Accountant in Bankruptcy

Financial Inclusion Commission Supplementary Evidence

CONTENTS

Scotland's Financial Health Service

1. The Bankruptcy and Debt Advice (Scotland) Act 2014 (BADA(S)) provides the framework for Scotland's Financial Health Service. This concept was part of the wider Bankruptcy vision developed in 2011. BADA(S) introduces measures including compulsory money advice for all individuals applying for entry into statutory debt solutions and a financial education provision for those who require it.

2. Through BADA(S) and the development of Scotland's Financial Health Service (SFHS) will ensure fair and just processes for debt advice, debt management and debt relief. The service will support the principle that those debtors who can pay should pay their debts whilst acknowledging the wide range of circumstances and events that contribute towards bankruptcy for individuals and businesses. The service will also contribute to securing the best return for creditors – ensuring that the rights and needs of those in debt are balanced with the needs of creditors and businesses.

3. The purpose of SFHS is to allow individuals to access the service at various stages, depending on their individual circumstances with the intention of addressing particular issues whether it be rent or mortgage arrears, homelessness, or seeking ethical and affordable credit before it results in an individual seeking debt management or debt relief. SFHS website acts as a hub of information and advice, bringing together different strands including debt advice, employability, access to ethical and affordable lending.

4. The website also promotes the use of credit unions in order to drive the public towards a more informed approach towards smarter money management. We surveyed all credit unions across Scotland to confirm whether they would like to be included on the SFHS website and to collate a list of all the products and services that they currently offer. This information has been used to allow users of the site to search for their local credit union and find out about their products.

5. The SFHS website hosts the Financial Capability module. This allows the public to access the module and complete the module at any time and at their own pace.

Key Facts

6. The SFHS website features:

- A search for your nearest approved money adviser and credit union.
- Links to trustworthy advice and support agencies ; Christians Against Poverty; Citizens Advice Scotland; Money Advice Service; National Debtline; Samaritans; Shelter Scotland; StepChange Debt Charity; Young Scot; Age Scotland.
- Links to other Scottish Government websites; AiB; DAS; Scottish Government website.
- Information on housing; Mortgage-to-Rent; Shared Equity; Help-to-Buy.
- Real case studies for people who found help through the linked advice/support agencies.

- An FAQ section.
- Information on saving and borrowing, and the dangers of high interest lending.

7. The Minister for Business Energy and Tourism launched Scotland's Financial Health Service website at the ABCUL Credit Union conference on 3rd December. The new website was well received at the event with stakeholders commenting on the ease of use and simplicity of the service. Many also complimented on the preview of the supporting 'Lighten the Load' campaign and how it effectively delivers a key message to the public on the importance of being able to manage your debt.

8. The public campaign began on 2nd January, with the television advert being broadcasted for 4.5 weeks during prime time television slots. To drive the campaign further, we have been working with credit union and advice sector stakeholders, to equip them with promotional items including A5 flyers, window posters and contact cards promoting the telephone number for Scotland's Financial Health Service helpline.

9. We are supporting Money Advice Scotland to run the pilot of the helpline from 2nd January until 31st March. This also provides an expedient platform to promote the benefits of our financial education module as telephone advisers will be talking to callers about the various sections of the e-learning course and using this to encourage better money management. We are also hoping to gain direct feedback from callers who have been through the process of using Scotland's Financial Health Service through the helpline, and use this information to contribute to continuously improving the service we provide.

10. Our Daily record partnership begins on 19th January, and will consist of various editorial features and a 16 page pull-out, including an introduction The Minister for Business, Energy and Tourism. As well as driving traffic to Scotland's Financial Health Service website, the aim of the partnership is to provide information on; better money management; trustworthy sources of advice and support; and the various options available to the people of Scotland who are suffering from financial difficulties.

Going forward

11. We are collating data and statistics from the launch and throughout the campaign period to help identify areas where we can work on to develop and improve the website. Many stakeholders have contacted us to show their interest and are very keen to be a part of the service. A programme of updates will be collated for consideration and secure a more dynamic future for the website.

Financial Capability Module

1. The introduction of financial education is a key part of 'Scotland's Financial Health Service' seeking to build financial capability and prevent individuals from repeated financial difficulties.

2. Currently, some money advisers, IPs and debt advice organisations offer financial education as part of services, however, it is not provided in every case. There is no requirement placed on individuals to seek help to address their financial capability issues, or develop the skills to avoid future financial difficulty during or following their entry into a debt management/relief solutions.

3. Respondents to AiB's Bankruptcy Law Reform consultation in 2012 were largely in favour of financial education being an integral part of any Scottish statutory debt relief option. However, they did not consider this should be mandatory in all cases. Respondents felt it should be optional based on specific criteria.

Key Facts

4. Financial education is a key part of the financial health service. The Scottish Government is working in partnership with Money Advice Scotland and the Money Advice Service to develop a financial education module to help individuals develop their financial capability skills and maximise their income. It will be available both as an e-learning module and hard copy, and will be hosted on the Money Advice Scotland portal and on AiB's Financial Health Service website for wider public use.

5. The module was piloted with a group of bankrupt debtors and other relevant organisations including money advisers and YoungScot.

6. The Financial Education Module consists of eight topics:

- Budgeting and Financial Planning
- Saving
- Borrowing
- Insurance
- Understanding Tax
- Financial Life Stages (Setting up a new home)
- Financial Life Stages (Having a baby)
- Financial Life Stages (Redundancy)

7. The financial education provision in BADA(S) makes it mandatory for the trustee to require individuals to participate in financial education, if the trustee considers they meet one or more of the following criteria –

- If the debtor has previously been made bankrupt (anywhere), or granted a PTD in the previous five years
- If the debtor has been issued with a BRO/U or are currently under investigation for a BRO/U

- If the debtor has previously signed a trust deed or IVA (whether completed or failed) in England, Wales or Northern Ireland within the last five years
- If the debtor has previously been in a debt management programme (including a DPP under Debt Arrangement Scheme) within the last five years.
- If the trustee has identified that there is a pattern of issues, or a course of conduct which would indicate that the debtor would benefit from this education (i.e. insolvency is due to poor money management or reckless spending)
- If the debtor believes that they would benefit from financial education and volunteer to participate in the programme.

8. BADA(S) provides that a debtor will not be required to undertake, or as the case may be, complete the financial education course specified by the trustee if, in the opinion of the trustee, the following applies –

- The debtor is unable to participate due to health reasons such as disability or physical or mental illness
- The debtor has completed a financial education course in the period of five years ending on the date on which the sequestration of the debtor's estate was awarded.
- The debtor agrees to undertake or participate in an alternative type of financial education

Common Financial Tool

1. Ensuring that the people of Scotland have access to the appropriate debt management and relief mechanisms is a key priority of the Scottish Government.

2. In developing new policy options for Bankruptcy Law Reforms, the Scottish Government considered insolvency practices in Europe and further afield, taking into account best practices from many countries.

3. The Bankruptcy Law Reform consultation, ran from 24 February until 18 May 2012. It examined and made recommendations on many aspects of bankruptcy law. The purpose of the consultation was to seek views on those recommendations with an aim of modernising Scottish insolvency legislation.

4. One of the recommendations proposed was: the Introduction a single Common Financial assessment Tool (CFT) to aid in the calculation of an appropriate contribution from individuals entering into all Scottish statutory debt management/relief solutions.

5. The policy aim for introducing a single tool, was to ensure consistency and transparency in relation to any determination of the level of contribution that a debtor might pay. The use of a single tool would be mandatory for approved money advisers in respect of all statutory debt management/relief solutions in Scotland. The CFT will determine whether an individual is able to make a contribution towards repayment of their debts and where appropriate the level of the contribution.

6. This also supported the introduction of a new Scottish “Financial Health Service” which focuses on advice from money advisers as part of the process as a key measure in helping people in Scotland to manage their debts and one of the core policy principles which underpins the Scottish Government’s programme of bankruptcy reform, that those who can pay, should pay.

7. Current practice in Scotland and the rest of the UK is that various different tools are used to calculate the level of contribution that a debtor should pay when they are in a statutory debt solution. Currently, the two tools most commonly used in Scotland are the StepChange financial budget and the Common Financial Statement (CFS).

8. The StepChange financial budget is currently used by the Accountant in Bankruptcy where she is the trustee in a bankruptcy, while the CFS is used by money advisers for those entering a Debt Payment Programme under the Debt Arrangement Scheme (DAS).

9. The majority of respondents to the consultation were in favour of one CFT.

10. As part of the Bankruptcy and Debt Advice (Scotland) Bill 2013, the development and delivery of a single financial tool was proposed. The use of a single Common Financial Tool (CFT) would be mandatory for approved money advisers in respect of all statutory debt management/relief solutions in Scotland. It would determine whether an individual is able to make a contribution towards

repayment of their debts, and where appropriate, what the level of the contribution should be, thus ensuring consistency and transparency across all solutions.

11. A working group consisting of representatives from the Insolvency Practitioner's Association, Institute Chartered Accountant's in Scotland, the free money sector, the banking sector, the credit union sector and the Accountant in Bankruptcy (AiB) was tasked with a remit to identify or develop a single CFT, either by adopting one of the current main tools or developing a new Scottish specific tool.

12. The working group found that both the StepChange and CFS tools were able to fulfil the criteria. AiB compared the benefits of both tools, and found that the evidence suggested that the benefits of adopting the CFS tool were more than the benefits of adopting the StepChange tool.

13. Benefits of the CFS :

- **Sustainability** – the trigger figures are breached less often than in the StepChange tool, which suggests that it is a more accurate reflection of actual spending habits, and therefore debtors are more likely to be able to sustain payments.
  For example : 78% of debtors exceeded the trigger value in at least one of the budget categories when the StepChange tool was used. This compared with 34% of debtors when the CFS tool was applied instead
- **Clarity for creditors** – the British Banker's Association (BBA), Finance and Leasing Association (FLA) and major utility companies already recognise this tool as industry standard.
- **Fair to debtors** – the CFS is overseen by a sub-group consisting of representatives from the BBA, FLA, Building Society Association, Advice UK and Citizen's Advice. Any changes to the CFS trigger figures are approved by the sub-group.
- **Consistency** – the CFS structure and uniformity encourages a consistent response from creditors, and reduces queries.
- **Money advice** – the majority of money advice services currently using the CFS, and therefore are already familiar with the rules and the software.
- **Consultation** – responses to the Bankruptcy Reform Consultation indicated that stakeholders strongly favoured the adoption of one tool. Of those that expressed a preference between the CFS and StepChange tools, 25 supported the adoption of the CFS, and only 4 supported the StepChange model.

14. From 1st April 2015, Section 3 of the Bankruptcy and Debt Advice (Scotland) Act 2014 will come into force. This provides for a single Common Financial Tool to be used to determine the level of contribution to be paid by a debtor in all Scottish statutory debt management/relief solutions : these being a Debt Payment Programme under the Debt Arrangement Scheme, a Protected Trust Deed and Bankruptcy.

15. The Common Financial Tool (Scotland) Regulations 2014 also come into force on 1st April 2015 and they specify that the Common Financial Tool is the Common Financial Statement.

Key Facts

16. In England and the rest of the UK, there will remain more than one tool that can be used to calculate a debtor's surplus income. This means that there will not always be consistency and transparency in relation to any determination of the level of contribution that a debtor might pay because different tools may give different results. In Scotland, we have decided to address this by making it a statutory requirement that there should only be single 'Common Financial Tool', to be used in all determinations, in relation to all Scottish statutory debt solutions.

17. Mandating the use of a Common Financial Tool across the money advice and insolvency sector is a significant step forward and one which has been widely supported both across the sector and by the Scottish Government.

Going forward

18. The Money Advice Service (MAS) are currently working collaboratively with Citizens Advice, Money Advice Trust and StepChange to develop a new Standard Financial Statement (SFS) to replace the CFS .

19. The new SFS will contain a savings provision which supports the Scottish Government's aim that debt management/relief solutions will also provide an element of financial rehabilitation.

20. It is envisaged that SFS will become the CFT and the Common Financial Tool (Scotland) Regulations 2014 will be updated to reflect this change.

Minimal Asset Process

1. Currently, debtors in Scotland with little in the way of income or assets can use a route into bankruptcy – known as the “Low Income, Low Assets” (LILA) route. This route into bankruptcy was introduced by the Bankruptcy and Diligence etc. (Scotland) Act 2007.

2. The policy rationale behind the introduction of LILA was that there were a group of low income debtors who could not, at the time, access bankruptcy because they could not demonstrate “apparent insolvency”. It was anticipated that individuals who entered bankruptcy via LILA route into bankruptcy would have small assets and be unlikely to have sufficient surplus income to make a contribution to their bankrupt estate.

3. The criteria required for an individual to enter bankruptcy via LILA is :

- their total assets must not exceed £10,000 with no single asset exceeding more than £1,000; and
- do not own or jointly own a house or any other property or land; and
- have a valid Certificate for Sequestration; and
- their gross weekly income is equal to or less than the standard national minimum wage for a forty hour working week; or
- they are in receipt of income support, income-based jobseekers' allowance or working tax credits.

4. The Scottish Government have found that the criteria for the LILA route into bankruptcy is too broad. As a high number of individuals entering into bankruptcy via this route have surplus income with which they can pay a contribution to their bankrupt estate. This results in numerous cases being transferred to “normal bankruptcy”.

5. The Bankruptcy Law Reform consultation, ran from 24 February until 18 May 2012. It examined and made recommendations on many aspects of bankruptcy law. The purpose of the consultation was to seek views on those recommendations with an aim of modernising Scottish insolvency legislation.

6. The consultation proposed 4 new bankruptcy products which would replace both the LILA and “normal” routes into bankruptcy. A summary of the responses received relating to the 4 new products are shown below:

- Respondents were against the development of a number different products for bankruptcy. They were, however, in favour of ensuring that all individuals were able to access the most suitable and cost effective bankruptcy product based on their individual circumstances.
- Respondents were also generally in favour of either a No Income product, or a product similar to LILA route into bankruptcy. They also favoured a limit being placed on the maximum debt allowed for a no income product, and that those who own heritable property should not be able to access bankruptcy via this product.

- Respondents were very much split on whether any individual should be discharged from bankruptcy early (6 months was proposed).
- Respondents were also in favour of a post discharge credit restriction being placed on individuals who were discharged earlier than one year after the date of their bankruptcy.

7. Further discussions with stakeholders took place throughout 2013, and stakeholders agreed that there was a need for a new route into bankruptcy for individuals who:

- have minimum assets to be realised and therefore no dividends would be paid to creditors; and
- are not in a position to make a contribution towards their bankruptcy either as a result of being their income comprising solely of social security benefits which do not vest in any trustee in bankruptcy (on the basis of section 187(1) of the Social Security Administration Act 1992) or who the Common Financial Tool (CFT) has assessed as being unable to make a contribution towards what their bankruptcy.

8. The policy rationale of replacing the current LILA route into bankruptcy with a new 'Minimal Assets Process' (MAP), is to provide lower cost debt relief to debtors whose only income is derived from social security benefits or for those who the Common Financial Tool (CFT) has assessed as being unable to make a contribution towards what their bankruptcy.

9. As the criteria for MAP is tighter than that for LILA, it is unlikely that there will be a reduction in the number of cases being transferred to "normal bankruptcy". This will result in more clarity for money advisers and debtors as to whether the debtor should be entering bankruptcy via the MAP route as opposed to the full bankruptcy route.

Key Facts

10. Criteria required to be met by individuals entering into bankruptcy via MAP is that they must have -

- been given money advice; and
- not entered bankruptcy by debtor application via MAP in the 10 years previous to making an application for bankruptcy via MAP; and
- not had an award of bankruptcy (by either creditor petition or debtor application) in the 5 years previous to making an application for bankruptcy via MAP; and
- have small assets (a total of no more than £2000 with no single asset in excess of £1,000 except a car which may be reasonably required by the debtor up to a value of £3000); and
- small debts (£17,000 or less); and
- no ownership or joint ownership of heritable property; and
- a valid signed Certificate for Sequestration; and

- been assessed by the CFT as having no surplus income to pay a contribution to their bankrupt estate or has been in receipt of a prescribed payment for a period of at least 6 months ending with the day on which the application is made;
- AiB will be the trustee in all MAP cases.

11. We expect that the majority of debtor applications for bankruptcy, including applications made via MAP route, will be received electronically into the ccountant in Bankruptcy along with a valid Certificate for Sequestration. (Although we will retain the option for debtors to make applications for bankruptcy via any route in paper format)

12. This process will require limited administration by AiB as trustee as :

- the debtor will have minimum assets to be realised and therefore no dividends to be paid to creditors; and
- the debtor be not in a position to make a contribution towards his bankruptcy as social security benefits do not vest in any trustee in bankruptcy (on the basis of section 187(1) of the Social Security Administration Act 1992) or as a result of a Common Financial Tool assessment.
- No accounts will be produced
- the debtor will be discharged 6 months after the date of award of bankruptcy
- the debtor will be subject to a PBR following discharge, restricting the amount of credit they can obtain (without first informing creditors of their recent award of bankruptcy) for an additional period of 6 months

13. As the MAP route will be administratively light and automated to a large extent it will be available to the debtor at a lower cost of £90.00 (the standard fee for a debtor application for bankruptcy is £200.00.)

14. The Register of Insolvencies (RoI) will inform creditors that the award of bankruptcy was made under MAP criteria and that the Accountant in Bankruptcy will not be accepting claims in these cases. The RoI will be updated throughout the duration of the case (including where the debtor is transferred to full administration bankruptcy and the AiB will). The debtors discharge date will subsequently be recorded on the RoI along with confirmation that the debtor is subject to a PBR following discharge, restricting the amount of credit they can obtain (without first informing creditors of their recent award of bankruptcy) for an additional period of 6 months. Once a case is closed, the record will be updated and remain on the RoI for a further period of 2 years.

Debt Arrangement Scheme

1. With high levels of debt increasingly hitting the headlines, the Scottish Government wanted to do something to help Scots with this problem. The Debtors (Scotland) Act 1987 had already introduced two forms of 'diligence stoppers' (prevention of court action) - time to pay directions and time to pay orders. However, these were only available from the courts and only applied to single debts. They did not help people with more than one debt.

2. In 2004 a third 'diligence stopper', the Debt Arrangement Scheme (DAS), was introduced. It allowed individuals with two or more debts to get help without having to go through the courts. DAS was introduced in 2002 by the Debt Arrangement and Attachment (Scotland) Act 2002 and brought into force in 2004 by the Debt Arrangement Scheme (Scotland) Regulations 2004.

3. DAS is a government-run debt management tool which allows someone in debt to repay their debts through a debt payment programme (DPP). The DPP will allow a debtor to pay off their debts over an extended period of time while giving them protection from their creditors taking action against them to recover the debt in the DPP. The DPP can last for any reasonable length of time and, if approved, will freeze all interest, fees and charges on the debt included, resulting in them being written off if the debtor fully completes the DPP.

Key Facts

4. In 2008/09 the numbers of DAS debt payment plans amounted to approximately 4% of the total number of statutory debt solutions in Scotland. Recent quarterly figures highlight that this figure has increased to over 30%.

5. DAS uptake has been consistently above 1,000 people each quarter for the last few years and we expect this trend to continue. This was following a period of substantial growth which saw the uptake of DAS increase more than ten-fold in six years (2007/08 to 2012/13).

6. The amount repaid through DAS continues to increase. In 2013/14, a total of £30 million was repaid to creditors through DAS and this figure is expected to grow by around 20 per cent in 2014/15.

Protected Trust Deeds

1. Protected Trust Deeds (PTD) are voluntary trust deeds entered into by a debtor for the benefit for creditors that are "protected" in the sense that creditors who do not agree to the terms of the trust deed have no higher right to recover their debts than creditors who do agree.

2. Once protected, the trust deed is binding on all creditors who can usually take no further action to pursue the debt owed providing the debtor complies with the terms of the trust deed. Upon completion of the PTD any remaining unpaid debt is discharged and cannot be pursued by creditors although secured lenders can still rely on their security. Prior to November 2013 conditions for protection of a trust deed included: the consent, or deemed consent, of a majority in number, or two-thirds in value of creditors; advertisement of the trust deed in the Edinburgh Gazette and registration of the trust deed in the Register of Insolvencies (RoI).

Background

3. The Bankruptcy and Diligence etc. (Scotland) Act 2007 amended section 1A of The Bankruptcy (Scotland) Act 1985 Act (as amended) and gave the Accountant in Bankruptcy responsibility for the supervision of trustees under PTDs. This came into force on 1 April 2008.

4. A review of the PTD process was conducted in 2009. Among its findings, the review concluded that further consultation with stakeholders should be undertaken to develop a more cost effective and transparent PTD process which would best serve the needs of both debtors and creditors.

5. In 2010, the Protected Trust Deed Working Group ("PTDWG") was established. The purpose of this group was to make recommendations for appropriate legislative and non-legislative measures, to ensure the PTD process in Scotland was fit for purpose. The PTDWG was chaired the Accountant In Bankruptcy and comprised of a cross-section of stakeholders from the advice sector, creditor organisations, insolvency practitioners and Accountant in Bankruptcy(AiB).

6. On the 17 October 2011, a consultation was launched which sought the views of stakeholders and public on recommendations to make the trust deed a more efficient, fit-for-purpose product, which would help ensure that PTDs achieved the best balance between the needs of debtors and the rights of creditors. The consultation was published on the AiB and Scottish Government websites and ran until the 31 January 2012.

7. Proposals in the consultation looked at, standardising the processes and improving the levels of information available to both debtors and creditors and to increase the dividends paid to creditors.

PTD Reforms

1. The performance of PTDs in recent years has been an issue of some concern to the Scottish Government. Key issues with PTDs in recent years has been that, in some cases, they offer insufficient returns to creditors because most of the value in the debtor's estate is used to pay the trustee's fees.

2. As trust deeds must only be granted for the benefit of a debtor's creditors, a fair return to creditors must be achieved. Historically high fees and costs associated with delivering PTDs, alongside disappointing dividend returns to creditors, were issues that need to be addressed.

3. The Scottish Government launched a Consultation on Bankruptcy Law Reform between 24 February and 18 May 2012. This consultation sought views on proposals to develop a service for debt advice, debt management and debt relief (including PTDs) that were fit for the 21st Century.

4. Stakeholder events to discuss the proposed changes to PTD Regulations and proposals for bankruptcy reform were held in Scottish Government buildings around Scotland: the Europa building in Glasgow on 22 April, Atlantic Quay in Glasgow on 20 May, Victoria Quay in Edinburgh on 29 April 2013 and at the Royal Highland Hotel, Inverness on 24 April 2013.

5. Key stakeholders consulted were: the money advice sector (including Money Advice Scotland and Citizens Advice Scotland); insolvency practitioners and their representative professional bodies (including the Institute of Chartered Accountants of Scotland); creditor representatives and other interested parties, such as the British Bankers Association; the Law Society of Scotland and local government. During the course of the consultation meetings, seminars, surveys and conferences were all held. Feedback from the consultation was used to draft the Protected Trust Deeds (Scotland) Regulations 2013, which will deliver greater benefit to debtors and creditors.

Key Facts

6. Based on the outcomes of the PTD and Bankruptcy Law Reform consultations and feedback received from stakeholders, AiB developed PTD policy in several key areas. The Protected Trust Deeds (Scotland) Regulations 2013 make provision for the following principal changes to PTDs:-

- Introduce a minimum debt level of £5,000.
- A trust deed which includes a contribution from the debtor's income (assessed partly by reference to the Common Financial Statement published by the Money Advice Trust) will be ineligible to be protected if the debtor's total debts can be repaid in full within a 48 month period.
- Removal of the requirement to advertise the trust deed in the Edinburgh Gazette, replaced by notice in the public Register of Insolvencies (RoI).
- A new standard front sheet for notification of the trust deed to creditors and the Accountant.
- Pre-trust deed fees and outlays will be excluded as outlays of a trust deed.

- Trustees will no longer be able to charge their fees at an hourly rate - they will be required to charge a single, fixed upfront fee, augmented by further remuneration based on a percentage of funds ingathered through the administration of the trust. These fee proposals will require to be notified to creditors and AiB on the new Form when the trustee is seeking to have the trust deed protected.
- Trustees will only be allowed to increase their fixed fee in exceptional circumstances. There will be a process for trustees to seek approval from creditors, failing which, the Accountant will determine if the increased fee is appropriate.
- The Annual Form 4 report on the management of the trust will be issued to creditors as well as AiB, with trustees required to provide information to creditors if the expected dividend has reduced by 20% or more. Trustees will be required to provide
- details of the options available and a recommendation on the way forward, to be approved by a required number of creditors.
- The Accountant will retain power to issue Directions to Trustees. There will be a new process under which the Accountant can apply to the Sheriff if she considers trustees have not reasonably complied with a Direction.
- Interim dividends should be paid to creditors where sufficient funds are available after 24 months, and then 6 monthly thereafter.
- Acquirenda (assets other than income acquired by the debtor after granting of the trust deed but which must fall to creditors) will be standardised at 4 years from when the trust deed is granted.
- No contributions can be paid from a debtor's social security benefits.
- Equity may be frozen in a dwelling-house at the date the trust deed is granted.

7. These changes apply to all trust deeds granted (signed) after 28 November 2013.

Scottish Government Support For Credit Unions

Current Position

8. Scottish Government recognises the valuable role credit unions play in tackling financial exclusion; and in providing financial services and products to a wide range of customers.

9. There are over 100 credit unions in Scotland with a combined membership of over 325,000, holding £335 million in savings and lending £240 million.

Current Representation

10. There are several trade bodies representing credit unions across Scotland, including the Association of British Credit Unions (ABCUL) and Scottish League of Credit Unions (SLCU). A number of working groups are also in existence, including the Cross Party Group on Credit Unions and the National Credit Union Forum.

Current Support and Promotion Activity

1. Credit unions are encouraged to access financial and business development support via Scottish Government's Just Enterprise programme and the £6m Enterprise Ready Fund. The Fund closed in June 2014 and is supporting 4 credit unions. The fund is targeted at enterprising third sector organisations to help them grow and become more sustainable.

2. Scottish Government provided a secondee to the Church of Scotland to provide additional support for financially disadvantaged individuals and families in Scotland by assisting with the further development of credit unions.

3. On a UK wide level, a number of Scottish credit unions are participating in the DWP £38m credit union expansion programme.

Credit Union Working Group

4. Mr Ewing has established a Credit Union Working Group to consider the further promotion of credit unions in Scotland. The first meeting took place on Thursday 9 October and will meet again on 14 January 2015. The remit of the Group is to 'promote credit unions in Scotland' to ensure:

- we have a secure, thriving and sustainable credit union sector in Scotland;
- credit unions have a wide and varied customer base; and
- the financially vulnerable in society are supported by having access to an alternative to high cost lending.

Promotion Activity

5. There has been significant activity to promote credit unions in Scotland. This has included Accountant in Bankruptcy's '12 days of Debtmas' campaign warning people about the dangers of taking out pay day loans in the lead up to Christmas in

2013 and beyond. It suggested that credit unions could offer customers alternative, affordable lending options.

6. Scottish Government has been working closely with schools to improve financial education and to promote credit unions as a viable means to save. Glasgow City Council (GCC) established their Starter for Ten programme in January 2014 which provides S1 pupils with a credit union account with an opening balance of £10. The project has evolved to include greater involvement from the Education Department and has been rebranded as the ‘Future Savers Initiative’. To date just over 1,300 pupils have signed up and GCC are in the process of signing up a further 700 pupils. In addition, Renfrewshire Council have replicated Glasgow City Council’s model and created 795 super savers through their new ‘iSave’ initiative.

Credit Unions and Welfare Reform

7. Credit unions are not always going to be the answer to help people affected by welfare reform – but they have an important role to play as part of the solution.

8. Many credit unions will not want or not be able to offer services or products to people affected by welfare reform. It is right that credit unions focus on sustainability, on maintaining ethical lending standards and on accountability to their members.

9. The Scottish Government welcomes and encourages those credit unions who do want to provide services or products to people affected by welfare reform, including “jam jar” accounts and personal budgeting support. We want to understand the barriers credit unions face and work with the sector to develop ways to overcome those barriers, where we can and within the powers we have.

Ist Alliance Ayrshire Credit Union

10. 1st Alliance Ayrshire Credit Union set up a new partnership involving 6 social landlords and North Ayrshire Council to explore how 1st Alliance could work better together to respond to the welfare reforms and to prepare for the impact of universal credit. This partnership is enabling tenants to sign up, via their housing associations, to credit union membership enabling them to pay their rents on time and budget more effectively.

Payday Loans

1. The Scottish Government is pleased that the pay day lending industry is being subjected to greater regulation. However, we call on the FCA to look again at the proposed cap and to do further research to support a reduction. The total cost cap is a start to better consumer protection, however, this is still not enough and more should be done to prevent spiralling debts.

2. The Scottish Government would like to see the mandatory use of real-time credit data sharing, to assess the individual's ability to pay back the loan, and to reduce the rate of multiple and repeat borrowing, which often results in individuals and families finding themselves in severe financial difficulties.

3. The Scottish Government strongly believes that money advice and financial education are key to improving people's financial management skills and breaking the cycle of behaviours that can lead to repeated financial difficulties.

4. The Bankruptcy and Debt Advice (Scotland) Act 2014 provides the framework for the Financial Health Service (FHS) for Scotland. The Scottish Government launched the FHS in the form of a new website on 03 December 2014. The purpose of the FHS website is to provide a one stop shop for people who have financial concerns or are seeking advice.

5. Financial education is a key part of the FHS. The Scottish Government has worked in partnership with Money Advice Scotland and the Money Advice Service to develop a financial education module to help individuals develop their financial capability skills and maximise their income. Users of the FHS website will be able to access this module.

6. The Scottish Government recognises that there are alternatives to the high interest sector such as Credit Unions, and will do all it can to promote these, where this is appropriate.

7. We welcome the FCA's requirements for lenders to introduce mandatory affordability checks however, we suggest that the FCA should be more prescriptive and consider using budgeting tools such as the Common Financial Statement.

Key Facts

8. In April 2014, the regulation of the pay day loan industry transferred from the Office for Fair Trading (OFT) to the FCA. Following their consultation in October 2013, new regulations were introduced by the FCA on 01 July: requiring a risk warning in financial promotions for High Cost Short Term Credit (HSTC); prohibiting firms from refinancing or rolling over a loan more than twice; requiring firms to provide the customer with an information sheet with details of free debt advice; prohibiting firms from making more than two unsuccessful CPA attempts and from using CPA to collect part payments.

9. Mr Ewing has held several roundtable meetings to discuss issues relating to payday lending. These meetings have brought together Money Advice Agencies

including Citizens Advice Scotland, Credit Union representatives and lenders to discuss the issues and possible solutions. Mr Ewing continues to engage with these stakeholders on this important matters and plans to hold another roundtable meeting. No date has been set for this meeting.

10. On 15 July 2014, the FCA published its consultation paper on capping the cost of high-cost short-term credit. The FCA consulted on the following proposals; Initial cost cap of 0.8% per day, Fixed default fees capped at £15, and total cost cap of 100%. Although in theory, these proposals will provide protection to consumers through capping, we shared the concerns of StepChange Debt Charity regarding the decision to cap the cost of loans at 100% of the amount borrowed. Although this goes some way to addressing the serious problem of lenders artificially inflating debts through rollovers and excessive interest and charges, we do not believe that this goes far enough to provide protection for financially vulnerable consumers.

11. The FCA see the benefit of real-time data sharing to enable firms to carry out more accurate affordability assessments and to prevent consumers from taking on multiple loans they cannot afford to pay back. They expect the vast majority of firms to participate in real-time data sharing and to share data with more than one credit reference agency and, although, they have seen progress, they believe the industry must do more. If they do not see evidence of this progress by November they will consider further action.

12. On 02 January 2015, the FCA introduced a price cap which means that customers taking out a loan on or after 2 January will never need to pay back more than twice what they borrowed, and someone taking out a typical loan over 30 days and repaying on time will not pay more than £24 per £100 borrowed.

13. Initial cost cap of 0.8% per day - Lowers the cost for most borrowers. For all high-cost short-term credit loans, interest and fees must not exceed 0.8% per day of the amount borrowed.

14. Fixed default fees capped at £15 - Protects borrowers struggling to repay. If borrowers do not repay their loans on time, default charges must not exceed £15. Interest on unpaid balances and default charges must not exceed the initial rate.

15. Total cost cap of 100% - Protects borrowers from escalating debts. Borrowers must never have to pay back more in fees and interest than the amount borrowed.

16. On the 09 October 2014, the Competition and Market's Authority (CMA) published its proposals to increase price competition between payday lenders and help borrowers get a better deal. These proposals have been developed in light of the FCA's price cap proposals announced in July and will help to ensure that the cap does not simply become a going rate charged by all lenders.

17. The proposals include measures to encourage the development of a high quality price comparison sector for payday loans. As a condition of participation in the market, payday lenders would be required to provide details of their products on accredited price comparison websites that will allow people to make quick and

accurate comparisons between loans. The full report can be found here: https://www.gov.uk/cma-cases/payday-lending-market-investigation

18. On 23 April 2014, Derek Mackay, Minister for Local Government and Planning hosted a summit for ‘Tackling Pay Day Lending and Gambling in Scottish Town Centres and neighbourhoods’. Representatives from local authorities, money advice services, welfare organisations, payday lenders, bookmakers and credit unions and the private sector were involved in discussions. The core purpose of the event was to consider how town centres can be revitalised by addressing the clustering of payday lending and betting shops.

19. On 8 August 2014, a 12 point action plan was launched by the then Minister for Local Government and Planning. The plan will build on existing commitments to the Town Centre Action Plan, the Financial Health Service and will focus on intervention, prevention, regulation and support.