

EFIN Research
Working Group on Over-Indebtedness

Early detection and constructive response about households financial difficulties



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Executive summary

Looking for efficiency

Confronted to “client financial difficulties” management in their daily activities, stakeholders such as companies, credit providers, building society, social services, debt advice, public authorities are looking for better performing approaches to manage these difficulties and to limit over-indebtedness of their clients.

The early detection of financial difficulties is a technique that allows the identification of people with a significant risk to meet severe difficulties, but who did not reach this level yet! This innovative approach has already been experimented and implemented by a range of stakeholders (In France, by la Banque Postale and Cetelem, two credit providers - In Poland, a business oriented approach has been developed by the authorities, named the “Rapid Response Instrument” , - In the Netherland, by the City of Amsterdam) and the results are unanimously positive: it brings better results for reduced cost !

A constructive approach proposed to the people in financial difficulties : the idea is to explore methods that will not deter the financial situation via financial sanctions, extra costs or penalties when arrears occur. This approach is appropriate for the situation where the client is willing to pay its debt but his incomes are really restricted. For these situations we have first explored the origin of the “punitive treatment” for debtors in chapter dedicated to the evolution of debt collection practices during the last centuries. Then, we have identified a range of innovative practices developed by stakeholders that were looking for better performance: UK local authority strategy to propose a holistic analysis of any citizen in difficulty (City of Solihul) the combat against detrimental debt collection practices via a regulation (some EU Member states have developed an important and effective regulation against such practices - UK illustration). A UK Water company developed a new constructive approach in arrears collection, that has proven its efficiency as well as a UK hospital debt collection company. Example of new approaches in debt collection from the United States of America has been also reported (from the CFS II Company). Debt collection by NGOs and non for profit institutions, some of them funded by big companies, have also proven better efficiency thanks to the supportive approach they are providing to their clients (Citizen Advice bureau, and StepChange Debt Charity)

Early detection and constructive approach in the collected practices presented in this paper show a high level of satisfaction from the practitioners of any type: public, private, NGO...

Better results on the economical and financial level, but also a reduced level of stress and mental diseases related to stress have been reported.

Then, the last paper presents the approach (via a systemic analysis) to design a collaborative scheme between the stakeholders to allow them to reach the best effective model to deal with debt related issues.

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Introduction

Fight against over-indebtedness (o-i)

In the large range of actions to be taken to reduce o-i, not so many can be implemented directly by stakeholders, in their daily practices.

Employment, stability in sufficient guaranteed incomes when you go through a rough time is key to combat on a long term o-i. Unfortunately, these factors are not easily accessible and require a political position that is far to be the dominant one nowadays.

EFIN perspective, in this paper, is to explore what can be done at the level of the stakeholders to limit this social evil. Therefore, in this microeconomic perspective, we believe that effective changes in some practices can bring great impact in the fight against o-i for the benefit of the whole range of stakeholders : the financially vulnerable people, of course, but also the creditors, the public authorities, and the whole society who pay a heavy tribute in this context.

Theoretical background :

Becoming over-indebted is not, in a very large majority, an “instant” change, but has to be understood as a process by which, confronted to financial difficulties, a person cumulates decisions, actions that at the end did not reach the objective to “solve” the problem. On the contrary, the sequence of decisions and actions implemented has generally increased the problem, the level of debts and the level of emergency to act in an “appropriate” way.

The reason for this is based on a range of human common attitudes like:

- the believe in the appropriateness of the decision taken (lack of vision);
- the believe in the fact that the decision is not the appropriate one, but that there is no alternative (lack of skills)
- the general “over” optimistic vision of the future : the incomes are going to increase soon, a job will be found, ...
- no emergency to implement a radical adjustment of the expenditures in the households budget

Indeed, many people succeed during this process: yes, the income has been increased in due time, yes, a job has been found,... but for the one who failed, they then face a deterred situation.

These o-i situations are very frequent: this is, unfortunately, a very common and shared disappointment from debt counsellors: when the person push their office door, the situation is already deterred, has become complex and urgent.

They are also frequent because the causes are related to specific causes. It can be a life accident, budget mismanagement, over-consumption, illness... as long as the o-i situation is the result of a process that has required time, and has cumulated inappropriate decisions,... For this reason, to explore innovative processes that allow to interrupt this vicious circle is key in a pragmatic response that can be built and implemented by the various stakeholders.

This paper will therefore explore solutions, innovative approaches that require, to be effective against o-i, that o-i is the result of a “long process” during which “inappropriate decision” has been taken.

Two approaches for concrete results have been documented in this paper :

- a. practices in the early detection of financial difficulties
- b. practices in a constructive approach for people in financial difficulties

The purpose of this paper is to present a selection of learnings from different sources, experiences and practices. The idea was to look for practices implemented by the whole range of stakeholders : public and private creditors, social services, debt advice, public authorities (local, national), regulators that correspond to these two innovative responses when financial difficulties emerge.

Brief overview of the treatment of financial difficulties in the history

Introduction

Over the past two decades there has been a rapid build-up of household debt, making over-indebtedness of individuals and families a widespread phenomenon in the EU area³. Moreover, the recent credit crunch and the successive economic recession have risen the number of households that face severe debt-related financial difficulties.

Growth in consumer borrowings is across all sectors of societies but is strongest among relatively low-income households and sources of credit are most likely to be used when their incomes are disrupted for any reason. Financial difficulties however, are not restricted to low-income households, but can be found amongst all groups of consumers in our societies. Nor must it be suggested that consumer debtor insolvency is always credit-related. There are many reasons an individual becomes insolvent⁴.

A strong strategy to limit indebtedness

In primitive societies, there were no laws regulating the debtor's insolvency and the payment to creditors because there were no debtors and creditors. According to Graeber David, the earliest accounts of debt can be traced to Mesopotamia as early as 1600 BC. In the great temple and palace complexes, not only did money serve largely as an accounting measure rather than physically changing hands, merchants and tradespeople developed credit arrangements of their own. Most of these took the physical form of clay tablets, inscribed with some obligation of future payment, that were then sealed inside clay envelopes and marked with the borrower's seal. The creditor would keep the envelope as a surety, and it would be broken open on repayment. In some times or places at least, these bullae appear to have become what we would now call negotiable instruments, since the tablet inside did not simply record a promise to pay the original lender, but was designated "to the bearer"- in other words, a tablet recording a debt of five shekels of silver (at prevailing rates of interest) could circulate as the equivalent of a five-shekel promissory note- that is, as money the principle of lending at interest, even compound interest, was already familiar to everyone⁵.

A role for religions

Indebtedness was, from the very beginning, the target of severe sanctions-religious (excommunication) and legal (death and slavery) - as a way of preventing the debtor's default and discouraging borrowing. In an attempt to voice their disapproval of the deviance associated with personal bankruptcy and to reinforce the stigma associated with bankruptcy, societies historically adopted bankruptcy laws that emphasized the bankrupt's deceitful, quasi-criminal conduct in entering into bankruptcy, focusing on degrading the bankrupt, and imposing significant penalties on the bankrupt⁶.

³Maitte Blázquez Cuesta and Santiago Budría [10] p.

⁴INSOL International - Consumer debt report [9] p.8

⁵Graeber David [1] p.214-216

⁶Efrat [6] p. 369

Negative perception of debtors and bankrupts held by societies may be observed in the course of the history and in the discrimination inflicted on the insolvent individuals.

The Hammurabi Code (diktat 117) determined the sale of the insolvent debtor and his family to pay the debt or, in alternative, their subjugation, for no more than three years, to slavery at the creditor's service. Hebrew law condemned the insolvent debtor to six years of slave work at the creditor's service. In ancient Greece, the debtor and his close relatives' servitude was also the punishment for the defaulting debtor. Historically, the execution started to take place on the debtor's person (life, freedom and honour) and only later it would focus on the debtor's wealth⁷.

Roman and Greek period

As far as the the Roman Law is concerned, the reference of the debt may be found in "The twelve tables ". This is the earliest attempt by the Romans to create a CODE OF LAW. The status of debt declare that:

"When a debt has been acknowledged or a judgment has been pronounced in court, 30 days must be the legitimate grace period. Thereafter, arrest of the debtor may be made by the laying on of hands. Bring him into court. If he does not satisfy the judgment (or no one in court offers himself as surety on his behalf) the creditor may take the debtor with him. He may bind him either in stocks or fetters, with a weight of no less than 15 lbs. (or more if he desires)." [After 60 days in custody, the case is returned to the court, and if the debt is not then paid, the debtor can be sold abroad as a slave, or put to death.]⁸

In Ancient Greece, bankruptcy laws forced the debtor to sit in the market place and place a basket over his head. In Ancient Rome, the insolvent debtor's body was auctioned off for sale in the middle of the commercial center in town. In pre-modern Italy, insolvent debtors were brought naked to a public square where they were required to bang their buttocks on a specially designated rock before a heckling crowd.

Middle ages

During the Middle Ages more sophisticated financial instruments appeared. These included promissory notes and paper money, letters of credit, and cheques⁹.

The emergence of the Atlantic slave trade and the massive amounts of gold and silver extracted from the Americas — most of which ended up in the far East, especially China — stimulated the re-emergence of the bullion economy and large-scale military violence. All of these developments, according to Graeber, directly intertwined with the earlier expansion of the Italian mercantile city - states as centers of finance that defied the church ban on usury and led to the current age of great capitalist empires. As the new continent opened new possibilities for gain, it also created a new area for adventurous militarism backed by debts that required the economic exploitation of the Amerindian and, later, West African populations. As it did, cities again flourished in the European continent and capitalism advanced to encompass larger areas of the globe when European trade companies and military outposts disrupted local markets and pushed for colonial monopolies.

Renaissance

During the 17th century in Scotland, bankrupts were required to wear a distinctive coat and cap, half yellow and half brown, in public.

Similarly, in France, the bankrupt was carried to the center of the market place where commencement of his bankruptcy was publicly announced. Further, to avoid immediate imprisonment, the bankrupt was ordered to regularly wear a green bonnet. When bankrupts appeared before a judge, they were required to expose their naked bodies.

These degrading and punitive bankruptcy laws reflected the prevailing negative sentiments of society towards bankrupts, and served to reinforce and perpetuate the social stigma associated

⁷Frade [7] p.4

⁸The twelve tables [2]

⁹Graeber David [1] p.250

with bankruptcy.

The traditional negative image of bankrupts was similarly present in colonial America. Insolvent debtors were perceived as criminals and thieves, but mostly as slaves and dependents. This harsh view of the defaulting debtor was manifested in the formal imposition of unforgiving penalties, including imprisonment and flogging.

Industrial period

Through the mid 19th century, debtors' prisons¹⁰ (usually similar in form to locked workhouses) were a common way to deal with unpaid debt in Western Europe. Destitute persons unable to pay a court-ordered judgment would be sentenced to these prisons until they had worked off their debt via labor or secured outside funds to pay the balance; the product of their labor went towards both the costs of their incarceration and their accrued debt.

In 1976 Article 11 of the ICCPR - *International Covenant on Civil and Political Rights* - came into effect stating, "No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation."¹¹

Credit and debt, in short, are among the essential building blocks of economic development, as vital to creating the wealth of nations as mining, manufacturing or mobile telephony. Poverty, by contrast, is seldom directly attributable to the antics of rapacious financiers. It often has more to do with the lack of financial institutions, with the absence of banks, not their presence¹².

Modern times

The “credits for everything” period

In pre-modern cultures, the bankrupt's social marginalisation, through public humiliation and legal criminalisation, served to discourage borrowing and to maintain social cohesion¹³. But nowadays, we encourage borrowing, so probably there should be a change in treatment of people in financial difficulties?

Today, in most market economy-orientated countries, the credit market has been deregulated, which likely has contributed to dynamics and vitality of the global economy at large. Deregulation of the credit market also implies that credit is offered to, and easily accessible to most citizens. From a consumer perspective, this in turn has led to the majority of citizens in such countries being more or less indebted.

Nearly all liberalized market economies also seem to produce a certain amount of debt-and-payment problems due to the continuous fluctuations and ruptures characterizing such systems¹⁴.

There are different forms of debt, including mortgages, loans, overdrafts, credit cards and hire purchase agreements. Some debts have specific rules and practices in place in relation to how they are managed and collected.

¹⁰ Wikipedia Debtors' prison https://en.wikipedia.org/wiki/Debtors'_prison

¹¹ International Covenant on Civil and Political Rights, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹² Ferguson [4] p.64

¹³ Efrat [6] p.214-216

¹⁴ Encyclopedia of Consumer Culture [3] p.427

There are many ways for a consumer to get into financial difficulties. The reasons are not always directly connected to credit facilities offered by lenders. In many instances, they may occur due to factors beyond the control of the debtor or they may be caused deliberately. In all situations, however the debtor's legal position is weak.

Various origins of consumer debt problems can be distinguished¹⁵.

- **Survival debts.** Survival debts occur as a matter of a survival strategy, when there is an accumulation of recurrent debts for the necessities of life, such as household debts (food, rent, electricity, education, clothing). They occur when families or single persons, often with growing children, have to live at a social minimum for any length of time.
- **Over-consumption debts.** These debts are caused through overconsumption by a debtor who initially has a surplus in their budget, but who finances their extravagant lifestyle with borrowed money. Typically, the debtor has entered into more than one loan, (unconsciously) causing an increased extension of debt. The cause is often a lack of financial management skills, inadequate monitoring or insufficient knowledge of credit facilities and the conditions under which they are offered.
- **Compensation debts.** These debts result from over-consumption by a debtor who typically suffers deprivation or social exclusion. It is triggered by advertising, and establishing social class, power, status or as compensation for other loss. This behaviour may result in illness-related debts, gambling debts, alcoholism and mental illness. They occur at all levels of society.
- **Relational debts.** These debts are acquired through connection with others because of marriage, other relationship or death. In some states, they arise by operation of law as a result of liabilities being incurred by a spouse.
- **Accommodation debts.** Accommodation debts are caused by the inability to adapt to misfortune, a sudden drop in income (redundancy or disability) or unforeseen expenses (increase of uninsured medical expenses or rise in housing costs). They also arise where the debtor anticipates prosperity that does not materialize. The debts are usually considered temporary, but they can become problematic if the debtor decides to try to preserve his way of life and is unwilling to dispose of any of his assets.
- **Fraudulent debts.** These debts occur when a debtor wilfully over-commits himself financially. At the least, the debtor failed to act in good faith or deliberately attempted to defraud his creditors, either whilst incurring the debt or in his representations of his ability to repay.

We consider that, based on the origins of consumer debts classification, there is an urgent need to revisit the concept of interest as an accompanying condition in loans and to show the different ways to lessen interest payments through personal initiative and "tactics". Over-consumption and fraudulent debts may require the application of penalties, in comparison to survival, compensation, relational and accommodation debts, that may require a more socially-oriented solution, such as the training programmes to increase awareness on financial issues, the access to minimum income to guarantee the basic necessities of life, free housing, psychological support to deprived or socially excluded people.

Over-indebtedness can seriously damage clients. They struggle to make repayments, cutting back on basic consumption as well as other important household expenditures, such as education or healthcare. Then, of course, over-indebtedness has material costs, such as late fees and, in default cases, asset seizures. The resulting loss of creditworthiness can deprive the household of crucial cash management tools. On another level, over-indebtedness can have sociological implications,

¹⁵INSOL International-Consumer debt report [9]

including peer pressure in groups, loss of one's dignity and social position, and violence in the household. Finally, over-indebtedness can have other long-lasting mental and physical health effects, including suicide in extreme cases¹⁶.

Example of detrimental debt collection practices

In the UK there's been a fair amount of progress to tackle poor practice, particularly in the area of payday loans and the poor practices of how the repayments on these loans were being collected by lenders.

Use of Continuous Payment Authorities was a big problem, as an example - payday loan companies would raid your account as soon as you got paid, and try to take £500. If that failed, they'd try for £400, and so on, and could do this as many times as they liked until they were successful - effectively cleaning out your account as soon as any money came into it. New regulation now limits Continuous Payment Authorities to 2 tries, and only for the full amount. Which? campaigned against a lot of this in Clean up Credit. The evidence Which?¹⁷ has gathered highlights a range of problems that make it expensive and difficult for consumers to manage their borrowing. Instead of putting consumers in control of their credit, too many products and practices include tricks which catch consumers out.

Complicated charging structures and unclear, sometimes even withheld, information mean that consumers struggle to compare prices and find the best deal for them. This is true both when they try to compare credit products of the same type - different credit cards, for example - and when comparing different types of credit - the cost of credit card borrowing vs a personal loan. Problems at the high-cost end of the credit market are well documented. All too often, we have seen payday lenders use inappropriate advertising, fail to carry out proper affordability checks, lend to people who can't afford to repay the debt and hit borrowers with high and repeated penalty charges when this proves to be the case. For example, some of the debt management companies may fail to disclose their charges: "I applied for a loan and got charged an application fee of £27 without even been offered a loan. When I applied for the loan there was no mention of any application fee otherwise I wouldn't have gone ahead with the process." A story shared on which.co.uk/campaigns.

Overdraft charges are opaque and difficult to compare, banks make it difficult to find details of overdraft charges and they vary hugely between providers and can be very high¹⁸. 18 volunteers were asked to find the information about unauthorised overdraft charges on each bank's website. This took 10 minutes on average, suggesting it's now harder to track down the information you need to work out overdraft costs. Once they'd found the charges information, it took the volunteers an average of around 19 minutes to work out the cost of the overdraft for each bank. Different charging structures are not in themselves a bad thing. However they are problematic when consumers are unable to compare different products due to the complexity and variability of different charging structures.

¹⁶Jessica Schicks and Richard Rosenberg [13] p.7

¹⁷Credit Britain "Which?" p.4

¹⁸Credit Britain "Which?" [14] p.23-24

Some lenders also impose repeated fees that could trigger or worsen a spiral of unaffordable debt for vulnerable consumers. Swiftmoney.co.uk, for example, charges a £20 arrears fee when payment is not made on the due date, a further £15 fee if the account remains in default after 34 days, and a £50 collection fee after 48 days. MyJar.com charges a £25 missed payment fee and a further £25 after 10 days¹⁹.

Regardless of how long the interest-free period on a credit card lasts, most providers reserve the right to withdraw a deal at any time if you miss a payment or exceed your credit limit²⁰. If this happens, you'll be charged interest at their standard rate. This is a disproportionate penalty. Not only could the interest charge be significant, but, if you've taken the card out recently, you may be unable to get another card so soon after, which would mean you risk being stuck with an expensive debt due to a small mistake. All these practises may lead to increased debts.

Debt collection control

In many countries there are **restrictions on abusive debt collection** practices. The primary areas where restrictions should be applied are²¹:

Preservation of human dignity:

- To ensure the consumer and his family has access to a sustainable minimum income. It serves society no purpose if such a large share of his income is directed at paying existing debts that he either runs up new debts or finds himself in ill-health through stress etc.
- To ensure the consumer and his family have access to accommodation upon eviction following debt enforcement of unpaid rent / mortgage payments.
- To ensure compatibility with debt solution processes which have been determined to give a sufficient length of payment plan to permit a fair reimbursement of the lender and a finite period of burden at the end of which the consumer can look forward to a discharge of remaining debt.
- To prevent unfair and non-misleading processes from being used to harass, confuse or use unfair duress to achieve payments by consumers when they may have other options.
- To ensure charges fall onto the lender who has commissioned the enforcement activity, so that this can be priced into the general cost of his loans and shared amongst all consumers, as at the point of borrowing all consumers who are lent to must appear to be a 'fair bet' - for who would lend to someone clearly unable to meet the payments - and as such should all be treated equally in terms of facing a share of the cost of enforcement against those who find themselves in such a position.
- Many debts which consumers struggle to pay come from utilities where different European countries have different approaches, particularly in relation to whether consumers have a fundamental right to access certain commodities, such as water, even if they have not paid their bills. A principle needs to be determined to assess best practice as to which approach is appropriate.
- The role for removal of possessions when most assets (TVs, DVD players etc) have exceedingly low resale values. Is removal of possessions carried out to liquidate these assets for cash or because the irritation value is sufficient to force the consumer to pay his bill.

Protection of rights

- Privacy - debt enforcement should respect the privacy of debtors and not share information with friends / neighbours / relatives, nor should they search for debtors by emailing / writing to all individuals with the same name to try and hunt down the debtor.
- Safety - obviously violence and harassment that may lead to physical or psychological

¹⁹Credit Britain "Which?" [14] p.26

²⁰Credit Britain "Which?"[14] p.28

²¹London economics [11] p.155-156

- harm must be prevented.
- Health including mental health – Debt enforcement, when done correctly, should not cause ill-health, but it also needs to recognise that it may exacerbate existing problems. Specifically there needs to be assurances that vulnerable debtors, such as those with mental health issues, need to be treated sensitively and appropriately.

Insolvency

There is a growing agreement that the consumer debtor should not be penalised, but offered some form of protection. Insolvency laws providing for a discharge of the consumer debtor will generally be regarded as a solution for their financial difficulties. Discharge²² is the release from the payment of liabilities resulting from the filing of a bankruptcy or insolvency proceeding. A law offering a discharge should however not be seen as an easy way out. For the law to be respected, the legislators should seek to avoid a dichotomy between the debtor and society. The barriers to obtain a discharge should on the one hand not be so high that the debtor is discouraged from using the procedure. On the other hand, sufficient recognition of the system should be created so that society is willing to forgive and permit a fresh start. Therefore, for effective help to be made available to the consumer debtor, it should not be structured solely by way of a discharge through bankruptcy proceedings, which will be mainly court-driven procedures requiring the involvement of a trustee or administrator. A trustee or administrator in this respect is an individual or organisation appointed to administer the assets of the debtor and distribute the proceeds to creditors.

At the 2001 World Congress in London, INSOL (International Federation of Insolvency Professionals) presented its Consumer Debt Report, prepared by a Committee chaired by Jan Van Apeldoorn.

The Principles that underlie the resolution of consumer debt problems are as follows²³:

- Principle 1: Fair and equitable allocation of consumer credit risks
- Principle 2: Provision of some form of discharge of indebtedness, rehabilitation or “fresh start” for the debtor
- Principle 3: Extra-judicial rather than judicial proceedings where there are equally effective options available
- Principle 4: Prevention to reduce the need for intervention

The different over-indebtedness treatment regimes are traditionally combined in two main categories, even if, today, we cannot speak of completely pure systems: the fresh start²⁴ model, of new opportunities, which is typically North American and shared by other countries of Anglo-Saxon tradition, and the continental European model of re-education or rehabilitation²⁵.

Fresh start

In the so-called fresh start model, insolvency is viewed as a natural risk of the market economy, associated with the expansion of the credit market. A fresh start rule entitling a debtor to be discharged from his remaining debts already appeared in the insolvency legislation of some of the colonial American states before 1789²⁶. The consumer who takes the chance of borrowing and is not successful should not be excessively punished. And he should not be excluded from the market for an excessively long period. The limited liability designed for companies is here mirrored in the consumer. This ‘natural’ form of interpreting credit and financial failure is typical of a society which, from the very beginning, was able to take advantage of the potentialities of credit expansion, using them as

²²INSOL International -Consumer debt report [9] p.7

²³INSOL International - Consumer debt report [9]p.11

²⁴The expression was first used in 1934, in a decision from the United States Supreme Court, within the *Local Loan Co vs. Hunt* [292 US 234, 244 (1934)] process. According to Ziegel [12], p. 313, this legal acknowledgement at the highest level turned this legal principle into one of the strongest and more respected values within the North-American society.

²⁵Frade [17] p.11

²⁶Ziegel [12] p.312

base for the society's economic evolution. According to Chapter 7 of the North American Bankruptcy Code²⁷ the debtors' assets are liquidated, the possible debts are paid and the remaining ones are forgiven, if not exempt. After that, the debtor is able to restart his life and access credit, without having his future incomes attached to any payment (except some debts which are excluded from forgiveness, like maintenance claims).

Rehabilitation

In the model of re-education or rehabilitation of a conservative social type, individuals are seen as responsible, decent citizens and much less as economic agents²⁸. Thus, the over-indebted person is someone who exceeded himself, although he was also, in part, a 'victim' of a system providing easy access to credit and of the constant appeal to buy. So he must be helped, especially when his financial difficulties result from unforeseen and unintentional circumstances (passive over-indebtedness).

But being helped does not mean deserving a fast and free way out of any responsibilities.

What usually happens is that the insolvent debtor must pay the total or a significant part of his debts at the expense of his present assets and future incomes, through a payment plan. The plan is directly or indirectly negotiated with creditors, through extra-judicial mediation (provided, for example, by a debt counselling service), or elaborated by an administrative or judicial authority. If he engages in honest and orderly behaviour, he can, then, in most of the cases, benefit from a total or partial forgiveness of the remaining debts.

From a historical perspective, the "punitive approach" was directly related to a will to limit the use and dissemination of debt and credits in the society. Considering this objective, using such stigmatising approaches might be relevant and efficient.

Nowadays, where credits are banalised and become more and more part of the daily life of EU citizens, the question is about the necessity to deeply revisit this paradigm.

Effectiveness of today's punitive approach

In the human history, it happens frequently that solution designed in the past are maintained for years, decades, more per tradition and habit rather than because it is still efficient and meaningful. Human being innovate no so spontaneously, usually stimulated when he is facing difficulties and when past "solutions" are finally identified as not valid any more.

In the last decades, a new phenomenon is observed by many stakeholders dealing with financial difficulties (creditors, debt counsellors, public authorities,...) : the profiles of over-indebted people include proportionally less people with a very high level of credits and debts (resulting mainly from mismanagement), but much more with restricted incomes, or who had a life accident that make their current level of debts not any more sustainable/ manageable.

Therefore, one of the consequences of this new trend is that the tools developed for solving the "non payment" of on-going contracts might have lost their efficiency.

When arrears appear, is it because of mismanagement, irresponsible consumption and attitude, or, on the contrary, does it result from an event that limits the financial capacity of the consumer, consumer that still want to pay its debts and is still willing to respect its contracts?

In the first situation, it might make sense to act in a way to make the consumer more responsible: in such situations, using discouraging tools, penalties and extra costs might send the message that the consumer has gone beyond a limit. If this message is understood, it might have an effective effect and push the consumer to act more responsible. As a preventive approach, we recommend here responsible credit practices, that might prevent such type of clients to get all the credit they are asking for.

In the second situation, using the same method (penalties, extra costs) when arrears appear might miss its objective. Indeed, facing life accident is already a stressful experience and, when it leads to increase costs, because of penalties and extra costs, it even reduces the budget capacity of the consumer. On a pure mathematical point of view, these tools are increasing the problem, the

²⁷Bankruptcy Basics <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics>

²⁸Frade [17] p.12

imbalance of the budget. On the psychological point of view, the message sent act as a double pain, which can be seen as extremely unfair, considering the fact that the consumer is, so far, willing to respect its contracts. These tools, because they are increasing the budget imbalance for a longer term, is extremely stressful and demoralizing. These impacts deeply the capacity for them to mobilise positive energy needed to face the difficulties, which might have negative consequences in the future (not only on health, but also on their capacity to remain productive, to keep or get a job).

Based on this analysis, and considering the fact that debt management is a heavy cost for the debtors, but also for the creditors, for the economy and the general society as a whole, we are considering the fact that stakeholders should explore innovative approaches and tools to better prevent, treat and cure this modern dimension of payment arrears.

Within the paper, we will document approaches that might be able “not to increase” the problem of arrears and defaulted contracts, think about ways to design a more efficient process to be implemented when life accident occurs.

These new way to treat financial issues are often related to specific strategies to identify financial difficulties at the early stage. Therefore, in the following chapter, a set of mix practices (early detection / constructive approach) have been identified and presented

Illustration of new approaches in the UK practice

Dealing with household customers in debt - guidelines²⁹

from OFWAT : Water companies of England and Wales

The full document is available online, hereunder some relevant paragraphs:

Purpose of the guidelines

It is for companies to decide how revenue can be collected in the most cost-effective way. All customers must pay for the services received and we support fully the right of companies to collect this revenue. However, there is a balance to be struck between recovering debt, in the interest of all customers, and dealing sensitively with those customers who genuinely find themselves in financial difficulty.

The purpose of these guidelines is to set out how companies’ policies and procedures might best take account of customers’ needs. They are not intended to provide advice on effective debt recovery, although many of the recommendations on ways of dealing effectively with customers in financial difficulty will help with overall revenue collection.

The guidelines cover what we consider to be the main issues for indebted customers, with reference to the various approaches which companies currently employ. They also set out our expectations. They attempt to draw a reasonable balance between allowing companies sufficient flexibility to devise and manage effective revenue collection systems while setting out as clearly as possible what we believe to be reasonable protection for customers. They may also provide a basis for CCWater’s assessment of the debt recovery procedures of companies.

Principle 1

Companies should be proactive in attempting to contact customers who fall into debt as early as possible and at all stages of the debt management process.

Principle 2

Companies should provide a reasonable range of payment frequencies and methods, for all customers. The entire range of options should be properly and widely advertised to ensure that customers can select the arrangement which best suits their circumstances.

Principle 3

All correspondence sent to customers should be written in plain language, be courteous and non-threatening but should clearly set out the action which the water company will take if the customer fails to make payment or contact the company, along with the possible consequences for the customer.

Principle 4

²⁹available on : <http://www.waterbriefing.org/home/regulation-and-legislation/item/9463-ofwat-issues-revised-guidelines-on-dealing-with-households-in-debt>

When agreeing payment arrangements with customers, the customer's circumstances should be taken into account wherever possible.

Principle 5

Customers whose accounts are managed by debt recovery agents or some other form of billing agent should wherever practicable receive the same level of service and care as those whose accounts remain with the water company. The potential consequences of having their debt managed by a third party should be no more severe than if the service was provided directly by the company.

Debt collection from medical bills

The article below relates to debt collection from medical bills makes some good points about how debt can be collected in a pleasant way and the results obtained are better.

A R Logix

Typically collectors from big-name companies are portrayed and accused of bullying, misleading patients, and using unorthodox tactics to collect on unpaid debts. Unfortunately, the media rarely shows medical collection agencies who are quite the opposite of that stereotype. As collection agencies are struggling with this negative image, more and more collections and revenue cycle management companies are changing the trend and are receiving recognition for their patient-friendly tactics and are still seeing positive results.

Berks Credit & Collections provides training for their collectors, encouraging them to use friendly tactics to obtain positive results for clients, while maintaining good relationships with patients. If collectors are good communicators, friendly and nice to talk to, patients feel more willing to discuss sensitive financial issues. To ensure client satisfaction and peace of mind, Berks Credit & Collections also records all of their phone calls with patients. Clients can review the recordings at any time, to make sure that their patients are being treated with respect.

"Our positive approach is proven successful with our higher liquidation rates." said Christina Landis, AR Logix, Inc. Marketing Manager. "Just think about yourself in this situation; would you want to pay a friend or an enemy? I think the answer is obvious."

By focusing on credit counselling and providing financial assistance resources to patients, debt collection and revenue cycle management companies can help debunk negative stereotypes set by aggressive collectors. Positive practices are especially important when it comes to medical debt collection since many patients already feel ashamed or embarrassed about their inability to pay and do not want to feel strong-armed into paying more than they can afford. If industry leaders work to change the perceptions people have of debt collectors, they can earn patients' trust, receive more positive feedback, and improve the overall revenue cycle process for healthcare facilities.

Other debt collection change in practices...

Theresa Tedd

In the [UK](#), debt collection agencies are licensed and regulated by the Financial Conduct Authority (FCA). The FCA sets guidelines on how debt collection agencies can operate and lists examples of unfair practices. These guidelines are not law but they represent a summary and interpretation of various legal areas. Compliance with these guidelines is also used as a test of whether the agency is considered fit to hold a credit licence.

Examples of unfair practices include misrepresenting enforcement powers (e.g., claiming that property may be seized), falsely claiming to be acting in an official capacity, harassment, claiming unenforceable or excessive charges, misrepresenting the legal position to a debtor, and falsely claiming that a court judgement has been obtained when it has not. The legal basis for these practices comes from section 40 of the Administration of Justice Act 1970.

Collection agencies and their debt collectors in the UK are not the same as court-appointed bailiffs.

In America some debt collection is being undertaken to collect the debt, but also to provide a service to the indebted. Below are two examples where this is happening.

The New Face of Debt Collection – Empathy, Kindness and Compassion

A couple of weeks ago I got a call from the collections division of a large financial company. The company wants to improve the quality of calls and improve the customer experience while still collecting debt.

That's not an easy change. Debt collectors are known to be threatening, aggressive, and intrusive, among other things. So how will I help this company? I proposed we take a posture of empathy, kindness and compassion. Seriously, that is what I proposed for the company's debt collectors. I got the idea for a softer approach to debt collection from my husband. My husband used to work for a debt collector. In fact, he worked for one of the most successful debt collectors ever. My husband's former company, a consumer friendly company, bought delinquent debts from banks and then restructured them according to terms the customer could afford. The strategy was successful. They were able to help 4.5 million consumers resolve \$15 billion in debt, all of it without ever suing a consumer, producing net margins as high as 48%. The company's secret: Kindness, empathy and compassion.

I proposed to my prospect that I teach employees how to handle customers' crisis with empathy. I told them that this empathy would bring in more money than any hard-hitting tactics ever could.

The company my husband worked for shut down. Long story. But the owner, Bill Bartman, started another collections company, CFS II. (The original company was CFS). CFS II uses the same successful principles of kindness to collect. And it's working big time.

CFS II works off of the preface that people in debt don't have money. What a novel idea!

They don't hire debt collectors. They hire people with customer care experience.

Collectors aren't rewarded based on how much money they collect. They are rewarded on the freebies they give away.

By freebies I mean help with consolidating debt. Resume writing. Pointing customers toward community resources.

Local Authorities In Britain : a coordinate approach for an increased efficiency Theresa Tedd

Local Authorities in Britain are changing the way they provide certain services that help their residents to stay out of debt and if they get into debt will help them get out of debt.

Instead of residents having to get in touch with many different departments to get advice on such matters as getting a job, organising a budget, staying healthy, dealing with debt and opening a bank account residents can telephone one number. This puts them through to an office which provides a Consolidated approach to all these different services that are provided by a Council and also to the outside bodies in that area that provide help.

In Solihull a Local Authority in the West Midlands for example this service puts together six key financial messages to enable residents to access the following:

1. Access to Job Advice
2. How to get on Line
3. How to organise a budget
4. How to stay healthy
5. How to deal with Debt
6. How to open a Bank account

The above messages underpin the British Government's expectation around Welfare Reform and it's movement of all benefits to a single Universal Credit which is being rolled out across Britain at the moment.

The following YouTube Video from the Metropolitan Borough of Solihull provides an interesting insight into how people can be encouraged to start taking the right steps to being free of excessive debt and gives in three to four minutes, details of the services provided in an easy to understand and friendly way.

<https://www.youtube.com/watch?v=0spOZzlhCGk>

This information will also be provided in every school in Solihull's Local Authority.

Universal Credit

Universal Credit is a benefit that is being introduced at present in England and Wales. It will be paid by Local Authorities.

Universal Credit is being introduced in Britain in stages. Instead of having to apply for lots of different benefits Universal Credit requires one application and replaces the following benefits:

- Income-based Jobseeker's Allowance
- Income-related Employment and Support Allowance
- Income Support
- Child Tax Credit
- Working Tax Credit
- Housing Benefit
-

Any other benefits are paid as usual. Claimants can not receive tax credits at the same time as Universal Credit.

The advantages of Universal Credit are that one assessment will give claimants access to all the benefits shown above. Making it easier to claim and administer. The claimant will be free to spend the money as they see fit. This has the advantage that everyone has different needs, so the money can be used as and when needed. The disadvantages are that Universal Credit has to be applied for on line and it needs to be budgeted and spent appropriately.

Recommendations

The Use of a single point of contact for the services that are provided locally is very helpful for people in debt both in the early stage period when financial difficulties are not heavy nor complex and in the arrears and defaults period when they are. By encompassing help for many of the triggers for debt such as employment, health, debt management and budgeting help people can receive the help they need. The contact details for this service could also be made available in schools, doctors surgeries and by use of a youtube video as shown earlier in this report.

Preventive strategies and approaches regarding over-indebtedness

Introduction

Early stage detection is key in financial difficulties resolution. A largely shared experience within European debt counsellors are the complexity and emergency of the indebtedness situation of their client. These are a major barrier to an easy and quick solution process. Deteriorated debt situation generally includes a range of different creditors (complexity), sometime a high amount of debt (debt cuts) some court decision already taken and implemented by bailiffs (emergency) and an already highly stressed debtor (potentially even less rational on an economical point of view). These elements reduce the possibility to build up debt settlement plans through short term negotiation, and consequently leads to high cost procedure for the creditors (administrative follow-up on a long period versus significant financial return, necessity to go to Court, to use debt collection services, to face debt cuts...), for debtors (who often can not maintain professional and social inclusion during a long term debt settlement plan, who often lives at or under the poverty line during this period), for the public authorities (because of the expenditures for social support and health care, free debt counselling services, reduced tax on income,...). All these elements invite stakeholders to build up innovative approaches that allows a respectful early detection of the financial difficulties that leads to a set of sound measures capable to stop financial difficulties before over-indebtedness.

Such innovative approach has to be design to benefit to the stakeholders {creditors, debtors and public authority (general interest)}, on an economical point of view (will reduce the costs of the procedures, improve the cost/benefit ratio), and reduce social distress.

One the most challenging issue is related to privacy protection, to guarantee of a respectful approach that increase financial inclusion

Consideration of the early stage in national laws

The UK practice of Citizens Advice Bureau (charity) -(Theresa Tedd)

Citizens Advice Bureau (CAB) is one of a network of independent charities throughout the UK that give free, confidential information and advice to help people with their money, legal, consumer and other problems.

The twin aims of the Citizens Advice service are to provide the advice people need for the problems they face, and to improve the policies and principles that affect people's lives. Trained advisers help write letters, make phone calls, negotiate with creditors and represent clients at tribunals and courts.

The Citizens Advice service in England and Wales, Northern Ireland, and Scotland is guided by four principles. All Citizens Advice Bureaux and workers for the bureaux must adhere to these principles, and bureaux must demonstrate that they adhere to these principles in order to retain membership of the national umbrella bodies.

- A free service
- Confidentiality
- Impartiality
- Independence

The service is also committed to:

- Accessibility
- Effectiveness
- Community accountability
- The client's right to decide
- A voluntary service
- Empowerment
- Information retrieval
- A generalist service

The Citizens Advice service is one of the largest volunteer organisations in the UK with over 20,000 volunteers. The majority of these are part-time volunteer advisers, but the figure also includes trustees and administrators. While volunteers have varying levels of training, they are all required to receive basic training to ensure they fully understand the nature of the service including the four basic principles. Typically there will be a paid bureau manager, advice session supervisors and in some cases some paid advisers. Some staff may be qualified to give specialist legal advice or to advise on immigration.

Each local bureau or group is a separate independent charity with independent trustees. Many bureaux are also limited companies and may have a board of directors, who will also be the organisation's trustees. Bureaux throughout the UK have varying community needs and very different resources, and consequently offer different styles and levels of service.

All bureaux in England, Wales and Northern Ireland are members of Citizens Advice, the operating name of The National Association of Citizens Advice Bureaux. Northern Ireland bureaux are also members of the Northern Ireland Association of Citizens Advice Bureaux (NIACAB). Bureaux in Scotland are members of Citizens Advice Scotland (CAS), part of the Scottish Association of Citizens Advice Bureaux.

Citizens Advice and CAS act as umbrella bodies for the bureaux in the UK. They provide access to information, training courses and consultancy services for all bureaux, and regularly audit individual bureaux against the requirements of their respective membership standards.

All bureaux try to ensure their services are accessible to all sections of the community, so that provision can be made for the housebound, immigrant communities, rural inhabitants, elderly and disabled as appropriate.

Funding

Both Citizens Advice and CAS are registered charities and are financed partly by the Department for Business, Innovation and Skills although both organisations are completely independent of central government. Member bureaux also pay heavily-subsidised subscriptions for the services offered.

They often receive significant funding by local authorities, and local solicitors may agree to provide limited legal advice pro bono. With the ever-increasing complexity of queries, many bureaux are having to resort to employing more staff to cope with constantly changing legislation.

IT support

Membership of Citizens Advice gives each bureau access to the national information portal, known as AdviserNet and to internet access provided through a Virtual Private Network.

Information on clients' problems and the advice offered to them is entered into the CASE national database, the use of which has been compulsory since 2008. Although the data on CASE is centrally stored and backed up by Citizens Advice, the data can only be accessed by the bureau that entered the information.

A replacement for CASE, Petra, has been in roll-out since 2011. Petra is based on the Microsoft CRM product.

New initiatives

Despite the large number of volunteers working for the organisation, level of demand for the service often far outstrips resources. Citizens Advice has recently begun looking at ways to reach all members of the community through new mediums such as email advice and digital TV.

Another initiative has been allowing university students to train as advisers to gain credits toward their degree. This was pioneered by a partnership between the University of Portsmouth and Portsmouth Citizens Advice Bureau and is also now available at Birmingham City University, University of Reading, University of Northampton, Glasgow Caledonia University and University of Glasgow.

Recommendations

The Citizen Advice Bureau has 20,000 volunteers and is available locally all over the country. Its free and impartial debt advice can be delivered in person. This makes it easier for people to understand what is being said and they can have an advisor with them to help them. This service could be set up anywhere. It could be set up in its entirety or in a simpler form depending on the circumstances.

StepChange Debt Charity (Theresa Tedd)

StepChange Debt Charity is the UK's largest specialist provider of free, independent debt advice. The organisation offers debt advice and money management.

The charity was founded in 1993 when Vic Ware OBE and Malcolm Hurlston introduced Consumer Credit Counselling Service to the UK via a pilot scheme based in Leeds

The introduction of debt counselling over the telephone proved to be a success and the charity expanded throughout the late 1990s and early 2000s.

The charity has continued to grow in recent years. In 2007 they established a non-profit individual voluntary arrangement service and in 2010 launched a free equity release advice service.

On 5 November 2012 the charity re-branded as StepChange Debt Charity. (Formerly the Consumer Credit Counselling Service).

In 2014 the charity was contacted by 577,677 people seeking debt advice. StepChange Debt Charity is the UK's largest specialist provider of free, independent debt advice

Funding

StepChange Debt Charity is funded by voluntary contributions from the credit industry, such as Lloyds TSB, Barclays and HSBC. In the most recently published report they made no investment

gain from their charity work. The charity has been successful over recent years to become the UK's leading debt advice charity, managing unsecured debt worth over £4bn.

A specific approach for Gambling (Theresa Tedd)

For thousands of gamblers every year borrowing to keep gambling leads to serious unmanageable debt problems.

Credit cards make it easier to spend money you don't have -- and that can be a serious problem when it comes to gambling.

A 2011 survey for the Gambling Commission found that the number of people gambling in the UK is on the rise and that nearly three-quarters of UK adults have gambled. Although UK licensed gambling halls don't allow consumers to use credit cards to gamble, online betting sites based both here and overseas do. When using a credit card to gamble, the money you bet may not be the only money you lose.

Instead of treating gambling transactions as normal purchases, some credit card companies treat them as cash withdrawals. Cash withdrawals involve extra fees -- plus, instead of having the normal grace period to pay the balance, you start accruing interest immediately from the day you withdrew the money.

"Check to see if there is an extra charge or any restrictions in place, as you may have to pay an extra percentage charge if it is classed as a cash advance," says Dorienna Koldenhof of the UK cards association.

When you bet with plastic, the money that is spent may not seem "real."

"Anything that distances you from the actual sense of reality of how much you are betting has consequences. It is a different experience from spending cash and feels more distant," says Adrian Scarfe, co-founder and head of clinical training for Gam Care which provides support for those with gambling addictions.

Using a credit card to gamble is "the extreme end of bad money management" and "a massive red flag" that you need help both for financial problems and a possible gambling addiction, says Una Farrell, spokeswoman for the Consumer Credit counselling Service.

Farrell describes credit cards and gambling as "a toxic combination."

"We tell consumers not to use credit cards to repay other credit or to pay for essentials," she says.

"If you are using your card to gamble then you are really in trouble, and you need to speak to someone urgently as you are likely to have both a debt and a gambling problem."

One of the biggest problems with using credit cards to gamble is that you may be able to avoid your debts for a substantial period of time by juggling cards, says Richard Kingdon, managing director of London-based addiction counselling service City Beacon.

"The trouble is that credit cards enable you to carry on gambling and to keep getting another card to bridge the cost of paying off other cards, Kingdon says. "Gambling addiction is as serious and destructive as crack cocaine dependency."

Is it possible to use credit to gamble responsibly?

Despite the risks, online gambling is a pastime for many. So is there any occasion when it might be safe to use credit cards to gamble?

Farrell thinks not.

"The worst thing that could happen is that you could win, and that would encourage you to continue gambling," she says. "You should not be using credit to gamble with money that you don't have."

Moreover, Farrell points out, if a website accepts only credit rather than debit cards, you might ask yourself why the company is doing this.

Recommendations

It would be much better if credit cards were banned from gambling websites at the very least it should not be possible to only use a credit card and not a debit card on an internet gambling site.

Anticipate financial difficulties: the contribution of the behavioral scoring (private sector initiative - France) **(Olivier Jérusalmy)**

Introduction

The development of the credit industry, as we know it today, was notably made possible by the risk prediction model called "credit scoring" . This approach, reducing the cost of risk prediction, has expanded access to credit for a very large part of society. The score gives a vision of a customer's probability of default and is an essential part of decision making.

But this approach has its limits, because in no case can anticipate the accidents of life that are the trigger of a large majority of cases of over indebtedness. Therefore, the number of debt situations increases especially since the economic and social context is changing unfavorably: falling incomes, rising costs, job loss, illness, separation ... To permanently eradicate this phenomenon, companies innovate by establishing safety mechanisms that predict the occurrence of financial difficulties ... even before the problem started.

What we are going to present, is an innovative approach that not only allows lenders to reduce litigations, but also to reduce the pre-litigations. This approach on the one hand reduces expenses related to litigation not covered by the customer, and allows on the other hand, in the medium term to sustain strong commercial relationship with customers, whose financial health is less exposed to the hazards of life of life.

Detect financial difficulties before they occur... Cetelem approach

Scoring is primarily a statistical technique that identifies what elements to consider when one wishes to predict the occurrence of an accident. The statistical treatment of behaviors of an existing customer will identify what are the elements that are found most often before a payment difficulty occurs. Therefore, each customer, based on his personal circumstances, will receive a score that illustrates the proportion of risk elements that are found in his situation.

For this identification work, we develop an algorithm (mathematical tool to help solve a problem) that will select clients with the highest probability of having arrears in 3-6 months. The algorithm will respond in particular to the question: what are the elements most often present in situations of our customers three to six months before they experience payment difficulties?

To answer this, the algorithm will analyse the elements at its disposal, and will show which are most often present.

Behaviour and risk factors

If the approach does not anticipate the occurrence of an accident of life, it can in any case identify the behaviour that in the long run could lead to a payment difficulty. Among these, there are in particular for clients of Cetelem: an "unusual" use of the credit: when credit reaches and exceeds 90% of the maximum amount authorized for renewable credit;

- when there is at least two credits in use including one renewable credit;
- when postponed payment deadline occurred during the last two months;
- when credit assets exceed € 650 in renewable credit;
- when the stock has increased by 95% over the previous quarter.

Behind these behaviour the difficulties of various kinds might be hidden: decreasing revenues, significant necessary expenditures, monthly expenses become too high, degraded personal circumstances (illness, death, divorce ...)

After the detection, the call to action ... or the art of suggestion

According to the survey made for the French Postal Bank, it is counterproductive to set up a direct telephone contact with a client who, as such, has not encountered a difficulty.

Therefore, the device includes sending a letter to the customer, reminding him that the company is still at his disposal to review its position throughout the duration of loan repayment.

Therefore, the service will be activated for customers who give up this suggestion, but not exclusively. It also happens that an eligible customer calls to the score spontaneously or following receipt of a letter, or the client to write to report a problem. Therefore there are at least three gateways for dedicated service.

Accompany, counsel, strengthen

Diagnosis

When contact is made with the dedicated service, the first phase consists of a diagnosis of the balance sheet and an evaluation of the difficulties at the root of fragility. The objective of this diagnosis is often to raise awareness to these customer of the challenges ahead and the need to intervene. Some clients refuse to lend themselves to the budgetary diagnosis at this early stage.

Solution proposition

Based on the diagnosis, intervention will take the most suitable forms, ranging from a simple deferment to a much more extensive monitoring. In between, we find:

- the change of the date of direct debit ;
- blocking or decreasing the amount of granted revolving credit;
- modification (reduction?) of the monthly payment;
- the responsibility taken by insurance;
- the reorganisation of the debt;
- the accompanying proposal for a partner association;
- 8% of customers refuse the proposed solutions.

The support and contribution of the board

A significant portion of the proposed solutions can be directly implemented by the dedicated unit of Cetelem (specific adaptation; sustainable reorganisation of loans to adapt to the new budgetary situation of the client). When situations include more complex elements, debts to other creditors, family problems, health ..., the use of an external partner is then suggested by Cetelem. In this case, the partner will play a financial intermediary role and propose a budgetary support in the duration (3-24 months). The latter is implemented by specialized services, which include Crésus (Regional Chamber of social indebtedness).

Volumetric analysis between October 2012 and September 2013

Number of letters sent in 2013 76.000

Customer calls to the dedicated unit 25 340

EFIN Working Group on Over-Indebtedness - Early detection and constructive response about households financial difficulties - December 2016

Spontaneous mails 7.580

Number of diagnostics performed 9.655

The number of the diagnostics performed is significant, almost reaching the number of 10,000! The analysis reveals that one out of two is really in trouble and 8 out of 10 accepted a helping solution from the appropriate committee.

Conclusion

It is too early to accurately measure the impact of the device, but the methodological base of the device seems to be solid.

However, if this statistical approach opens the door to a personalized treatment of customer credit usage, there is no guarantee that the company that implements it pursues the objectives of prevention of overindebtedness and consolidates the financial inclusion of customers. It is clear that these scores could equally be used for an elimination policy of the clients considered undesirable.

The "Support" programme of the French postal bank - Preventive, responsible, inclusive (Olivier Jérusalmy)

Introduction

The French Postal Bank for several years has been developing active strategies against banking exclusion. Postal Bank accounts 26 million customers in France. Its branch network is highly developed, its customers are 10.7 million individuals. Moreover, the Postal Bank has close to 2 million customers in the situation of financial fragility. With approximately 20% of sensitive customers, we understand the bank's motivations to develop preventive approaches that restore the budgetary and financial situation of these clients.

Postal Bank, a key player in financial inclusion in France

In 2010, when the Postal Bank started its lending activity, the Minister Lagarde stressed that the bank has a major role is the prevention of over-indebtedness. This is the reason why this activity has been developed from the very beginning and includes:

- strict risk scorings (1 out of 2 application is rejected);
- monitoring of credit in partnership with the association Cresus, which offers professional support to people in difficulty;
- a commitment to advance industry practices in general (support the Manifesto for Financial Inclusion developed especially by Red Cross, UNCCAS and Secours Catholique).

So the philosophy of the bank is to develop strategies that will allow the customer first, to avoid stumbling in an accident of life and, secondly, to consolidate their finances and budget to eventually become customers like the others.

The "Support" package today

Mission

The purpose of the programme is, firstly, to support clients of the Postal Bank who encounter financial difficulties and, secondly, to improve the prevention of financial fragility situations. "The Support" is a banking platform for information and guidance, accessible on the client's initiative via a unique number no surcharge.

How does it work?

- It is the client who takes the initiative.

The support system is based on the ability to encourage vulnerable customers to request the package.

To do this, information from customers is essential: customers must not only know the existence of the programme, but also have a positive image, so that the establishment of the contact is not experienced as demeaning.

- Support is offered by phone

The customer of the Postal Bank is regularly called for entering in contact with the bank by phone. Indeed, although the network of post offices is very broad field, many management services are accessible to clients by phone. In this sense, the medium is not unusual for them, which is a facilitating element.

Budgetary advice to consolidate the fragile customers

Among the expertise of the bank, the calculation of the remaining life (amount available after the deduction of the compulsory expenses) is a must, and the "Support" programme seeks to enhance this expertise by keeping it available for the clients.

1) Review of the budget: it lists the revenues and expenses; it is checked whether or not the budget is in equilibrium; taking the measure of possible imbalance.

2) Management consulting: first, it is checked whether through simple measures, easy to set up, problems can be treated (change of dates of automatic debiting ...)

3) Consumer Tips: energy subscriptions, telephony, insurance ... We seek the most favorable offers ...

4) Advice on revenue: how to increase revenue? This involves checking that the customer has enabled the social services and benefits to which he is entitled. There are also social tariffs, housing subsidies, additional revenues.

Some figures

Nowadays, the platform has 30 internal employees, trained in budget analysis. Account managers meet sixty calls per day and have already helped more than 2,000 customers since it opened in November 2013. After a trial period of several months through regional pilots, the orientation device is now national.

Although it is too early to provide an assessment of the programme, the Postal Bank reports a series of advantages:

- First, it is a responsible way to meet its obligations to serve everyone: rather than suffer the precariousness of a significant proportion of its customers, it develops a long-term answer for the latter to increase its chances to access the standard customer profile.
- Then a fragile customer is expensive: the financial difficulties encountered generate high administrative costs.
- Finally, a fragile customer offers little commercial development opportunities with the bank: credit, cards, investments ...
- Consequently, the aid proposed by the bank for the financial empowerment of its customers use the bank's interests in the medium term.

Conclusions

An active financial inclusion by one or more banks in a national market?

This first example of innovative practice in terms of support for vulnerable customers illustrates:

1. the ultimate expression of an inclusive vision of the banking market;
2. once the obligation to serve all customers is properly implemented, the interest for the bank is to strengthen the financial condition of its customers so that they are not too expensive clients, but become, on the contrary customers like the others;
3. the effectiveness of a preventive approach, implemented when the problem is not too serious; costs arising from a proactive approach seem to be eventually more than covered by the savings and by income generated from the business development of customers who overcame their financial difficulties.

However, the French situation that focuses the effort on one bank goes against the spirit of the Belgian law, where financial inclusion is supposed to be the responsibility of all actors on the market.

In this sense, the shortfall of Postal Bank is a "competitive disadvantage" compared to other financial institutions! Would it not be useful, therefore, to consider a compensation system that would contribute to all stakeholders, in proportion to their market share? This principle of compensation is also planned as part of base banking service in Belgium: by this principle, the legislator intends to reduce the risk that some banks do not grant the base service.

A French banking law which furthers the notion of inclusion

A cheaper banking services for vulnerable customers, a prior explanation of fees for payment incidents before debiting the account, establishment of the Observatory of banking inclusion are all provisions that make much more dynamic the prevention of difficulties.

Public authority initiative : early detection by the City of Amsterdam (NL) Jan Siebolds

In Holland the debt-solution chain consisted for years of preventive activities and solving solutions. For the preventive activities and information the organisation Nibud is very active. For the solving solutions the municipalities are in charge. There are two possible solutions: the cordial way and the legal way.

The City of Amsterdam has created an activity in between preventing and solving: an early detection-project of financial difficulties, called Vroeg Eropaf.

Vroeg Eropaf

More than 50% of the people in financial distress do not look for help in time. They think to manage the problems themselves. Mostly they seem to be too optimistic. Another reason can be that they are unknown with the debt-advice possibilities. And perhaps also: they are too ashamed (or too proud) to ask for help.

The advisers of debt-advice organisations do ask frequently: why do you visit us that late. Besides: the classic attitude of the debt-adviser was often: "only when the client comes spontaneous to us he is sufficiently motivated". An outdated attitude !

For a long time, creditors and debt-advisers did not work together constructively. Last decade we saw a changing attitude. For instance: the housing corporations (renting out 200.000 houses in Amsterdam). A more social approach is growing.

In 2006 in Amsterdam some debt-advice organisations started small format experiences with the local housing corporations. These organisations informed the debt-advice organisations about the most serious defaulters in rent-paying.

If that person was not already known as a debt-problem, the debt-advice organisation visited him at home in a few day's time.

An evaluation proved that this approach was profitable for both debtor and creditor. Based on that experience the City of Amsterdam decided in 2008 to organise a large-scale late payment, early warning project, called "Vroeg Eropaf" : detection and outreaching action in an early stadium.

Demanding

For all players the project Vroeg Eropaf is rather demanding.

For the creditors: working with the project means accepting the payment-proposals.

The project is also demanding for the debt-advice organisations: the first contact is needed in a few day's time. A complete analysis of the financial problem and an accurate action-plan must be completed in 4 weeks time. The payment from the City of Amsterdam for the work of the debt-advice organisation is based on "no cure, no pay". That means: no personal contact means no benefit (despite the provided efforts).

Conditions

The information from the housing corporations is highly privacy-sensitive. That is the reason why this information goes directly from the creditor to the debt-advice organisation (and not to the municipality). Well organised it is an allowed construction by the privacy-authorities.

Creditors and debt-advisers are no natural allies. They have to work on a good relationship. That takes time, but it is worthy.

Results

In 2014 Vroeg Eropaf received 3000 signals from the Amsterdam housing corporations. And also: 3.400 signals from energy-providers and 4.200 from health-insurance companies.

70% of the people, visited under Vroeg Eropaf, had no earlier contact with a debt-adviser or a social worker. 47% of the visited debtors needed long time debt-advice.

After an investigation in 2014 the Ministry of Social Affairs declared: "Based on a social cost-benefit analysis it is clear that Vroeg Eropaf has a strong positive rate of return. For the City of Amsterdam it means that every in the project invested Euro generates a profit of € 2,22."

On the 25th November 2015 all partners in Amsterdam signed a new contract to continue Vroeg Eropaf till 2019.

Regulatory initiatives

France

French regulation dedicated to bank process of fragile clients

Didier Gillet

Foreword

For many years, public authorities have focused on fighting over-indebtedness and favouring financial inclusion. To this end, they have issued ever stricter regulations that the credit and financing institutions have to gradually abide by.

Financial players have thus devised a series of measures in recent years to address the matter: Product and service offers specifically aimed at client categories who are struggling with the management of their budget or who are facing financial difficulties; dedicated follow-up services for fragile customers; teaming up with social actors in view of making appropriate use of banking services and products easier, including microcredit.

New regulations have just been enforced with an aim to making all these measures even more effective.

A banking law reinforcing access to bank services, making them easier and cheaper to use for fragile customers

Banking law n°2013-672 of 26 July 2013 includes several measures reinforcing the protection of private individual bank customers and supporting financial inclusion. These measures mainly focus on bank charges, capping the fees and making it mandatory for the bank to inform their clients of the fees incurred in relation to overdrafts and other accounts mishaps, before actually debiting the account of such fees.

Besides, it has become mandatory for the banks to offer their fragile clients a common specific offer of services and means of payment charged at a very low fee of 3 Euros per month. Additionally, the law has made some arrangements with current over-indebtedness and bank account access rights procedures.

The definition of a « fragile client » was specified by decree based on criteria related to the number of quarterly defaults, of subsequent commission fees deducted, or to funds flows on the one hand, and on actual over-indebtedness and suspension of banking privileges situations on the other hand.

A charter for financial inclusion and fighting over-indebtedness

Article 55 of this same banking law calls for the *Association française des établissements de crédit et des entreprises d'investissement* (AFECEI) [the French Association of Credit Institutions and Investment Companies] to adhere to a significantly binding charter thus enforcing one of the measures included in the multi-year plan adopted by the French Government on 21 January 2013 for social inclusion and the fight against poverty.

As per this charter, credit institutions and financing companies are committed to:

- Set up measures providing private individuals wider access to banking services and making them easier to use,
- Develop detection mechanisms meant to address their clients' difficulties at an early stage in order to better prevent over-indebtedness.

Measures related to banking services

Clients entitled to basic banking services within the bank account access rights plan are contacted once a year in order to assess their personal situation and needs, and based on this assessment, a different, more appropriate choice of products and banking services can be offered.

Clients are offered services designed for an easy management of their account and limiting the risks of default (such as fixed date direct debits, authorized only debit cards, early warning service informing the client of their current balance).

Actions for preventing over-indebtedness

While retaining the specificities of each banking network, the prevention of over-indebtedness within credit and financing institutions is based on two foundations: detection and follow-up of clients in a state of financial fragility.

Please note that no clear definition of a « client with a risk of over-indebtedness » is given in this charter. The risk assessment is globally left to the credit institutions. However, these institutions must provide a yearly report on their actions (see below), and these will be analysed in order to check the coherence of the measures taken, the target population and the overall volume of action and make sure that these actions meet the regulatory requirements.

Detection

Credit and financing institutions must set up a mechanism providing an early detection of clients in a state of financial fragility, combining internal alarm devices and client knowledge. To this end, they must set up a specific plan aimed at identifying their clients' financial struggle by assessing the way they manage the products and services subscribed, based on criteria specific to each banking network and taking into account their customers profile and financial behaviour.

Follow up

Credit and financing institutions commit to offer their clients who have been identified as being in a state of financial fragility appropriate internal answers, and namely must:

- Meet with each such identified client in order to determine the possible improvement levers for his situation.
- Refer clients who cannot be dealt with within their own network to dedicated internal or external structures.

Measures follow up

Credit and financing institutions commit to include in their internal control report submitted each year to the *Autorité de Contrôle Prudentiel et de Résolution* [Resolution and Prudential Control Authority] (ACPR, regulatory authority of the French financial sector) a new section named « measures taken in support of clients in a state of fragility » detailing the detection and follow up procedures they have set up, and the results achieved.

Moreover, credit and financial institutions must send each year to the newly appointed *Observatoire de l'inclusion bancaire* (OIB) [Financial Inclusion Observatory], a summary of the main measures enforced in support of persons in a state of fragility. This monitoring body will be tasked with compiling and analysing all these data.

Conclusion

The « social » efficacy of these measures must still be perfected considering the stakes of an overall poverty rate of around 14% in the population combined with strong social expectations from the banks. Besides, there is a significant discrepancy between the number of actual cases currently treated with these plans and the sheer size of some communication campaigns, and it is feared that this might lead to some form of « *social washing* »! Nevertheless, these measures as a whole are headed in the right direction and should significantly increase in the years to come considering the regulation authorities' ever stricter constraints.

Poland

Evaluation of the “Rapid Response Instrument” (preventive approach)³⁰

The Polish Agency for Enterprises Development, a governmental agency, implemented in the last years a governmental policy to support companies at an early stage in financial difficulties. Part of this is the Rapid Response Instrument system (RRI) which was developed by PARP and the Cracow University of Economics from 2009 onwards. The RRI is an indicator-based system for monitoring

³⁰ The following information on the project has been provided by Ms. Anna Świebocka-Nerkowska of the Polish government, Director of the Human Resources Development Department, PARP Rapid Response Instrument to Bankruptcy Riskin on the Commission's conference on "Learning from Failure – Bankruptcy and Second chance for Honest Bankrupt Entrepreneurs". More information on the "Rapid Response Instrument" can be accessed under

http://www.isr.parp.gov.pl/images/Nabor5/parp/ISR_na_zagrozenia_upadloscia_ENG.pdf.

changes in economy sectors and enterprises. It is a **tool for early identification of changes of the economic and financial situation** of enterprises that allows provision of support to companies affected by changes in the economy. The purpose of the project is, among others, to provide decision-makers with information that contribute to taking anticipatory actions in accordance with the principle which says that it is better to warn, monitor and respond than remedy negative effects. The RRI is a tool which enables a systemic change: an intervention-based approach has been replaced with a **preventive approach**.

Description of the RRI project: To select companies for potential support for the RRI project the following criterias were decisive: values of individual items from the balance sheet, the profit and loss account and the cash flow statement. This data has been available from a prior project on another subject. Companies which were known as possibly being in danger of over-indebtedness were contacted by individual calls of experts (no call center structure) after an intensive preparation of 2/3 hours per company by individual phone calls. The further proceedings then follow the scheme below:

- Identification of threatened company;
- Diagnosis;
- Counseling service/development plan;
- Implementation of development plan measures.

The **threat identification** is based on the analysis of signs indicating that, in the near future, the company can have following problems on the market:

- Outflow of regular customers;
- Losses due to debt;
- Falling market shares;
- Decreasing sales;
- Unfavourable offers from suppliers;
- Deterioration of offered credit conditions and of access to credit;
- Decreasing liquidity reserves.

The **Development Plan** is a document describing for instance the reasons behind the problems faced by a company and the anticipated effects of not responding to these problems. A comprehensive analysis leading to the creation of a Development Plan in the company allows to determine the line of corrective or development measures in areas such as:

- Marketing and sales;
- Manufacturing and technology;
- Human resources;
- Physical resources,
- Financial resources;
- Organisational resources;
- Information resources.

The **Development Plan** shall include **preventive and interventive measures**:

- Preventive measures means that an entrepreneur received support such as a comprehensive consultancy to prevent negative situations in the company and for its employees, including coaching, mentoring and trainings matching the needs of the company and its employees.
- As interventive measures the entrepreneur received support which included comprehensive consultancy supporting the company in the areas that could limit the negative effects of economic change, including coaching, mentoring and trainings addressing the needs of the company and its employees, and a professional outplacement programme dedicated to the employees who are going to be dismissed, including i.a. career counselling, retraining or trainings aimed at increasing professional qualifications, psychological support, trainings for people intending to set up companies, on-the-job trainings and job agency.

Recommendations, based on an **analysis of the project results**: In an analysis of the RRI

project some general conditions that affect the effectiveness of an early warning and response system (EWRS) have been identified. Those conditions are pursuant to the representatives of the project, to some extent, universal and should as such be taken into account in various early response systems:

- First, an EWRS must be **holistic**, which means that it is capable of performing three functions:
 - Programming – the design of public intervention for restructuring actions to reduce or eliminate the risk of bankruptcy and loss of jobs;
 - Implementation – implementation of the public intervention aimed at supporting the restructuring measures to reduce or eliminate the risk of bankruptcy and loss of jobs;
 - Evaluation – of the effects of public aid in support of the restructuring measures designed to reduce/eliminate the risk of bankruptcy and loss of jobs.
- Second, an EWRS must be **dynamic** in nature. Meaning it has the capacity to start the support for companies very quickly based on the information coming from an early warning system and the flexibility of such an action. The dynamic nature of an EWRS is its ability to learn and adapt in response to broader economic and social changes in the environment in which the system operates.
- Third, an EWRS must be **transparent**. In particular, it is important to provide a specific and clear division of powers and responsibilities of its participants and assign appropriate roles to them (strategic, concerted action, coordination, implementation, monitoring). It is also important to provide clear rules and mechanisms of communication within the EWRS and between it and its environment.
- Fourth, an EWRS should be **hybrid** in nature. On the one hand, it should be characterized by a fairly high degree of **centralization** (in the sphere of **strategic decisions** on the scope and form of support provided to certain sectors of the economy and monitoring the overall health of the economy). On the other hand, it should be **decentralized** and **based on local knowledge** (in the field of recognition of specific needs and targeting appropriate implementation activities).
- Fifth, an EWRS must be based on the **logic of network interoperability**. In such a system, it is essential to ensure interaction among central government and its agencies, regional and local structures of territorial government, businesses, employers' organizations, trade unions and organizations offering appropriate training and consultancy services. Each of those entities has the resources (power, knowledge, financial resources, information, processing potential etc.) without the integration of which it is impossible to achieve the objectives for which an EWRS was established.
- Sixth, an EWRS must be capable of **systemic learning and evolution**. This implies the need for regular evaluations of the outcomes of the measures implemented under the system and for the subsequent modification of its mechanisms based on the results of such evaluations. In this case, it is advisable to pursue the approach known as evidence-based policy.
- Seventh, an EWRS must be **credible**. Its credibility is verified by the promptness of its interventions, their relevance to the needs of entrepreneurs and their employees in addition to low transaction costs of using its services.

Some numbers on the project: As a result of this project 260 enterprises threatened by negative consequences of economic change received individual development plans as well as training and advisory support (including 191 SMEs); 6,550 employees were trained, coached and mentored. Costs for this support for companies and their employees amounted up to 12 million EUR.

Presentation of a selection of debt counselling procedure

France

Description of “debt settlement procedure”:

This French **debt settlement procedure** outside the court was established in 1990 (so called Neiertz Act).¹ It is widely available as over-indebted households can apply to a regional "commission of over-indebtedness" (with often several offices in the same region) administered under the auspices of the Banque de France. It is free of charge for the debtor. The initial stage of the procedure is based on an attempt to help the debtor and creditors arrive at an out of court settlement, based on an **agreed repayment schedule** and possibly a **postponement of payment**. As it stands, in the event of a failure to agree on an out-of-court settlement, the commission can, at the debtors request, draw up measures to settle or postpone the debt or a moratorium that are imposed on both the debtor and the creditors. Recent interviews of households showed that three quarters of the debtors had made use of those formal measures to alleviate their financial difficulties.² The legal procedure in court is only accessible after having successfully applied to the Banque de France's procedure, and where no formal out of court procedure is possible (e.g. because the debtor has no means of repayment).

Assessment of “debt settlement procedure”: The “Cour des comptes report” provides a positive assessment of this procedure.³ It is seen as an effective and balanced way to deal with over-indebtedness as it **mixes non-judicial and judicial approaches** as well as offering the possibility of repayment plan, moratorium or bankruptcy (with or without liquidation of the assets). However, its effectiveness has been questioned as 17% are second time applicants due to a failure of the solutions provided in the first instance. According to the report, the difficulty seems to be because the approach is too administrative. The "commissions" do not have enough time or resources to meet the debtor and to carry out an **in-depth assessment** in order to define a **really suitable and personalised repayment plan**. Another weakness is the **lack of support for the debtor** once the solution is agreed. Despite the fact that the law stipulates that a social workers should support the debtor during the repayment plan, no funding has been made available to provide this service.

Description of “debt resting” procedure: Another approach, when financial difficulties are the result of an **unplanned change in the situation** of the borrower and it is to expect that the situation will improve, the legal possibility of "**debt resting**" (Délais de grâce) exists (Article L313-12 of the Consumer Code).⁴ A judge can **suspend the repayment or reschedule a debt over 2 years**, depending on the borrower's situation. This solution is different from those available for over-indebtedness debtors but offers a **temporary solution** for people facing temporary difficulties with their credit. Such a solution is widely accessible and at a limited cost however it is not widely known.

In France some **public funds** exist that helping people to repay arrears regarding rents and energy. An example is the FSL (Fonds de solidarité logement) which distributes financial aid to prevent persons in financial difficulty becoming homeless. Such funds are widely accessible through social workers however there are various eligibility criteria. Regarding other type of debts (mobile phone, credit, etc.) there is usually no public fund.

Sweden

Description of “debt reconstruction”: In Sweden it is more common that private individuals with problem paying their debts file for debt reconstruction rather than that they file for personal bankruptcy. The reason behind this is that after the personal bankruptcy proceedings have been concluded the private individual is still fully responsible for the debts that are left. Therefore personal bankruptcy is not a good option for private individuals that want to be declared debt-free. The debtor can apply for debt reconstruction to the Swedish Enforcement Authority by filling in a specific form. The Enforcement Authority looks into whether the debtor meets the requirements for debt reconstruction listed above. Then the Authority decides whether to initiate debt reconstruction and then sends a proposal for the proceedings to the debtor's creditors. The proposal contains all of the debtor's debts at the point when the debt reconstruction is initiated. The creditors may comment on the proposal. If debt reconstruction is permitted, the debtor will receive a decision from the Enforcement Authority and normally an **instalment schedule**. When the process on debt reconstruction has been initiated the creditors are not allowed to charge

interest on the debts covered by the procedure. In some cases the Enforcement Authority may have a part of the debtor's salary (or other remuneration), prior to the application of debt reconstruction. This means that a part of the salary is deducted in order to pay off the debtor's debts. This attachment on salary ends when a debt reconstruction is initiated.

If the debtor pays his/hers debts in accordance with the instalment schedule the debtor is normally declared debt-free after a period of five years. If a debtor already is living at subsistence level when the debt reconstruction commences, the debtor may be issued a decision without an instalment schedule. This means that the debtor do not make any payments on his/her debts. When the payment period is over and the debtor has fulfilled his/her obligations according to the instalment schedule, the debtor is no longer liable to pay anything for any of the debts included in the debt reconstruction. The debtor will receive no notice from the Enforcement Authority when the debt reconstruction is complete.

Belgium

Amicable debt mediation

(Article from ECDN - Money Matters n°3 - Vivien Leffin and Didier Noël)

Even if it is not mentioned as such in the Belgian plan for social inclusion, the fight against over-indebtedness is one of the targets set by the Belgian legislator. Some examples: the Act of 5 July 1998 created a fund for dealing with over-indebtedness to which all institutions offering consumer credit or mortgage loans in Belgium have to contribute. Part of the contributions paid into this fund may be allocated to the financing of information and awareness-raising measures aimed at over-indebted people.

The Act of 12 June 1991 also regulated debt mediation, which must be seen as another instrument for preventing and dealing with over-indebtedness. First of all, the Act prohibits debt mediation, with the aim of putting an end to possible excesses resulting from the commercialisation of such services, the debtor's money problems being aggravated by the excessive fees claimed by mediators without necessarily offering equivalent advantages. However, debt mediation is authorised if the service is provided by certain experts within the framework of their professional activities or function, namely lawyers, law officials (notaries public, bailiffs), legal representatives (temporary trustees), or public or private institutions duly authorised for that purpose by the Federal States (Regions or Communities). There are 539 authorised institutions in Belgium.

Debt mediation

Mediation refers to actions intended to reach an agreement between or reconcile the people involved in the procedure: therefore, the mediator's work consists in facilitating the emergence of an agreement between people who are in dispute, and the implementation of this procedure is determined by mutual agreement between the people in question: the mediator must be totally impartial and neutral and is bound by rules of professional secrecy. In Belgium, the debt mediator's role is highly complex and differs depending on whether it involves a judicial debt mediation procedure within the framework of the abovementioned collective debt settlement procedure, or is part of a non-judicial debt mediation procedure outside the said collective debt settlement procedure. Within the framework of a non-judicial mediation procedure, the debt mediator is chosen by the indebted person. The mediator analyses that person's situation, identifies the monthly income and liabilities, checks the legality of the sums claimed from the indebted person and attempts to negotiate with a repayment plan with the creditors or prepares other solutions such as a court procedure. The mediator must obtain the agreement of the parties to the plan s/he has drawn up. In that case, the mediator is also in charge of providing the indebted person with legal and economic information concerning his/her obligations and rights, as well as budget guidance. Federal and regional laws and regulations governing the distribution of energy also entrust community welfare centres with this responsibility for people having difficulty paying their energy bills. In certain cases, these bodies can pay to the creditors of an over-indebted person all or part of their debts. This may involve a reimbursable advance.

Under a judicial mediation procedure, when the court has checked that the over-indebted person is eligible for the collective debt settlement procedure, the debt mediator is designated by the court and is accountable only to the court. Their role is described by law (see box).

Costs for mediation

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In the case of non-judicial debt mediation services, communal welfare centres may claim a contribution from the over-indebted person in exchange for their work. The amount of this contribution is fixed on the basis of the income of the person in question. Generally, however, they do not claim such contributions. As regards authorised non-profit associations, this question is treated differently in each Federal State. In the case of judicial mediation the costs which a debt mediator can claim from the over-indebted person and the remuneration of the mediator responsible for the person in question correspond to fixed amounts determined by federal regulation. The breakdown of these costs and remuneration established by the mediator is checked by the court. During the procedure, the mediator must withhold an amount from the income of the over-indebted person by way of payment of these costs and her/his remuneration. In the event that the over-indebted person is totally insolvent the mediator's costs may be paid in full or in part by the Fund for Dealing with Over-indebtedness.

The communal welfare centres also receive federal grants intended to finance a certain number of equivalent full-time jobs allocated to the provision of debt mediation services. These grants are paid by an Energy Fund which is financed through a contribution charged to each customer of the electricity and gas companies.

Belgian judicial debt settlement (in brief)

The role of the mediator under judicial mediation procedure: to ascertain the details of loans and loan defaults recorded with Central Individual Credit Register, as well:

- as of seizures, assignments of sums and remuneration mentioned in the ad hoc file;
- to receive the income of the over-indebted person and to make available to her/him, without delay, a sufficient amount to enable her/him to pay her/his current expenses;
- if applicable, to request the court to authorise the debtor to accomplish an act which falls outside the scope of the normal management of her/his assets (such as, for example, the sale of personal property);
- to collect the debt claim declarations that creditors must submit to the debt mediator;
- to attempt to draw up a repayment plan which enables the over-indebted person's debts to be paid as far as possible, while ensuring that she/he and her/his family have a sufficient minimum income to be able to live with dignity (this minimum amount must not in principle be less than the part of the over-indebted person's income that cannot be seized); debts linked to fundamental needs (such as health care) must be paid first and foremost;
- in the event of the express or tacit approval of the proposed plan by the over-indebted person, and, if applicable, her/his spouse, to request the court to approve the plan;
- if the plan is not approved, to request the court to impose a debt settlement plan;
- to monitor and control the implementation of the measures set out in the plan;
- to submit a written progress report to the court at least once a year during the procedure;
- to request the court to modify the plan if its implementation proves to be impossible or if new facts emerge;
- to request the court to terminate the procedure if the over-indebted person has not complied with her/his obligations pursuant to the procedure.

General analysis of stakeholders potential interest in collaborating in amicable debt advice

Olivier Jérusalmy

Objective

achieve effective results through a systemic approach to amicable debt advice by identifying and promoting practices that increase cooperation between stakeholders.

- an alternative definition of amicable debt advice
- identify the stakeholders
- identify their objectives
- identify their incentives
- identify practices that respect those objectives
- contextual requirements to facilitate stakeholders cooperation
- last remarks on public authorities and private debt collection companies

What is amicable debt advice ? A lack of a common accepted definition...

A first reference...

« Debt advice (also called money advice, debt counselling or credit counselling) generally refers to information and help for people who are unable to meet the contractual payments on their household bills, consumer credit or other financial agreements, or who are at risk of not being able to meet these payments. » Civic Consulting study / DG SANCO

A potentially controversial definition to open up the discussion ?

Amicable debt advice : a procedure to facilitate payments (bill, arrear, credit,...) management so as to protect each creditor's' interest ...WITHIN... the limit of the respect of human dignity and privacy for each debtor

Two key notions :

- Amicable debt advice is exclusively dedicated to situations where debtors are solvent (resources available to repay all the requested payments within a reasonable time limit to debt settlement) --> otherwise... personal bankruptcy is recommended (which allows debt cuts and shorter plans, and appropriate protection for completely insolvent persons)
- Protecting human dignity : is the necessary foundation upon which a balanced treatment of debtors and creditors can be ensured. Debt advice professionals should be mandated to fairly assess (in this perspective) the financial capacity of each household.

Who are the stakeholders ? What are their specific role ?

The debtors: those who act first

- pushing the door open for debt advice, often because of a specific event : foreclosure, bailiffs,...

The creditors: those contacted by the adviser...

- dealing with arrears, default credit, and implementing administrative follow-up, internally and or via collection agencies

The debt adviser

Various existing approaches (profit/non-profit), each with a specific impact on the « costs » (high / low / for free) and, consequently, on who has to face these costs (the debtors, the creditors, a public authority, or a mix)

Professional debt collectors ...

Are they legitimate stakeholders, considering the fact that their actions increased significantly the existing financial difficulties?

- some might have a specific « public authority » proxy and ... subsequently a coercive power
- specialised private collection companies,... others

The most relevant issue is how to regulate practices in order to protect of human dignity and privacy (Belgium can be seen as a good practice)

Public authorities

Over-Indebtedness is no longer a private issue, but has become a social one over the past years.

O-I generates an important cost for the whole of society (social & economic)

What are the stakeholders' objectives ?

Debtors :

- Face and deal with emergencies related to debt collection procedures ?
- Negotiate with creditors ?
- Reach an improved budget balanced, when it is possible (non real poverty) ?
- Contest illegal amounts requested ?
- Improve day-to-day life when many debts has to be managed ?

Creditors :

Differences between:

- those with or without « secured debt » : Recover higher amounts thanks to a debt adviser in an amicable procedure
- those with their own debt collection service / those using collection company : Reduce costs with the action of a debt adviser

And also...

Avoid the risk of a non-amicable debt settlement procedure with a real risk of significant debt cuts, if I do not accept amicable procedure ?

Debts adviser :

- Pacify the dialogue between the debtor and its creditors...
- Reduce potential competition between creditors
- Achieve effective and positive impact for creditors and debtor.
- Cover the cost of the mission (non-profit / public) / Maximise the profit (private for profit adviser)
- Access to a real « status/responsibility » for amicable debt adviser to increase the chance of successful amicable procedure

Professional debt collectors

- Maximise their profit

Public authority

- Limit negative social impact of over-indebtedness (subsequent poverty, increased social support and expenditures, increase health expenditures, social and economic exclusion,...)
- Guarantee an efficient treatment with low impact on public expenditures

What are the stakeholders incentive to collaborate in an “amicable procedure” ? With other words, what amicable procedure should include to be attractive ?

Debtors :

Financial incentives :

- Reduced penalties and/or extra-costs...
- Better/ more balanced protection of their assets...

Moral incentive:

- Less or reduced number of debt collection acts (letters, phone call, foreclosure, handover,...)

Creditors :

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Financial incentives :

- Reduced costs for debt/arrears collection than home made/other sub-contracted actions
- Improved performances (higher recovered amounts)

Economic incentives :

- Increase financial recovery of customers via short procedure to boost purchasing power

Moral incentive:

- Balanced and fair treatment of creditors

Debts adviser :

Financial incentives :

- Sustainability (non-profit/ public) / OR see private debt collectors section

Moral incentive:

- Recognition by debtors and creditors for the important role of debt adviser
- Appropriate responsibilities to allow effective mediation

Professional debt collectors

Financial incentives :

- Increase benefit via higher margins/ increased prices

Public authority

Financial incentives :

- Reduce justice and other public costs related to non amicable procedures

Economic incentives :

- Increase financial recovery of customers via short procedure to boost economic activities/consumption

Social incentives :

- Limit all the social, physical, psychological negative impact of O-I on a significant part of vulnerable citizens.

Illustration of practices which meet stakeholders' objectives

Trustworthy and responsible...

- Amicable debt advisers investigate the debtor's' situation (budget : incomes & expenditures) and map all the « debts »
- Amicable debt advisers, based on the situation analysed, fix the amount for the repayment of creditors while maintaining the means necessary for the debtor to live in dignity

- If no debt cuts are necessary / if the duration is reasonable (a common EU standard?), personal bankruptcy procedure is not requested

Less costly for debtors and creditors...

- Amicable debt advisers are non-profit / public (FR, BE, some UK, AT, DE,...) limit « profit maximisation strategy with negative impact on prices and debts » and hence exploitation of vulnerable people
 - Lower costs than private approach (internal or sub-contracted)

More efficient for debtors and creditors...

- Amicable debt advice facilitates the financial recovery of debtors and increases the potential amounts collected (UK). A constructive, solution oriented approach, to debt encourages a more balanced budget (increasing income / reduce ineffective expenditures,...)
 - Professionals of budget management with holistic approach (UK: MABS, FR: Point Conseil budget - Crésus, BE: médiateur de dettes - ...)

Contextual requirements

Amicable debt advice (Ada) is efficient when:

- debtors can repay all their debts
 - Amicable procedures that include debt cuts are very rare and not easily acceptable for creditors
- an effective personal bankruptcy procedure exists for unmanageable debts (that includes possible debt cuts)

Consequently :

Ada is efficient when the total amount and the importance of the debts are low

Hence

Early detection leading to constructive debtor's' budget redress is key to successful debt alleviation ... Innovation in a fair detection and follow-up from the companies side should be tested (FR: Crésus + Cételem + Banque Postale)

- Ada allows longer debt settlement plan than judicial
- Necessary incentive to promote effective amicable approaches (FR, BE, NL,...), otherwise creditors might not play the game
- Ada guarantees fair treatment of all creditors
- Limit of potential unfair competition between creditors (principle of proportionality)
- Ada has a positive impact on the mental health of the debtors
- Should lead to a “pause” in the debt collection acts (foreclosure, letter,...)
- Ada guarantees fair & efficient assessment of debtor's financial capacity to repay debt
- Stop never ending negotiations... unnecessary when a common approach to assess debtor's' financial capacity is accepted by all stakeholders (Budget reference : NL / UK)

Public authorities

- When debtors are solvent : not a real issue as long as debt collection practices do not generate violence and indignity/exploitation
- When debtors are insolvent : social issue when never ending process... - when debts generate and maintain long term poverty and hence require an increase of public support
- Should regulate business model to restrict opportunity for companies to make more profit when their clients meet financial difficulties

Professional debt collectors

- Potential risk of barriers and lobby: because of a business based on debtors difficulties, might generate resistances against « solution oriented» approaches
- Consequently :
 - Regulation should limit this risk, and hence limit the possibilities for this industry to earn more money when the problem is maintained (prices based on real costs - which remains an issue because of tricky control)
 - Regulation should limit the benefit for the creditors to use their services... via the positive effect on their balance sheet (RO - mortgage credit)... via the competition of a more efficient non-profit approach available on the market

Conclusions

When financial difficulties emerge in the life of individuals and households, the traditional treatment implemented by the companies based on financial penalties and extra costs is more often abandoned for more efficient solutions;

From public institutions as well as private companies, innovative approaches have been developed to limit costs of administrative treatment of arrears and increase the recovery opportunities of the customers;

These innovative approaches include:

- the early identification of the financial difficulties (quick reaction is key to propose efficient recovery program);
- a non stigmatising, “culpability free” contact based on pragmatic and professional budget advice approach to identify how to stop the unbalanced situation BEFORE it becomes an over-indebted one;

- a partnership with NGO, public services, professional who provide debt advices when the existing arrears have been originated by different creditors;
- an holistic approach: at local level, the impact on the social inclusion of the people in difficulty is much higher when a collaborative method is implemented between the various actors on the field (health, housing, income, job,...)
- The improved efficiency comes from:
 - a positive action and attitude: no criminalisation of the people in financial difficulties;
 - identification at early stage make the support provided efficient in a short period of time;
- debt advices are designed to search for on a long term recovery of the budget balance. This approach provides improved results probably because:
 - people are more eager to react in a constructive and rational way when they do not feel guilty nor punished because they meet financial difficulties, especially when the reason is a life accident;
 - people receive advices that really support them in their financial recovery, which create a strong confidence and loyalty feeling, because the advices include actions to increase the incomes, when relevant;
 - all together, the early detection allows a shorter (in duration) follow-up for the companies (reduction of the administrative costs), and allows to keep a positive relation with a client;
 - the partnership with NGO for debt advice and debt collection is financially wiser than using traditional for profit "debt collection companies" who act in a old school way;
 - when life accident (real loss in the income) is the origin of the arrears, the financial penalties approach is increasing the budget imbalance and therefore increase the duration for a potential financial recovery.

Recommendations

EU institutions

Harmonised human dignity protection for EU Citizens, when considering debt treatment:

- A common approach, method, to estimate households budget capacity to face their debt AND to maintain a human dignity;
 - the complex but efficient method of "reference budgets" should be considered here. When implemented by professionals, when build on a national consensus, this approach has a potential to decrease drastically the time dedicated to the debt management by every stakeholders and, consequently, its cost.
- A harmonised legal framework to forbid unfair/violent "debt collection" practices;
- A common protection for EU citizens against financial exploitation /slavery coming from high interest rate credit and never ending indebtment.

National authorities

- To protect citizens against unfair/violent "debt collection" practices;
- To protect citizens against financial exploitation /slavery coming from high interest rate credit and never ending indebtment
- To invite all companies to develop a "proactive" approach to detect financial difficulties and to propose a "positive approach" to limit over-indebtedness trap.
 - the French approach should be studied and assessed to check how it impacts the level of over-indebtedness. In case of real positive one, to promote this method in the EU.
- To support research at national level to develop the "reference budget" methodology" and to maintain a funding for its regular updating. This mission can be proposed to a public institution
- To invite local authorities to develop collaborations between the various services dedicated to vulnerable people;

- To guarantee to each citizen an access to a “debt advice service”:
 - with a non exploiting method, limiting their activities’ prices to cover the costs;
 - to do so, debt advice can be positively attributed to “non-for-profit structures” to guarantee a low costs approach
 - to allow this access with a limited impact on the public budget, we recommend to fund this activity on fair and proportionate contribution of the creditors who benefit from the service
- to attribute to “debt advice” the responsibility of the use of the “reference budget” method (method previously validated by representatives of debtors and creditors)

Local authorities

- Could test collaborative approach and partnership between services dealing with vulnerable citizen at local level;
- Could train their staff to develop and use “reference budget” method;

Private companies

- Should question the cost/effectiveness of the classic / old fashion approach to deal with their clients in financial difficulties;
- Should test and learn from pilots innovative approaches such as early detection of financial difficulties and positive follow-up designed to their clients in such difficulties;
- Should test efficiency of a partnership with non-for-profit debt advice services (when available) to subcontract debt management when clients dealt with different creditors compare to the use of debt collection companies. Should test with them the potential efficiency of the use of common validated tools to calculate the contributive capacity of debtors and therefore limit wasted time.

NGO and non-for-profit debt advice

- Support the development and the use of reference budget in their practices, and its national recognition by the various stakeholders;
- Develop collaborative approaches with companies’ representatives to elaborate method to reduce administrative and negotiation time and increase mutual trust and confidence.
- To test the interest of the “industry” to fund their “debt advice” activities on fair contributions of all involved creditors (eg: a % of the collected money?)