

CAS Response to Review of Scotland's statutory debt solutions

Stage 3 Consultation - March 2025

Instructions to respondents

- Please respond to yvonnemacdermid@yahoo.co.uk and in the subject bar put STAGE THREE REVIEW CONSULTATION
- The consultation runs for 12 weeks. Please respond by 4 June 2025.
- Where points are raised it would be more powerful if you can provide evidence, which will be dealt with on a confidential basis
- Please note stakeholders do not need to respond to every question

Please DO NOT share any files which may contain personally identifiable information (PII).

Confidentiality and data protection

Your responses to this consultation will be treated with confidentiality, except as required by law. While your personal information will not be shared with third parties without your consent, please be aware that some information provided may be subject to publication or release to other parties or to disclosure in accordance with access to information regimes such as the Freedom of Information Act 2000, the UK GDPR, and the Data Protection Act 2018. However, any personal data will be anonymised or redacted before publication to protect your or client's privacy.

Final report

The report published at the end of this review will include a list of organisations who responded to this document, and our initial document, but not the names of individuals. We will refer to respondents based on the sector they operate in our final documentation.

Notes to readers

A summary of responses can be found as an attachment to this document.

Finally, at this juncture, we would like to thank our colleague Professor Elaine Kempson for her advice, guidance, and considerable contribution to the Project.

Yvonne MacDermid and Craig Simmons

March 2025

1. Setting the scene

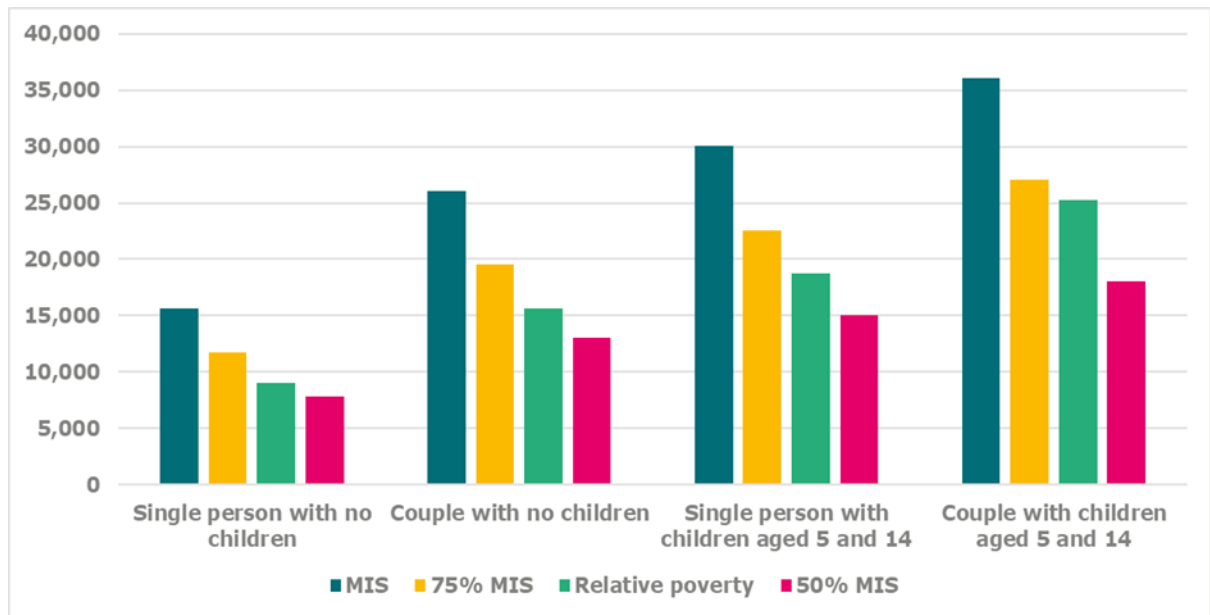
Q1.1 Do you agree that the aim, set out in the 2014 Act , for the insolvency regime is still appropriate, with the amendments suggested?

Citizens Advice Scotland would agree that the aim set out in the 2014 Act is still appropriate with the suggested amendments but with the added caveat that any such aim must be based on securing a reasonable, liveable and dignified standard of living. This relies on a system being in place which then seeks to ensure this standard is upheld and maintained.

Recently we experimentally examined a set of our complex debt client data using their income and expenditure compiled under the Common Financial Statement criteria and comparing them to the Minimum Income Standard set by the Joseph Rowntree Foundation. The results were very clear showing that the current system under the CFS is near equivalent to just 50% of the Minimum Income Standard.

The graph below illustrates that the CFS is actually below the relative Scottish Poverty Levels – a full 25% below the minimum which the Institute of Public Policy Research stated as the lowest and least favourable option for a Minimum Income Guarantee, not to mention would directly contravene the policy aim of the Scottish Government’s Anti-Poverty Strategy.

Graph 1. Annual income thresholds by threshold and household type. Courtesy of Philip Whyte IPPR Scotland presentation to Poverty Alliance January 2024.



Whilst the cases used were particularly dealing with bankruptcy because there were no other options available and most individuals we support cannot maintain any payments. Nonetheless Statutory Debt Solutions, no matter the solution, is meant to be a road to a new start and this can only be truly achieved if individuals in debt are allowed a chance to a future and not tied down in making arbitrary payments simply because of some outdated aim of making people pay redress, even if they cannot afford it. The current system is over-emphasised on squeezing income over time, focusing on the essential lack of economic capacity which often led the individual to require these measures in the first place.

If we look globally and compare our system of statutory debt solutions with other countries, and considering factors such as fail rates, rates of dividends, number of dividends actually collected against the necessary fees of administration, it demonstrates that our products actually offer very little return but at a relatively great expense.

The times involved in our statutory products are lengthy, and even where discharge is short (such as under MAP), the engagement is in fact longer in terms of Debtor Contribution Orders and Acquirenda which hangs over an individual for 4 years.

In contrast, in America for example, Chapter 7 Bankruptcies allow an individual to be fully through the whole process and discharged after 6 months. It starts with a certified pre-qualification credit counselling course which can be taken at any point in the 180 days before application. And it ends with the individual being discharged

completely after a further certified debtor education course has been completed. But the individual is completely discharged, and no further contribution is made, if their income is below the median state income (not including Social Security Benefits).

If an individual's income is above the median state income, then they must file a Chapter 13 which is the equivalent of Full Administration Bankruptcy and to qualify the individual must have disposable income that pays at least 25% of their total debt in 5 years. If the individual does not have this income, then they apply for a Chapter 7 bankruptcy. ([Bankruptcy Requirements for Chapter 7 - Upsolve](#))

Whilst it could be argued that the processes for MAP and Full Administration are similar and meet the aims as set out, there is an element of simplicity to the American system which means it is more focused on fostering entrepreneurship and equipping individuals with a fresh start, rather than an undue emphasis that we have on financial failure.

And these facts have long been discussed and dissected even as far back as 2006 with the consideration of the Bankruptcy and Diligence (Scotland) Act 2007 where the Enterprise and Culture Committee examined the effect of statutory debt solutions on fostering enterprise and where it fell short.

At its very foundation of the American system and MIS is that individuals in debt are allowed to have a reasonable standard of living that meets their physical, psychological and social needs. It is not about punishment but rather enabling participation in the life of their local communities as other citizens do.

This is also seen in the Republic of Ireland system with their Guidance on insolvency which states that:

“The ISI considers that a reasonable standard of living is one which meets your physical, psychological and social needs. It does not mean that you should live at a luxury level but neither does it mean that you should only live at subsistence level. You should be able to participate in the life of the community, as other citizens do”

[P4. Insolvency service of Ireland. Guidelines on a reasonable standard of living and reasonable living expenses Effective from 17 October 2023]

This is the aim that the Scottish Insolvency system needs to strive for and place at its centre.

Q1.2 Are the four principles set out above appropriate?

Citizens Advice Scotland agreed that the 4 principles set out above are appropriate but with a few changes. For example, in terms of the recommendation of removing the word “debtor” and using “consumer” instead, CAS would recommend using the words “person in debt” as this is more in line with the reality of the situation as the individual may not see themselves as a “consumer” as it is not a commercial commodity they are transacting in but a process they have had to go through in order to deal with their debt situation.

As for “*to help ensure all those who need to borrow can do so as economically as possible*”, it is worth noting that it is often a misconception that the recovery system has an impact on the wider financial system, but there is no empirical evidence that any changes in the recovery system actually have an impact on the financial system such as fluctuations in interest rates or borrowing. Therefore, it is remiss to use these terms as a means of restricting improvements to the insolvency system and limiting the support offered to people in debt. Unsecured lending decisions are taken on terms of demographic and personal financial circumstances, not how the insolvency processes work.

Credit Referencing is already engaged at providing transactional data and recorded enforcement action such as decrees or insolvency procedures. However, the actual intricacies of the insolvency process are not connected beyond these levels and makes no difference to scoring. For example, it will be recorded as a bankruptcy or Protected Trust Deed regardless of how these products operate in practice.

What is actually required and similar to our response in Q1.1 above, any principle must afford individuals a reasonable and dignified standard of living. And whilst we understand that there is a need to ensure creditors receive the best return possible from a debt solution, it should never be at the detriment to the individual in debt nor their standard of living.

Any principles must be set under the context that statutory debt solutions are meant to exist to help individuals in the most intractable debt situations and a key to this is having a reasonable approach to determining who can afford to repay and those who have no means whatsoever.

This doesn't appear to be happening in our current system, and we are not as yet achieving these principles. For example, when you consider the efficacy of DAS based on the current CFS system, then you have a higher-than-expected attrition rate. According to the Accountant in Bankruptcy's 2023/24 Statistics, there were 9560 DAS cases which conclude in the 7 years from 2015/16 to 2022/23. Of which 38% (3672) completed their programmed whereas 62% (5888) were revoked.

The concluded cases accounted for 47% of the applications made over the period and the remaining 53% were still "live". This points to just over 3 in 5 concluding without attaining effective discharge and raises the question regarding the sustainability over time and whether the current system for assessing contribution actually works.

As mentioned in Q1.1, Citizens Advice Scotland ran an exercise with our debt cases comparing these to the Minimum Income Standard and by setting the level of affordability assessment level at 75% of the MIS threshold. Whilst this did result in far fewer of our cases being suitable candidates for DAS, the payments that were set are more likely to be financially robust and capable of staying the course with the average payments at being £218 per month. And as such, would mean a system more in line with the principles being proposed, especially as we have Scottish Population where 62% of our clients are below the relative poverty level.

2. Incremental improvements to the current solutions

2.1 Joining up the solutions

Q2.1 Do you agree these alternative measures should be taken forward? Are there any implementation considerations that should be taken into account?

Citizens Advice Scotland agree that there are merits in taking the suggested alternative measures forward.

Providing a moratorium immediately when a solution fails will ensure the individual is afforded a safety net in order to give them time to seek fresh advice. It will stop debts worsening and their financial situation becoming more precarious. It is a sensible and just approach as clients will not be chased nor feel pressurised into grabbing the first solution that comes along claiming to offer relief. Time and time again, advisers in the Citizens Advice Network, see clients who have been placed into an inappropriate solution, and it is left to the free sector to fix. Often this is due to clients in crisis taking the first option that comes their way rather than being fully informed or fully considered all of their options. This leads to high failure rates of statutory debt solutions such as DAS or Protected Trust Deeds. (See further comments on Q4.9 about inappropriate solutions). By allowing someone in these situations the breathing space afforded by a moratorium the time to take advice and become fully informed, it will ensure the next debt solution is more likely to run its course.

This is particularly true for couples who are in joint DAS when their partner passes away. Revocation should not occur straightaway but rather be given a period of review within the DAS with an automatic moratorium for at least 6 months, regardless of their financial situation. This is about providing empathy to an individual who has just lost a loved one. More so, the partner who has passed away could have been the person dealing with their finances and therefore the survivor may not be in a position to know what is happening so requires time to find their feet, even if it is just to get the passwords to their accounts. The last thing they need is their DAS being revoked

This also speaks to an **easier transfer between existing solutions** including a more seamless data transfer between eDEN, ASTRA and BASYS. Recently Citizens Advice Scotland, StepChange, Money Advice Scotland and Christians Against Poverty ran a joint free money advice sector event where we listened to the concerns of advisers.

Online Access Platforms with Adviser support and better data transfer was a strongly supported solutions which advisers called for. Online platforms which allow people to

access information about available debt solutions with support in navigating that system would allow ease of access and transition between products.

One suggestion that was strongly supported was the creation of a client account which would store the client's information including their income and expenditure which would then pre-populate the Accountant in Bankruptcy's systems. This meant that if the client had to move between the Statutory Products, the adviser would simply have to check the client account, make any changes necessary and then it would pull across to whichever system it needed, rather than the adviser having to completely start from scratch.

The free sector is also in agreement that taking account of payments and time engaged should be included. This "crediting forward" approach in terms of time and contribution made would ensure that when a person has tried with their solution but for it to fail, all is not lost. These contributions in both monetary and time are then deducted from the new solution as an operation of fairness.

For example, if an individual's Protected Trust Deed failed in its second year, and was converted to a MAP, then that individual should immediately be discharged as they had already completed 2 years. This would also extend to the Acquirenda period which would not be "reset" with the MAP but rather run on for a further 2 years.

This approach would result in some cases where the transfer results in automatic discharge with no Acquirenda or further contribution period. For example, a DAS being revoked after 5+ years and then becoming a MAP or Full Administration Bankruptcy. But it would ensure the individual leaves their financial solution feeling it counted for something rather than the current system where many are left feeling despondent and thus disengaging altogether.

Many advisers spoke of the current system in trying to achieve discharge from a failed PTD taking months to complete, all the while the individual's debt is growing. A failed PTD needs to be responsive to allow people to quickly apply for alternative solutions such as bankruptcy.

This sort of approach would require the common IT application used by all participants such as the client's account suggested above to allow for a seamless

process. This would ensure that money adviser's valuable resources are not being misused or inefficiently used up as streamlined information sharing platforms will be less time consuming for advisers. The use of technology could improve the perception of current systems which at the moment are seen as not being user-friendly or easy to navigate.

Finally, the alternative solution of a **clear and consistent composition mechanism** across the solutions is desperately needed and long been advocated for. In fact, the Scottish Law Commission in 1985 recommended that repayment plans should not last longer than 3 years, and in certain circumstances it could be extended to 5 years by a Sheriff. This framework was regarded by the Commission as essential and could be used as a baseline for payments across all debt solutions, based on the individual's ability to pay. Once the period of composition expires, all remaining debt (unless lawfully excluded such as student loans) would be cleared. This approach has beauty in its simplicity and parallels other systems such as that found in the Netherlands and New Zealand where repayment schemes last no more than 3 years and any remaining debt is written off after this period.

As stated in our previous response, Composition, particularly in DAS must be fair and attainable. Presently, DAS composition sits at 12 years and 70% of the debt, this is too high a bar to be reasonable or practical. Many advisers commented on the challenges they face in trying to achieve composition for their clients. It has long been a contentious points with many stakeholders from across the debt landscape including IPs, creditors and the third sector calling for change. As CAS urged in our previous response, composition must be shorter and certainly no longer than 5 years. Its purpose is to allow discharge for individuals who have maintained lengthy repayment periods but due to a change in circumstances can no longer pay. Rather than lose all their work and making them restart processes all over again, composition is to ensure early discharge and being allowed to move forward debt free.

If we genuinely want our statutory debt solutions to meet the aims and principles in section 1, we must have a system that offers fair composition, based on affordability and reasonableness.

The free money advice sector urge for the interoperability of solutions to be fixed and have a system which actively supports the seamless transition from one solution to another.

Whatever the solution, it must be realistic and not add to a money adviser's burden.

2.2 Minimal Asset Process (MAP)

Q2.2 What are your views of this proposal?

Citizens Advice Scotland are in support of reducing the reapplication period to 5 years. However we would urge for the upper debt limit to be removed altogether, no matter how many times an individual applies for MAP.

The purpose of the upper debt limit was initially included as a means of identifying potential fraud. However, according to the AIB's own statistics, 70% of Full Administration cases do not produce a dividend and the median percentage of bankruptcy cases resulting in a Bankruptcy Restriction Undertaking is less than 1%, such an upper limit is completely unnecessary.

As for reduction of MAP reapplication period, the free debt advice sector are strongly in support – a survey conducted by Money Advice Scotland found that 80% of money advisers who responded supported a reduction and cited that in doing so would address the financial distress and anxiety of clients who are unable to apply for a MAP and allow them to have timely relief for individuals facing financial crisis. It would also align the reapplication period with a Full Administration bankruptcy.

70% of respondents flagged the negative impacts on clients due to the 10-year reapplication period and highlighted common experiences of clients being delayed in accessing debt relief, increased financial vulnerability due to further debt accumulation and the negative impact on mental wellbeing. In our previous response, we selected a couple of cases as an illustration but there are countless more where this rule has had an impact on a client's experience.

Access to MAP should simply be based on affordability – if an individual can afford to pay a contribution and has high value assets, it is a Full Administration, but if an individual has no or low-value assets and unable to pay, then it is a MAP.

Q2.3 Do you agree with this conclusion?

Citizens Advice Scotland do not agree with this conclusion and believe the issue of low equity and protecting people's homes are being compounding together.

Discussions on total asset holding previously were on removing the single asset threshold and having a singular threshold covering all assets which was duly accepted and agreed upon. However, inflating that rate to £3000 would be a negligible amount if it is expected to cover all of people's potential assets from amounts in their bank accounts to equity in their property.

If this figure is to be truly discussed, then it must be higher to allow for a reasonable equity thresholds that takes account the costs of selling any asset to realise equity.

It would be remedied even easier, if the family home was simply excluded altogether or by deciding the amount of minimum home equity to be allowed. Most IPs will not seek the sale of a property in an IVA, if the equity is below 15% of the house value and the first £5000 is protected to cover costs as it is not worth their time and energy to sell it due to such little return. A similar approach should be adopted and enshrined across all products to ensure fairness and to meet the principles outlined in section 1.

2.5 Debt Arrangement Scheme

Q2.4 Do you think that interest, fees and charges should be removed on revocation? If not, why not?

Currently, interest and charges are frozen from date of award under DAS and then if it is later revoked, they cannot be retrospectively applied, however as the consultation notes, interest, fee and charges going forward can be re-applied starting from the date of revocation (minus any payments received to date during the DAS period). That being said, CAS do agree that interest, fees and charges cannot be retrospectively re-applied and there should be a period of moratorium following revocation that continues to freeze interest, charges and fees.

At present, the Standard Moratorium does not freeze interest or charges unlike the English Breathing Space system and Citizens Advice Scotland would urge that this would be a more suitable change which would address the issue. Moreover, as stated above, if on revocation or cancellation of a statutory debt solution such as DAS which has not resulted in discharge, an automatic moratorium should be invoked to afford individuals the opportunity to seek fresh advice and seek an alternative solution without having to lose the good work that they have done to date.

Furthermore, as stated above, any time and payments which have made should be carried forward into the new solution and be “credited forward” as suggested in Q2.1. These steps together would resolve the issue regarding DAS as described, ensuring that the work the individual has done is not lost or disregarded but would actively encourage individuals to re-engage and find a solution more suitable to their change of circumstances. This would prevent debts spiralling by stopping the accrual of all types of interest as well as fees and charges from the outset.

That being said, there are issues surrounding DAS which CAS highlighted in our previous response which do not seem to be addressed including:

- Poor communication from creditors in responding to enquiries and not adhering to regulations

- DAS administration is overly burdensome on money advisers

- Greater transparency of roles and responsibilities under the DAS regime is needed

Creditors need to be held to task more when not adhering to the regulations. One such example is better communication with creditors, particularly smaller creditors in responding to DAS requests. Creditors failing to respond to such requests such as balance confirmation can considerably delay the process which adds further burdens on money advisers. Creditors should be responding to these requests or agreements and if they do not then the last quoted amount from the creditor should be the accepted balance rather than the current system of confirmation. If the creditor does not respond to update the balance, then they should not be able to change it at a later date or have expectation on the money adviser to contact the creditor repeatedly just to confirm the balance.

And this poor communication is not just limited to creditors, as advisers often have issues with the DAS administrator. The biggest issue being in the application process. Rather than check the whole application and then returning it to the money advisers for further information, the DAS administrator will check the application and as soon as an issue arises, it is sent back for the adviser to fix. The adviser will fix the issue but then only find a later fault is found. This causes a constant back and forth between the DAS administrator and money advisers. If the DAS administrator simply checked the whole application and sent a list to the Money Adviser, it would mean all issues are dealt with together rather in the current piecemeal fashion.

Not only does this add considerable delay but often free money advisers only work part-time, and it can mean they have to spend weeks going back and forth over one application. Many money advisers feel the AIB and DAS Administrator fail to understand the level of resource and time it takes to manage DAS cases. There is a feeling there is a lack of recognition over workloads that Money Advisers have to carry as well as a lack of trust and respect. Such actions as treating an application in a piecemeal fashion only add to these hostile feelings of disrespect.

Many advisers will refrain from completing DAS applications because they have become burdensome and feel clients are being villainised when they are simply trying to seek debt relief.

One adviser spoke of a DAS case being returned because the Scottish Government logo on the mandate of authority had been slightly cropped when being uploaded. This was despite the fact, all pertinent information and signatures were clearly visible.

Many advisers highlighted cases of this nature which left them feeling deeply frustrated and undermined, even when errors made were not by the money adviser but other parties, but it was left to the money adviser to remedy. One adviser spoke of a case where a creditor had went bust, but no matter what was provided to the DAS Administrator, they still demanded a letter from the company confirming the balance.

This level of pedantic nature coming from the DAS administration only leaves advisers feeling demoralised and patronised. It does not foster good working

relationships between advisers and the AIB. Changes are needed in the way DAS is being handled, and it needs to be more flexible so it can move with the client and their lives rather than being stuck rigidly in place by inflexible processes and practices.

This again leads CAS to call for greater transparency is needed in terms of who is responsible for what under a DAS and what this means going forward when a DAS is agreed. Under bankruptcy the role of adviser, trustee and clients as well as the Accountant in Bankruptcy are clearly defined. This is not the case with DAS and often the lines become blurred with the onus falling heavily on the adviser rather than the DAS administrator or other parties.

Some tasks such as assignation of debt should be between creditors and the DAS Administrator and not relying on the adviser or causing further distress to the client. For example, another adviser highlighted a DAS case where there was a mistake in the case when it migrated from DASH to eDEN but rather than the DAS Administrator contacting the creditor, it fell on the money adviser to fix it or at least find a reason for the error, but it proved impossible for the adviser to get any response. This led to ongoing arguments with the creditor, payment distributor and the DAS Administrator, all eating into the valuable time and resource of the free sector adviser which meant they were unable to focus on other cases or support other clients.

Another adviser spoke of cases where there has been a variation in the DAS where a debt is paid in full. Again, rather than the Payment Distributor informing the DAS Administrator, they went through the money adviser and in turn the DAS administrator asked the money adviser questions that they were not privy to and had to go to the Payment Distributor for answers, sticking the money adviser in the middle as a go between. Thus, creating a level of administrative steps which could have been easily avoided and placing massive administrative hurdles in the adviser's way.

Whilst these have not been fully addressed in this consultation, CAS wished to highlight these issues again as further work to improving DAS and its processes are required, beyond just the freezing of interest and charges.

2.6 Setting affordable repayments

Q2.5 Do you agree that a different approach is required outside of the Common Financial Tool? If yes, would you agree that the Joseph Roundtree's Minimum Income Standard should be adopted?

As stated, Citizens Advice Scotland along with Money Advice Scotland, StepChange and Christians Against Poverty held a joint money advice conference from the free sector, where views on this issue were gathered.

In general, on paper, many money advisers were interested in exploring the adoption of the Minimum Income Standard (MIS) within the Common Financial Tool (CFT) as it appeared to offer simplicity. However, most money advisers were unfamiliar with it as a concept and were unsure how it would apply.

Ultimately, advisers are seeking to reduce the level of evidence requirements, and a threshold such as MIS and/or income-based model could be a method in achieving this.

At present, the only solution that has an element of income-based model is the MAP process under bankruptcy whereby if a client is solely in receipt of benefits, the adviser only has to submit income evidence as it does not matter what their expenditure are. Other solutions do not offer this option.

It felt in order for money advisers and the sector as a whole to make an informed decision on such changes, further work is needed to demonstrate how such a new model would work in practice. In particular, how MIS sizes up to the current Common Financial Statement and its Trigger Figures.

Some advisers were content in certain aspects of the current system, but only because they knew how it works and what is required of them. The concept of MIS is too foreign an idea at this stage, that many do not know what the long-term impact would be. Moreover, whilst there was a need to improve the current system, many advisers did not know how this could be achieved, other than re-assessing how the CFS is calculated as many called for the use of higher income quintiles to be used or something similar to MIS in terms of how energy is assessed under CFS.

There were some concerns of a MIS or income-based model in that it may not fully account for variations in expenditure such as varying housing costs across the country. Therefore, if it were to be adopted, certain thresholds had to be built in, such as regional differences to take account of such variances in rents/mortgage costs, travel costs as well as those to cover disabilities, children and whether the household had a car.

Another concern was that MIS should not remove client choice. Advisers spoke of cases where clients may have an income below the threshold but had low expenditure which meant they could afford to pay a contribution such as an individual staying with family and therefore had no housing costs. Others spoke of clients' who simply wished to make payments and would like to do so. Advisers were concerned that if the client were below the MIS threshold, that they would be blocked from contributing, even when they wished to do so. This could also have the unintended consequences of clients who are below the MIS level unable to access credit as lenders refusing to give credit.

On the other side of the coin, advisers were worried that a MIS threshold could show a client had disposable income but due to the simplicity of the calculation, it failed to take into account their true circumstances and in reality, the client had less than or no disposable income. One adviser gave the example of a client who was on a Zero Hour Contract but then got a better job, however this came with a move that resulted in higher housing and travel costs, so even though their income had improved, their costs had dramatically increased and therefore in reality, they were not better off.

It is clear to advisers that the expenditure analysis and financial education elements which come along with this discussion, is essential to the money advice process. Advisers stated it is a critical part of the budgeting advice and support they provide to clients to help get them back on track. Therefore, any change such as MIS or income-based model must allow for these discussions to take place and it would only then apply when it comes to applying for a statutory debt solution. Advisers would still be expected to do a full income and expenditure assessment, regardless of MIS thresholds but when it came to applying for a statutory debt solution, then only income evidence is required to demonstrate meeting the MIS threshold along with evidence of expenditure for costs above the threshold that needed to be considered.

Many advisers supported the exploration of MIS threshold and even an income-based model as it certainly has potential in reducing adviser workloads, reduced stress for clients as well as speeding up the process for all stakeholders concerned.

Many felt it is a good direction to go in, especially in light of the rapidly rising cost of living debt but required more clarification on how it could work in practice, with demonstrable examples comparing the current system with the proposed one.

On this note, CAS are keen to work with the Accountant in Bankruptcy along with other money advice organisations on these discussions with the money advice sector and advisers. We have already started work in this area and considered the current Minimum Income Standard in relation to the CFS. In short, we found that whilst slightly fewer people would make contributions under a MIS threshold, people would be afforded a standard of living that ensure any payments being made were sustainable and maintained. This is because, at present **CFS trigger figures matches to only 50% of the current MIS level and in doing so, is trapping people under the relative poverty line.** A move to MIS should actively lift people out of poverty by ensuring any payment under statutory debt solutions still allows people to achieve a dignified life, in line with Scottish Government's aims under their Child Poverty Targets and Anti-Poverty Strategy.

We would be happy to provide further information should it be requested.

2.7 Allocating any increase in income during insolvency

Q2.6 Do you agree with the proposed 50/50 split of any increased income?

In our previous response, Citizens Advice Scotland were in support of a split of increased income as it would be beneficial for all:

- It incentivises individuals to take advantage of opportunities
- England do not expect the full disposable income to be made in contributions
- Failing to do so would stifle opportunities for individuals to financially better themselves

However we argued for the proportion to be set at 30/70 with 30% going to the creditors and 70% for the individual. We would also require more detail on “any increased income” because some increases in income, come with increased correlated costs – for example, the National Minimum Wage increases, usually in line with inflationary costs as a means of ensuring the working population can maintain their standard of living with rising costs. We would not agree that this increase should be subject to the split, be that set at 50/50 or 30/70 as whilst it is technically an increase in income, it should not be subject to such harsh split but rather a fuller assessment of the individual’s circumstances.

As we argued previously, creditors and trustees understand the benefits of allowing individuals to keep a share of increased income as it incentivises them to take advantage of financial opportunities. In England, for Debt Relief Orders, the first £75 of disposable income is disregarded as a buffer for individuals and a similar approach should be taken in Scotland.

We argued that the split should be lower than 50/50 with individuals retaining the majority share. Receiving even 30% is still very generous for creditors who often only see 10p on the pound from insolvency returns.

When speaking with the money advice sector, there was widespread support for the proposed system as it is certainly an improvement on current processes. Advisers spoke of how new income, especially in bankruptcy is “swallowed up” and there is a need for a model which allows individuals to retain additional income as it not only improves their financial wellbeing but also benefits their mental health and emotional wellbeing.

However, when it came to how the income should be split, there were varying views and concerns. One of which was that additional income could come from multiple sources and not all sources should be treated equally. For example, a compensation payment following a tragic accident where an individual has suffered horrific life-changing injuries, would not be considered the same as an inheritance or windfall. This is because compensation is generally paid to recompense a loss of some kind, such as earnings or to cover adaptations to property or extra support now required. Therefore, the split of 50/50 would be extremely hard to justify as this could leave the individual in a financial, physical and emotional detrimental position.

The split must be enough of an incentive, so individuals feel supported to save whilst they are in their insolvency solution and develop good financial resilience when exiting. This means being set at a level which improves lives and not just a financial benefit for creditors.

Most advisers stated their clients do not have savings. This not only impacts on financial resilience, but it also affects mental wellbeing, and additional savings could improve both these areas.

It is also important to note is that often the amount individuals receive is usually after some form of tax, so it must be set at a level which makes it worth their while, if most go to creditors, it could end up disincentivising individuals.

There was a suggestion that rather than a set split, a more equitable tiered approach would be preferable. This tapered system should be taken where, depending on the circumstances of the additional income and the amount, would see varying levels of deductions with larger amounts split more evenly. This would ensure a fair and realistic division of funds for each individual's circumstances. It would account for varying individual needs.

Additionally, the potential administration burden on advisers must be considered and overzealous monitoring of individual's incomes could become time-consuming and impractical, requiring additional resources. Some advisers were concerned that any split, would require additional work for them as they would have to ensure the true costs of the additional income are accounted for, but this could be covered by a conversation rather than a full income and expenditure assessment with new evidence required. It may not be practical or efficient to have a new affordability assessment each and every time an individual's income changes as this would create a "bureaucratic ordeal". There is a need to have a clear focus on sustainability, ensuring that any proposed split allows the individual to maintain their debt solution but also benefit from the additional income.

This involves the following:

- Defining what kinds of additional income is to be split, along with a clear threshold as to what is considered as disposable income (similar to the approach undertaken in DAS)

- Clarify clearly defined parameters as to any levels of the split and what additional income is disregarded such as National Minimum Wage increases or amounts below a certain threshold (such as England's DRO system)
- Strengthen support for individuals exiting bankruptcy and providing clear guidance on building savings during an insolvency process. This would build in the ability to save, even modestly, which is crucial to financial resilience and wellbeing.

No matter how the system is defined or the level of thresholds set, the current system cannot continue. Too often individuals are unable to take on extra work and a fair division is desperately needed. We would advocate for tiered approach which is assessed on case-by-case basis to take account of individual needs with a cap of no more than 30% being taken for creditors.

2.8 Asset holding

2.8.1 Family home

Q2.7 Please tell us your views on this approach of dis-regarding some of the equity in the family home and, in particular, any unintended consequences. What should the level of equity dis-regard be?

In our previous response, Citizens Advice Scotland called for the family home to be excluded from insolvency proceedings as it would be the simplest and easiest of all options. We are in the midst of a housing crisis and such ambiguity on the protection of the family home under insolvency, only adds to the pressures individuals in debt face.

Preventing homelessness is a priority for the Scottish Government and there is a need for better protection of the family home in these matters so not to undermine the policy aims being sought.

That being said, in terms of the approach of disregarding some of the equity, there are some merits to this. In England, Insolvency Practitioners are able to disregard the first £5000 of a property's equity as this would cover the sale of the property. Moreover, to ensure it is a sale that is worth such costs, there is an assessment

which considers if the equity in question covers at least 15% of the property value, above the initial £5000 disregard as a baseline. If the property does not meet this threshold, it is considered not efficient nor profitable to force a sale and evict a family from their home, adding costs and pressures to the public purse to rehome them.

Citizens Advice Scotland would advocate for this process to be adopted into Scotland. It ensures consistency across the nations, and it is already a proven working system

That being said, we would argue that there are certain safeguards put in place to ensure families in vulnerable circumstances are protected. We would advocate for a modern version of inhibition for the purposes of securing equity when evicting a family would cause severe detriment and hardship, for example a specially adapted home for a disabled child. Even if there is valuable equity in the property, evicting a family with a disabled child would cost more as they would have to pay for adaptations to any new property they move into. Furthermore, this may not be possible if it is into private rented accommodation. Therefore, by granting the Trustee security over the equity in the form of an inhibition, would secure this for the purpose of creditors if the property is later sold. This could involve a right to sell but it can only be realised on the sale by the individual of their home. It would still be afforded the 15% equity protection and £5000 disregard to ensure individuals are able to purchase a new property if possible. The Trustee would not sell the property, but should the individual leave the property or sell, the asset can be realised. On the event of an individual's death, the 15% equity protection and £5000 disregard would still be invoked for the individual's share.

Crucially, in these circumstances where sale is not possible nor ethical, it would ensure protection of the family home by effectively exempting it from the sale process. This was originally considered by the Scottish Law Commission as good practice which should be adopted as it ensures fairness for all parties but not unintentionally costing the public purse more in the cost of supporting a family through the homelessness processes in place.

Instead, the Trustee would be given a 3-to-5-year time limit in which to sell the security rights, unless the property is sold in the interim period. This would allow the Trustee or any purchaser the rights to the available equity (minus the £5000

disregard and 15% equity protection). Individuals would have 15% of the equity to purchase or put towards a new property, therefore not relying on the public purse to rehome them. If the property cannot meet this threshold, it is disregarded, and no sale is necessary. Finally, we would recommend that valuations of the property are based as near to the date of sequestration as possible and the disregard amounts/equity protection are routinely updated to be reflective of the housing market fluctuations.

It is time we draw this debate to close and have formal protection of the family home enshrined immediately. We assert that the position we have suggested would be fair and equitable for all parties involved.

Q2.8 Please tell us your views on this option. Please tell us any issues you see in its operation.

Citizens Advice Scotland do not believe this option would be workable. As stated, it would be extremely complex and there are several parameters which would need to be agreed and clearly defined – for example what is meant by “normally live in”.

Would this be based on structures as those used in Local Housing Allocation or that which is used to define the Spare Room Subsidy (colloquially known as the Bedroom tax) which determines the size of the property a family should have for the purposes of Housing Element of Universal Credit. This option fails to provide adequate protection or safeguards for families, especially those in vulnerable circumstances. Nor does it consider that the loss of a home should always be a last resort. It could result in homes being assessed too cheaply or valued as a low asset when the opposite is in fact true.

Most worryingly, it fails to consider the cost to society and the public purse in terms of the disruption of rehousing, social security application, as well as family and personal trauma of being rehomed. **For all these reasons and for those set out in Q2.7, the bar for selling a family’s home, which is their safe place, must and should be high, to the point it is exceptional in itself.**

2.8.2 Vehicles

Q2.9 Do you agree that the current limit for vehicles should be increased?

What is a reasonable level?

Citizens Advice Scotland agree that the current limit for vehicles must and should be increased. This has been an issue which all stakeholders across the insolvency landscape from creditors to Insolvency Practitioners to money advisers are in full agreement on and called for in Stage 2 of this review.

The Scottish Government have already agreed the approach in which to set a reasonable level where the Stage 2 working groups recommended that an expert opinion should be sought to determine this value. This should be based on the average value of a modern mid-sized family car, before considering a revised asset value for vehicles. It should take account of changes in the way people now purchase vehicles and increased costs of second-hand cars. The Working Group at Stage 2 also recommended that guidance must be produced to ensure a consistent approach when dealing with vehicles.

At this point, the Scottish Government committed to commission further work to help inform Stage 3 including obtaining expert opinions on such valuation amounts and where further consideration could be given on how to treat vehicles in bankruptcy by the Accountant in Bankruptcy.

The Scottish Government committed to uprating the existing vehicle threshold while consideration to wider more fundamental changes were being discussed. This did not happen.

Citizens Advice Scotland would advocate for an immediate uprating to be put in place and argue this would be no less than £7000. This is based on adviser's experiences of supporting clients obtain valuations of their car and that the average cost of purchasing a second-hand car in the current market which can range anywhere from £12,000 to £20,000 depending on make and model. This would be pending the Scottish Government obtaining an expert opinion.

A more precise valuation must be sought from an expert such as AA or Glass's Guide and the vehicle valuation should be annually reviewed to ensure efficacy. The

review at Stage 3 could then concentrate on getting such expert opinion on the cost of a mid-range legally compliant and durable car, with expectancy said vehicle would last at least 3 years.

The current value of vehicles is not fit for purpose and must be updated now. It is forcing individuals to purchase poor quality cars which require higher repair costs as they break down repeatedly. Or they are unable to access bankruptcy due to their need for a car, but the value is too high, and advisers cannot provide guarantees or reassurances that their car will not be realised as an asset. **This cannot continue.**

There was support for mobility scooters to be exempt from consideration as an asset in insolvency.

Q2.10 Do you agree with this proposal?

Citizens Advice Scotland fully agree with this proposal as we did in Stage 2 of the review. This has long been agreed without controversy and now merely needs to be implemented. CAS would urge this immediate implementation.

2.8.3 Bank accounts

Q2.11 Do you agree that to improve access to bankruptcy the levels of funds allowed in a current account should be increased? What is a reasonable level?

Citizens Advice Scotland fully agree that we must increase the levels of funds in a current account and for this amount to be a true reflection of the cost of living. The current allowance for money in a bank account, fails to consider that the money is there to pay ongoing bills. At the moment, advisers have to be strategic when applying for bankruptcy because if ill-timed in terms of earnings and benefits hitting an individual's bank account, it could automatically exclude them from bankruptcy despite the fact that even 24 hours later, the amount would drop below the allowance after bills have been taken off.

The current allowance has not been updated since before the 2007/08 financial crash and the landscape of debt and bankruptcy has changed significantly since this date.

As to what a reasonable level should be, CAS believe that rather than setting an arbitrary figure which then needs to be constantly reviewed and updated, it would be

best to set the level based on a formula that is already consistently reviewed. CAS would recommend tying the level to the Minimum Income Standard set by the Joseph Rowntree Foundation based on the average household size in Scotland (currently 2.2 people). This would ensure people's ongoing bills, and a decent standard of living have been accounted for, thereby avoiding the pitfall of further debt being caused because money which should have been used for bills being seized for debt repayment.

2.9 Continuous review of the system

Q2.12 Do you agree that there should be an annual review as a minimum, and build on existing quarterly review meetings

Citizens Advice Scotland do agree that there is merit in a continuous review of the system to ensure that it is reflective of the society we live in, rather than an archaic model which no longer applies. A continuous cycle of review will ensure we are keeping with the changing landscape.

Nonetheless, the timeframe for review must be reasonable. CAS recommend that following the Stage 3 review, it would be good to have a set period of time before reviewing any changes and recommendations for improvements. These must be afforded time to bed in and allow for the changes to show promise. Moreover, it takes times to train advisers and update processes to implement said changes. Otherwise, we could end up leaving little time to adapt and not allowing the recommendations a chance to be successful.

Following this initial period, which CAS would recommend would be no less than 2 years, a continuous review cycle is then put in place, but we need to set the initial review first. This will ensure any teething issues from the Stage 3 recommendations to come to the fore as it can usually take 18 months to 2 years before any changes to a system filters through data and statistics. If the review is set too early, impact may not have been captured in order to be measured and evaluated fully. But if set too late, bad practice and misunderstanding can be allowed to fester and teething issues are not proactively dealt with.

Following the initial review (after 2 years), a further review period can then be set and agreed, depending on the outcome of the initial review. Normally, this could be an annual cycle but this could be onerous and end up in a perpetual state of review where the next one begins as soon as the last one finishes. Therefore, CAS recommend that whilst an initial review period is set, the ongoing review period must wait until the changes and recommendations are up and running. This will give us an opportunity to assess what is required going forward.

There are other examples of review processes being built into legislation including the newly introduced Mental Health Moratorium which built in a 5-year review cycle to allow the new system a chance to bed in and be monitored. This will afford the sector an opportunity to make changes should the be necessary and ensure the initial policy aim of the Mental Health Moratorium can be achieved. CAS do not feel the debt solutions needs such a length of time given it is one that has been in operation for decades but a review cycle is imperative to ensure we are operating a system which works.

3. Insolvency in a wider social policy context

3.1 Deficit budgets

3.1.2 Proposals for changes to the insolvency regime

Q3.1 Are there any further amendments to either insolvency rules or procedures that you think should be included to enable access for people with deficit budgets?

Citizens Advice Scotland would support the amendments regarding the reduction of the time limit that people can reapply apply for MAP after their original application.

However, we would not restrict this to just people with deficit budgets. As per our pervious response, 80% of advisers in our Citizens Advice Network fully supported reducing the reapplication period of MAP to 5 years for all clients. This simple alignment to Full Administration would significantly reduce financial distress and anxiety, not only for clients in deficit budgets but for all clients. The current rule is having a negative impact on individuals being unable to access suitable debt relief,

exacerbating financial vulnerability and further debt accumulation. This is not just limited to those with deficit budgets. **Therefore, the reapplication period should be reduced to 5 years for MAP across the board.**

As for the amendment on homeowners being able to access MAP if the equity is low, Citizens Advice Scotland would be in full support of this recommendation. As highlighted in our previous response and above in Q2.7, **there needs to be radical reform to the protection of the family home building in an equity protection threshold that applies to all statutory debt solutions including MAP.**

The only further amendment Citizens Advice Scotland would advocate for is the complete removal of the upper debt limit in MAP rather than an increase. There is no reason for this, other than an unfounded mistrust from creditors and the Accountant in Bankruptcy. The purpose of the upper debt limit was initially included as a means of identifying potential fraud. However, according to the AIB's own statistics, 70% of Full Administration cases do not produce a dividend and the median percentage of bankruptcy cases resulting in a Bankruptcy Restriction Undertaking is less than 1%, such an upper limit is completely unnecessary.

Given the low number of Bankruptcy Restrictions Undertakings and low number of fraud prosecutions in any given year, this is a process that is not helping the situation but rather hindering it.

It fails to consider the realities of people's financial lives and the assessment of whether an individual's application for bankruptcy should be a MAP or a Full Administration, should be solely based on their ability to pay a contribution and their asset level. If an individual has sufficient assets or can afford a contribution, then it would be a Full Administration. If not, it should be a MAP regardless of the amount of debt they have accrued.

The upper debt living serves no useful purpose and is no indication of the actual reasons for the debt occurring. Individuals can have high levels of debt, it does not mean they have been frivolous. The cost-of-living crisis has impacted heavily on many households across Scotland, hitting across all economic profiles. Many households where they may have been able to absorb income shocks in the past are no longer able to do so. This is leading to individuals being unable to afford their high

value mortgages or Hire Purchase agreements, along with other priority debts such as energy and council tax. All add up. People simply do not have enough money to make ends meet.

The Accountant in Bankruptcy argue that a limit is needed to ensure fraudulent, or cases of malfeasance are captured, yet have failed to show any evidence of such malfeasance. If this is a form of fraud control, then this should be easily evidenced but this has never been shown. As an initial indicator for dubious activity, there is no evidence that has been produced, and certainly little justification for the extra costs of making an individual go through a Full Administration Bankruptcy over a MAP.

Using a financial limit as a fraud control, rather than conducting fair and proper investigations, is not sufficient, nor is it effective. The amount of debt an individual is in is not an indicator of fraud, or even the level of administration that will be required. Having such a limit only perpetuates stigma and hinders debt relief.

As we reported in our last response, numerous clients in our network have been unable to apply for MAP due to this limit – even if it is 1p over the limit. This means they have no other choice but to be placed in a longer bankruptcy process, despite the fact no contribution or asset realisation is possible. It is just costing the public purse more money and resources than necessary.

The cost and effectiveness of the upper debt limit must be re-evaluated

Finally, the introduction of a Mental Health Crisis Breathing Space for England and Wales has already been completed through the Bankruptcy and Diligence Act 2024 and the introduction of the Mental Health Moratorium.

3.1.3 Money advice to support people with deficit budgets

Q3.2 Please can you provide examples of where money advisers and welfare rights advisers work closely together to find solutions for individual clients with deficit budgets and the general lessons that can be learnt from the collaboration

Citizens Advice Scotland assert that the vast majority of advice agencies delivering adviser work closely with welfare rights advisers, either internally or externally.

Every Citizens Advice Bureau in our network will routinely complete a welfare benefits check as part of the money advice process. They will also work with the designated benefits adviser (usually within the same CAB) to help apply for benefits.

There appears to be a misunderstanding on how Money Advisers work. All Money Advisers will complete income maximisation checks, including benefits as part of their advice process. This is part of the Scottish National Standards procedures for Level 2 Debt Advice. Money Advisers will either themselves support clients to complete benefit forms or will approach specialist welfare rights advisers, when necessary, such as tribunal representation (This must be done by a Level 3 Welfare Rights Adviser).

It is a natural step in the money advice process. Some agencies may not have internal benefit advisers but will have connections that they can rely on externally such as Advocacy Rights organisations or even Social Security Scotland local community teams.

Most services will have both Money Advisers and Welfare Rights advisers in the same agency, normally operating to Level 2 SNSIAP provision as a minimum. This includes providing casework advocacy, whereby one adviser covers both disciplines or a team working together for one client. They may have access to Level 3 representation for in-court advice or tribunal representation. This is certainly prominent for benefit tribunals whereas in-court representation can be patchier depending on the local area provision. Nonetheless, asking for examples is a moot point as it already occurs as standard.

Q3.3 Can you provide examples of where full income maximisation has been successfully integrated into debt advice services?

Again, Citizens Advice Scotland are concerned about the need for this question. As stated in Q3.2, the Citizens Advice network have successfully integrated income maximisation into their debt advice services and have done so for years. It is the ethos of the Citizens Advice Network to provide a whole person, holistic approach to advice, so no matter the presenting issue, be that benefits or debt advice, housing or

relationship issues, we will consider their full situation and provide support on whatever their needs may be.

It is already an integral part of the money advice process to conduct a full assessment of income maximisation, whether that is applying for eligible benefits and grants, seeking means in which to increase work where possible, contributions from non-dependents, looking at ways to reduce spending and expenditure such as applications for social tariffs or gambling support. No matter the situation, a money adviser will find a way to support their client to the best of their ability to ensure the financial statement produced is a true and accurate picture of the person's situation but also one which helps improve it to its fullest potential. We would refer to the recently published Debt Advice Handbook which speaks to such a process to evidence that it is a part of the system we use already.

3.1.4 The role of the social security system

3.2 Adapting the insolvency regime to the decline in asset-holding by defaulters

Q3.4 What change to the system, if any, is needed to deal with this situation?

Citizens Advice Scotland accept that the proportions for PTD and DAS have shifted where for the first time, there are more DAS than PTDs. However, we are not sure that this concludes the facts that it is linked to the assets individuals may have.

Alternatively, the concentration of the market, now dominated by 3 big players, there is an efficiency preference for DAS. It does not involve having to deal directly with assets sales or the expense of statutory administration requirements which are incumbent on PTDs. Technically there are no trustee costs for DAS and it is readily adaptable for the mass market. DAS also yield greater contribution amounts – we estimate that the median (post-COVID) percentage advantage rose from 43% to 52% in the last 3 years.

Historically, Bankruptcy focused on a Trustee obtaining value from the individual's assets. But Income became a more central feature with the introduction of PTDs.

This then became more of a focus with the advent of DAS. Most asset bases for consumers now lie in their pensions and their housing. As the Financial Lives Survey conducted by the FCA noted:

“Over two-fifths (44%) of people have stopped saving or investing or reduced how much they save or invest to make ends meet, while 23% used their savings or investments to cover day-to-day expenses. Over half (53% or 27.6m) did either of these things in the 12 months to January 2024, compared to 56% in the 6 months to January 2023. In comparison...just 3% (1.8m) stopped contributing to a pension or reduced their contributions to make ends meet. Only 2% (1.1m) cashed in a pension fully or took out a lump sum to cover day-to-day expenses.”

If you also consider ONS data, the largest proportions of household wealth is made up of net property wealth (40%) and private pension wealth (35%). Within certain bounds, pensions are protected and whilst there is some protection (more by accident than design) for the family home in a PTD, this relies on the individual have sufficient income to make it profitable. As more and more clients have property as their main asset, therefore it is no major surprise that with the property protection built into DAS as standard, why this would be a more favourable option for IPs compared to PTDs.

CAS do not feel there is anything that can be structural done to the system to combat this as it is merely a change in the landscape. Rather than trying to have our systems retrofit a new landscape, it is perhaps time to consider whether there is even still a place for PTD or could changes be made in terms of family home protection and employment restrictions (as stated in earlier responses) that mean bankruptcy could be accessible to those who need it and DAS is available for those who want it.

Our network has seen a shift in the number of MAPs compared to Full Administration Bankruptcy. And as illustrated by the questions on deficit budgets, this is due to the change in the financial lives of individuals in Scotland. More and more people are struggling to make ends meet and their budgets balance. The rising tide in cost-of-living costs and debts are pushing people into situations where they have no money to survive, never mind pay their debts. Sometimes even a MAP is not an option because the broken budget itself will not be fixed and even if they clear the debt for

now, further debt will simply accumulate. None of these scenarios can truly be fixed by amending the statutory debt solutions alone. However, amendments can be made to make it easier for people to access debt relief, even if it is only temporary as suggested above in Q3.1.

Until then, with many individuals with deficit budgets or low assets, it will mean a shift in the products being sought and the solutions being put in place.

3.3 Creditor behaviour

Q3.5 Do you agree that the AiB should ensure that creditors are aware of their responsibilities in relation to DAS DPPs. Would an AiB notice that money advisers and insolvency practitioners can send to creditors when they approach them for details of claims, meet this need?

Citizens Advice Scotland agreed that the AIB should be ensuring creditors are following the rules but it would take more than just an AIB Notice.

We heard from numerous advisers across our network that creditors not being aware or simply ignoring their responsibilities are the bane of a money adviser's life.

Advisers are having to use whatever tools they have at hand to force creditors to respond to requests for balances and offers. This includes quoting FCA Sourcebook rules, using legislative means and even sending numerous letters, emails, texts and calls. Any and all means to do what they can. Some creditors are very good at responding, but others are impossible. One adviser stated that "*it feels like you are crawling through broken glass*".

There is no middle ground and quite frankly, an AIB notice would not do enough. It needs a tougher and more severe response. If advisers cannot get a creditor to respond, it exacerbates the client's situation and deepens their debt. Therefore, any consequence for not responding, should reflect this impact. Advisers and CAS would urge that the consequence should be that if a creditor does not respond, the debt in question is reduced. This will force creditors to respond quicker.

Advisers highlighted that for many creditors, they do not even have the appropriate address and have to use a generic mailbox, therefore any notice will likely go unnoticed.

However, often in these cases, the Accountant in Bankruptcy can exacerbate the pressure placed on money advisers, whereby the adviser is expected to jump through many administrative hoops just to confirm the debt balance for DAS. Yet when creditors fail to respond, it is the money adviser who has to deal with the Payment Distributor and Accountant in Bankruptcy. Advisers presented cases where creditors have clearly written off the debt and it is no longer outstanding, but yet the confirmation is not to the Accountant in Bankruptcy's liking and further confirmation is requested. For many advisers, they feel this is more of an issue with the AIB's processes than just with creditors being unresponsive.

Advisers spoke of the AIB wanting every little detail confirmed; from the agent the adviser spoken to, the date, the precise time, the names and addresses of every single contact attempted with evidence of the communications being sent. Every little minute detail and if anything is missing, it is sent back.

Even when advisers have access to credit reports which shows the balances as updated by creditors, this is not accepted as AIB have requested that it must come directly from the creditor. All of which adds time and takes a considerable resource.

In some cases, the requests would be better resolved with the AIB having direct conversations with the creditors themselves and not through the money adviser as a go-between.

One adviser highlighted a case where the creditor had gone bust and no matter what the adviser explained to the AIB, they were still demanding written confirmation directly from the creditor. This was not possible because the company no longer existed.

To deal with this situation effectively, more teeth is needed which makes creditors have no other choice but to deal with the request. For example, reducing the debt for non-response. At the same time, the AIB have to be realistic in their expectations when it comes to balance confirmation.

Whilst DAS does allow deemed consent at the point of approving the Debt Payment Plan, to get to this, advisers have to go to extreme lengths to get balance confirmation. There is no deemed consent for balance confirmation and that must change.

As stated in Q2.4, the level of administration expectation placed on advisers can border on advisers feeling they are being pulled in all directions just to get the balance confirmed and provide sufficient evidence that is then rejected as not being enough. With workloads of advisers already being under great strain and many working only part-time hours, if a creditor does not respond, then the last known balance should be accepted and even reduced. This should be stated clearly to creditors when the initial request for a balance confirmation is sent with a strict deadline for response.

The sanctions for non-response have to match the workload cost of the adviser and potential harm caused to the client for delaying their application. It is unfair to place such demands on a money adviser who works in the free sector but less expectation on the creditor in the private sector.

Q3.6 Do you agree that the AiB should be more proactive in collecting information from advisers and insolvency practitioners about creditors that repeatedly fail to fulfil their responsibilities and reporting these creditors to regulators as proposed above?

Citizens Advice Scotland agree that the AIB should be more proactive in collecting information but also in sharing that information with relevant authorities such as the Financial Conduct Authority (FCA) and Financial Ombudsman Service (FOS)

For commercial creditors, linking the Accountant in Bankruptcy with the FCA and FOS will assist in providing appropriate oversight and if necessary, sanctions on repeat offenders. Failing to respond and communicate effectively with third sector organisations trying to support individuals in financial difficulties is a contravention of the FCA regulatory rules and a failure of their Consumer Duty. But it cannot be the sole responsibility of advisers to flag these issues to the FCA and FOS. The AIB have a unique view of the whole landscape which would be invaluable to such authorities and fosters good cross-sector cooperation. It could also lead to tougher sanctions and expectations being placed on creditors.

To assist in flagging problematic creditors, an easy reporting system should be created to allow advisers to seamlessly flag bad creditor behaviour to the AIB and if necessary, this could link with the FCA as a regulator and the Financial Ombudsman

Service. This would create a feedback loop where advisers are encouraged to flag bad practice by creditors because they know it will be taken seriously and there will be repercussions on creditors as well as improvements to overall processes. Justice must be done but also must be seen to be done.

These actions together with a harsher penalty on creditors as suggested in Q3.5 above will do far more than a simple AIB notice could ever achieve.

3.4 Consumer access to insolvency

Q3.7 In the light of the experience of previous marketing campaigns, is there compelling evidence for the Scottish Government funding another?

Citizens Advice Scotland can certainly see some merit in another Scottish Government funded marketing campaign, given the success in regard to our own Debt Campaigns in which we have raised awareness of debt advice and to encourage people to come to our network for advice and support. Whenever we have done these campaigns in the past, they have been positively received and seen an uptake in people coming to our services.

We know from numerous behavioural studies and research in the past that people often do not know where to turn when it comes to discussing their financial situations and that often a marketing campaign can be the very nudge to encouraging engagement with services such as our Citizens Advice Network.

However, such campaigns can drive up demand to the point supply cannot cope and given our money advice sector is already under greater strains and pressures than before, not only in terms of numbers but also complexity of cases, any marketing campaign will only be successful if there is sufficient resource behind it to support the influx generated. Increasing awareness of debt advice and support will always be welcomed but we cannot add to the burdens advisers are already experiencing – this will only weaken the sector further and have the unintended consequence of not actually providing the solutions originally being sought due to lack of resource.

We cannot encourage individuals to seek advice if at the end of the day they will only end up waiting weeks for a free debt advice appointment and therefore pushed into the arms of commercial providers who then place them into inappropriate solutions.

That is not to say marketing campaigns are not necessary because we do need to raise awareness, but they will generate more people using free advice services and therefore impact on the advice agencies and the third sector. Therefore, a marketing campaign can be a part of a suite of interventions that if done correctly and properly resourced, will help bolster our advice sector, not hinder it further.

On this note, while Citizens Advice Scotland welcome that we are being asked about funding, resource, demand and capacity of the free debt advice sector, these are extremely challenging to answer within the confines of a review of statutory debt solutions. This is a complex landscape with no easy answers and with multiple dynamics at play which demands its own separate focus – as such we would like to see the Scottish Government lead in the formation of a dedicated working group involving key sectoral stakeholders to address the challenges facing the provision of free money advice.

Q3.8 What are your views on these recommendations to change the language used?

As Citizens Advice Scotland stated in our previous response, language around debt is harmful and has an impact on individuals feeling shame and embarrassment. Even with the most supportive and non-judgmental advisers, Stigma is strongly associated with debt and that is in part down the language we use. It is acting as a barrier to debt relief.

We reported in our last response that many clients will refuse to even consider bankruptcy because it is too shameful. Often individuals will seek private solutions such as PTDs as it is perceived as a lighter more accessible form of debt relief.

Language and the perceptions it creates have a real impact on how people think about debt and insolvency. Every inch of an individual's financial lives is picked over which is deeply shameful and humiliating. People feel judged and condemned for falling into debt, often due to circumstances completely outwith their control.

Applying for bankruptcy or any debt solution should never be an easy decision, but nor should it be shameful.

Changing the language will be one step forward in tackling stigma. Currently it is overly technical, emotionally provocative and judgemental.

As we stated in our last response, people will naturally gravitate towards PTDs because the words used are “Trust” and “Protected”, giving connotations that the individual will be safeguarded and that they can have faith in the system trying to help them. This is not the same for bankruptcy, which is often perceived as harsh, punitive and limiting.

Lessons must and can be learned from other countries where words such as “financial protection”, “debt counselling” and “individuals in debt” are more commonly used. These words are more welcoming, engaging and non-judgemental.

In our last response, we recommended some small but incredibly powerful changes that could be done – For example, instead of the Debt Arrangement Scheme, it could be called the Financial Arrangement Scheme. It would make individuals feel that they are being empowered to take back control of their money and finances. Getting them into a better financial arrangement overall rather than just dealing with their debts.

Another could be changing the word “bankruptcy” to a Financial Comfort Order. We have seen the power of such words in England with the Debt Relief Order. It is a form of insolvency but clearly signals to individuals that it is focused on Debt Relief. Bankruptcy is still and always will be a harsh words with harsh connotations. Changing it to “Financial Comfort Order” signals to people that it is more about achieving the proposed aims and principles in Section 1 where insolvency seeks to provide a financial safe haven.

Such small but effective changes to the very language embedded in our systems will have an enormous impact to make transformative change, tackling stigma and encouraging engagement in the sector and perhaps even working together to eradicate it once and for all.

Q3.9 Do you foresee any problems arising from amending the Debt Advice and Information Package in this way?

Citizens Advice Scotland agree that it is important people are made aware of the aims and principles which the AIB must operate under, however we are unsure that the Debt Advice and Information Package is the right vehicle. The DAIP is more linked to diligence and certainly it could be included but it may not have the intended

outcome that is being sought in raising awareness of the AIB's duty to treat individuals with dignity and respect.

If the intention is to ensure people who are entering statutory debt solutions such as bankruptcy are made aware of such a duty, then it would be better to include such a disclaimer in all the AIB guides and statutory forms that must be signed. This will prove problematic in that most of the AIB guides have been made digitalised on a platform which is now no longer easily accessible, but by also attaching it to statutory forms that must be signed such as the DAS consent form or the Statutory Moratorium form, it will ensure before entering any insolvency product, people have been informed of the AIB's duty.

However, to be truly effective, there must be a form of redress attached. Similar to the Financial Ombudsman Leaflet which must be given to debt advice clients as part of their FCA regulated activities, any disclaimer about duties must be accompanied with a route of redress – such as to raise a complaint with the Scottish Public Services Ombudsman.

Q3.10 Please may we have your views of this suggestion and details of which standards do not currently cover this issue.

Citizens Advice Scotland agree that there is an abundance of regulation on creditors, IPs and Money Advisers from Scottish National Standards on Advice Providers, to the FCA's Consumer Duty and Principles of Business to IP Regulations under SIPPS. All of which drive a broader set of principles. However, in our discussions on this area across the sector, there was a strong call from all stakeholders that when it comes to such principle-based oversight, the AIB were the ones who lack a clear set of values in which to operate – unlike similar counterparts such as Social Security Scotland.

As identified in Q3.9, it is important that the principles (as suggested in Section 1) are adopted and upheld, not only by creditors, IPs and Money Advisers but most importantly by the AIB. Moreover, people seeking insolvency and statutory debt solutions must be made aware of these responsibilities and have an open redress route to raise complaints should the AIB fall short.

All parties within the debt and insolvency landscape must be seen to uphold these shared values and principles and it does not matter if they are governed by different forms of regulation but rather there is a clear unified approach, so that individuals know what to expect and what to do if expectations are not met.

Q3.11 Do you agree with our conclusion? If not do you have any suggestions on how the difficulties faced by small creditors might be overcome?

Citizens Advice Scotland agree with the conclusion made as whilst the register being private could have benefits in protecting individuals' security and privacy, there is an element that the general public do not really know the existence of the register and switching to a private register when the risk is low would be an extreme measure. It could also have unintended consequences of stopping people who require access and information gleaned from the register, being unable to obtain it, such as smaller creditors.

In speaking with our network, there is the perception that most people are not adversely affected by the register being public and many advisers find it useful for checking their client's previous history. Due to the reality that many people need to know something about the individual in order to search it properly as well as know it exists in the first place, the risk of harm is relatively low. There are safeguards in place for people who may need to keep their details confidential such as victim-survivors of domestic abuse and perhaps more detailed focus on whether this is working is required. But in general, for the vast majority of applicants, the register as it currently stands, does not need to be changed.

Q3.12 Would allaying consumer fears about anyone being able to access the registers in the Debt Advice and Information Package serve any useful purpose?

Citizens Advice Scotland consider that allaying individuals' fears on access to the register is always beneficial, we are not convinced that this needs to be included in the Debt Advice and Information Package. As stated in Q3.9, the DAIP is mostly used in diligence proceedings and may not necessarily be the platform for such messages.

In reality, most money advisers will do this already when discussing insolvency with their clients and explaining the purpose of the register. Most money advisers have this included as standard and is best practice.

Adding such messages to the DAIP could be counterproductive in that it puts an idea in the individual's head and adds to their fears but then do not have an outlet in which to explore and be assured. There is potential it creates the problem it is trying to solve.

Having these discussions as part of the money advice process and from a qualified money adviser, mean people seeking insolvency can talk it over and seek reassurance.

CAS feel the best place in which clients can be able to get advice on the registers, ask questions and discuss concern is with their independent and impartial money adviser.

Q3.13 Do you agree that this issue can be satisfactorily dealt with by an AIB notice to creditors?

Citizens Advice Scotland do not agree that this issue could be dealt with by an AIB Notice. As stated in Q3.5 above, such notice to a creditor will do little in alleviating the issue because such notices can be ignored. Moreover, there is no direct correlation. The two are simply not connected. The calls in the previous consultation were on changing the impact of bankruptcy on employment contracts and tenancy agreements. These impacts are caused by third parties not creditors and as such we cannot see what an AIB notice to creditors, who have no say or control on employment or tenancies, would achieve or how it could deal with the issue. It has nothing to do with creditors. It is the consequences of being awarded bankruptcy.

If an individual applies for bankruptcy and there is a clause in their tenancy agreement on bankruptcy, it is the landlord who seeks to terminate the lease – not the creditor.

This is the same for employment contracts – it is the employer who invokes the clause not the creditor.

Additionally, whilst there would be scope to make changes in terms of tenancies by banning such clauses via Scottish Legislation and ensuring landlords cannot terminate a lease on the basis of bankruptcy, this would not be possible for employment contracts as it is a UK reserved matter and would require UK legislation to ban such practices.

That being said, certain employment positions which are prevented from applying for bankruptcy such as directors of a company could be amended because this set by Scots Law and could open access to bankruptcy up to many people. But it does not stop an employer adding such a clause to their own employment contracts. In fact, certain professions require permissions to continue practicing if they have been made bankrupt – for example dentists, bank employees, accountants and IPs, even in certain cases debt advisers as there is an implied degradation to their professional standing by applying for bankruptcy.

None of these issues could be solved by an AIB notice to creditors.

3.5 Broader support for vulnerable people

Q3.14 Are you able to provide detailed examples of joined-up services of this kind that could be rolled out more generally?

Citizens Advice Scotland agree there is a need for links between money advice services with other government agencies and support services to provide a whole-person holistic approach to advice. This involves all sectors such as Local Authorities, social services, mental health professionals, addiction services and others all working together as a multi-disciplinary team, each bringing their own insight and expertise to support an individual and their family.

CAS know of several examples that could be used to share best practice and take learnings from including:

Accessible Advice Funded Projects – This is a Scottish Government led initiative which aims to make money advice, including income maximisation and welfare benefits, more accessible by providing funding for services in community settings. It built on the work by Welfare Advice and Health Partnerships which placed advisers in GP practices, but the Accessible Advice Fund expanded this to include other

community settings such as mental health services, schools, hospitals and even other third sector organisations. It seeks to help people who are struggling financially but may not know about money advice, get support in places where they are already being supported - <https://www.gov.scot/news/financial-advice-where-people-need-it/>

Trussel Financial Inclusion Projects – Trussell have extensive financial inclusion projects across Scotland, working in partnership with other third sector organisations including our Citizens Advice Network to help people in financial hardship. It seeks to prevent the need for emergency food aid by offering advice and support on money matters, maximising incomes and dealing with debts to help people move out of the need for emergency food - <https://www.trussell.org.uk/news-and-research/publications/evaluation/evaluating-our-money-matters-advice-and-support-services>

Food Insecurity Pilots – Through the Ending the Need for Foodbanks Strategy, Scottish Government funded several of our CABs to pilot the use of shopping cards as an alternative to foodbank referrals. This was not seen to be a long-term solution but rather a method in which to provide vital crisis support and unlock wider entitlements such as a holistic service of benefits and debt advice that wrapped around this pilot. <https://www.gov.scot/publications/cash-first-towards-ending-need-food-banks-scotland/pages/4/>

Aberlour Tayside Project - This was set up in 2022 to support Tayside families struggling with public sector debt such as council tax and school meal debt. The project brought together existing support agencies to test new and innovative approaches to financial advice and support as well as a bespoke Hardship Fund to deal with unmanageable public sector debt. <https://www.aberlour.org.uk/publications/aberlour-family-financial-wellbeing-tayside-pilot-evaluation>

Orkney Money Matters Project – This is led by Voluntary Action and brings together a collective of local organisations and third sector agencies all working together to reduce financial insecurity in Orkney. The project provides several pathways to advice and cash-based support such as Citizens Advice, Orkney Blide Trust and THAW and seeks to increase access to advice and support for families facing financial difficulties - <https://www.blidetrust.org.uk/news/money-matters-project>

Money Guiders Scotland Network – Delivered by Money Advice Scotland and run by Money and Pensions Service, this is a growing network which links up professionals from various sectors to help deliver money guidance. It trains professionals who may not be money advisers but have routine discussions with clients, customers and service-users about money. For many professionals such as social workers or mental health professionals, they are expected to have conversations with their service-users about money but are often worried about having these conversations without training and a relevant support network. The Money Guiders Programme seeks to address that issue. It also allows members to share best practice, connect with other public, third and community projects from across different skill points such as housing, welfare rights, education, health and social care.

<https://www.moneyadvicescotland.org.uk/about-the-money-guiders-scotland-network>

These are just a few examples of collaborative working that already exists but it should be noted, most if not all are driven by the third sector. To truly galvanise change, this needs fuller involvement from Scottish Government, Local Authorities and other public bodies such as the Accountant in Bankruptcy.

A great example of this is the Council Tax Pilots which are being funded by Scottish Government in partnership with Citizens Advice Scotland. These projects are seeking to provide targeted advice on council tax debt as well as considering the wider holistic nature of support. It aims to bring collaboration between local authorities and community groups to improve council tax debt collection practices -

<https://www.gov.scot/news/supporting-people-with-council-tax-debt/>

Lessons could be easily learned from these existing projects as well as the potential to be rolled out across the whole of Scotland.

Q3.15 Are there new ways of joining up services that should be considered?

Often when services are joined up, there are elements which are overlooked or not given enough resource because they are not direct advice but rather additional support that keeps individuals engaged such as advocacy and before-care support.

There are pockets of services that provide this level of support but are rarely included in models which seeks to adopt a joined-up approach.

For example, in East Lothian, the Buddy Project was set up to accompany people to their medical assessments for disability benefits. This was more than just moral support as many individuals need someone to stay beside them, but it also was a system of advocacy in action.

Another element is supporting people to get ready for advice. The advice process can be and is arduous, especially in debt advice. As stated previously, when an individual goes through insolvency, every aspect of their lives is picked over and dissected. Mountains of evidence and financial documents have to be gathered and produced. Forms have to be read and signed. New bank accounts may have to be set up. Suppliers switched and expenditure reduced. All of this can be overwhelming, exhausting, isolating and feel never-ending. Whilst have a Buddy Project style approach of providing emotional support would be needed and welcomed by individuals, they also need practical support in gathering evidence, completing forms and preparing for the advice journey.

This model is currently being tested in Citizens Advice Scotland via our Routes Out of Crisis Project - <https://www.cas.org.uk/what-we-do/our-publications/routes-out-crisis>

However, it should be noted that this is not a new or innovative model. It has been used in the past, for example advice agencies, including CABs across Scotland were known to have assistants whose job was to complete the administrative side of the debt advice journey, working hand in hand with individuals who may have had issues in engaging such as digital exclusion, literacy issues, language barriers or mental health issues. All of which have been known to struggle with paperwork and forms. This can become so overwhelming that they cannot continue with the journey.

Embedding both the emotional support and practical support elements of these will help ensure individuals are prepped and can stay engaged as many clients can end up dropping out of the debt advice journey due to feelings of being overwhelmed.

Q3.16 Do you support the development and promotion of such a register to support a 'no wrong door' approach? If so, who should be responsible for compiling it and keeping it up to date? Can you provide details of any current or previous attempts to do this?

Citizens Advice Scotland agree that the development of a register to support a no-wrong door approach could have its benefits. Historically, there was a Money Adviser register ran by Money Advice Scotland, albeit limited in its information as it did not state what the agency could support with and to what level. This meant the register lacked the ability to adequately inform individual the level of service they could expect.

Therefore, if a new register is to be created, it should link to Scottish National Standards for Advice and Information Providers so that each agency included will clearly display the level of service they provide. This would allow for reasonable and informed referrals, especially if the individual requires representation at tribunal or in court.

The register would have to be annually maintained as projects can be short run, due to limited funding and short funding cycles. This would be reliant on an organisation such as the Accountant in Bankruptcy who are the most likely candidate to have the resources to maintain such a register. Moreover, by having the Accountant in Bankruptcy as overseer of such a register, they could ensure it linked to their approval of use regarding their systems (BASYS, eDEN and ASTRA) As for other models, please see our response to Q3.17 below

Q3.17 Do you envisage any other routes to achieving a ‘no wrong door’ approach for people seeking debt advice?

Citizens Advice Scotland do not believe that there are any other routes to achieving a no wrong door other than having a workable register and there are examples of this including Money and Pensions Locator Tool -

<https://www.moneyhelper.org.uk/en/money-troubles/dealing-with-debt/debt-advice-locator>

Other examples include Fife Council and their No Wrong Door approach -

<https://our.fife.scot/leadership/conversation-topics/no-wrong-door>

However, it will only work if it is maintained and as detailed in Q3.16, details the level of service provided. That being said, to truly adopt a No Wrong Door approach, this requires a Tell Us Once system to be part of the approach. Having to retell one’s story and repeat themselves as they move through the No Wrong Door approach,

would be incredibly demoralising and retraumatising. Therefore to ensure continued engagement and a wrap-around service which are the very foundations of a New Wrong Approach, you simply cannot do one without the other. Moreover the No Wrong Door approach requires the inclusion of other services, not just debt advice.

On that note, other models have been developed to link up organisations, service providers and third sector advice agencies, aiming to provide a No Wrong Door and Tell Us Once system including:

- Experian Hub: <https://supporthub.experian.co.uk/>

- Vulnerability Register: <https://www.vulnerabilityregistrationservice.co.uk/>

Additionally, the UK Government are seeking to create a Share Once Support System which Money Advice Trust have done extensive research and development into. This Tell Us Once system which would then link up the necessary organisations across all sectors and seek to ensure a No Wrong Door approach -

<https://moneyadvice.org/latest-news/money-advice-trust-responds-to-governments-new-share-once-support-register/>

All these models could be used as a foundation for creating a Scottish specific register or even adopted. Regardless of the option taken, it will take significant resource and commitment from all stakeholders to maintain but would be deeply beneficial.

Q3.18 Do you support the development of a ‘just tell us once’ facility? If so, how do you think this could be best achieved?

Citizens Advice Scotland support the development of a Tell Us Once Facility and have advocated for such in the past. As stated in Q3.16 and Q3.17, there are other models which could be utilised and even adopted, rather than creating a whole new bespoke register. Citizens Advice Scotland would recommend these models are explored as they seek to link up other agencies out with the debt advice landscape such as GP surgeries, NHS Health Boards, Social work. All of which are being explored by the UK Government and the Money Advice Trust.

3.6 Financial education

Q3.19 Do you think that broader advice on money management and budgeting should be built into pre-insolvency money advice?

Citizens Advice Scotland agree that broader advice on money management and budgeting is and should continue to be built into pre-insolvency money advice. As we previously stated, it should be noted that money management and budgeting is already included as standard in the general money advice package. Logically, this is as far as debt advice processes should go. It is already a strenuous and arduous process for people to engage with, without adding anything else on top of it.

Whilst further money management skilling should and is offered, and this could be extended to post-advice, we would encourage that this should be done once the dust is settled from the solution implementation process. It needs to be an individual's choice not a mandatory requirement. This is because clients have several competing demands and pressures, which go beyond the presenting debt issue.

Clients naturally learn about the insolvency process and system as they go through their advice journey. Advisers will discuss options along with other support mechanisms such as budgeting and money management which in turn teaches individuals. This is a natural course, and many advisers would see it as them doing their jobs as they should.

Q3.20 Should money advice, including money management and budgeting be required prior to a Protected Trust Deed?

Citizens Advice Scotland, agree that money advice, including money management and budgeting should be required prior to a PTD. We add that this should be independent and impartial which would mean being delivered by a separate organisation to the PTD provider.

There are arguments by IPs that they already provide this level of advice prior to a PTD but we do not agree. Presently, IPs do provide information based on SIPP3.3 which are their professional requirements. This is to ensure the client has information about all potential debt relief solutions based on their own circumstances and their CFS. It does not however cover issues of income maximisation, money management

or budgeting. As to solutions that are laid out, this can be limited to just advice on statutory debt solutions and not informal non-statutory options. IPs must now provide as standard a written format detailing all their options and implications as they have provided information on. However, it still fails to provide the additional budgeting and money management skills information that individuals may need.

This is not the same as the independent money advice given by our network. The advice given, which may be done prior to being referred for a PTD, will include budgeting, income maximisation and money management skills as well as laying out all options, both statutory and non-statutory.

Additionally, debt advice is a regulated activity governed by the FCA and as such falls under the Consumer Duty. Therefore, debt advice agencies including our network have to seek good consumer outcomes. More so, these must be evidenced. This is on top of the requirements under internal audits and Scottish National Standards. All of which require advisers to provide a detailed course of action letter which outlines all advice given, including any conversations on money management and budgeting.

But the issue here is more to do with capacity to match demand because such detailed advice and wrap-around services are time-consuming and resource-intensive.

Therefore, whilst Citizens Advice Scotland are in support of making it mandatory for individuals who are considering an PTD to be given such independent money advice – as is the case with bankruptcy. But in order to do so, there are serious implications upon the third sector in terms of capacity and resource which would require additional and stable funding streams.

4. The ‘market’ for delivering advice and solutions in Scotland

4.1 The currently distinct roles of not-for-profit money advisers and the commercial sector

4.2 The medium to long term viability of the for-profit and IP sectors

Q4.1 What is needed to ensure a healthy, vibrant and ethical market for for-profit firms could be enabled for the medium to long term.

This is rather a challenging question as further investigation would need to be completed, especially on the causes and implications of the saturation currently being seen in the market.

At present, we can only assume inferences. For example, similar saturation is being seen within DAS, following the changes to open up delivery. These changes were intended to bring not-for-profit providers into the market for delivering DAS, but this aim doesn't appear to have been achieved.

Currently the DAS market is dominated by 2 commercial firms accounting for over 60% of all DAS. The AIB are responsible for further 20%. Thus, leaving just 20% for the not-for-profit sector, of which there is one main charitable provider offering administration of DAS with a market share of 15%.

In comparison, this is a similar landscape for PTDs. Such saturation is concerning as it may limit the provision of PTDs and DAS in future and it lends itself to precarity should these commercial providers withdraw from either insolvency solutions – this could lead to these solutions being unable to be administered.

This could be due to many causes, some known and some unknown and whilst we could lay them out, it would only be an assumption. Therefore, a thorough investigation is needed to move such assumptions to known variables. The Competition and Markets Authority would be best placed to do such an investigation,

in particular to consider what are the guiding factors for the saturation of the Scottish Insolvency economy and whether it is truly harmful to individuals.

Following the investigation, as the factors, causes and implications will be better known, then the question on what is needed to ensure a healthy, vibrant and ethical market would be better known.

Q4.2 Tell us if, and how, provision of repayment solutions could be maintained if the for-profit sector exited the market.

As stated in Q4.1, such saturation gives the risk of precarity. Should the for-profit leave the market, it could have significant ramifications for the sector as a whole. Most notably, the not-for-profit sector, who are already under great strain and could not cope with the additional demand, unless substantial influx of resource was provided.

That being said, should the for-profit sector did exit the market, there is potential for the AIB, who have the knowledge capacity and systems to step in and be expanded if required. Again, this would require a substantial injection of resources.

There is precedence for such actions – the Bankruptcy (Scotland) Act 1993 introduced a clause to allow PTDs to be a route into bankruptcy, removing it from the hands of IPs and into the hands of the AIB. However, this would only be a temporary solution given it is not resolving the issue but moving the saturation from two providers to just one. This could lead to potential issues arising from conflicts of interests in terms of the AIB's roles and responsibilities.

Again, a thorough investigation as suggested in Q4.1, would be the best place to gather information and intel on this problem statement as well as potential insight into how provision of repayment solutions could be maintained if the for-profit sector exited the market.

4.3 The medium to long term viability of charitable and not-for-profit debt advice

4.3.1 Informing funding decisions

Q4.3 Tell us if, and how, the Scottish Government could effectively carry out a study of the level of debt adviser provision needed to meet known demand for debt advice? Are there others sources of information that should be considered in setting funding levels?

As already stated, debt advice in the UK is a regulated activity (excluding Local Authority provision) and therefore would have data on the providers of regulated services across Scotland. It however is incomplete in that it does not cover Local Authorities, but this information could be gathered from the Improvement Service who have previously conducted a survey on local authority funded services in the past. (<https://www.improvementservice.org.uk/products-and-services/transformation-and-improvement/improving-outcomes-in-money-advice/publication>)

We would also recommend using public sector data which can shine a light on levels of public sector debt. When considering the demand of debt advice, it is important to note that public sector debt (for example council tax arrears, social rent and school meal debt) far exceeds the debt now found in commercial sectors. Then there are other sectors which should be included such as energy and telecoms debt. All of which was considered under recent research by Impact on Urban Health - <https://urbanhealth.org.uk/insights/reports/supporting-households-in-energy-debt>

This research advocated for a widening of the FCA debt levy model which is based on the level of debt advice generated by commercial credit firms. Impact on Urban Health makes the case that given other sectors are increasing in terms of level of debt owed, then the policy of “polluter pays” model is not capturing all the polluters. Therefore, expanding the FCA model to other sectors is not only fair but desperately needed. This will be further explored in Q4.4 below

Regardless, data which could assist in assessing demand would include the Money and Pensions Service who gather annual data on financial wellbeing in order to analysis demand for debt advice - <https://maps.org.uk/en/publications/research#>

As does the Financial Lives Survey by the FCA (<https://www.fca.org.uk/financial-lives/financial-lives-2024>)

There are also comparisons that then could be made with existing AIB data in terms of level of provision of Statutory Debt Solutions with the caveat that many individuals seek non-statutory debt solutions which would not be covered in AIB data but still indicative of provision.

That being said, while Citizens Advice Scotland welcome that we are being asked about funding, resource, demand and capacity of the free debt advice sector, these are extremely challenging to answer within the confines of a review of statutory debt solutions. This is a complex landscape with no easy answers and with multiple dynamics at play which demands its own separate focus – as such we would like to see the Scottish Government lead in the formation of a dedicated working group involving key sectoral stakeholders to address the challenges facing the provision of free money advice.

4.3.2 Sourcing additional funding

Q4.4 Please tell us your views about whether these measures will be effective. What would you propose to ensure these measures are effective / what alternatives would you propose?

Citizens Advice Scotland would agree that funding reform is needed. The widespread use of short-term precarious funding cycles is causing the money advice sector to be under-resourced, overworked and stretched to breaking point. This is having an impact on the people our network strive to support. Funding precarity impacts on people in need of services because as funding is cut or stopped, projects change, close, or are limited by the constraints of such precarity. Change is needed.

There are cases of money advisers being stuck on project funding for years but because the cycle runs year to year, they are faced with constant threat of redundancy, and loss of their own financial security.

The need for debt advice is not going away. Longer funding contracts are needed. Short term funding cycles only result in loss of talent and expertise as well as wasted resources in constant recruitment and training cycles. It takes over a year to fully

train an adviser. Often an adviser will just be qualified and then lose their funding. If that adviser is not able to be retained, that is a complete waste of resources.

Frequently, agencies will issue redundancy letters only for funding to be awarded too late and then having to go out to recruitment, despite mere months before having fully qualified and capable staff.

On this note, as stated before, while Citizens Advice Scotland welcome that we are being asked about funding, resource, demand and capacity of the free debt advice sector, these are extremely challenging to answer within the confines of a review of statutory debt solutions. This is a complex landscape with no easy answers and with multiple dynamics at play which demands its own separate focus – as such we would like to see the Scottish Government lead in the formation of a dedicated working group involving key sectoral stakeholders to address the challenges facing the provision of free money advice.

However Citizens Advice Scotland do wish it to be noted that insight from across the Money Advice Sector was gathered and this includes on the above proposed measures.

Expanding the Debt Advice Levy – There was broad support for expanding the debt advice levy. As Citizens Advice Scotland noted in Q4.3, the picture of debt has changed. Commercial credit debt is now by far superseded by public sector debt and utility debt. Currently the Debt Advice Levy is only on commercial credit firms and used to fund debt advice services. Yet they are not the only sector to benefit from such services. Utility firms, telecom providers and local authorities all benefit from independent debt advice because an adviser takes a holistic approach and will seek resolution for all an individual's debts, not just the commercial ones. Yet these other creditors do not contribute to the Debt Advice Levy (although Local Authorities do fund separately in some areas).

Therefore, most money advice organisations, including Citizens Advice Scotland, agree that expanding the debt levy would provide a stable source of funding and ensure ALL creditors contribute to supporting those in debt. There are concerns about the level of the levy that should be applied, and we would recommend the proposal by Impact on Urban Health where the amount a sector pays is

proportionate to size and profits of creditors as well as the amount of debt the generate. This would mean as debt in different sectors fluctuate as would their contributions.

Statutory Requirement for Local Authorities: There was some support regarding this option as it would place an obligation on councils to ensure adequate funding is ringfenced for local debt services. This would certainly ensure debt advice is available across all regions, particularly in underserved areas. However, such funding is only possible if Local Authorities have the appropriate budget in which to provide services or funding to external agencies. This would require Scottish Government involvement to ensure funding to Local Authorities is sufficient to allow ring-fencing of funds to allow Local Authorities the ability to meet their Statutory Requirement. There is no point placing a statutory requirement on local authorities, if they do not have the means in which to meet it.

Statutory Right to Debt Advice: Similarly to the statutory requirement on local authorities, this would only be achievable if the debt advice in which to meet this right is properly and sustainably funded. Without which, there is no guarantee that this would be available for individuals to exercise their statutory right. It also assumes that it is exercisable and against a stretched sector, this is not practical. Additionally, there would need to be a route to allow people to challenge if their statutory right is not accessible. If an individual is in debt and has to raise legal proceedings in order to exercise their right to advice, all this does is add extra strain, costs and time constraints on individuals. None of which is conducive to the end goal of seeking debt relief. Again, this would require Scottish Government backing to ensure dedicated and adequate funding is made available

Changes to Fees on Insolvency Solutions: Citizens Advice Scotland do not agree with this suggestion, nor does the wider advice sector. Previous attempts have shown that this does not work and has the unintended consequence of acting as a barrier to support. With the introduction of cost alleviation through fee waivers, most applicants to Statutory Debt Solutions cannot pay for applying for such solutions, therefore it would not be able to fund itself. People in debt do not have money to make this option economical. Moreover, the PTD funding model has only recently been changed which sought to re-distribute fees amongst the Trustee and creditors.

It does not bring in new streams of money and any additional fees on the private sector would only increase costs for individuals, thereby limiting access to only those who could afford higher costs.

As for Alternative models, there are some potential opportunities which could help ensure the sustainability of free-to-client debt advice services:

- Local Authority's requirement to ringfence money purposely for provision of debt advice: Whilst it is not a statutory requirement, such ringfencing provision could ensure that this money is set aside for debt advice and cannot be spent elsewhere. This could be centrally set by central government – similar to systems as the Scottish Welfare Fund based on the level of demand in the local authority areas. This has happened in the past and would ensure various levies are directly protected for money advice. Since ending, services and provisions have deteriorated. Further dilution occurred in some local authority areas because they defined welfare rights and income maximisation services as money advice but not to the same level as debt advice. Whilst money advice contains these elements, the reverse is not always true. Some income maximisation services, and welfare rights teams do not provide debt advice, and certainly not to level required.

- Corporate sponsorships: Some money advisers advised that their agencies have explored corporate partnerships with financial institutions, but this can limit advice provision and is reliant on contracts being renewed. There is also a requirement to ensure no conflicts of interest arise and safeguards would need to be in place to ensure the money advice agency can retain its impartiality.

- Philanthropic Contributions, Crowd funding and Community Fundraising: These unconventional routes could be used to provide targeted funding to support specific aspects of debt advice and there are services current receiving funding to do just this. However, whilst they do offer a route to increased funding, these streams cannot be compelled nor guaranteed so they may be considered as a funding stream, they cannot be heavily relied on.

No matter what new model is adopted, there are key factors that must be considered. Any new model must be fair and transparent to ensure funding is allocated equitably across the sector and all individuals are able to benefit from free

debt advice. Funding must be sustainable and as mentioned above, long-term funding cycles which supports debt advice services over time would be a step forward compared to the current short-term or one-off funding pots.

Finally, it must ensure it does not add to advisers' already crushing administrative burden such as increased complex reporting. The new funding model must be easy to administer and not place any additional strain on already overstretched workforce.

4.3.3 Improving use of funding

Q4.5 Please tell us your views and key considerations about the proposal for Scottish Government to investigate and provisionally fund a programme of investment in the sector.

Citizens Advice Scotland agree that Scottish Government should investigate and fund a programme of investment in the money advice sector. It is desperately needed for an already over-stretched and under-resourced sector. If investment does not happen, the system cannot sustain the rising tide of demand and will only corrode further.

Nonetheless, this investigation and investment programme requires strategy and a strategic committee providing oversight. The Committee should be tasked with the initial investigation to assess the current situation, the needs of the sector and proposed solutions. It would then oversee the implementation of such proposals and monitor its rollout and impact.

This would require cross-sectoral and cross-party involvement with a mix of private, public and third sector organisations involved in the Committee such as academia, Fintech, financial firms' representation, charities and consumer bodies. All providing their own unique insight and expertise to finding solutions and investment opportunities.

There have been known successful models of such programmes including the work of University of Edinburgh Financial Institute, Fintech Scotland and the FCA's own TechSprint programmes. These collaborative programmes have led to significant investment and technological advancements which seek to support the financial sector and by extension the Scottish insolvency sector.

These models could be replicated with a focus on insolvency and could even lead to potential solutions such as the exploration of building technology which uses Open Finance and AI within the AIB's own systems to help streamline and create seamless data transfers. This could have the potential ability to alleviate administrative burdens by building CFT limits directly into AIB systems such as BASYS, eDEN and ASTRA where sections are prepopulated, thereby saving time and resources.

Another consideration is the involvement of the human element. Whenever technology is recommended or considered, there is a balance that must be struck in using such technology to bring efficiencies but never at the cost of the human touch. Insolvency is a sector where human compassion is fundamental and cannot be drilled down into mere numbers. There is also a requirement of ensuring this human element can ensure compliance and legal requirements are being met, not to mention the need and desire for human interfaces as the preferred method of advice provision for many individuals, particularly the most vulnerable.

Therefore, Citizens Advice Scotland would urge that any investigation or investment programme proposed must keep individuals at the heart of its aim and objectives.

However, while Citizens Advice Scotland welcome that we are being asked about funding, resource, demand and capacity of the free debt advice sector, these are extremely challenging to answer within the confines of a review of statutory debt solutions. This is a complex landscape with no easy answers and with multiple dynamics at play which demands its own separate focus – as such we would like to see the Scottish Government lead in the formation of a dedicated working group involving key sectoral stakeholders to address the challenges facing the provision of free money advice.

4.3.4 Marketing not-for-profit advice services

Q4.6 Do you have views on whether a marketing campaign around debt advice and insolvency should prioritise not-for-profit provision?

As stated in Q3.7, Citizens Advice Scotland can find merits in a marketing campaign and certainly one which prioritise free sources of debt advice and not-for-profit provision. However, capacity to meet any increased demand must be in place first.

Services are already over-stretched and at breaking point in terms of provision, thereby urgent and substantial investment is needed. Moreover, any campaign aimed at not-for-profit agencies in a means to encourage people to seek advice cannot immediately coincide with such investment. As we stated in Q4.4, it takes over a year to fully train a money adviser, therefore any investment would need time to bed in before capacity is at a level to meet any demand generated from the campaign. Essentially, marketing not-for-profit provision is only viable if it is in a position to be marketable. There is no point driving up engagement with services, if services are not able to meet that engagement. Simply creating a position where demand increases but cannot met, will only make the current economic situation worse.

On this note, while Citizens Advice Scotland welcome that we are being asked about funding, resource, demand and capacity of the free debt advice sector, these are extremely challenging to answer within the confines of a review of statutory debt solutions. This is a complex landscape with no easy answers and with multiple dynamics at play which demands its own separate focus – as such we would like to see the Scottish Government lead in the formation of a dedicated working group involving key sectoral stakeholders to address the challenges facing the provision of free money advice.

Q4.7 If the marketing campaign was to attract more clients suited to repayment solutions to not-for-profit providers, is there appetite in the sector to play a greater role in those solutions?

Further to our points in Q4.6 regarding demand and capacity, where in order for the sector to play a greater role in any solutions, there needs to be a healthy sector able to meet it.

However, in terms of appetite, this would depend on what is meant by “role”. Would not-for-profit agencies be expected to be providers of all statutory debt solutions including PTDs – would we need IPs in order to administer these products?

This could be challenging for many agencies including the Citizens Advice Network. Two of our basic principles of the CAB services is to be free and impartial. Giving such provision could come with costs, both reputationally and monetary which would make these principles impossible.

The current system where the free sector is seen as trusted intermediaries able to assess viable options for individuals and allow them to make an informed choice works because of this impartiality and reputation. This includes making referrals to trusted partners for provision of products such as Full Administration bankruptcy with contributions, PTDs and DAS.

That being said, while Citizens Advice Scotland welcome that we are being asked about funding, resource, demand and capacity of the free debt advice sector, these are extremely challenging to answer within the confines of a review of statutory debt solutions. This is a complex landscape with no easy answers and with multiple dynamics at play which demands its own separate focus – as such we would like to see the Scottish Government lead in the formation of a dedicated working group involving key sectoral stakeholders to address the challenges facing the provision of free money advice.

4.4 Differing practices of not-for-profit and for-profit providers

Q4.8 Please share with us any experience you have of AiB evidence checks resulting in you having to change the CFT submitted and the reasons for this.

As mentioned in Q2.4, there is an abundance of experiences by advisers of AiB checks resulting in increased burdens and delays. We highlighted that there is a level of bureaucratic meticulousness that goes beyond what is necessary and falls into the feeling that advisers are under intense scrutiny to prove every single penny of income and expenditure – beyond what is reasonable or practical.

In speaking with our network, Citizens Advice Scotland found many advisers who found barriers caused by the way AIB conduct their evidence checks and whilst not all resulted in the adviser having to change the level of contribution, it still added to their stress and workload.

In fact, more often than not, even with the extreme level of quibbling and the constant back and forth caused by the AIB in picking apart every little cost, most CFTs didn't result in a change of contribution which begged the question – why do it?

One adviser spoke of a client who was self-employed and as is common, their financial statements had a mix of personal and business expenses all coming from one account, making it challenging to separate out. The client had a complex case and had made an agreement with their partner to each claim for 2 of their 4 children each. This is because the client had a child with a previous partner and 3 with their current partner. Splitting the claims between the couple meant they could claim each for 2 children and split the Child Benefit. Nonetheless the client still had the cost of 4 children to cover, yet the AIB stated that the client could only claim for the 2 within their financial statement. This meant the client's actual financial situation was not being fully accounted for and meant the money adviser had to start from scratch creating a whole new CFS with evidence. This was despite the fact, it didn't change the contribution because the client had no disposable income. Yet it created a mountain of work for the advisers, for zero returns for the creditors.

This resulted in a waste of valuable time and resources, just to satisfy the AIB as well considerable delay in getting the client debt relief.

Advisers were quick to state that this is not AIB-wide. In fact, it is mostly with the DAS administrator rather than with bankruptcy. Advisers cited sessions done by the bankruptcy team were extremely helpful in ensuring that the evidence expectations from advisers is clearly defined. This means, whilst still burdensome and heavy, it is done to the level expected and reduces the need for a constant back and forth on cases. Advisers added that the team dealing with bankruptcy in AIB are more inclined to have a conversation with the money adviser and work together to find a solution, especially in cases where evidence may be lacking.

This is not the same for DAS as we highlighted in Q2.4.

That being said, it is important to note for that for most advisers, the vast majority of cases we are now seeing are below the CFS trigger figures or the client is solely in receipt of benefits. This means the cases are relatively straightforward and have limited evidence requirements.

Q4.9 Please share with us the evidence you have of inappropriately completed income and expenditure assessments and inappropriately recommended solutions. Please tell us the frequency you see cases like this.

In speaking with our network, Citizens Advice Scotland found numerous cases where advisers have seen inappropriately completed income and expenditure forms. Thereby leading to inappropriately recommended solutions.

For many advisers, this felt like a common issue and happened on a regular basis.

In fact, advisers stated that the biggest offender in terms of PTD providers was J3 Solutions. For most advisers we spoke to, where they had a case with a failed PTD, it had come from J3. Often when looking at the client's income and expenditure, it was clear a PTD should never have been done in the first place. This was even the case where there had been a change in the client's circumstances.

One adviser illustrated this with a client they were supporting who was seeking discharge from a failed PTD, the client was on benefits and no assets and should never been recommended a PTD when a MAP would have been better.

In these cases, clients end up in worse situations and even more debt.

We are naming this firm outright given the level of work it is generating for our network, and advisers feel that the AIB have a duty to investigate and look closer at firms with high attrition rates. It is not always possible for advisers to flag up, more so they would be doing on a case-by-case basis. Whereas the AIB have an ability to take a wider scan of the landscape. This would involve looking at firms where a high number of PTDs fail, especially in their first 2 years.

Another common provider mentioned by our sector was Credit Fix where too often advisers are seeing PTDs whereby the client is solely in receipt of benefits or providers have done everything in their power to make the financial statement show disposable income. Advisers spoke of constant cases where financial statements did

not fully account for a client's circumstances or missed essential expenditure, even rental payments, just to make the PTD work.

It should also be noted that it is completely understandable why people cling to these providers. They offer a fast and quick resolution to rising debt issues and often can see clients quicker than the free sector which is undercapacity. They may not even know they can get such free advice as often the fee-charging sector can advertise on social media or pay for sponsored slots on search engines which the free sector cannot afford to do. It is natural that clients jump at these solutions and even though they are still paying, it is often at a lesser amount than they were so a client can justify the payment when in reality they cannot afford it.

In terms of evidence, aside from the testimony from our network, we would highlight the investigation completed by BBC Disclosure Scotland into this very issue - <https://www.bbc.co.uk/programmes/m001n5q4>

A stronger approach is needed, and more oversight should be placed on PTDs to ensure that every single one that is being proposed is just as rigorously checked as the free sector. Moreover, the AIB must take action when they are presented with frequent offenders. Many advisers spoke of making complaints about IPs to the AIB and Regulated Bodies, only for the IP to receive a fine but allowed to carry on with their abusive practices.

Such meagre repercussions make advisers in the free sector feel that there is no point in making complaints because nothing changes. Citizens Advice Scotland would recommend more is done to look into a failed PTD at the point of failure to consider why it failed. If it is clear that the PTD should never have been recommended in the first place and this happens on a frequent basis, then the AIB must step in, even withdrawing licensing to use the PTD systems as a means of deterrence. Otherwise, these practices will simply continue, and the free sector will be left to mop up the mess.

4.5 The role of technology in advice and solutions

Q4.10 Are there any other ways to promote appropriate use of technology in the debt advice / insolvency landscape in a coordinated way?

As noted, the use of technology is not necessarily about replacing human interaction so desperately needed for debt advice but rather the use of technology for streamlining processes to free up such human resources to do what they do best – help people in debt. In order to promote such appropriate use in a coordinated way will take significant investment but also significant buy in from the sector itself.

The main challenge facing the free advice sector is resource – due to successive funding cuts, most services do not have the time, money nor staff to properly invest in new AI and technology. It does not mean they are not willing; it is simply they are unable to do so, especially against a rising tide of demand.

There are many models that could be explored to learn lessons from such as the integration of income maximisation and benefits check into the loan application process with banks. Lloyds Banking Group have worked with Inbest and Lightning Reach to support loan applicants to maximise their income as best as possible as well as search for grants that may be better for their financial position rather than taking on more loans. Such models could be looked at working with the debt advice sector, for example pre-populating AIB systems or creating consistency across the board. This may be challenging in trying to attach APIs to current AIB systems but nonetheless it should be explored. However, it would still need strategic investment, not only from the Scottish Government but in conjunction with the UK Government, financial institutions and Fintech organisations. Certainly, in Scotland, with Fintech Scotland, the eco-system is already established, meaning there is potential in exploring how it could be used to support the free advice sector.

But to do this effectively, the advice sector must be involved as they will know what will work for their clients and individuals in debt. To afford this, the sector needs to be resourced, otherwise they will not be able to get involved, nor be able to buy in its potential.

4.6 Ongoing availability of debt advice for people within an insolvency solution

Q4.11 Do you agree with our proposed approach to making debt advice available to people during and as they exit insolvency solutions? Are there broader considerations we should take into account?

Citizens Advice Scotland certainly see merit in the proposed approach of providing debt advice for people during and as they exit an insolvency solutions, however there are several considerations that need to be reflected upon.

The first is human behaviour. Individuals seeking debt relief and come to our network for debt advice are dealing with extremely emotional and distressing situations. Debt is traumatic. And quite often with traumatic experiences, when people deal with the cause of the trauma – for example, implement a debt solution which deals with their debts – they do not wish to engage any further. They quite frankly want to “put in their rearview mirror”. This is certainly true for many debt clients who as soon as they have their debt solution implemented, they do not wish to deal with debt advice any further. They will only return only when something goes wrong or there is an emergency because they know where to go for help but that does not mean they want to have ongoing support.

Many individuals in debt simply want their debt dealt with and move on, therefore the opportunities for further intervention may not be welcome nor taken up.

Citizens Advice Scotland would advocate that any offer of ongoing support is at the request of the client and not imposed. We agree it should certainly be available to be offered but it cannot be mandatory. This is because it can be retraumatizing for people to revisit the situation and quite rightly wish to avoid. Even when an individual goes into a DAS, most clients simply make their payments religiously, but they are not in constant contact with their adviser, unless something changes or goes wrong with the payment plan.

Money advisers, as standard, will make it clear to their clients once they are in a debt solution that support is always available and may guide individuals to a range of assistance such as gambling helplines, addiction or mental health support. It is

offered but it is not enforced upon the individual. It is made clear that it is there when needed.

Whilst most CABs in our network will have clients who frequently return for support, this is because they trust our CABs and know no matter the issue, we can provide help. Often these clients are vulnerable and need face to face advice. But no matter if they return again and again or only once, it is their choice.

Another consideration in this provision, is the need for provisions. As stated at several points in our response to this consultation, the free advice sector and our network are under resourced, underfunded and often advisers feel underappreciated when it comes to meeting current demand. If ongoing and post-advice support is to be offered, this will only add to this strain. Most agencies cannot meet the demand already at their doors, if it then involves holding onto clients, this will become unsustainable and lead to further corrosion, as well as poor adviser wellbeing. CABs want to support clients and will do their utmost to meet this commitment, but to do so adequately and effectively, they need a vibrant and healthy workforce in order to fulfil it. This will take significant investment and funding into the network so it is bolstered, complimented and able to thrive.

On this note, while Citizens Advice Scotland welcome that we are being asked about funding, resource, demand and capacity of the free debt advice sector, these are extremely challenging to answer within the confines of a review of statutory debt solutions. This is a complex landscape with no easy answers and with multiple dynamics at play which demands its own separate focus – as such we would like to see the Scottish Government lead in the formation of a dedicated working group involving key sectoral stakeholders to address the challenges facing the provision of free money advice.

Q4.12 Do you have views on the proposals for broader money guidance being made available to people during and as they exit insolvency solutions? Do you have comments and / or evidence to support or challenge our concerns here?

As answered in Q4.12 above, whether the support is for debt advice or broader money guidance being made available, this comes back to resourcing and human behaviour.

Individuals may not want nor need broader money guidance. Often individuals in debt are some of the best money managers as they have had to be. They may not be able to take up financial products such as savings, insurance or investment due to their income. These options are often for people with money and as noted in this consultation, there is an increasing number of people with deficit budgets.

Money Guidance may not be appropriate and could be insulting to suggest that it is needed. However, this does not mean it should not be made available as there will be individuals who could benefit from money guidance – such as being made aware of cheaper forms of insurance, social tariffs and other support to help people with their money. Certainly, money guidance is built into the debt advice process, so there would be merit to have it continue during the debt solution and beyond. To do so effectively would require sufficient resourcing and allow it to be the client's choice.

On this note, while Citizens Advice Scotland welcome that we are being asked about funding, resource, demand and capacity of the free debt advice sector, these are extremely challenging to answer within the confines of a review of statutory debt solutions. This is a complex landscape with no easy answers and with multiple dynamics at play which demands its own separate focus – as such we would like to see the Scottish Government lead in the formation of a dedicated working group involving key sectoral stakeholders to address the challenges facing the provision of free money advice.

Q4.13 Do you agree that the Scottish Government should be tasked with assessing the number of money advisers required to deliver these two facets of advice as part of the broader exercise referenced in section 4.3?

Citizens Advice Scotland agree that Scottish Government should be tasked with assessing the number of money advisers, but not just for the purposes of the two facets as described but rather to assess the gap currently in the market. The shortfall of money advisers needed now for demand is apparent. It needs investment to match demand which requires an assessment of what is currently available and what is needed. If Scottish Government are not tasked with this assessment directly, another party should be appointed to fulfil it.

On this note, while Citizens Advice Scotland welcome that we are being asked about funding, resource, demand and capacity of the free debt advice sector, these are extremely challenging to answer within the confines of a review of statutory debt solutions. This is a complex landscape with no easy answers and with multiple dynamics at play which demands its own separate focus – as such we would like to see the Scottish Government lead in the formation of a dedicated working group involving key sectoral stakeholders to address the challenges facing the provision of free money advice.

5. The role of the AiB

Q5.1 Please tell us your experience of any actual conflicts of interests in the current role the AiB has. Please provide any specific examples or evidence where this has created risks or issues.

Citizens Advice Scotland stated in our previous response, there is the potential for conflicts of interest because, unlike other regulators, the AIB not only oversee and monitor the provision of statutory debts solutions, but they also administer them.

No other regulator who has oversight in their sector, actively participate in it – for example Ofgem is not an energy provider, the FCA are not a financial firm.

Whether this conflict is only perceived, it still presents a risk. As we stated in our previous response, in relation to the CFT, the Accountant in Bankruptcy can act as Trustee of a bankruptcy so would have to assess an individual's income and expenditure, but then they are also responsible for the oversight of other trustees. They can set rules, guidance and regulation which benefits their own internal processes and procedures rather than those which are beneficial to all. Other regulators do not have this conflict because their own aim is to ensure the rules and regulations that they set work for all stakeholders, not just themselves.

Money advice and consumer organisations such as Citizens Advice Scotland do not have access to the internal workings of the AIB but given that many of our advisers have reported on the demands of the AIB: From DAS, where the pedantic nature of the AIB can lead to significant delays to the evidence requirements causing clients to struggle to provide requirement documents. All of these demands have been placed

on the free money advisers rather than the Trustee of the bankruptcy or payment distributor under a DAS – both of which receive sufficient fees for doing this work.

In fact, advisers spoke of conflicts that arise in DAS where because the AIB acts as the DAS administrator and the Payment Distributor, it causes issues which can be extremely challenging for the money adviser who is often left to do the legwork as previously described in Q2.4 and others in this response.

A regulator who monitors the actions of parties in the market must be impartial and as long as the AIB acts a Trustee, that impartiality is not possible. It will inherently create bias, intentionally or otherwise. They are imposing standard practices which work for them but may not and are not working for other parties. This does not mean the AIB are not striving to do what is right but unless they are subjected to independent scrutiny as a case manager, there is no way to know that this is what is being achieved. Advisers recognised that strides have been taken to silo out functions within their departments, it will inevitably overlap and adds to the perception of unfairness.

In essence, the AIB cannot be marking its own homework. Even if they are following the procedures, by being the ones who set the procedures, it is not possible for them to know that the procedures are working or not.

Advisers across our network feels this undermines trust because it could be problematic for people to attempt to complain about a process or procedure set by the AIB, directly to the AIB who then are the ones who investigate the process or procedure that themselves created.

Whilst there is the Scottish Public Sector Ombudsman, this would only cover the complaints regarding the AIB as a public service and not as a case manager. If the money adviser wants to challenge a decision made by the AIB, this involves going to the Sheriff Court which has to be on a point of law. This makes it extremely challenging for people to raise complaints and it does not feel like natural justice.

With other regulators, there is better separation which gives the assurance of impartiality and builds trust, also it involves a feedback loop. For example, the Financial Ombudsman Service regularly feeds back to the FCA on what issues they are seeing and the results of their decisions. This can highlight to FCA where their

own rules and regulations is not working and in turn will result in review and even change to those rules and regulations.

This has been proven time and time again as it has led to strengthening of consumer protection from the introduction of a Consumer Duty, more forbearance being introduced for mortgages and the forthcoming Buy Now Pay Later Regulation. It also led to lead generators in insolvency being restricted. At present, this does not appear to be happening with the AIB. That must change and as long as the AIB has multiple and conflicting functions, it will not change.

Q5.2 If you believe the functions of the AiB should not all sit within one portfolio, please tell us your views about why as well as how and where they should best be delivered.

For Citizens Advice Scotland's view on why the functions of the AIB should not sit within one portfolio, please see our answer above at Q5.1.

As on how and where it is best delivered, this is often challenging because the AIB are often touted as the Trustee of Last Resort and if this is removed, it could create a gap. However, as it has been done in the past with DAS, it is possible to procure a trustee of last resort as a commercial element. In the financial sector, the FCA instructs designated banks to provide certain products such as Basic Bank Accounts to ensure that anyone who requires a bank account can access it. This is not without its challenges and provision can be limited for certain groups, but it allows for that separation. The FCA itself does not become a provider of basic bank accounts as a bank of last resort and nor should the AIB be a trustee of last resort. Instead, they should have other commercial entities acts as their trustee in these cases.

It may be worthwhile for a cost benefit analysis to be conducted on the AIB's function of having their own case management team or whether this should be farmed out to other providers. If there is no difference in costs/benefits, then it would certainly be better to separate it out, if only to foster trust within the debt landscape.

Q5.3 Please tell us your views on the role AiB should have in solution administration. If you think the AiB's role should change or evolve in this sphere, please explain why and provide any evidence to support your position.

Please see our responses to Q5.1 and Q5.2 for our reasoning but Citizens Advice Scotland do not believe that the AIB should have a role in the provisions of solutions but rather as an organisation which oversees and monitors the administration of Statutory Debt Solutions.

6. Access to insolvency for self-employed people and small business owners and charities

6.1 Reluctance to enter insolvency

Q6.1 How might this reluctance best be addressed?

As Citizens Advice Scotland raised in our previous response, barriers such as being unable to separate business and personal income or lack of current solutions have an impact on the individual's ability to continue their business or trade and fails to address their needs personally and professionally. This adds to the reluctance being shown in seeking advice.

In terms of addressing this reluctance and what is needed, as we noted in our previous response there is a lack of specialist debt advice services aimed at supporting these individuals. There is also a lack of creative solutions which allows them the ability to continuing trading.

If the general market for debt advice is limited in terms of resource, the market for specialist advisers trained in dealing with small business and self-employed individuals is even smaller. It takes a specific skillset to deal with issues such as taxation, business contracts and supplier regulation.

Additionally, the range of client types for these advisers can be vast and varying from a single tradesperson acting on their own to a small business owner with employees who rely on the business for their income. This can create a range of conflicting needs which the debt solution needs to take account of.

An adviser would have to know the options and factors for each of these client types including knowing the legislation which governs statutory Limited liability Partnerships and other small business models. Each have different level of complexity which requires expertise knowledge in order to fully inform their clients. For example, most people are not aware that even in a partnership, personal guarantees can be written into contracts which supersede the limited liability of the partnership and often will sign contracts where all sums are due and therefore personally liable.

Specialist advisers trained in supporting small businesses and self-employed individuals may have to consider certain expenses as a priority above what is traditionally considered a priority – a skill mainstream money advisers are not equipped or able to do. For example, the priority may be a supplier to provide stock to allow the business to keep trading but in consequence deprives the individual of an income stream.

At present, the only provider of such skillset is Business Debtline, but this can lack the local element which can be vital to advice and is desperately needed, especially for sole traders who may be aware of their local CAB but not necessarily Business Debtline.

As a means of tackling this issue, it could be argued for a case of simply upskilling general money advisers in these expertise areas and having a specialist business debt element to the role. This could be either having one individual in each local agency or a pool of local advisers that could perform this role.

However, as we have stated, the current money advice sector is already stretched, and it takes over a year to train a generalist money advice– simply adding another element will take considerable time, money and resource. Ideally, creating such skillsets available in localised areas will provide the opportunity for these individuals to seek advice.

Once the capacity is in place, work can begin in encouraging uptake especially before financial situations reach crisis point. There is already plenty support for businesses when they are first starting up such as Business Gateway but there could

be an offering added to this that encourages support on what to do when struggling with money.

All of which will take time and work if we want to encourage small businesses and self-employed individuals to seek help but equally, we need there to be somewhere for them to get that advice should they then seek it.

6.2 The funding, and availability, of specialist money advice

Q6.2 Do you agree small business debt advice should receive an increased level of funding through the debt advice levy administered by the Scottish Government?

Citizens Advice Scotland cannot answer this question as it is for the Scottish Government to decide how it administers the debt advice levy, and it is for them to consider the merit in ringfencing funds for small business debt advice. However, this could cause greater issues elsewhere where funding is already scarce.

Q6.3 Are there other funding sources which should be considered for increasing funding for small business debt advice?

Citizens Advice Scotland cannot answer this question as it is for Scottish Government to consider which funding sources could be used to increase funding for small business debt advice.

Q6.4 What is the best way of meeting the need for specialist advice? Further funding to the main bodies currently working in this area? Or setting up a new, bespoke service?

As stated above, the first question is whether specialist small business debt advice can be funded. However, if such funding were to be found, it may be important for Scottish Government to consider a face-to-face element to the advice provision, given that Business Debtline currently provide a telephony only service. This is because many small business owners and individuals who are self-employed will be

working and living in their local communities. It is more natural for them to use a local service they can trust. Moreover, simply funding the main bodies currently work in the area may provide a channel for advice, but only for those wishing to use that channel. Therefore, any services that are being created must be complimenting the current system rather than simply replicating it.

It is also important to consider that small business debt advice will have additional complex elements to their advice structure, including the need for taxation support, accountancy and legal support which is often out of reach of some small businesses and soletraders. Any service providing small business debt advice needs to be able to work closely with these areas to ensure a holistic approach is taken to their situation. As with personal debt, the presenting issue of financial issues is rarely the only problem they are facing.

6.3 Difficulties separating personal and business finances

6.4 Negative budgets

6.5 Problems with existing insolvency solutions

Q6.5 Do you agree there is a need for new, or amended, insolvency solutions for self-employed people, small business owners and charities?

As Citizens Advice Scotland stated in our previous response, to encourage entrepreneurial endeavours, debt relief needs to offer where possible the option to continue trading. Some businesses will be no longer viable and require a route out, whilst others need to be supported with debt, but the overall business model is still profitable. Failure to do so will stymie wider economic growth and will discourage people from starting their own business, if they are afraid of losing everything.

The current debt solutions on offer often means businesses cannot continue and they only go into insolvency once the business has been wound up. People in these

situations will avoid that until they have no other option because they want their business, their livelihood to continue.

Business DAS was created to offer businesses the options to continue trading but as noted, these have not been used. This is because the processes are too clunky and do not offer the required flexibility needed to operate for small businesses.

Most have too low assets to continue trading, and the sanctions arranged against them make it, so it is not effective. Therefore, any solutions offered, regardless of if they are new or amended, must have the ability to be fluid as possible.

Unfortunately, the current suite of statutory debt solutions (which are not often available for businesses) tend to crystallise a situation which kills the business. They do not have the flexibility needed to maintain it.

With such flexibility, they will become an attractive solution for small businesses. If current solutions cannot be adapted to offer such flexibility, then new ones must be created.

Q6.6 If yes, what should be the key features of these new or amended insolvency solution(s), noting the prevalence of highly variable incomes, the need to continue trading and difficulties separating out personal and business finances in this cohort?

Please see our answer to Q6.5

Q6.7 Do you think new or amended solutions sit better in the personal insolvency regime or the corporate insolvency regime? Please can you give the reasons for your response

Citizens Advice Scotland would assert that solutions cannot be simply split into the personal insolvency regime or the corporate insolvency regime for small businesses and self-employed individuals. This is because, as noted, often their professional and personal lives are so intricately intertwined, it almost needs a system to be equally intertwined.

For most of the sole-traders and self-employed individuals whom the Citizens Advice network support, the personal insolvency regime is actually best placed to support them. The corporate insolvency regime is rather too heavy handed for these individuals and it is completely out with their depth. This is true even for some partnerships and small companies. Whilst they may have a corporate entity, they may have the ability to continue to trade and therefore it is just the debt that requires a solution. Placing them into the corporate insolvency regime may do more damage than help. Whilst others may find the personal insolvency regime is not fit for purpose.

Citizens Advice Scotland would argue that it is not where the solutions sit that is the issue, it is the solutions themselves and whether they work for small businesses. At the moment, we would state they do not for the reasons outlined above. That is because they lack the flexibility and capability to help individuals to keep on working. Regardless of where the solutions lie, what is needed is solutions that work and are accessible for those who need it. Perhaps once this is achieved, then a wider debate can be had on where they are best placed.