

moneyadvicescotland
Scotland's Money Charity

RESPONSE

ACCOUNTANT IN BANKRUPTCY PROTECTED TRUST DEED CONSULTATION 2016

April 2016

About Money Advice Scotland

Money Advice Scotland is the national umbrella organisation in Scotland which promotes and champions financial inclusion and the development of free, independent, impartial, confidential money advice. Our mission is to be the driving force towards financial wellbeing for the people of Scotland.

Introduction

Money Advice Scotland welcomes the opportunity to respond to the Accountant in Bankruptcy consultation on Protected Trust Deed (PTD).

To help prepare this response, Money Advice Scotland conducted a survey of its members, staff and Council of Management. Respondents included money advisers from local authorities, Citizens Advice Bureaux, housing associations and other advice agencies.

Questions 8 – 13 appear to be aimed specifically at trustees. As our respondents did not include insolvency practitioners, we have not provided responses for this section.

1. MINIMUM DEBT LEVEL OF £5,000 – REGULATION 4

Question 1(a): Does £5,000 remain an appropriate minimum debt level?

A majority of our respondents were of the view that £5,000 remains an appropriate minimum debt level.

Alternative responses ranged from £3,000 to £10,000. Respondents who noted a preference for £3,000 noted that this would have the advantage of bringing PTD into line with full administration bankruptcy.

2. STATEMENTS IN RELATION TO TRUST DEED – REGULATION 7

Question 2(a): Is the length of acquirenda period considered to be appropriate?

Over 90 per cent of our respondents consider the current acquirenda period to be appropriate. The respondents who deferred from this view suggested a shorter period would be preferable.

3. PAYMENT OF DEBTOR'S CONTRIBUTION - REGULATION 8

Question 3(a): Is the contribution period of 48 months appropriate?

Our respondents were split over whether the contribution of 48 months is appropriate.

Many of our members favoured a return to the 36-month contribution period with one respondent commenting “why change something that is not broken.”

It was also noted that three years is already a long period to be paying out all disposable income and that the longer the agreement continues then the more likely it is to become

unsustainable. One respondent also noted that debtors must be given the opportunity to move on.

Question 3(c): Where a debtor does not continue to make payments for a period of time during the agreement, is it right that the payment period can be extended?

It was considered that an agreement should only be extended in exceptional circumstances. One respondent also argued that if an extension to the payment period is required then this would cast doubt on the overall sustainability of the arrangement and another solution may be more appropriate for this debtor.

Question 3(e): Are there any circumstances when a debtor should be allowed to take a break from making payments during the period of the PTD?

Our respondents were unanimous in agreeing that a debtor should be allowed to take a break from making payments during the period of a PTD in certain circumstances.

Respondents cited a sudden income shock as the main reason for justifying a payment break, including life events such as having a baby, the breakdown of a relationship, loss of employment, illness and bereavement of close relative. Many of our members were of the view that payment breaks for PTD should be brought in line with DAS variation.

It was noted, however, that the request for a payment break may be a symptom of a wider requirement to review the level of payment more generally. The respondent who raised this point also remarked that a payment break effectively delays a client's discharge from debt and this may add to the pressure on a debtor.

4. PAYMENT OF DEBTOR'S CONTRIBUTION - REGULATION 8 PARAGRAPH

Question 4(a): Is 48 months an appropriate timescale?

A majority of our respondents considered 48 months to be an appropriate timescale.

5. DOCUMENTS TO BE SENT TO CREDITORS – REGULATION 10

Question 5(a): Do you agree that the Common Financial Tool (currently the Common Financial Statement) is an effective way of ensuring transparency in calculating the level of contribution to be paid by each debtor?

Question 5(c): Have you identified any issues with the application of the Common Financial Statement to PTDs?

A majority of respondents agreed that the Common Financial Tool remains an effective way of ensuring transparency. That is not to say, however, that our members had not encountered issues with the application of the CFT.

The CFT is considered useful as a guide, but criticised as being somewhat inflexible to an individual's often unique personal circumstances. Many respondents noted that the trigger

figures can be detached from the everyday needs and commitments of a debtor. This is perhaps to be expected given that the methodology is based on the spending habits of the lowest income quintile. For this group, 75% of their income is made up by social security benefits. It was also noted that the CFT and earnings arrestment sets down two different standards of what is considered as acceptable for a debtor to pay.

Whilst the spending guidelines within the CFT (currently the Common Financial Statement) are set down by the Money Advice Trust, our members noted that the AiB still has a role in ensuring that a debtor does not fall below a socially acceptable living standard (particularly those with children).

Advisers also noted that trust deeds may fail if a debtor signs up to a contribution that leaves little capacity for contingencies. One respondent suggested that certain contingency fields within CFT should not require to be evidenced to allow for more sustainable contributions. At the other end of this argument, one respondent called for overspends of the spending categories to be monitored more closely.

Although not mentioned directly in the consultation paper – or referred to in our own membership survey for that matter – some respondents also expressed concern on the planned move to the Standard Financial Statement model and, more specifically, the suggested spending guidelines set down in the early versions.

6. REGISTRATION OF THE TRUST DEED ETC. – REGULATION 11

Question 6(a): Is it appropriate that AiB has the authority to refuse to protect a trust deed if they have determined that the contribution amount has not been assessed appropriately in accordance with the Common Financial Tool?

Our members were of a majority view that the AiB should not have the authority to refuse to protect a trust deed even if it is considered that the contribution amount had not been assessed properly in line with the CFT.

For respondents who did not consider it appropriate for the AiB to hold the authority to refuse to protect a trust deed, it was suggested that when creditors and the debtor are in agreement then the trust deed should be protected in any case. One respondent also noted that this may add an additional and unnecessary burden to the AiB's own resources in cases where agreement has already been reached. It was also considered inappropriate for the AiB to be both a "stakeholder and a decision-maker" in the same process.

On the other side of this argument, it was suggested that the AiB could have some role in ensuring that any arrangement is not to the detriment of the client. One adviser cited the example of a client who had applied for trust deed when she was unemployed based on her partner making payments on her behalf. In the view of that adviser, better options were available to the client and, in these circumstances, it seems appropriate for the AiB to refuse to protect the trust deed.

7. DEDUCTIONS FROM DEBTOR'S EARNINGS – REGULATION 14

Question 7(a): Is it appropriate that, where a debtor has failed on two consecutive occasions to pay their required contribution, the trustee can instruct the debtor's employer to make a deduction from the debtor's income?

Question 7(c): Have you experienced any issues with the process used to instruct an employer to make a deduction from the income of a debtor?

A majority of respondents were of the view that this is not appropriate.

One adviser said that "failure to pay can be a sign that payments are unmanageable and a review of current circumstances should have to be carried out before payments can be enforced." This view was reinforced by another respondent who noted that the deduction from earnings could cause severe hardship until it is possible to review the situation with the trustee. It was also suggested that other options are already available in the event of failed payments with several respondents noting that the trustee can pursue sequestration in these circumstances. One adviser stressed that this was a step too far in the balance between debtor and creditor:

"This is a contract not a court decree. This confers the authority of the crown – not even council tax recovery is afforded this privilege. Once someone has fallen behind with cumulative payments the trust deed should fail."

The impact on the debtor's relationship with the employer was also noted. Advisers voiced concerns that this could lead to dismissal given that a stigma still exists around the subject of debt. If this happens, then debtors and creditors alike may lose out.

Other respondents also suggested that this should only be considered an option where it can be shown that the debtor has failed to engage and where the debtor is choosing not to pay rather than being unable to pay.

RESPONDENT INFORMATION FORM

Please note that this form must be returned with your response to ensure that we handle your response appropriately.

1. Name/Organisation

Organisation Name

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3. Permissions - I am responding as...

Individual / Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No