

moneyadvicescotland
Scotland's Money Charity

RESPONSE

Funding the Accountant in Bankruptcy 2018-19

March 2018

1. Do you agree that upfront debtor application fees should not be increased at this point?

Yes.

We agree with the proposals that debtor application fees should not be increased and welcome the acknowledgement that an increase would make bankruptcy unaffordable for some people who would benefit from it.

We are concerned by the assertion within the consultation paper that upfront fees are necessary to prevent ill-thought applications. Rather, it is more likely that clients who are eligible for bankruptcy are often prevented from doing so as they cannot afford the upfront fee. Research by the Money Advice Service consistently emphasises the importance of seeking advice at the earliest opportunity, but upfront fees can be a barrier to securing a solution. The requirement that a client must first access an approved money adviser already acts as an effective safeguard against what might be described as unsuitable applications.

If a person is eligible for the MAP route into bankruptcy, it should not be surprising that they cannot raise the £90 fee. We are of the view that it will be worthwhile for the AiB to undertake a survey on how individuals and households are funding upfront fees to help influence any evidence-based review of upfront debtor application fees in future. In the experience of our members, clients typically rely on charitable grants or borrowing from friends and family to meet the cost of fees. Arguably, this is not the best use of these resources. The consultation paper suggests that the cost of the fee is de facto met by creditors. It could be argued equally that (certainly at the time of application) the cost is met by cutbacks to other expenditure that may be essential to the client.

The issue of cross-subsidising arises later within the consultation paper, but we are of the view that it is pertinent to the discussion of upfront fees. We are also interested in the AiB's view on Peter Wyman's recommendation that the full fee collected from each MAP bankruptcy should be passed back to the adviser.

2. Do you think that the principle of full cost recovery is appropriate in the bankruptcy system?

No.

We agree with the comments within the consultation paper that bankruptcy application numbers, and thus income from fees, will be influenced primarily by external factors. As the paper notes, a focus on full cost recovery for each individual year will likely result in an annual cycle of significant fee revisions. This is not a desirable outcome.

A recent Money Advice Service report (*The Economic Impact of Debt Advice*, 2018) provides a timely reminder on the beneficiaries of debt advice, estimating that additional creditor recovery is increased by £133-360m annually. When creditors stand to benefit to this extent, we should consider whether there is scope to increase their support towards the costs of an effective debt relief and debt management system administered by the AiB.

3. Do you agree that it is right to seek to recover the costs across the system as whole, so that there is a degree of cross subsidy between MAP, full administration bankruptcy and PTDs?

Yes.

Cross subsidy is necessary to provide a sustainable range of options for people seeking debt relief and debt management, in line with the AiB's functions. We also welcome the openness with which the consultation paper sets out how the AiB exercises cross subsidy.

4. Do you agree it is right to ask those bankruptcy cases administered by private trustees to make a contribution towards the costs of those cases which contain no funds?

Yes.

We agree with the conclusion that private trustees are only likely to take on cases that are profitable. It follows that it is reasonable that these cases cross subsidise cases which contain no funds.

5. Do you agree that it is right that, of the predicted £4.2m shortfall in 2018-19, the public purse should meet the bulk of these costs, with fee increases designed to generate an additional £1m a year in the longer term?

Don't know (yes and no)

As noted, we are concerned that any significant increase to upfront debtor application fees would be a barrier to people accessing bankruptcy which may in turn impact on the level of funds raised by the AiB. In that respect, the proposed fee increases that are designed to generate an additional £1m in the longer term are sensible.

However, in a wider policy context, any decision on whether the public purse should meet these costs cannot be viewed in isolation. This consultation takes place amid a backdrop of unremitting, year-on-year cuts to advice services. Analysis from the Improvement Service's Money Advice Performance Management Framework (MAPMF) shows that the number of FTE paid staff members has fallen by 18% between 2014/15 and 2016/17. This is unsustainable at a time when Peter Wyman's independent review of debt advice concluded that a 50% increase in the supply of debt advice is necessary to meet demand.

A correlation could also be drawn between the decreasing availability of money advisers and falling statutory applications. If this trend continues, the funds raised by the AiB will continue to diminish. The consultation notes that the AiB will consult separately on proposals that would allow AiB to fully recover DAS costs without reducing the overall return to creditors. As we note in our response to question 2, creditors remain one of the leading beneficiaries of debt advice. Given that £37.8m was returned to creditors in 2015/16 through DAS – some 45% of the total repaid via the three statutory options – we are of the view that an increase in the 2% charge on payments made to creditors should not be off the table. If more public funds are directed towards the provision of debt advice, creditors are likely to recover more money and revenue from fees may correspondingly increase. While the funding of debt advice is not within the remit of the AiB, we are of the view that these concerns remain relevant.

6. Do you agree that the proposals set out in paragraph 29 represent a fair way of generating this additional income?

Yes.

7. Do you agree with our assessment that the proposed increase in upfront creditor fees is unlikely to alter creditor behaviour except at the margins?

Yes.

We agree with the AiB's analysis that an increase in upfront creditor application fees is unlikely to impact on the decision-making of most major creditors given that fees in Scotland will remain far below those in England and Wales.

In terms of how behaviour of creditors might change positively under the new fee changes, we are hopeful that this may prompt better decision-making from certain creditors about whether pursuing bankruptcy is the best approach, or whether other options are more suitable.

8. Are there any other points you would like to raise?

As noted previously, we welcome the openness and transparency with which the consultation paper sets out the arrangements for cross subsidy and funding decisions. In our view (and of course we declare an interest in this respect) it is important to highlight the projects for the advice sector that the AiB supports. The MATRICS project continues to be a valuable resource for the money advice sector in Scotland. Enquiries to the MATRICS programme increased by 60% between Q3 2016 and Q3 2017.

The consultation should also prompt a closer look at protected trust deed fees. We are of the view that the £100 supervision fee is relatively low.

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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Advice Sector

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Local Authority

Solicitors/Advocates

Insolvency Practitioners

Debtor

Sheriff Officer & Messenger at Arms

Judiciary

Other If other please specify _____

4. 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

(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 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