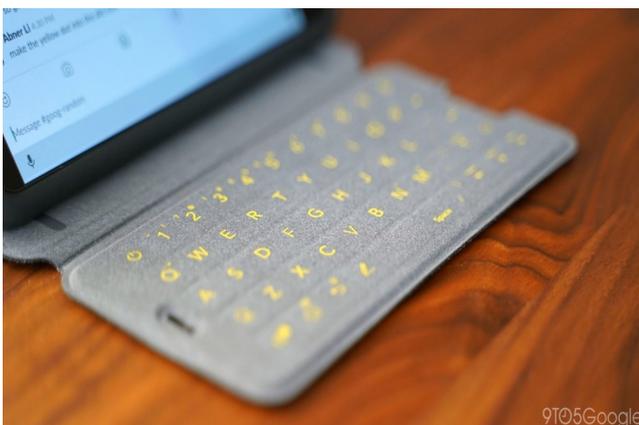


A copy of the written advice provided should be retained on the case file in English to enable colleagues and supervisors understand the advice given to the client.

If a client has literacy problems and no one to assist them with reading a letter, DAPA would expect these facts to be recorded within the case notes, and the case notes would need to be sufficiently detailed to ensure there is a clear record of the advice given to the client. In this situation, the Scheme would not expect a written record of the advice to be sent to the client.

## Confirmation of Advice—Tailored Fact Sheets

Factsheets are an acceptable method of confirming advice in writing to clients. However, where standard fact sheets are provided to clients, the DAPA Scheme will expect these to be tailored to the individual circumstances of both the client and the issues presented.



Factsheets generally deal with many issues and therefore need to be tailored to the client's particular circumstances as it is likely that part of the factsheet may not be applicable to the client. Factsheets are designed to provide information and are not the equivalent of actually providing advice. The Scheme therefore looks for evidence within the case record that the Adviser not only went through the factsheet with the client, but also which parts were discussed. This can be evidenced by various methods including retaining a copy of the factsheet on the case file with a highlight against the sections

discussed, and/or noting the sections discussed within the case notes e.g. advised client on factsheet Y, including paragraphs 1, 2, 3, 7, 9, and 10, all other paragraphs not relevant. Additional notes should be added where relevant.

## Case Closure—Good Practice

Over recent months, the Scheme has seen some very good examples of case closing letters. These include examples of where the letter summarises the advice given, the situation at the point of closure, outstanding actions required by the client and how long the file will be stored. These are all points of good practice and provide the client with the opportunity to return to the organisation if they require further advice.



### Mortgage Repayment Vehicle

In cases where the client is on an interest only mortgage, the mortgage term is coming to an end and there is no repayment vehicle apparent or explored, this will be an Area of Concern in cases where there is less than 12 months remaining on the term. In all other cases, it will be an Area of Improvement.

## DRO's and Credit Reports

There seems to be a number of new ways of obtaining Credit reports and DAPA considers them all as valid. These include Check My File and The Insolvency Panel as well as the traditional methods. It is up to the Approved Intermediary to decide which to use.

### DRO Unit Referrals

There are instances of where the Scheme will consider a referral to the DRO unit with out a copy of the clients credit reports acceptable. Examples of these include if the client refuses for this to be obtained and where the debt is no where near the £20,000 limit.

**Does a Credit Report need to be obtained when referring to the DRO unit?**

**Benefit Checks** The Scheme is now seeing more benefit checks documented on case



files. Organisations can also signpost or refer clients for benefit checks where expertise and/or resources are not available internally. The Scheme views benefit checks as not only a way of ascertaining if the client is entitled to different benefits, but also a way of checking the existing entitlement. This ensures the client is receiving the correct award of benefit and can also highlight if the client has deductions they were not aware of. If a benefit check is completed by the organisation, there should be a copy retained within the case record and available for the DAPA assessment.



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