

Money Advisor Update

Winter Edition 2012

I hope you all enjoyed your festive break and no doubt are ready to go with regard to resolving the debt problems that our clients will face, now that the credit card statements will be falling through the letterboxes.

We have finalised our research which provides the content for the 2012 Grant Thornton Money Advisor Programme. The dates, venues and itinerary for the seminars are featured in this Newsletter. For any of you who have not yet confirmed attendance and wish to do so, please contact Lynne McCabe, as demand has meant that we have had to add new dates in some areas.

My theme is based on research carried out by Professor Paul Bishop of Plymouth University on the main drivers affecting the financial distress of our clients. In particular, we have investigated how the combined effects of the economy, advertising and changing social attitudes have created the perfect storm to bring personal insolvency to record levels. In addition we have also undertaken research with clients who sought advice from the free money advice sector on how their lives were changed after receiving advice.

This year we have also developed a report in conjunction with Experian that goes much deeper into the background of the consumers that choose to go seek advice on personal insolvency over the last 12 months.

As you are no doubt aware, the available routes to funding are becoming narrower and consequently this year's research will assist with funding applications. It is my hope that it could well be the defining factor with regard to influencing the relevant decision makers.



Gareth Neill
Partner

I look forward to seeing you at the venue most convenient.

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Mind Over Money Groups

2012 will see the official launch of the Mind Over Money (MOM) initiative.



MOM is a three-session programme offering information and support for clients with unsecured problem debt. It is delivered by way of group sessions and can be used either by anyone delivering debt advice.

The Mind Over Money programme has been designed by two practising money advisers with extensive experience of working with peer support groups in conjunction with Grant Thornton.

Mind Over Money seeks to enhance the **effectiveness of debt advice** by focussing on four main objectives:

- 1 To give the client **information** and support to enable them to self-help as much as possible.
- 2 To focus caseworker time on giving strategic and tactical advice.
- 3 To foster the development of **better financial skills** such as budgeting and money management.
- 4 To encourage the client to examine their **attitudes in relation to money** and to support the process of change in spending behaviour where appropriate.

The material presented in the course is divided between giving relevant useful information, encouraging the development of better financial skills and raising the client's level of awareness about the way they manage their money

Session 1	<p>1 Looking at the problem – Where am I now?</p> <p>This section helps the client to do all the preparation work necessary and covers organising their paperwork and starting to work on a budget sheet, including a list of all their debts.</p>	<p>2 Looking at the problem – How did I get here?</p> <p>This section encourages the client to think about how debt has affected their lives. It also covers the main causes of debt and asks them to consider how much life change has contributed to their situation.</p>
Session 2	<p>1 Looking at solutions – Where do I want to get to?</p> <p>This section helps the client to identify their goals both short and long term and to look at the challenges that lie before them in order to achieve their objectives.</p>	<p>2 Looking at solutions – How do I get there?</p> <p>This covers the range of options open to clients who are in debt.</p>
Session 3	<p>1 Recovery from debt – How do I get there?</p> <p>This session looks at the process of change and the support available to help them. It enlightens the client about the emotional and mental symptoms caused by debt so they know they are not alone.</p>	<p>2 Helping yourself – External sources</p> <p>The final section is practical and informative, covering a wide range of sources of motivation ranging from further reading material to money saving tips. Also covered in this section is the Grant Thornton Mind Over Money 12 Steps programme.</p>

Grant Thornton 2012 training seminars



The Rise of Personal Insolvency In The UK; Less Stigma or More Distress?

We are delighted to invite you to our 2012 free training seminars in which we will reveal the research commissioned by Grant Thornton on key influences that have affected the growth in personal insolvency and debt since the mid 1980's.

Our presentation will cover:

- research to bring more impact to funding applications
- the role of economic and legal factors which have changed clients attitudes towards personal insolvency
- how we are supporting charities to continue to give free debt advice
- the 'Insolvency Lag' and its impact upon the drop in personal insolvencies since 2010
- what is the future for personal insolvency in the UK and the impact upon stakeholders?
- a did you know session?

Also joining us this year will be the local Official Receiver who will host a Question and Answer session about local issues affecting money advisors.



**All our seminars attract
CPD Points and are recognised by
the Solicitors Regulation Authority**

2012 seminar venues

February

London	14 February
Oxford	15 February
Winchester	16 February
Birmingham	21 February
Leeds	22 February
Liverpool	23 February
Manchester	29 February

March

Sheffield	01 March
Bristol	07 March
Cardiff	08 March
Reading	14 March
Tunbridge Wells	15 March
Newcastle	20 March
Middlesbrough	21 March
Durham	22 March
Gatwick	28 March
London	29 March

April

Colchester	03 April
Norwich	04 April
Nottingham	25 April
Lincoln	26 April

May

Manchester	01 May
Chester	02 May
Birmingham	03 May
Portsmouth	09 May
Brighton	10 May

Case Law

Recent Cases

Hargeaves (trustee in bankruptcy of Salt) v Salt

Mr Salt had disposed of a Spanish villa to a business acquaintance on the basis that the purchaser would take on the mortgage of Euro 1 million and pay sundry debts related to the property. The evidence was that the property was worth Euro 2.4 million. The purchaser's argument that the value should be assessed in the light of Mr Salt's desperation merely to rid himself of the mortgage as the bank closed in was rejected. The value was to be assessed on the basis of what a purchaser might reasonably be expected to pay given the market circumstances at the time and not merely what the seller is willing to accept.

On the facts it was anyway found that the bank was not closing in and that the reason for the disposal was to put the asset out of the way of an outstanding application in the divorce court for ancillary relief.

Faced with applications for the recovery of the property under s339 of the Insolvency Act and s37 of the Matrimonial Causes Act, the judge, sitting in the Family Division, noted that the latter could only be used to make an asset available for ancillary relief and that if the whole value would be swallowed in the bankruptcy then s37 was not applicable. It appeared on

the limited evidence available that recovery of the property, if worth Euro 2.4 million, would give rise to a surplus in the bankruptcy. An order was made under s339 for the property to be vested in the trustee in bankruptcy, but the parties were left to attempt to agree consequential monetary terms to adjust for the payments made by the purchaser. The judge noted that by the time of the hearing the property's value had probably fallen to Euro 1.8 million, but did not rule upon the effect, if any, that that should have on his final order.

Joint Liquidators of Newgrass of Manchester Ltd v TMK Finance Ltd

The company had sold a property to TMK for £2.3 million in May 2005. Just 17 months later TMK resold the property for £4 million. The liquidators saw the second sale as demonstrating that the first had been at an undervalue, but on the evidence the court found that in fact the purchasers in the second sale had overpaid, so the liquidators' claim failed. The case is a warning against jumping to attractive conclusions!

Jones v Kernott

The Supreme Court has overturned the majority decision of the Court of Appeal and restored the first instance

decision awarding Ms Jones a 90% interest.(CUG 1058, March 2010 and PIF 21, November 2010).

Ms Jones and Mr Kernott were unmarried, but owned the property jointly. They lived together for 8 years and had two children. Mr Kernott then left. They put the house on the market at £69,995 but it failed to sell. They cashed in a life policy which provided Mr Kernott with £2,800 as a deposit for a new home for himself which he bought mainly by means of a mortgage. Ms Jones and the children continued to live at the jointly owned house and Ms Jones paid the mortgage.

The Court of Appeal found that there was no evidence to justify a departure from the 50 : 50 interests at the date that Mr Kernott had moved out, other than that equitable accounting might have been applicable after that date, although equitable accounting had apparently not been raised at any stage before the courts.

The Supreme Court grumbled that Parliament had not legislated for an equivalent of divorce ancillary relief in the case of unmarried 'couples'. It didn't seem to occur to them that this might have been a policy decision not to legislate rather than mere laxity in not having got on with it.

Although the five Supreme Court judges were unanimous as to the result,



they provided four different judgments as to the exact legal reasoning, thereby minimising the usefulness of the decision as a precedent.

The most substantive judgment issued jointly by two of the judges was founded on a view that the attempt to sell the house quantified Mr Kernott's interest at that date, namely £30,000 to £35,000, which then did not change over the subsequent 15 years before the matter of the sale of the house again became a practical issue. This gave Mr Kernott an interest of 12% - 14% which was near enough the 10% finding of the County Court not to warrant departure from that original award.

The Supreme Court was influenced by a view that it could not be right that Mr Kernott should benefit from the capital gain both on the original house and also on his new house. This overlooks that he was likewise at double risk if house prices had fallen. As to the actual imputation or inference of intention, although the parties did intend to sell the house and take £30,000 to £35,000 each, when it didn't sell the almost inescapable conclusion is that plan A was replaced by plan B, but the Supreme Court stuck with plan A.

As regards claims in the context of a bankruptcy, the case shows the court more robustly applying its own view of fairness (equity) rather than following

the common law position of the legal title deciding the interests in the absence of real evidence displacing this. By issuing the four judgments containing some disagreements as to principles, further pressure is applied to government to legislate. Legislation, if it comes, is likely only to make the position even more uncertain for trustees in bankruptcy by avowedly awarding the court a wide discretion.

Secretary of State for Work and Pensions v Payne - Supreme Court

The Supreme Court has ruled that the right of the Secretary of State to recover overpaid benefits by deduction from future benefits cuts off upon the making of a debt relief order, confirming the decisions of the Court of Appeal (PIF44, July 2011 and of the Queen's Bench Division (PIF31, March 2011). The Supreme Court further stated (it would seem obiter) that the right also cuts off upon the making of a bankruptcy order and not, as had previously been decided by the Court of Appeal in *R(Balding) v Secretary of State for Work and Pensions* (CUG947, March 2008), upon the bankrupt's discharge.

In reaching this conclusion, the Supreme Court rejected the 'net entitlement' principle enunciated by the

House of Lords in *Mulvey v Secretary of State for Social Security* (1996). This principle had been that the individual was only entitled to receive benefits net of the deduction and therefore there was no recoupment occurring from the bankruptcy estate. Nevertheless, the Supreme Court did not rule that *Mulvey* had been wrongly decided as it was a Scottish case influenced by the Scottish common law of bankruptcy. The consequence is that there is now a discrepancy between England and Scotland on the matter of recovery of overpaid benefits by deduction.

The decision was unanimous, as was a strong hint that the government might wish urgently to review the law.

The Supreme Court also saw fit to distinguish the Court of Appeal decision in *Bradley-Hole v Cusen* (1953), involving an overpayment of rent, where it was held that the overpayment was to be regarded as merely a payment in advance of future rent, so the tenant could not be made to pay again when the landlord became bankrupt.

Putting our clients in control of their debt

At Grant Thornton, we know that debt can affect clients in different ways. We understand that money worries add up to more than just numbers. Our goal is to provide support and advice that your clients need to put them back in control over their debt. We explore all the options available to resolve a client's debt concerns.

How do we help your clients?

- We offer free impartial face to face debt advice throughout the UK.
- Debt advice from a company who have just been providing solutions to debt problems for over 20 years.
- We are committed to protecting the client through their debt journey and we focus on helping their recovery.

How do we help money advisors?

- We provide free training to money advisors on all matters regarding personal insolvency.
- Research made available which has helped funding applications.
- Free technical help with debt advice.
- All our training has a CPD points value.

For more information, please contact:

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