

## Home Owner & Debtor Protection (Scotland) Bill Stage 1 Debate December 2009

### 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 intention to enable lay representation in repossession cases.

Finally, the proposed Certificate for Sequestration route into bankruptcy would be of considerable benefit to those of our clients who find themselves excluded from traditional forms of debt solutions.

### 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 supports the Bill which reflects the consensus reached by both.

### Lay Representation

The Bill provides for those people facing representation to have the right to be represented in court by a lay representative. CAS believe that there should be no barriers or requirements to advisers wishing to be lay representatives and we therefore welcome the recommendation by the Local Government and Communities Committee that the approval process for this measure be clarified and that consideration is given to training and resources.

### Certificate of Sequestration

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.

If a client is on a low income but not low enough for LILA, then there is no easy route into bankruptcy. For those who don't fall into the LILA route, they have to be apparently insolvent before they can apply 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 is more costly for them to do so.

Our evidence has found that many of our clients don't have sufficient income to access either the Debt Arrangement Scheme or a Protected Trust Deed as a means of resolving their difficulties. They are also unable to access the LILA route into bankruptcy because they are either homeowners or their income is over the threshold of the scheme. Instead, they are left in limbo, with interest and charges being applied onto their debts – making them even more un-repayable.

We believe that were this element of the Bill to be introduced later, it would mean at least another year before clients had this route into bankruptcy. Bankruptcy is never an

easy option, and in our experience people don't opt for this solution unless they have exhausted every other solution.

However, we welcome 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.

## **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 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 welcome the recommendation made by the Local Government and Communities Committee in its Stage 1 Report that clarity is needed with regards to the role of an adviser in the Certificate of Sequestration, and would call on the Scottish Government to respond to this, ensuring that this is deliverable.

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.

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## APPENDICE

### Case evidence

Case evidence from bureaux highlights the circumstances in which debtors are currently missing out on existing debt solutions, and would benefit from the Certificate for Sequestration. The majority of these cases show clients who are in full-time low paid work that places them just above the income threshold for accessing LILA. These clients typically have multiple debts, but have little disposable income to offer to creditors and are therefore very unlikely to be able repay all their debts in a reasonable period.

An East of Scotland CAB reports of a client whose income exceeds the LILA income limit by less than £3 per week. The client is in full-time employment, but has become depressed as a result of his financial problems and the breakdown of this marriage. He has no entitlement to any means tested benefits and therefore cannot access LILA. The client's only option is to wait for a creditor to take formal action against him and serve a charge for payment, as no other option is viable.

A West of Scotland CAB reports of a lone parent who has multiple debts, but whose income is just above the income threshold for LILA. The client works full time at a low wage, but has multiple debts of over £3,000. The bureau managed to come to an arrangement with the local authority over rent and council tax arrears, but the client has no disposable income to pay towards her utility and consumer debts. The client is managing to keep to these arrangements, but reports that it is a monthly struggle.

An East of Scotland CAB reports of a client whose income is just too high to access LILA. The client has debts of almost £15,000, but has no surplus income from his employment to offer. The client disclosed that he was thinking of asking his employer to reduce his hours for a few months so that his income would be sufficiently low in order to access the scheme.

A North of Scotland CAB reports of a client couple whose income is too high to gain access to LILA and too low to repay their debts. The clients have struggled for three years to repay their debts, but are struggling to do so after the wife had to leave work due to ill health. The clients report that the strain of living with debt is starting to affect their health. The bureau advised that the client may be entitled to Incapacity Benefit, and should apply for this in order to access LILA.

Evidence from bureau also indicates that self-employed clients can have very high debts and relatively low incomes, but not low enough to access LILA. This appears to be particularly relevant in the current recession, where self-employed work is reportedly "drying up", thereby increasing debts and reducing incomes. Clients are therefore often faced with the decision of lowering their income to access LILA, but at the cost of sacrificing income that is vital for essentials.

An East of Scotland CAB reports of a self-employed client who is unable to access any route out of debt. The client has debts of over £17,000 and earns around £240 per week.

After meeting her essential expenditures, the client has no surplus income. Her income level is slightly above that maximum income level required for LILA, and other options for dealing with the debt such as DAS, rescheduling, or Trust Deeds, are not feasible. The client is struggling to cope financially and is anxious to resolve the situation, but can see no way of doing so. The bureau commented that the only options for the client are either to wait to see if a creditor serves a charge for payment, which would make her apparently insolvent and thus allow her to petition for her own bankruptcy, or to reduce the hours she works. This would bring her income below the limit for accessing LILA. However, since she needs all her income to meet day to day expenses, this would only make her situation even more difficult.

An East of Scotland CAB reports of a self-employed client who has developed significant debts after a lengthy period of illness. The client has unsecured debt of £87,000 and secured debt of £175,000. The client now suffers from clinical depression and is unlikely to be fit for work for some time. The monthly shortfall between income and expenditure is £1,300, and the client has exhausted his savings in an effort to stay afloat. The client does not meet the conditions for LILA and has no other options for getting out of debt.