BANKRUPTCY AND DEBT ADVICE (SCOTLAND) BILL: STAGE 1

SUBMISSION FROM CITIZENS ADVICE SCOTLAND

Introduction
Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland’s network of 81 Citizens Advice Bureau (CAB) offices. These bureaux deliver frontline advice services throughout more than 250 service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.

We welcome the opportunity to respond to the call for evidence on the Bankruptcy and Debt Advice (Scotland) Bill. The Citizens Advice Service is a key component of the debt advice landscape in Scotland, providing access to debt solutions for thousands of clients every year. In 2011/12, bureau took on over 15,000 debt cases with a total debt of nearly £200 million. Any changes to bankruptcy law and the debt relief model will have a significant impact on the advice that bureaux provide and the outcomes for clients.

We believe that debt advisers, who play such a key role in helping individuals to access much needed debt relief, should have a strong voice in the future shape and direction of debt relief and bankruptcy. This response is based on the views of debt advisers in bureaux as well as on the experiences of clients gathered through social policy evidence.

Executive summary
CAS is supportive of the majority of the Bill, although we have concerns about various sections that we would like to see addressed or clarified:

- The proposed Common Financial Tool underpins the whole system and it is crucial that it strikes the right balance between debtors and creditors, as a tool that favours unrealistically high contributions would lead to missed payments and debtors falling out of debt solutions. We therefore welcome recent indications from the AiB that the Common Financial Statement, used by citizens advice bureaux and most stakeholders, will be used in the new system, and would like confirmation of this decision.
- We are concerned that increasing contribution periods from 36 to 48 months may result in a growing number of debtors who cannot maintain those contributions, resulting in increased hardship. We understand that this proposal is aimed at supporting the full costs recovery policy of the AiB. However, ultimately debt relief is for people who have no other way of managing their debts, and increased failures will have an impact on both debtors and the AiB’s costs.
- The fee for bankruptcy remains a barrier to debt relief for many low income clients. We welcome the suggestion, if confirmed, that the fee for the Minimal Assets Process (MAP) will be around £100 instead of the current £200 for the Low Income Low Asset (LILA) route into bankruptcy. However, this remains a significant amount of money for many low income debtors, and we would welcome further flexibility in how the fee can be paid.
• CAS is broadly supportive of mandatory advice for all those considering debt relief, although it is of equal importance that this advice is appropriate for the debtor’s needs. With this in mind, we are concerned at the recent change to the DAS regulations that money advice can be provided by organisations or individuals working towards type 2 of the Scottish National Standards for Advice and Information whereas previously an attainment of type 2 was the minimum standard, if the organisation was not a CAB, local authority, insolvency practitioner or authorised by the DAS Administrator. It is unclear whether there is a time limit for working towards type 2 or whether this can be open-ended. Without a defined time limit, this may represent a watering down of money advice standards. We would therefore welcome further clarification of what advice standards will be expected of organisations who will give advice on statutory debt relief.

• Financial education may be beneficial in principle, but the lack of detail in the proposals makes this benefit difficult to judge. We would welcome further detail from the Scottish Government on what mandatory financial education will entail, including the format that it will be delivered in and the source of the training.

• We are disappointed that the Bill makes no mention of the problems that undischarged bankrupts experience retaining their bank account. The majority of debtors lose their bank account after being made bankrupt and struggle to open a new account. This goes against the principle of financial rehabilitation outlined in the Bill, as a bank account is an essential service in today’s society. The issue is currently being addressed by the UK Government for England and Wales, and we believe the Scottish Government should address this issue as a matter of urgency in the Bill.

Response to the call for evidence

What is your general view on the Bill and broadly, are you supportive of it?
Citizens Advice Scotland is supportive of the majority of the Bill, although we have concerns about various sections that we would like to see addressed or clarified, as we have outlined in the executive summary. We believe there is at least one omission in the Bill which we would like to be addressed.

We are disappointed that the Bill takes no cognisance of the difficulties that the majority of undischarged bankrupts experience in keeping hold of or opening a bank account. There is currently only one major bank in the UK who will open a bank account for an undischarged bankrupt, with a limited number of branches in Scotland. The Insolvency Service in England and Wales recently found that only 27% of people are able to retain their bank account on the making of a bankruptcy order. 55% of bankrupts will struggle temporarily and then get a new account. 18% will not be able to get a bank account of their own.

AiB statistics show that almost 9,000 people in Scotland were made bankrupt in 2012/13. Using the figures above, around 6,500 will have lost their bank account, almost 5,000 will have struggled to get a new account, and 1,600 will have been unable to open a new account at all. This situation clearly goes against the intentions outlined in the Bill which aims to rehabilitate debtors. While debtors may be expected
to have mandatory financial education, they may have no access to a bank account. Bureau evidence shows the impact that this can have on clients, including being unable to receive employment pay and paying more for essential services.

A South of Scotland CAB reports of a client having difficulty opening a bank account after being made bankrupt. He is having to have his salary paid into his girlfriend’s account. He also received an HMRC PAYE repayment cheque, but cannot cash it as he has no bank account. He had travelled a round trip of around 90 miles to go to a different bank as there are so few alternatives in the area.

A North of Scotland CAB reports of a client who received a letter from his bank stating that they were closing his account in 30 days as he had breached the terms of the conditions. The client stated he went into an unauthorized overdraft by £3. He gets a state and private pension, and earnings from working 5 hours per week paid into his account. He has no other bank accounts, and has been sequestrated though will be discharged in July. He applied for a basic bank account with two other banks but this was declined. The bureau phoned the client’s bank but they are unwilling to change their decision, although they state that they have done so on previous occasions. The bureau thereafter discussed other options with the client, with a Post Office account a last resort. As the client has income and requires an account for direct debits, the Post Office account is not the best option.

We believe that the Bill represents an ideal opportunity to address this situation. In England and Wales, the Department of Business, Innovation and Skills, alongside the Insolvency Service, have drafted an amendment to the draft Deregulation Bill that reduces financial risks for banks that offer accounts to undischarged bankrupts (http://insolvency.presscentre.com/Press-Releases/Change-of-law-to-help-more-bankrupts-open-bank-accounts-69054.aspx). There is therefore a risk of a two-tier system in the UK where debtors in Scotland may be penalised significantly more than their English or Welsh counterparts, due to their lack of ability to access a bank account. The Bill represents an opportunity to address this issue.

Did you take part in the Scottish Government's consultation on the Bill and have your views been reflected?
CAS responded to the original consultation in May 2012 and we have subsequently attended and contributed to a number of stakeholder events regarding the proposals. The original proposals have been changed significantly, such as the proposal for numerous levels of bankruptcy, which suggests that the AiB and the Scottish Government have listened to stakeholder feedback. The AiB recently suggested two further decisions not mentioned in the Bill, such as the reduction in the fee for bankruptcy to around £100 and the use of the Common Financial Statement, which we welcome and would like confirmed in this process.

What is your view on the following proposals within the Bill?

Advice and education:
CAS is broadly supportive of mandatory advice for all those considering debt relief, although we are concerned that this will place additional pressure on advice services
that are already operating at or near capacity. Mandatory advice must be matched with adequate support and resources for those providing the advice.

It is equally important that the advice received by the debtor is suitable and appropriate for their needs. Citizens advice bureaux often advise clients whose debt situation has been made worse by previous advice that they received on a debt product. Therefore, the quality and appropriateness of the advice is important, as poor advice can be more detrimental than no advice.

With this in mind, we are concerned at the recent change to the DAS regulations that money advice can be provided by organisations or individuals working towards type 2 of the Scottish National Standards for Advice and Information whereas previously attainment of type 2 was the minimum standard, if the organisation was not a CAB, local authority, insolvency practitioner or authorised by the DAS Administrator. It is unclear whether there is a time limit for working towards type 2 or whether this can be open-ended. Without a defined time limit, this may represent a watering down of money advice standards. We would therefore like further clarification of what advice standards will be expected of organisations who will give advice on statutory debt relief.

The policy objective of providing a financial education role, as part of the ‘Financial Health Service’, could have a beneficial impact for debtors. However, the lack of detail in the Bill makes this impact difficult to judge, particularly around the format of the financial education. It is not clear from the proposals how the education will be delivered, who will provide it, and how participation will be judged. We do not know whether this will consist of group sessions (with potential confidentiality issues), whether there will be consideration of differing educational levels, or whether the education will be personalised or generalised.

It has been suggested that financial education may be provided in an online format, which may be inappropriate for many debtors. A recent survey of bureaux found that over half of clients seeking advice on benefits did not have access to the internet at home. We therefore suggest that the financial education will need to be in a number of flexible formats that are accessible to all debtors. The detail of these proposals, currently lacking, will determine whether this is a successful policy.

**Payments by debtor following bankruptcy**

We are broadly supportive of the principle of a Common Financial Tool for Scotland and that this should underpin the new system of debt relief. However, we were concerned by the proposals in the initial consultation which we believe would have been inflexible and would have resulted in debtors attempting to make unsustainable contributions. It is imperative that the proposed Common Financial Tool strikes the right balance between debtors and creditors, as a tool that favours unrealistically high contributions would lead to missed payments and debtors falling out of debt solutions. This outcome would undermine the whole new model for debt relief.

Citizens advice bureaux, and most other stakeholders, use the BBA figures in the Common Financial Statement when assessing debtor contributions. These figures are accepted across the UK and we believe strike the right balance between the
debtor and the creditor. We therefore welcome recent indications from the AiB that the Common Financial Statement will be used in the new system, and would like confirmation of this decision.

Using the common financial tool, the debtor will pay an assessed contribution during a payment period of 48 months. This is an increase from the current 36 month period. We are concerned that increasing contribution periods may result in a growing number of debtors who are unable to maintain those contributions, resulting in increased hardship. We understand that this proposal is aimed at supporting the full costs recovery policy of the AiB. However, ultimately debt relief is for people who have no other way of managing their debts and increased failures will have an impact on both debtors and the AiBs costs.

The Bill proposes allowing an assessed contribution to be deducted directly from the debtor’s wages, where the debtor fails to make two payments. While we understand the reasoning for this proposal, we would argue that this should only be used as a method of last resort. Debtors may be in employment where disclosure of their debts through this method may put their position at risk. For example, a debtor who works for a financial institution or who handles a large amount of money at work. The debtor contribution order must therefore only be used where all other routes of payment have been exhausted.

We welcome the proposal for a ‘payment break’ of up to six months for debtors who are unable to continue making an assessed payment, which will apply across all debt relief and debt management products. This will help to ensure that a short-term unanticipated change in circumstances will not automatically cause the agreement to fail.

**Bankruptcy where debtor has few assets: introduction of ‘minimum assets process’ to replace the ‘Low Income Low Asset’ route**

We are broadly supportive of the introduction of the ‘minimum assets process’ although we would like clarification on some points in the Bill and also confirmation of whether the fee for MAP will be lower than it currently is for LILA. We welcome aspects of the proposals, including the six month discharge from bankruptcy and the retaining of the £1,500 lower limit on total debt.

The experience of citizens advice bureaux is that LILA has been a successful policy initiative in helping people with low incomes to access debt relief, although the fee has proved to be a barrier for some. We want to ensure that the Bill maintains the access to debt relief for low income debtors that is currently available.

We are concerned that the narrowed criteria for MAP may shut the door to some low income debtors who can currently access the LILA route to bankruptcy. This would mean that more rigorous contributions will be expected of these debtors in the mainstream sequestration process (where they will need to make payments for 48 months). We would welcome details about the debtors who may lose out as a result of the MAP proposals.
We are concerned that there will still be a fee for MAP (currently £200 for LILA), although we welcome recent indications from the AiB that the fee will be around £100 for MAP due to the reduced administration costs involved and the low income of the debtors that the proposal is aimed at. We would welcome confirmation that the fee for MAP will be lower than that currently charged under LILA.

While a reduction in the fee would be welcome, we are concerned that some debtors will still struggle to afford the fee. Bureau evidence shows that the LILA fee already acts as a barrier to debt relief for many low income debtors, and will continue to do so under the new regulations.

Since the introduction of the £200 fee for bankruptcy in June 2012, citizen advice bureaux in Scotland have recorded 796 issues in which the debtor has been unable to afford to pay the fee. This figure is based on statistical recording from around 85% of bureaux, which suggests that the actual figure will be higher than this. Comparing year-on-year figures (Jan-Mar 2012 compared to Jan-Mar 2013), shows that cases in which the debtor had been unable to afford the fee increased by 59%, suggesting that the increase in the fee from £100 to £200 has increased this barrier.

Case evidence from bureaux shows the types of low income clients that are unable to afford the £200 fee for bankruptcy and the consequences this holds for them. Being unable to afford the fee can serve to make the client’s debt worse, through continuing interest, charges and deductions from benefits, which can impact on the health of the client.

An East of Scotland CAB reports of a veteran who is unable to afford the £200 fee for bankruptcy. The client served in the army and now suffers from Post Traumatic Stress Disorder. The client has rent and council tax arrears, which accrued due to the client’s inability to deal with finances, bills or benefit applications. He would like to apply for LILA as he feels that the stress caused by his debt is having a negative effect on his mental health. However, he cannot afford the £200 application fee, which is almost three times his current total weekly income. If the client is unable to apply for bankruptcy, direct deductions from his benefit to go towards his arrears will equate to over 17% of his total weekly income. The bureau helped the client to apply to a veterans charity for help paying the fee.

Case evidence from bureaux suggests that on-going welfare reform may be making the fee even less affordable for clients. Many welfare reforms involve a benefit reduction (the ‘bedroom tax’) or the removal of a benefit (the sickness benefit reassessment) both of which impact on a client’s ability to both stay out of debt and to afford the fee when bankruptcy is their best option.

An East of Scotland CAB reports of a client who is unable to afford the £200 application for bankruptcy, partly due to the impact of the ‘bedroom tax’. The client has been unemployed for six months and now suffers from chronic anxiety and depression which has resulted in him being unable to leave the house. He is claiming ESA and has no savings. As he lives on his own in a two bedroom house, he is now deemed to be under occupying his tenancy and is having to make
contributions towards his rent. He does not think he could rent out the spare room due to his mental health problems. The client would like to address his debts through LILA, but cannot afford the fee as his essential expenditure currently exceeds his income.

There is an option of paying the fee in instalments, which is aimed at making the fee more affordable. However, debtors must pay all the instalments before they can have an application accepted. For those on a very low income, this is in effect saving money in a place that they cannot access in the case of an emergency, and we therefore have few clients that choose this option.

Given that the fee acts as a barrier to debt relief for people with very low incomes, we would argue that the fee either needs to be reduced or alternative methods of payment introduced. MAP will require ‘minimal administration’ from the AiB, and will be focused on those with the lowest incomes, so it is logical that the fee should be lower than it currently is for LILA. We would also welcome an alternative system of payment where a debtor could pay a deposit for MAP that would allow the application for bankruptcy to be made, and thereafter six monthly payments following this before discharge. This would help spread the payments into something more manageable for the debtor. For example, if the fee were to be £100, the debtor could pay £50 on application and then around £8 per month for the six months prior to discharge. The debtor’s discharge could be delayed beyond six months until the full fee is paid.

Moratorium on diligence: introduction of six week single moratorium on diligence
We welcome the proposals to provide a moratorium on diligence of 6 weeks across all debt relief and debt management products. This will provide a breathing space for debtors to seek advice on debt solutions while being protected from creditor action. However, we remain concerned that debtors who are unable to raise the fee for bankruptcy will remain exposed to diligence.

Discharge following bankruptcy: process for debtor’s discharge from bankruptcy (application, review, appeal, repeal, deferral, unclaimed dividends, discovery of assets)
The Bill proposes a new process that links a debtor’s co-operation with their discharge from bankruptcy. This will mean that a debtor’s discharge can be deferred until the trustee is satisfied that the debtor has fully co-operated. While we don’t disagree with this principle, we are concerned that the ‘co-operation’ in this respect is not clearly defined, and we would welcome further detail on the circumstances in which a debtor would be assessed as not having co-operated with the trustee.