

**Home Owner & Debtor Protection (Scotland) Bill
Stage 3 Debate
Februarv 2010**



1939-2009: 70 years
of Scottish CAB advice

Summary

- Citizens Advice Scotland (CAS) strongly supports the measures proposed in the Bill which would have a positive impact on many of our clients.
- CAS welcomes the provisions that will enable lay representation in repossession cases.
- The proposed Certificate for Sequestration route into bankruptcy will be of considerable benefit to those of our clients who find themselves excluded from other debt solutions.
- CAS also welcomes the provisions that, subject to creditor's consent, will enable a debtor's main home to be excluded from protected trust deeds.
- The focus of this briefing is upon sections 9 and 10 of the Bill both of which we believe will be of considerable benefit to our clients by offering a way out of indebtedness.
- CAS recognises that at Stage 2 Section 10 was debated at length and that concerns were raised as to its implementation and its place in the overall Bill. However, CAS believes that Section 10 offers many benefits to those people who find themselves in a cycle of debt and are outlined in the relevant sections below.

Introduction

Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland's network of 83 Citizens Advice Bureau (CAB) offices. These bureaux deliver frontline advice service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.

CAS was represented on both the Debt Action Forum and the Repossessions Sub-Group, and thus broadly welcomes the findings reached by these groups.

Certificate of Sequestration – Section 9

We believe that this element of the Bill is critical in order to alleviate the current financial crisis that many of our clients find themselves in.

In 2008, the Scottish government introduced the LILA (Low Income Low Asset) route to bankruptcy. This provided a relatively simple route into bankruptcy provided the debtor fits certain criteria, in particular an income below a certain level, and low assets. The route specifically excludes homeowners.

Whilst the LILA route into bankruptcy has undoubtedly helped many people, Bureaux continue to report cases where low income clients are excluded, as their income is slightly above the stated level or alternatively they are homeowners. Examples of these are outlined in the attached appendix.

Those who cannot access the LILA route have to be apparently insolvent before they can apply for bankruptcy themselves. This means that a creditor has to take formal action, such as court action *and* serve a formal document known as a charge before the debtor can apply for bankruptcy. In our experience, the vast majority of creditors don't do this, because it adds to costs that they are unlikely to recover in full. As a result, these debtors are often left in limbo, with interest and further charges – specifically default and administration charges – being applied onto their debts, thus making repayment far less likely.

Our evidence has found that many of our clients have insufficient income to access any of the other formal debt management routes such as the Debt Arrangement Scheme or Protected Trust Deeds as a means of resolving their difficulties. Accordingly, we consider that the certificated bankruptcy route will go some way to address this vacuum, and will aid many debtors, offering them a fresh start. Bankruptcy is never an easy option, and in our experience people don't make this choice unless they have exhausted every other solution.

However, we welcomed the recommendation made by the Local Government and Communities Committee that the Scottish Government respond to the concerns of the advice sector – in particular greater clarity over the role of the “approved adviser” to ensure that a money adviser's impartiality cannot be called into question. Additionally, we welcomed the response by the Scottish Government on these concerns at Stage 2. Although CAS acknowledges that amendments made at Stage 2 addressed this in part, we would be interested to see the specific detail as laid out in the regulations and the forthcoming guidance.

Trust Deeds – Section 10

CAS welcomes the changes to Protected Trust Deeds allowed for in the Bill. Section 10 of the Bill enables certain assets and liabilities to be excluded from a protected trust deed, in particular the debtor's main dwellinghouse. The provision is reliant on creditor agreement, so is unlikely to affect many creditors adversely, but will allow some flexibility in the agreement.

One debt solution which currently exists in England and Wales is the Individual Voluntary Arrangement scheme (IVA). An IVA is a legally binding arrangement supervised by an Insolvency Practitioner which enables a debtor to reach a compromise with their creditors and avoid bankruptcy. The proposals are entirely flexible to accommodate personal circumstances and can include excluding the debtor's home from the IVA.

Although IVAs are sometimes problematic, this is an example of a scheme which operates in England and Wales but not in Scotland and which benefits many debtors, particularly as it enables the exclusion of the debtor's home.

Following Stage 2, CAS is pleased that clients will be able to come to an agreement with their creditors to exclude their homes from a trust deed. Section 10 is a very welcome provision in the Bill, and one that we consider will be of great benefit to a number of CAB clients as:-

- It will ensure that at the beginning of the trust deed the client has the certainty of knowing whether their home is included or not
- It will help those debtors who have little equity in their homes
- It should avoid clients having to suffer the costs of moving home
- It should avoid clients having to move themselves and other members of their household which potentially would lead to changing schools, loss of support network and difficulties in getting to work
- Clients who have adapted their properties for disabilities are also reassured that their home may not have to be automatically included in trust deed

Further examples of specific ways in which Section 10 would benefit many of our clients are outlined in the attached appendix.

Conclusion

Citizens Advice Scotland strongly supports the Home Owner and Debtor Protection (Scotland) Bill and would particularly welcome the proposed Certificate of Sequestration. CAS believes that the provisions contained within the Bill are proportionate responses to the challenges posed by the recession, and are likely to continue to benefit both debtors and homeowners in the long-term.

We would call on MSPs to support all measures contained within the Bill and ensure that it is enacted in a short time scale, thus enabling many people stuck in a cycle of debt to make a fresh start.

Abigail Westwood
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APPENDIX

Case evidence

The following case evidence show examples of instances in which the client would have benefited from the measures proposed in Section 9:

A North of Scotland CAB reports of a client with debts in excess of £45,000 and who felt that bankruptcy was her “only way out”. Whilst the client’s earnings fell below the income threshold, her savings were just above £1000 thus making her ineligible to access the LILA route. The client must now wait for a creditor to take formal action against her before she can petition for bankruptcy.

An East of Scotland CAB reports of a client who had taken out a loan to pay creditors and who consequently found himself with unmanageable debts approaching £100,000. The client was ineligible for LILA and was advised that he will have to wait for a creditor to take formal action against him in order to show apparent insolvency.

A West of Scotland CAB reports of a client with multiple debts including rent arrears, council tax debt and utilities debt. The client got into difficulty paying creditors as she was in receipt of Statutory Sick Pay for 6 months. The client earns just over the threshold for accessing LILA, and so despite urgently needing to access this type of debt solution must wait for a creditor to take formal action against her in order to show apparent insolvency.

The following case evidence show examples of instances in which the client would have benefited from the measures proposed in Section 10:

A West of Scotland CAB reports of a client who had approached a debt management company who recommended a trust deed as the way of dealing with the client’s debt issues. The client was referred to an Insolvency Practitioner and signed the trust deed; however the family home was not dealt with at the outset.

The Insolvency Practitioner wrote to the client a number of times saying the equity would need to be dealt with; however, the client did not understand this and continued to pay £450 per month to the trustee for four years. The trustee would not release her from the trust deed as he indicated that the equity from the house was now £35,000.

The client eventually handed over the keys and walked away as a result of the high stress levels of the situation. She stated that she would never have entered into the trust deed if she had understood this would happen.

An East of Scotland CAB reports of a client who wanted to discuss the Mortgage to Rent scheme. The client and his wife were both in Trust Deeds and the trustee was forcing the sale of their house to realise the equity of £28,000. The client had been left a lump sum of £25,000 upon the death of a relative and this also went to the trustee. The client contributes approximately £432 per month to the Trust Deed.

A West of Scotland CAB reports of a client who was in a trust deed. The Insolvency Practitioner was now having to look at the property value and referred the client to the CAB to see if he would be suitable for the Mortgage to Rent Scheme. Unfortunately the client was informed that no landlord would take the property on due to the state of disrepair. The client has been left with having to find the equity or else the Insolvency Practitioner will sell the property.

An East of Scotland CAB reports of a client whose Trust Deed had failed. The client had no equity in her property and the trustee suggested that she apply for mortgage to rent. The client had both mortgage arrears and secured loan arrears and was advised that the property may have to be sold. The client's husband had recently lost his job and was unable to maintain Trust Deed payments, whilst the client earned too much to be eligible for assistance with benefits or Working Tax Credit.

The bureau negotiated with the client's lenders to write off the shortfall of mortgage/secured loan, however Mortgage to Rent were unable to obtain a social landlord for these clients, so the application could not proceed. The outcome is that the client's property still remains at risk.

An East of Scotland CAB reports of a client who came in to discuss an application for Mortgage to Rent having been made bankrupt by a trustee following the failure of a Trust Deed. The trustee was forcing the sale of the property to realise the equity, however the house had been adapted to suit the client's disabled husband and they did not want to move.

