BANKRUPTCY AND DEBT ADVICE (SCOTLAND) BILL: STAGE 1
SUBMISSION FROM MONEY ADVICE TRUST

About the Money Advice Trust
The Money Advice Trust (MAT) is a charity formed in 1991 to increase the quality and availability of money advice in the UK. We work with the UK’s leading money advice agencies, government and the private sector to increase the availability of money advice, improve its quality, and enhance the efficiency and effectiveness of its delivery.

MAT’s vision is to help people across the UK to tackle their debts and manage their money wisely.

MAT aims to support individuals and micro-businesses in the UK through their debts and into financial health, and to improve the capability, quality and efficient delivery of free independent money advice by:

- Delivering advice to the public via National Debtline, Business Debtline and My Money Steps;
- Supporting advisers;
- Making the case for free money advice;
- Coordinating initiatives to improve money advice;
- Sharing research and information to shape and influence policy.

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

Introductory Money Advice Trust comment
We welcome the opportunity to contribute to the Economy, Energy and Tourism Committee call for evidence on the Bankruptcy and Debt Advice (Scotland) Bill. Our comments are set out in response to the individual questions below.

What is your general view on the Bill and broadly, are you supportive of it?
We are generally supportive of the aims of the Bill. However, we have some concerns that an element of ‘punishment’ for being in debt may be creeping into some of the proposals. For example, the requirement that certain individuals must participate in financial education could be interpreted this way. Another example is the proposal to require debtors to pay towards their bankruptcy for 48 months. This seems a long time and whilst we accept that it will mean a better return for creditors, it will mitigate against the fresh start that people in debt (usually through no fault of their own) need in order to rehabilitate themselves.

We have some specific concerns which we have highlighted below.

Did you take part in the Scottish Government's consultation on the Bill and have your views been reflected?
The Money Advice Trust submitted a response to the consultation on the Bill. Overall we are pleased to see that the proposal to introduce several new forms of bankruptcy has been dropped as this seemed unnecessarily complex. We feel that
the correct balance of insolvency products has been achieved with the replacement of Low Income Low Asset bankruptcy by the Minimum Asset Process (MAP).

We are pleased that the proposal to require compulsory debt advice from an approved money adviser before accessing statutory debt relief is to be taken forward. We also feel that it was sensible to abandon the proposal to require the AiB to give debt advice.

We are disappointed that there is no proposal to remove the ‘apparent insolvency’ rules as originally proposed. We do not find the concept of ‘apparent insolvency’ very useful and remain in favour of the Scottish Government removing the requirement for evidence of apparent insolvency to access bankruptcy. As all advisers who offer access to statutory debt solutions will be approved, we see no remaining purpose for this concept.

We are very pleased with the AiB’s decision to adopt the Common Financial Statement (CFS) as the mandatory tool to be used in Scotland when assessing debt solutions and repayment. We look forward to working closely with the AiB to ensure that the needs of all parties are met as plans are made for the introduction of the Common Financial Tool.

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

- advice and education: provision of compulsory money advice from an approved money adviser for anyone considering accessing a statutory debt relief or debt management product; mandatory requirement for individuals to participate in financial education [Policy Memorandum paras. 18-33]

  Whilst we agree that money advice should be compulsory for those considering any form of statutory debt relief, we would stipulate that this advice must be holistic and independent. If fee-charging debt management companies or insolvency practitioners are to be permitted to offer compulsory advice, there should be controls in place to ensure that this advice is given in the best interests of the client.

  In order for financial education to deliver real benefits and change in behaviours it must be relevant, timely, accessible and independent. We believe that money advice organisations are best placed to provide this. A good money adviser with sufficient time to spend with each client will incorporate some elements of financial education into their everyday interaction with their client. However, we think that the people charged with offering financial education would not necessarily have to be fully trained money advisers. There could, for example, be regionally based staff who could work with the clients of several money advice centres, and who could offer this service.

  Whilst we think that anyone accessing statutory debt relief could benefit from financial education, we do not support a compulsory element of any kind, even if someone has previously been bankrupt. For financial education to work, it will be important that the person taking part is a willing participant.
There is a danger that compulsory financial education for certain individuals could be interpreted as a ‘punishment’ for indebtedness. We can also foresee the possibility of unintended consequences creeping in. There may arise a conflict between the valuable perception of independence by users of free debt advice providers if an individual is required to attend a financial education session with their advice provider.

However, we were pleased to learn that AiB is in discussions with Money Advice Scotland on what a set of national standards for financial education would look like. This seems to be an entirely appropriate next step.

- payments by debtor following bankruptcy: development of a common financial tool to be used to calculate the amount of any contribution to be made by an individual from any surplus income they have; allowing the Accountant in Bankruptcy to make an order fixing the debtor’s contribution towards their bankruptcy; requiring debtors, assessed as being able to make contribution towards their bankruptcy, to make such payments throughout payment period (48 months); allowing an assessed contribution to be deducted from the debtor’s wages; provision of a payment break up to six months [Policy Memorandum paras. 34-73]

As we have stated above, we are pleased with the decision to adopt the CFS as the Common Financial Tool. The CFS is already seen as the industry standard and is widely used by advisers and creditors alike.

We are pleased that a maximum rather than indefinite payment period is proposed. However, as we have stated above, we are concerned that the proposal to require bankrupts to make payments for 48 months extends the payment period unreasonably and limits the ability of the bankrupt client to make a fresh start. The equivalent in England and Wales is an income payments order that usually runs for three years.

We welcome the payment break provisions but would query the proposal that one of the eligibility criteria is “a reduction of at least 50% in their disposable income.” This seems an unrealistic proposal. A drop in income of much less than 50% would have a drastic effect on income available to pay towards the bankruptcy. We suspect that in reality, it would mean that either the contribution to bankruptcy would cease, with all the related consequences, or the bankrupt would have to fall behind on essential household bills such as rent, mortgage and council tax in order to keep up with the required payments. Another option would be to apply for a variation of the contribution order and, in practice; we presume that the trustee will be looking at each case on its merits when deciding whether a payment break or variation is the best option. We feel that the trustee will have greater flexibility to respond in the most appropriate manner to each case, if there is a much lower reduction in disposable income to trigger the payment break option.

It is not clear to us if one payment break is allowed of up to six months, or more than one payment break adding up to a total of six months. People do have repeated changes in circumstances beyond their control and the latter path may be preferable.
• bankruptcy where debtor has few assets: introduction of ‘minimum assets process’ to replace the ‘Low Income Low Asset’ route [Policy Memorandum paras. 74-88]

We support the introduction of the MAP. However, we have some concerns about the proposals as they stand. The Debt Relief Order (DRO) is a roughly equivalent procedure in England and Wales. The debt limit was set at £15,000 when introduced in 2008. We are aware that DROs are due for imminent review and there will be calls for this limit to be increased substantially.

We query whether the proposal for a £10,000 debt limit is too low and will not capture the intended beneficiaries of the MAP process. If someone is on benefit level income they may easily have debts over £10,000 but will not have the income available to make payments under the formal bankruptcy route. We would suggest the debt limit should be £20,000 or above if any debt limit is required. If the applicant has no assets and benefit level income, or has been assessed as being unable to make a payment contribution, we do not see why the amount of debt they owe makes any difference to the outcome.

• moratorium on diligence: introduction of six week single moratorium on diligence [Policy Memorandum paras. 89-95]

In our response we recommended a moratorium of 12 weeks on the basis of our experience as a DRO Competent Authority. We can report that in England and Wales, there have been times when many agencies have had waiting lists for DROs for 12 weeks or more. Leaving issues of the length of the moratorium to one side, we believe that a procedure similar to that available under the Debt Arrangement Scheme would be essential to ensure protection for people in debt whilst they wait to have their case dealt with by an approved adviser.

• application for bankruptcy: requirement to sign a ‘Statement of Undertaking’ relating to the debtor’s duties and obligations during the bankruptcy process; removal of provisions from the Bankruptcy (Scotland) Act 1985 relating to incomplete and inappropriate debtor applications; application for bankruptcy from executors of the estate of insolvent deceased individuals; recall of award of bankruptcy [Policy Memorandum paras. 96-116]

We welcome the proposal for a Statement of Undertakings and believe that if handled correctly (and it does not become a tick box exercise) it will improve transparency and understanding between all parties of their rights and obligations. It is important that anyone contemplating bankruptcy understands that it is a serious business with serious obligations.

We would like to suggest a small amendment to the Statement of Undertakings which we believe will assist with the sustainability of contribution orders. We believe it is important that the bankrupt is encouraged to feel secure that they can approach the trustee for help, if things are going wrong financially (such as a drop in income). We suggest that consideration is given to amending point 7 of the Statement of Undertakings.
7. I shall immediately inform my trustee of any change of address or change in my financial circumstances during the period of my sequestration.

It should be clearer that the requirement to inform the trustee about a change in financial circumstances applies to an improvement or a deterioration in circumstances and if the latter, that assistance may be available.

- administration of estate: introduction of a time frame (120 days) for creditor claims; variation in length of first accounting period to no less than 6 months; extending ‘acquirenda’ (any property or right acquired or received by a debtor after the date of bankruptcy, and at present, before date of discharge) period to 4 years [Policy Memorandum paras. 117-137]

With one exception, we do not have any particular comment to make about these proposals which appear to be reasonable overall. We do have concerns over the extension of the right of acquirenda to property and assets acquired four years from the date of bankruptcy. This seems unduly harsh and will affect the ability of people to make a fresh start. We have made similar comments on the extension to the time people are required to make payments under bankruptcy.

- discharge following bankruptcy: process for debtor’s discharge from bankruptcy (application, review, appeal, repeal, deferral, unclaimed dividends, discovery of assets) [Policy Memorandum paras. 138-200]

In relation to the discharge period, we would only mention that in England and Wales, the discharge period is 12 months for bankruptcy and there is a 12 month moratorium period for DROs after which debts are written off. The provision for early discharge from bankruptcy before the 12 month time period has been recently repealed.\(^1\) However, the early discharge period of six months under the MAP process may assist some people with easier access to basic bank accounts and to make a fresh start post-bankruptcy.

Introducing a default credit restriction however, would only serve to penalise those clients who have embarked upon bankruptcy as a genuine attempt to relieve them of their debts. It may also affect a sole trader whose chances of starting up their business again would be severely restricted.

We do not have any particular comment to make about the other proposals which appear to be reasonable overall.

- records: removal of power to prescribe the form of the Register of Insolvencies; modernisation of the sederunt book process; removal of requirement to publish in the Edinburgh Gazette [Policy Memorandum paras. 201-223]

The purpose of the register should be to inform interested parties and not to punish or ‘name and shame’. We therefore support the removal of the

\(^1\) Repeal of Early Discharge: Under the Enterprise and Regulatory Reform Act 2013, when implemented section 279(2) IA86 will be repealed meaning that all bankrupts will be automatically discharged 12 months after being made bankrupt, unless they are subject to bankruptcy restrictions or have had their discharge from bankruptcy suspended.
requirement to publish in the Edinburgh Gazette. The other proposals are also reasonable.

- functions of sheriff and Accountant in Bankruptcy in bankruptcy: transferring further bankruptcy processes from the courts to AiB; introduction of e-application process; recall of bankruptcy provisions; appointment, replacement, removal of trustee [Policy Memorandum paras. 224-291]
  
  We can see that most of these proposals make sense and will streamline the application process. We welcome the decision to introduce an e-application process for bankruptcy but also to continue with the facility for paper-based debtor applications to be available as there may be specific cases where a paper application needs to be made. For example, a paper-based system could be used by the advice agency as part of the information gathering process before submission of the application.

  However, if applicants are allowed to submit paper applications, it is essential that full advice from a money adviser is received prior to making the application. This is based on our experience of processing DRO applications. This is so that the adviser can use their skill and experience to elicit all the required information from the client. This ensures that the full range of debt options are considered and that if all parties are agreed that a DRO is the best option, that the application is accurate and comprehensive.

  
  We do not have any particular comment to make about these proposals which appear to be sensible overall.