

Protected Trust Deeds – Improving the Process

Comments from Consumer Credit Counselling Service Scotland

Introduction

The Consumer Credit Counselling Service (CCCS) Scotland is Scotland's largest provider of specialist online and telephone debt advice. CCCS Scotland offers a range of debt advice solutions to its clients, including Debt Management Plans (DMPs) and specialist help for people who are self-employed or who have mortgage problems. In 2011 the charity counselled almost 4,000 clients on the telephone and thousands more online.

CCCS Scotland welcomes this opportunity to comment on the Scottish Government's consultation on the Protected Trust Deed (PTD) process. The charity works in partnership with insolvency practitioners¹ to provide PTDs to its clients. CCCS Scotland's sister charity in England and Wales (the Consumer Credit Counselling Service) played a key role in drafting the Individual Voluntary Arrangement (IVA)² protocol in 2008 and the updated protocol in 2010. The IVA protocol provides transparency and standardisation for creditors and debtors.

Overall, we are in favour of the proposals contained in the consultation and the proposed Guidance. Our organisational ethos is to be fair to both creditors and indebted consumers, focussing on "can't pays" rather than "won't pays". We believe the proposals and Guidance in the consultation for the most part matches this ethos.

However, the charity has some concerns in relation to the consultation proposals:

- the Common Financial Statement (CFS) is not a suitable budgeting tool for every debt case (paragraph 7.10). Using other budgeting tools (such as CCCS's) must be allowable for PTD cases;
- the proposals covering why trustees may deem discharge from a PTD inappropriate (paragraph 8.8) are too vague. We would prefer some more concrete examples of the circumstances under which this may happen; and
- there needs to be greater clarity about the circumstances under which a trustee could apply for an Income Protection Order (paragraph 8.11).

In addition, CCCS has issues with the proposed Guidance:

¹ Campbell Dallas, French Duncan, Grant Thornton UK LLP and KPMG.

² An IVA is the equivalent of a PTD in England and Wales.

- paragraph 2.2 needs to provide examples of “scenarios” where breaches of the Guidance would be acceptable;
- in paragraph 10.1 it is unclear why no additional verification is needed from a creditor if a claim submitted differs significantly from the amount stated by the debtor in a trust deed;
- paragraph 10.7 needs to be clearer about why only one payment break is allowed from a PTD; and
- setting the limit for a trustee to make a payment in a PTD to month 18 (paragraph 12.1) could be too late.

Finally, it is important that the protocol and Guidance be monitored and enforced effectively by a body with sufficiently rigorous powers. We are concerned that little mention is made in the consultation of the powers of the Protected Trust Deed Review Board (PTDRB).

Our response to the following consultation questions is based on the interests of our clients, both current and potential. We have responded only to those questions of most relevance to our work.

Questions

Question 1. From your perspective, will the Guidance drive the desired changes as set out above?

We agree that for the most part the Guidance will ensure transparency and fairness in the administration of PTDs for both creditors and consumers. However, once it is implemented oversight by the Accountant in Bankruptcy (AiB) and PTDRB must be sufficient and the consumer voice must be adequately represented on the Board. It is vital that both the AiB and PTDRB have adequate powers to punish breaches of the Guidance.

Question 3. Do you support the application of the Guidance to PTDs generally?

Yes. It is important that consumers are protected from organisations that may seek to exploit their debt problems to make excessive profits. The clarity and consistency that comes with the Guidance will benefit consumers, as well as creditors and insolvency practitioners.

Question 7. Do you think that the Guidance goes far enough? Should there be a wholly legislative approach to trust deeds, not reliant on the voluntary agreement of those involved?

The example of the IVA protocol³ in England and Wales has demonstrated that a voluntary agreement can be successful. Currently we do not see the need for an intrusive, legislative approach to PTD. However, should the

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<http://webarchive.nationalarchives.gov.uk/+/http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/foum2007/plenarymeeting.htm>

Guidance prove to be unsuccessful or is not properly enforced by the AiB or PTDRB then this approach may need to be revisited.

Question 9. Do you agree that trustees should seek to make payments to creditors no later than month 18 and at 6 monthly intervals thereafter, subject to sufficient funds being ingathered?

We are concerned that allowing trustees to wait 18 months before making a payment may be too long. It may prove stressful for debtors to have so extended a period between a PTD being agreed and a first payment made. There is also a possibility that an 18 month ceiling could encourage some providers to hold on to the ingathered money for a longer than reasonable period.

An alternative may be to mandate that payments should be made based not on the amount of time that has elapsed but on the proportion of the debt gathered by the trustee. For example, a trustee should have to pay a creditor once a debtor has repaid 10 percent of what is owed through the PTD. This would hopefully ensure a swifter return to creditors while encouraging debtors to stick to their repayment programme.

Question 10. From your perspective do the limited controls on fees as set out in the Guidance go far enough, or should AiB have increased powers over the fees that can be claimed in a PTD?

The controls on fees in the Guidance do not appear to be strong enough to prevent some providers setting unreasonably high fees. The Guidance needs to be clearer on what is considered to be a reasonable up-front fee and the percentage of contributions that may be taken each month.

Previous research by CCCS has shown that high up-front fees and monthly payments can significantly extend the amount that indebted consumers can pay in Debt Management Plans (DMPs).

Repayment under a DMP - typical client		
	Fee-charging debt management company	CCCS
Client debt	£23,256	£23,256
Monthly repayment	£236	£236
Upfront payment	£472	Zero
Monthly fee	£41.30	Zero
Term of DMP	8 years, 3 months (99 months)	10 years, 1 month (121 months)
Total repaid (including fees)	£28,661	£23,256

Although a DMP is a different type of repayment vehicle than a PTD these figures demonstrate that too high fees would result in a) a lower amount repaid to creditors over the course of a PTD, and b) a debtor perception that too much of their money was going to a third party.

If one of the intentions of the Guidance is to encourage a repayment ethic and a maximum return for creditors then it is necessary to minimise fees as much as possible. We recommend following further research that the Guidance should include a table showing what levels of fees are acceptable. The AiB or PTDRB should then be given powers to intervene and lower fees that exceed any limits set.

Question 11. Do you agree with the introduction of a PTD Review Board?

Yes.

Question 12. Do you agree the proposed membership of the PTD Review Board as stated in the Guidance document?

We would recommend increasing the representation from the debt advice sector. Currently, as the only consumer focussed organisations on the Board, debt advice providers are outnumbered ten to two. At least doubling the representation of these organisations would ensure that the PTDRB is more sensitive to consumer problems arising as a result of the new Guidance.

In addition, it may be prudent to include representation from a consumer advocacy organisation without a financial stake in PTDs on the Board. This would hopefully ensure a neutral voice in proceedings with an understanding of the concerns of indebted consumers.

Question 14. Do you agree that trust deeds should be published in the Register of Insolvencies rather than the Edinburgh Gazette?

Yes.

Question 16. Do you agree that a standard front sheet should be introduced for use throughout the industry?

Yes.

Question 17. If so, do you agree with a – d above as to what it should include?

We agree that a), c) and d) should be included on a front sheet. However, b) would need to be clarified before a front sheet was attached to PTDs as standard. The current phrasing,

“provide further information that would assist creditors on whether or not to accept the trust deed”,

is unclear. CCCS Scotland would like to see further details from the Scottish Government on point b) before this proposal is enacted.

Question 24. Should a single mechanism be employed as industry standard to calculate a debtor's income and expenditure, for example CFS?

No.

Question 26. If you do not agree that the CFS should be used, should some other figures, be used, for example CCCS?

It would be ideal for organisations to have the option of using either the CFS or the CCCS budget guidelines.

There is no reason why more than one set of budgeting figures should not be used. In fact, a strong argument can be made that it is sensible for different advice organisations to use different approaches depending on the socio-economic profile of their clients. Research by the Department of Business, Innovation and Skills has demonstrated that there is a difference in the overall profile of Citizen Advice Bureau (CAB) and CCCS clients.⁴

The issue is not whether budget guidelines differ, it is whether creditors trust the approaches of the organisations using them. As has been shown over the previous 18 years both creditors and insolvency practitioners have faith in the counselling methods of CAB and CCCS. The AiB currently uses both the CFS and CCCS budget guidelines when acting as a trustee.

Creating a situation where the CFS was the only appropriate tool could create huge difficulties for organisations not set-up to use it. For example, under the new system would every PTD recommendation based on CCCS budget guidelines need to be looked at again using the CFS? This would take time and mean added expense for debt advisors, IPs, creditors and eventually consumers.

Question 28. Do you agree that the Form 4 Statement of status of the PTD should be provided to creditors on an annual basis?

Yes.

Question 29. Should the capacity be developed to have the Form 4 displayed electronically on the ROI, and this form part of the PTD information held on the ROI?

Yes, on the understanding that the move to electronic communication results in a lowering of costs in fees for the consumer.

⁴ Credit, debt and financial difficulty in Britain, 2009/10: A report using data from the YouGov DebtTrack survey. Department for Business, Innovation and Skills, June 2011

Question 30. Do you agree that a timescale should be fixed for the submission of claims in a trust deed by creditors?

Yes.

Question 31. If so, do you agree that 120 days is the correct timescale?

Yes. However, we would recommend the Guidance is re-written to impress upon creditors the importance of submitting their claim at the earliest possible point in order to minimise any potential stress for consumers.

There is often a link between being in debt and mental health issues. Research has shown people with six or more separate debts are six times more likely to have a mental disorder than the general population.⁵ CCCS recently introduced a unique online tool (*CCCS Wellbeing*) that helps identify clients who may be suffering from depression. Of the over 5,000 clients completing the tool in 2011, 58 percent were suffering from severe depression. Bearing this in mind any move towards reducing the pressure on indebted consumers should be encouraged.

Question 35. Do you agree that there should be an extension of the provision for sequestrations in the Debtor (Scotland) Act 1987 to provide that as of the date when a trust deed becomes protected an earnings arrestment stops automatically?

There is a concern that this proposal may encourage indebted consumers to apply for a PTD when they may be more suitable for another debt solution, for example a DMP. We suggest that it may be sensible for the AiB to carry out analysis to see if this is true before proceeding.

Question 45. Do you agree that no contribution should be taken from Social Security benefits where these are a debtor's only income?

There is a problem with this proposal in that it raises the question of what will happen to debtors solely reliant on social security benefits who would be able to enter a PTD. If there is a blanket ban on this type of debtor entering a PTD then there is the possibility that some may wind-up entering an inappropriate debt solution, less suitable to their long-term requirements. Analysis should be done on the likelihood that this may happen prior to this proposal being introduced.

Question 47. If not, do you think that legislation should be introduced to prohibit trustees from accepting contributions from a debtor's Social Security benefits?

See answer to question 45.

⁵ Jenkins R, Bhugra D, Bebbington P, *et al* (2008) Debt, income and mental disorder in the general population. *Psychological Medicine*, **38**, 1485–1494.

Question 48. Do you believe it is appropriate for an agent's fact finding fees, that are incurred prior to the granting of a trust deed, to be treated as an outlay of the trust deed?

Yes.

Question 49. Do you believe it is appropriate that a further charge to the trust deed should be allowed to verify information gathered by a third party agent?

Yes. However, it is important that the AiB and PTDWG ensure that any further charges are proportionate to the work done by the third party agent. It would be unacceptable if this proposal allowed some fee-charging debt management companies to extract maximum payment for minimum effort. We would expect all third parties to be able to justify their fact-finding fees if challenged by the AiB or PTDWG.