

# Home Owner and Debtor Protection (Scotland) Bill

November 2009



1939-2009: 70 years  
of Scottish CAB advice

## Summary of key points

- Citizens Advice Scotland (CAS) strongly supports the Bill, which will have a positive impact on our clients who experience debt and/or housing problems.
- The Bill reflects the consensus reached at the Debt Action Forum and the Repossessions Sub-Group, both of which CAS was represented on.
- CAS welcomes the intention to enable lay representation in repossession cases, and call for citizens advice bureau advisers to be enabled to represent their clients in hearings.
- The proposed Certification for Sequestration route to bankruptcy will be of great benefit for a group of debtors who remain on the sidelines of debt solutions. We look forward to seeing guidelines on the process that will help bureau advisers offer the Certificate to appropriate clients.

## 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 services throughout nearly 200 service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.

In 2008/09, Scottish Citizens Advice Bureaux dealt with over half a million new issues for clients – nearly one issue for every minute of the year. Of these issues, over 100,000 concerned debt and nearly 50,000 concerned housing problems. Issues relating to debt and housing have increased significantly in recent years, with the number of debt issues brought to bureaux increasing by 16% last year. Our recent research report, *Drowning in Debt*, found that the average consumer debt held by a bureau debt client was £20,193, a 50% increase in five years.

Citizens Advice Scotland (CAS) was represented on the Debt Action Forum (DAF) and the Repossessions Sub-Group. The recommendations from the two groups fed into the current Bill. We are supportive of the provisions contained in the Bill, although we have some concerns about aspects of the Bill which will be outlined under the following headlines:

- Lay representation
- Certificate for Sequestration
- Trust Deeds

## ***Lay representation***

Currently the Bill provides for those facing repossession to have the right to be represented in court by an approved lay representative, with the approval process to be prescribed by subordinate legislation. This provision is extremely welcome, however we will require clarification concerning the approval process. Small claims legislation prescribes the rules that cover lay representation under that procedure, and additionally, the Scottish Civil Courts Review<sup>1</sup> recommends the use of “McKenzie friends” to assist in court in exceptional circumstances. We consider that there should be some form of uniformity in the terms of the authorisation of lay representatives. We consider it important that there are no barriers or requirements to advisers wishing to represent their clients in repossession cases. Given the demands placed on bureau resources by the recession, any barriers to representation would lessen the impact that lay representation should have.

## ***Certificate for Sequestration***

We welcome the proposed new route to sequestration for debtors who find themselves outside of current debt solutions. Our evidence has found that many debt clients cannot access the LILA route to bankruptcy because they are homeowners, or their income is over the threshold for the scheme, yet they have insufficient income to enter a Protected Trust Deed or the Debt Arrangement Scheme (DAS). Research undertaken by CAS in 2008 found that around a quarter of bureau debt clients could not access any of these debt solutions, leaving them in limbo. The proposed Certificate for Sequestration will provide a solution for some of this client group to deal with their unmanageable debt.

The Bill makes provision for debtors to apply to an ‘authorised person’ for the certificate. The authorised person is required to certify that, in that person’s opinion the debtor is unable to pay debts as they become due. This authorised person is likely to include money advisers in Citizens Advice Bureaux. There remain some concerns about the ways in which the Certificate for Sequestration will operate:

- It has yet to be made clear who the ‘authorised person’ is likely to include, and again we would wish to avoid too many barriers to obtaining authorisation that would make these provisions ineffective with regard to bureau debt clients
- Advisers have also expressed concerns about the process that will be required in order that they would be in a position to confirm, in their opinion, that a debtor is unable to pay their debts
- Without detailed guidance and strict criteria, the Certification process may turn money advisers into decision makers rather than advice providers. This could have implications for the impartiality of the service.

CAS and money advisers are supportive of the proposed Certificate for Sequestration as a new debt solution. It will allow groups of debtors who previously found themselves outside of various debt schemes to have a route out of

---

<sup>1</sup> Report of the Scottish Civil Courts Review 2009

unmanageable debt. However, if money advisers are to offer the Certificate for clients, it is important that the provisions are designed so that they are comfortable and confident in doing so. In particular, the legislation and guidance must be designed to ensure that money advisers' impartiality is not called into question.

### ***Trust Deeds***

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 while still allowing it to become protected. This has the potential to help debtors who have little equity in their home. The provision is reliant on creditor agreement, so is unlikely to affect many creditors adversely, but will allow some flexibility in the agreement.

Consideration was also given at the Debt Action Forum to a 'Fast Track' Protected Trust Deed. We believe that conditions in the Trust Deed market do not favour debtors or creditors at present, and that the proposed 'Fast Track' PTD would go some way to addressing the problems in the market. The proposed Trust Deed would offer additional protection to the family home for debtors that are able to offer a minimum level of repayments. This would mirror the aims of the Bill, so we call on the Accountant in Bankruptcy (AiB) to introduce this type of trust deed as soon as possible.

### **Conclusion**

Citizens Advice Scotland (CAS) strongly supports the Home Owner and Debtor Protection (Scotland) Bill. Its provisions contain proportionate responses to the challenges posed by the recession, and are likely to continue to benefit debtors and homeowners in the long-term. We have outlined our responses to the provisions in the Bill in this paper, all of which can be addressed in the near future through the Bill or the Statutory Instruments supporting the legislation. We call on MSPs to ensure that the Bill is enacted in a short time scale in order to help debtors and homeowners at the earliest opportunity.

Keith Dryburgh  
Social Policy Officer  
Citizens Advice Scotland  
0131 550 1015  
[keith.dryburgh@cas.org.uk](mailto:keith.dryburgh@cas.org.uk)