When I appeared before Committee on 6 November, I made a commitment to write with some information on the Scottish Government’s Consultation on Bankruptcy Reform, which ran from 24 February to 18 May 2012.

Consultation - 48 monthly payments

During my meeting with Committee, it was suggested that the Scottish Government’s consultation did not cover our proposal to extend the period during which a debtor will pay a contribution towards the cost of their sequestration to a period comprising 48 monthly payments. This is not quite correct.

Question 10.41 A in the consultation document asks, “If yes – (i.e. if you think that contributions should be paid for a fixed period) for what period should contributions be paid?” 65 respondents answered the question by expressing a preference. I can provide further details of these responses, as follows:

27 respondents preferred 3 years. These 27 included Local Authorities, IP firms and organisations such as Citizens Advice Scotland. 1 respondent (a Citizens Advice Bureau) preferred 4 years. 32 respondents (including ABCUL and every individual credit union that submitted a response to the consultation) preferred 5 years and 5 (including the British Banking Association) preferred another period of their choosing.

The majority of respondents who expressed a preference, therefore, actually preferred a longer contribution period than the one provided for in our Bill. It was only after further consultation and discussion that the Scottish Government decided to fix the period at the middle figure of 4 years, because it was felt that this would best balance the needs of debtors and creditors.
It would also be relevant to mention, at this juncture, that the Scottish Government had initially held the view that our statutory debt management scheme, DAS, should be the mandatory default option for debtors who could repay the whole of their debts within eight years. We moved away from this proposal as a result of stakeholder feedback. The 48 month payment period will, however, help provide greater transparency and make it easier to compare performance across debt solutions. I hope it is now clear that the Scottish Government did consult on this matter.

**Consultation - discharge**

I also said that I would come back to Committee with some additional information as to the Law Society of Scotland's response to our consultation exercise, on the question of whether discharge should be linked to cooperation by the debtor. However, I have been advised that there is no record to show that the Law Society made a response to our consultation. This is unfortunate, as the exercise would undoubtedly have benefitted from their involvement.

**Increased returns to creditors/breakage rates**

One of your members also enquired, during our discussion, as to what evidence the Scottish Government could show, to demonstrate that the extended payment period would increase returns to creditors, referring to oral evidence previously given by a witness from Citizens Advice Scotland. Insofar as we expect an individual to repay more over 48 monthly payments than they might previously have repaid over 36, I believe that the basis for our belief, that this change will result in an increase in return to creditors, is self-evident. However, I also understand the underlying concern that has been expressed, which is that the individual may not be able to manage to make their expected 48 monthly payments, in other words, that this change will lead to an increase in 'breakages'.

This is not supported by the evidence we have looked at. In relation to DAS for example, the proportion of live cases which are revoked per quarter, has remained reasonably stable since 2011-12, at approximately 3%, despite the usually much longer payment periods – although I appreciate that there are a range of different figures in the public domain which, I have been advised, do not always take the increase in live caseload properly into account.

My officials have carried out some analysis of non-payments in sequestration. The evidence is inconclusive. ‘Breakages’ can be the result of a number of factors including the level at which the contribution was initially set, the likelihood of change to the debtor’s financial circumstance and the scope for trustee intervention.

As well as extending the payment period, the Bill also makes other changes which could effect the individual’s ability to pay, such as the introduction of the Common Financial Statement as the single Common Financial Tool (which we hope will lead to more sustainable contribution levels) and improved trustee powers to deduct contributions from employees' earnings.

I have been advised that, with these different factors in play, it is not possible to say with any certainty that the balance of the evidence suggests that the extension of the payment period to 48 months either will or will not lead directly to an increase in ‘breakage’ rates – because the cumulative effect of different, inter-linked changes will obscure the impact of any one, single specific change.
I am, however, always mindful of the possibility of unintended consequences and, although I continue to believe that 48 monthly payments sets the right term of a contributions period in sequestration, I am happy to consider how we should include this proposal in our policy review process, going forward, in order to guard against unintended, negative consequences.

I trust this is helpful. As I said when I gave evidence, I am happy to hear more representations, should any of your members wish to make any.

Yours sincerely,

FERGUS EWING

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