MONEY ADVICE TRUST

BUSINESS DEBTLINE NATIONAL DEBTLINE WISER ADVISER

Consultation response: Scottish Government Proposals for changes to PTDs

Response by the Money Advice Trust

Date: April 2019

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Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2018, our National Debtline and Business Debtline advisers provided help to more than 204,000 people by phone and webchat, with 1.7 million visits to our advice websites.

In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2018 we delivered this free training to over 820 organisations. Furthermore, Money Advice Trust Training and Consultancy services have worked with over 224 commercial organisations to identify and support their customers in vulnerable circumstances.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Public disclosure

Please note that we consent to public disclosure of this response.

Introductory comment

We welcome the proposals to change the rules and update the process in relation to protected trust deeds (PTDs).

- ✓ We wonder if there is scope to strengthen the proposals still further by imposing a rule that would not allow a trust deed to be set up at all in cases where people in debt would be better off in a DAS, paying off their debts in full within 60 months.
- ✓ We do not support an increase in the minimum debt level allowed as this would only serve to exclude more people in debt from the option of a PTD.
- ✓ We agree that category one and two disbursements should be included in the fixed fee.
- ✓ We support the proposals to restructure the voting system for PTDs. The proposals seem to be the fairest balance of the interests of smaller creditors, the person in debt and the larger creditors.

However, we are concerned that the proposals do not go far enough. We would like to see the Accountant in Bankruptcy (AiB), the FCA, the Insolvency Service and the insolvency practitioner regulatory bodies look at how lead introducer firms work in Scotland to channel people towards insolvency practitioner (IP) firms and trust deeds in particular.

Responses to individual questions

1. Considering If a PTD Is The Best Option.

Question 1(a): Do you agree that protection should be refused where the full debt in a trust deed could be repaid in 60 months, through the debtor's contributions?

Yes x
No

We agree that protection should be refused where the full debt could be repaid in 60 months through client contributions. It is clearly beneficial for the client to consider setting up a debt payment programme under DAS instead. This option would be cheaper, with a much greater return for creditors and less stringent consequences for the person in debt. A PTD conveys assets to the trustee, including assets that are acquired post-insolvency such as windfalls and inheritance.

However, we wonder if there is scope to go further here, and to provide the AiB with additional powers to refuse a trust deed altogether in these circumstances, rather than restricting the powers to refusing to protect the trust deed. This would mean that to prevent inappropriate trust deeds being set up, there would be a rule to say that trust deeds cannot be set up at all if the full amount of the debt would be repaid over the course of the trust deed. This could help to catch people who didn't seek debt advice before applying for a trust deed.

Question 1(b): If you answered no to Q1(a), what do you consider an appropriate timescale?

Answer: Not applicable.

2. Payment of Debtor's Contribution – Regulation 8

Question 2(a): Do you agree that a trust deed should not be eligible for protection where the value of contributions over its extended period is equal to or greater than the level of debt present when it was granted?

Yes x
No

We share the concerns identified in the paper that in some cases a PTD is not a suitable option for people in debt, particularly where someone has a low level of debt and a sufficient available income to clear the debt in four to five years in full.

We would tend to agree that where the value of the payments made over an extended period are equal to or greater than the level of debt then the trust deed should not be eligible for protection.

However, again we would query why someone in this position should be in a trust deed at all, if they can pay their debts back in full using a debt payment programme under DAS. The paper states that:

"In these circumstances, we do not consider a trust deed an appropriate solution, and we propose to change the regulations to end this anomaly."

However, could a less than scrupulous insolvency practitioner (IP) still propose a trust deed, even where this would not be protected? This might allow the IP to charge fees to the applicant, even if the trust deed fails, where they should be on a DAS instead.

Question 2(b): If you answered no to Q2(a), why not?

Answer: Not applicable.

3. Minimum Debt Level – Regulation 4

Question 3(a): Do you think that the minimum debt level allowed in a PTD should be increased from £5000?

Yes
No x

We would not support an increase in the minimum debt level allowed in a PTD as this would only serve to exclude more people in debt from the option of a PTD. We agree that increasing the minimum debt level could be detrimental for people in vulnerable circumstances, who might be forced into bankruptcy instead.

Question 3(b): If you answered yes to Q3(a) at what level would you set the minimum debt level at?

£7500
£8000
£10000
Other
(please state your preferred level)

Answer: Not applicable.

Question 3(c): If you answered other to Q3(b) what do you think the minimum debt level should be?

Answer: Not applicable.

4. Remuneration Payable to Trustee Under Protected Trust Deed – Regulation 23

Question 4(a): Do you agree that category one and two disbursements should be included in the fixed fee?

Yes x
No

Yes, we agree that category one and two disbursements should be included in the fixed fee. We share the AiB's concerns that costs and fees have risen significantly in relation to insolvency practitioner (IP) work on PTDs. We also cannot see any justification for such rises.

Question 4(b): If you answered no to Question 4(a), why not?

Answer: Not applicable.

5. Voting Procedure In PTD Section 170 (2) of The Bankruptcy (Scotland) Act 2016

Question 5(a): Should the voting system for PTDs be restructured where a trust deed would only be protected if out of the creditors who have voted those who own 75 % of the value of debt have actively accepted the terms of the trust deed?

Yes x
No

We support the proposals to restructure the voting system for PTDs. The proposals in the paper seem to constitute the fairest balance between the interests of smaller creditors, the person in debt and the larger creditors.

This proposal would have the advantage of the trust deed voting process matching that which operates in an Individual Voluntary Arrangement. As the paper states, this revision would promote creditors to actively consent to the proposals and therefore to participate in the process, particularly where they may get a poor dividend return but feel powerless to influence the outcome.

Question 5(b): If you answered no to Question 5(a), what should the terms be?

Answer: Not applicable.

Question 5(c): Do you believe that AiB should be given general powers to refuse the protection of a trust deed?

Yes
No x

We do not believe that the AiB should be given general powers to refuse the protection of a trust deed. This is for the reasons set out in the paper, that there is no consensus as to what the grounds should be for refusing to grant the protection of a trust deed, and no consensus on when such powers should be used.

Question 5(d): If you answered yes to Question 5(c) should these general powers to refuse the protection of a trust deed only be introduced if the creditor voting procedure does not change?

Answer: Not applicable.

Question 5(e): If no creditors respond to the trust deed proposal do you agree that the trust deed should become automatically protected?

Yes x
No

Yes, we agree that the trust deed should become automatically protected where no creditors respond. People in debt would be unable to resolve their debts and be subject to further stress and uncertainty if their trust deed was not protected because their creditors chose not to respond when they could do so.

Please use the box below for any other comments you may have, or anything you feel is not covered in the consultation questions.

The AiB should look again at trust deeds and whether there are further protections that can be put in place to prevent people in debt taking out a trust deed when another debt option would be more suitable for them.

The measures outlined above will go some way to redress the balance in relation to restrictions on the fees and charges that the insolvency practitioner (IP) can charge, and to restrict trust deeds being offered where someone can pay the debt back in full through a DAS.

We would like to see the AiB, the FCA and the IP regulatory bodies look at how lead introducer firms work in Scotland to channel people towards IP firms and trust deeds in particular.

- ✓ We would question whether there are sufficient protections in place to ensure that full and holistic debt advice is provided before the trust deed "solution" is put in place.
- ✓ Is there a fee structure operating that incentivises lead generation companies to make unsuitable referrals?
- ✓ What structures are in place to ensure an IP only accepts suitable referrals, and that due diligence on the suitability of referrals is carried out by the IP?
- ✓ At very least, the AiB should develop strong and robust requirements on IPs in relation to the rules for accepting referrals from lead generation companies.

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