INSOLVENCY DRIVES A POST-ELECTION CON-LAB PACT

David Kerr MCICM looks at how the insolvency profession had an impact on the outcome of the General Election.

YOU might not have expected to find the world of insolvency to be a source of unification across the two main political parties given the divide between them on many issues and the ongoing battles at Westminster. But in one respect at least, their manifestos are surprisingly similar.

Both recognise the problem of household or consumer debt, and the need for something to be done to alleviate it, and in their commitments to address this both main parties have alighted on proposals put forward by StepChange, the debt charity, and others, for some form of breathing space for debtors.

Given that both the Conservative and Labour election manifestos contained pledges to introduce such a scheme, the insolvency trade body, R3, has urged the Government to move forward with proposals for a new breathing space for indebted individuals.

Someone in serious problem debt (Conservative fair debt proposal) could seek legal protection from further interest, charges and enforcement action if they are eligible for a statutory repayment plan; during a six-week period they would be given time to seek advice and set up such a plan.

This might involve those struggling with high debts entering into a repayment programme along the lines of Scotland's Debt Arrangement Scheme (Labour refers directly to introducing a version of this) or some other form of statutory repayment plan.

StepChange would like to see a longer breathing space to help the eight million people in the UK who are using credit to cover every-day living expenses and need space to help them manage periods of financial difficulty. Consumer credit has been growing consistently, and faster than the economy as a whole, with many caught up in a spiral of interest and penalties on their increasing borrowing.

DEBT ARRANGEMENT SCHEME

Scotland's Debt Arrangement Scheme (DAS), seen by some as part of the solution, differs in some important respects from its equivalents south of the border. Debt management plans in England and Wales are informal, non-statutory, deals with creditors, and are sponsored by the likes of StepChange (with creditors covering the costs) and other commercial providers (where the costs are met out of the debtor's contributions). There is no register of such plans, and the debtor is not afforded protection from bankruptcy.

DAS is a scheme backed by legislation that involves the setting up of a Debt Payment Programme whereby the debtor, through an approved advisor, puts forward an application to creditors for their agreement; creditors have 21 days to respond, but if they fail to do so then a process of deemed consent will apply. The advantage for the debtor is that interest and charges are normally frozen, and creditors are barred from taking legal action in respect of their debts.

The debtor also has an affordable plan based on disposable income – the payments must be kept up though, or the plan will be revoked and interest will be re-applied and backdated.

As in current debt management plans, there is no debt forgiveness in a DAS; it runs for as long as is necessary to repay the debts, less interest (though a DAS for an unincorporated business is generally restricted to five years). Charges are limited, so that creditors receive at least 90 percent of the amount the debtor pays in, and there is a searchable DAS register.

This could be a model for a new statutory debt solution in England and Wales, but it does require legislation. Coupled with provision for a breathing space, it could be a welcome addition to the range of options currently available to debtors.

The breathing space proposals do bring some challenges though, and the details will need to be worked through carefully. Who will act as the advisors, and who will police the breathing space to ensure that assets are not dissipated and/or further credit incurred? Six weeks should be enough for the debtor to take advice, weigh up the options and commence the process for a formal repayment scheme where that is the appropriate route.

Of course, an English version of DAS merely adds to the range of current options, which include the statutory Individual Voluntary Arrangement (IVA) – typically providing some debt forgiveness, with the debtor usually paying contributions over five years, leaving some debts unpaid and written off. IVAs already have an interim stage built into them, with creditors held at bay while an insolvency practitioner, as nominee, assists the debtor in seeking creditor approval for a proposal. Sound familiar?

Whether the new Government, in its combination of political shades, will find the parliamentary time to legislate for a new breathing space remains to be seen. It does at least seem to have cross-party support.

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