

# Money Advisor Update

Summer Edition 2010

## A new beginning

Welcome to the Summer edition of Money Advisor Update, a regular series of newsletters designed to keep money advisors up to date with industry news and information.



Since writing the Spring edition of our newsletter, we have now presented the findings of our Psychology of Debt research at the first of our training days, from which I have received fantastic feedback, particularly from managers of offices wishing to use the research to support funding applications.

We like to use our training seminars as a platform to share our research with the voluntary sector as well as getting feedback on trends that we believe will affect the debt advisor in the future. The Credit Crunch will soon be three years old and its grip upon the economy

seems to be getting tighter. The UK is still under severe financial distress having gone through one of the worst economic crises since the Great Depression in the 1920's and it is difficult to see light at the end of the tunnel. We have predicted that unemployment will continue to increase until 2011, thereafter leaving a wake of social and financial destruction for many people in the UK.

The latest CAB statistics highlight that advice given in relation to debt is up 25% year on year and in my opinion this figure will continue to increase. What marks this particular recession different from previous economic downturns is perhaps the profiles of consumers that are showing the highest increases year on year in the usage of Bankruptcy and the IVA. By far the highest increases have



**Gareth Neill**  
Partner

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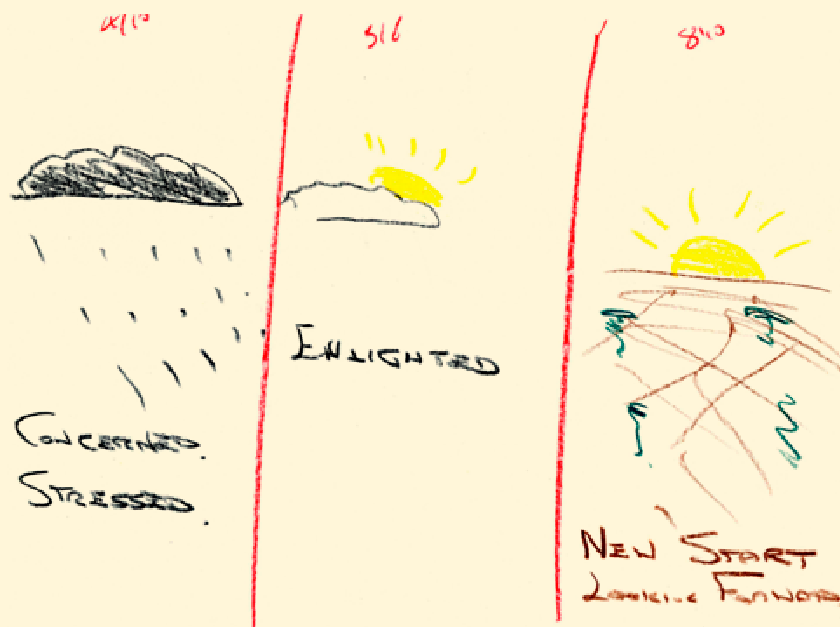
come from the middle classes as a consequence of the levels of debt that they have borrowed during the boom credit years and previously serviced by overtime and bonuses.

It is our prediction that the scars of this recession will be with us for a very long time, perhaps even a generation. From a social perspective, our research tells us that consumers will be forced to re-evaluate what they 'need' as opposed to what they 'want'. We believe society will no longer indulge in the culture of 'Affluenza' that pre-dated the current economic crisis.

The scars that many of us will suffer from the 'credit crunch' will give birth to a consumer who will evaluate offers and promotions with more depth, and a social bonding will continue to grow.

We know from our experience of clients entrusted to us from the voluntary sector, that virtually all express wishes for a new beginning or indeed a new reality. This represents a shift from the fear, anxiety and depression, that our research confirms the clients are living with, to hope for the future.

**This is best illustrated by one of our clients who was asked to draw a psycho-graphic depicting their emotional state Pre, Mid and Post debt resolution.**



The initial stage highlights their feelings when they first contacted someone in the free money advice sector who then referred the client to Grant Thornton for assistance. Once the client was informed of their options, they started to feel better indicating an improvement in their overall emotional wellbeing.

The final stage, represents the client's feelings when their IVA was approved by their creditors, with their hopes for a new beginning prevalent in their mindset.

Our research underlines the importance that Money Advisors have in making a difference to peoples lives and ensuring that clients can regain control of their finances and their lives.

**There are still limited spaces available for the remaining Training Days, so please contact Margaret McBurney (details on page 6) to ensure you book your space.**

# Grant Thornton and Experian

We have invested in research for the free money advice sector in conjunction with Experian, which charts the annual changes in insolvency over the last couple of years and allows us to highlight these changes by local authority region.



Many money advice centres have contacted us to obtain a copy of the research for their specific area since it can assist them build their case for additional funding to help with the distribution of money advice.

For example below for the North West of England. The percentage changes highlight the increasing demand that is being placed upon the local money advice centres for insolvency within those specific locations, which could be very useful as part of the funding request.



GOR	Local and Unitary Authority	2007/08	2008/09	Change	Change %
North West	Ribble Valley	127	208	81	63.8
North West	Hyndburn	229	352	123	53.7
North West	Sefton	799	1129	330	41.3
North West	Blackburn with Darwen	476	669	193	40.5
North West	South Lakeland	255	358	103	40.4
North West	Copeland	196	270	74	37.8
North West	Oldham	565	769	204	36.1
North West	Chester	367	494	127	34.6
North West	Burnley	273	363	90	33.0

Should you be interested in using our Info Bureaux please contact the local client service manager at Grant Thornton (details on page 8) to request this information.

# Full & Final...

Informal Full & Final financial settlements as a way of dealing with debts can seem like a very sensible way to a debt resolution.

After all a Full & Final settlement allows the client to resolve their debt in an informal arrangement – or does it?

Advice surrounding the validity of these agreements sometimes seem to vary in accordance with whomever is dispensing the solution. Consequently, it is no wonder that many clients are left bewildered as to their legal position.

The crucial question is whether a full and final settlement is legally watertight. There is a significant risk that the answer is “No”. Furthermore, what are the implications for clients whose debts have been sold on to debt purchase companies.

Full & Final settlements relate to a principle of law dating back over 400 years, known as Pinnel’s case (1602). Pinnel was owed £8 10s by Cole. Cole paid Pinnel £5 2s 6d which Pinnel apparently accepted in full and final settlement. However, Pinnel subsequently sued Cole for the balance.

The crux of the law surrounding Full & Finals can be found in Chief Justice Brian’s words;

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“Payment of a lesser sum... in satisfaction of a greater cannot be any satisfaction for the whole, because it appears to the judges that by no possibility can a lesser sum be satisfaction to the plaintiff for a greater sum.”

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Two hundred and eighty two years later, this principle was upheld by the highest court in the land, the House of Lords, in a case by the name of Foakes v Beer (1884). In more recent times the Court of Appeal again upheld the principle in D & C Builders Ltd v Rees (1966).

Should the creditor accept a lesser sum in full and final settlement, the client still remains at risk of the creditor changing their mind, even if the creditor put it in writing that the payment was in full and final settlement.

Like all the best stories that of Mr Pinnel and Mr Cole had a further twist. Cole was not due to pay Pinnel the £8 10s until 11 November 1600. He in fact paid the agreed lesser sum of £5 2s 6d on 1 October and this eventually saved him. The deal was “I will pay you less, but I will pay you early”.

...are they really



A large, stylized graphic of the number '40%' in a red, textured, hand-drawn font. The '4' is a simple cursive shape, the '0' is a thick oval, and the '%' symbol consists of a diagonal bar and two dots.

There was give and take on both sides, so the deal was binding in law.

Chief Justice Brien, having said that a lesser sum cannot be satisfaction for a greater sum, went directly on to give a theoretical example that, instead of paying the sum due, the debtor might agree with the creditor to give him a horse, hawk or robe. It would not matter what the value of the gift might be. The creditor might simply prefer a horse, hawk or robe to the money and this substitution of the method of “payment” would be binding, just as in the actual situation the early payment accepted by Pinnel prevented him renegeing on his agreement to settle for a lesser sum.

Clearly on the figures, payment six weeks early does not justify, by reference to interest rates, a discount of 40%, but that is not for the debtor to worry about. The creditor may or may not have good reason for being desperate for money at the earliest possible date.

Today’s credit markets have changed the relationship between creditor and debtor with so many creditors selling their debts to third parties. These third parties are not shy about using charging orders or alternative legal processes to recoup the outstanding debt that a client may have with them. This could have grave implications for the client if they are not careful with regard to their legal position surrounding their understanding of any Full & Final settlements they may have made previously.

In making any deal with a creditor, a debtor should always be careful to avoid misleading the creditor as to his true ability to pay, or the deal may be unraveled for misrepresentation.

Rather than attempting private deals with all the difficulty and uncertainty as to whether they work, a debtor might well be advised to consider the formal alternatives of bankruptcy or the proposal of an individual voluntary arrangement. A voluntary arrangement proposal once approved by a 75% majority vote of the creditors is binding on all the debtor’s creditors.

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# Training seminar programme 2011

We value your feedback on this publication and with regard to our research on the Psychology of Debt, if you have attended one of our recent events. If there are any areas relating to debt that you think we should explore for next year then we would like to hear from you with your ideas.

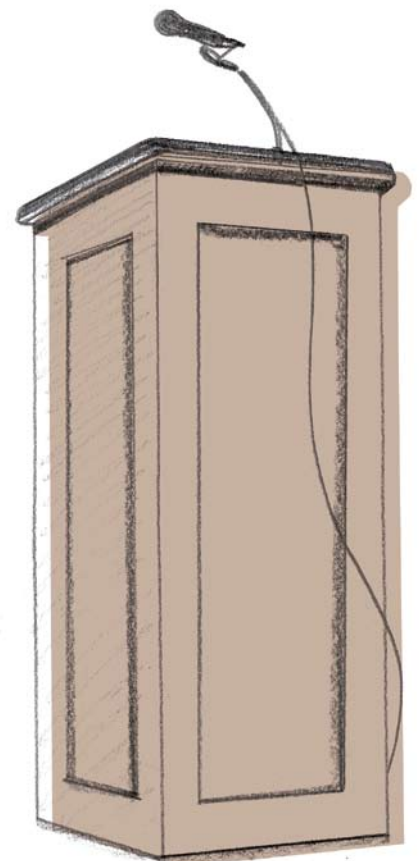
Please email me on [gareth.w.neill@gtuk.co.uk](mailto:gareth.w.neill@gtuk.co.uk)

**We still have a few 2010 course dates left.**

Lincoln	9 June
Northampton	10 June
Manchester	16 June
Carlisle	17 June
Southampton	28 June
Portsmouth	29 June
Brighton	30 June
Birmingham	7 July
Chester	15 July
Colchester	21 July

**To reserve your place, please contact:**

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# Case Law

## Recent Cases

### **DELANEY v CHEN**

Prior to bankruptcy the debtor sold his property and rented it back. The transcript of the judgment is awaited, but it is understood that the property was worth £275k and was sold for £210k and leased back at £500pa on a 21 year lease.

The judge ruled that this was not a transaction at undervalue as the lease had a value which was not quantified by the trustee.

This decision appears to justify the reluctance of trustees in bankruptcy to attack these deals, confirming that there is more to be considered than the cash element of the sale price.

### **JONES v KERNOTT**

This case concerned the division of the proceeds of a jointly owned property. Mr Kernott had left the property some 15 years previously and had bought a house of his own. The case has caused concern that the Deputy Judge had apparently based his decision to award Ms Jones a 90% interest on the basis of fairness, which is only supposed to be the test in matrimonial cases.

The Deputy Judge upheld the decision and approach of the County Court.

The Stack v Dowden requirement is that, in the absence of direct evidence, the court should seek to divine the common intention of the parties as to the interests in the property by considering all the circumstances of the situation. The Deputy Judge took the view that the proverbial officious bystander would say that in this case of a prolonged separation with the absent party not seeking to force a realisation, the common intention must have been fairness and it was then for the court to decide what was fair.

### **OFFICIAL RECEIVER v MITTERFELLNER**

Mr Mitterfellner was a German national who had obtained a bankruptcy order on his own petition, claiming a UK centre of main interests based on residence at an address in Hastings.

On the application of the official receiver, Chief Registrar Baister reviewed the evidence in some detail and ruled that it did not support the finding of comi and accordingly annulled the bankruptcy order as “ought not to have been made”.

He went on to say that even if he had found the comi to be in England, the extent of the false evidence given to the County Court would of itself have justified the annulment of the order despite the debtor’s undoubted insolvency.

# Contact us

If you would like to find out more about how Grant Thornton can assist you, please contact:



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