Citizens Advice Scotland

Common Financial Tool Regulations 2018

Introduction

Citizens Advice Scotland (CAS), our 60 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer helpline, and the Extra Help Unit, form Scotland’s largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone.

In 2017-18 the Citizens Advice Service network helped over 295,100 clients and dealt with almost 800,000 advice issues for clients living in Scotland. With support from the network clients had financial gains of almost £142.2 million and our self-help website Advice in Scotland received approximately 3.2 million page views.

Citizens Advice Scotland welcomes the opportunity to provide evidence to the Scottish Parliament’s Economy, Energy and Fair Work committee, on the Common Financial Tool Regulations 2018.

CAS also wishes to express our thanks to the Accountant in Bankruptcy and the Minister for the withdrawal and resubmission of the Common Financial Tool regulations 2018 with a later commencement date, to allow more time for IT development and training to take place, should the regulations be passed.

The committee has asked us to provide a copy of our response to the Future of the Common Financial Tool consultation (attached) and to indicate whether our view has changed.

In summary we have fewer concerns about the introduction of the Standard Financial Statement (SFS) in Scotland than we had at the time of the consultation. Since the consultation there have been a number of positive developments, both in terms of the uprating of the Standard Financial Statement (SFS) trigger figures\(^1\) and in collaborative working with the Accountant in Bankruptcy (AiB) on the guidance for using the Common Financial Tool (CFT).

We now see little overall numerical difference between the SFS and the Common Financial Statement (CFS) which currently backs the CFT, although we do note that allowances for “food and housekeeping” are still lower under SFS than CFS. Work done by our colleague David Hilferty at Money Advice Scotland shows that following

\(^1\) Allowances for “food and housekeeping”, “personal costs” and “communications and leisure” arrived at by an annual survey of household expenditure, using the bottom quintile of households.
the annual reviews of the CFS and SFS for use in 2018, both models produced winners and losers, especially when compared to the CFS figures for 2017.\(^2\)

That all said we still have some wider concerns which are not addressed by these regulations and which we discussed in our response to the Future of the Common Financial Tool consultation, namely:

- The living standards of citizens in debt.
- The burden of evidence required to enter into bankruptcy or a debt payment plan.
- New evidential requirements.

We explore these in more detail below.

**Living Standards**

Both the SFS and its predecessor the CFS were designed to provide an agreed format for documenting and recording income and expenditure to help determine reasonable payments to debts. The backers of SFS and CFS also specify maximum allowances for some items of expenditure, e.g. under the SFS “housekeeping and food”, “personal costs” and “leisure and communication”. These maximum allowances are called “trigger figures”. Trigger figures help facilitate the process of submitting offers to creditors and having offers of payment accepted. In particular the creditor does not have to query the validity of every line of expenditure submitted, and there is less subjectivity and judgement of the debtor’s spending habits, providing the expenditure is less than the trigger figures. The trigger figures vary depending on the size of the household and are based on the lowest quintile of households in an annual survey of household spending. If trigger figures are exceeded the debtor usually has to provide an explanation for this, or curb their expenditure to the level of the trigger figure if they wish to apply for a debt solution.

Scotland is currently the only part of the UK where a set of trigger figures is coded into the legislation along with a requirement for advisers to follow guidance issued by the AiB to support the use of the figures. The CFS trigger figures currently provide a check against expenditure in the AiB’s Common Financial Tool calculator, which calculates the contribution that a debtor can make to the statutory options of a debt payment plan under the debt arrangement scheme, bankruptcy and protected trust deeds. The trigger figures are therefore critical to the living standards afforded to people in Scotland’s statutory debt solutions.

As alluded to in the introduction, one of the most significant developments since the consultation has been an uprating in the SFS trigger figures by the Money Advice Service in late 2017. Previously the SFS trigger figures were significantly lower than

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2 Please note that some of the CFS “food and housekeeping” figures were downrated between 2017 and 2018, which means that debtors in 2018 are worse off than debtors who applied for a statutory solution in 2017, in terms of a food and housekeeping allowance.
the CFS which was of great concern to our members, as the SFS check against expenditure would have resulted in significantly more trigger breaches, especially around “food and housekeeping” than on CFS. If the additional expenditure could not be justified by evidence this would then result in the expenditure being capped at the trigger figure and consequently a higher disposable income being identified and higher - but not necessarily affordable - contributions to the AiB’s statutory debt solutions. The uprating has ensured that there is now near parity between the SFS trigger figures and the CFS trigger figures and the risk of higher, unaffordable debt payments has mostly been mitigated.

However, it is important to note that the trigger figures for both the CFS and SFS are based on the spending of the lowest 20% of UK households. In other words, people in a formal Scottish debt solution are encouraged to spend the same or less than the lowest 20% of UK households whilst repaying their debts, unless there are good reasons to justify exceeding those figures. The committee will be aware that the bottom 20% of households has been most affected by welfare reform, frozen benefits, stagnant wages, rising rental costs and inflation. Furthermore, it is this group of households that are most likely to access foodbanks as there is not enough money coming in to meet all their costs. It is therefore not inconceivable that trigger figures based on this group’s spending will actually decrease in the future as income is further constrained by austerity, at the same time as inflation and other costs increase. We note that this actually happened with the CFS trigger figure for “food and housekeeping” reducing from 2017 to 2018, whilst food costs were rising.

We also want to highlight to the committee that following campaigning in Scotland the Money Advice Service commissioned research comparing the SFS and the Joseph Rowntree Foundation’s Minimum Income Standard (MIS). The MIS is significant in that it was adopted by the Supreme Court in their judgement on tribunal fees as a benchmark of a minimum reasonable expenditure for a household. Whilst some of the SFS trigger figures compare favourably to the minimum income standard, other SFS trigger figures are significantly below the MIS and the impact of this is most felt by lone parent households with multiple children. This is clearly a matter of concern for CAS.

CAS acknowledges that no method of assessing income and expenditure is perfect; however, we think that the trigger figures approach is flawed by not setting a minimum amount that the debtor needs to have a reasonable standard of living. CAS notes that other jurisdictions use different approaches to assess the reasonable expenditure of a debtor and, in particular, the Republic of Ireland sets minimal levels of expenditure for debtors in bankruptcy. These approaches were supported by CAB debt advisers in our pre-consultation survey. In support of our members we therefore think that a minimum expenditure would be a better starting point for calculating debtor contributions. We acknowledge that this approach would need to be backed by significant academic research to provide transparency and rigour, and to
introduce this in Scotland would require Scottish government funding and political will.

**The burden of evidence**

The AiB sets out in guidance requirements on the debt advice sector to provide evidence of all spending not covered by a trigger figure and any breaches of the trigger figures. The guidance was developed by the AiB and is scrutinised by a working group which comprises of creditors, insolvency bodies and the advice sector.

The point of the guidance is to indicate how the AiB expects an adviser to use the Common Financial tool and what evidence they are required to provide to support it. The requirement for advisers to provide evidence prior to submission of a bankruptcy was introduced by the Bankruptcy and Debt Advice Scotland Act 2014. Prior to that the Accountant in Bankruptcy’s administration team gathered evidence to confirm income and expenditure following the award of bankruptcy. In effect the burden of administration was passed from the AiB to the advice sector.

The reason for the gathering of evidence is to ensure that firstly the right advice is offered based on the actual circumstances of the debtor and for the AiB to meet their policy aim of ensuring that those who can afford to repay their debts do so. We agree that this is a laudable aim, however in practical terms the evidence required is significant and includes up to date evidence of the following:

- Payslips
- Benefit letters
- Details of other income
- Rent
- Factor fees
- Mortgage and secured loans
- Mortgage endowment
- Council tax
- Any HP agreements
- Gas
- Electricity
- Other fuel
- Additional expenditure on disabilities
- Pet insurance
- Child maintenance

Where trigger figures are breached advisers will also have to provide evidence to support those breaches. This was of great concern to our advisers in our pre consultation survey, when there was a significant difference between the CFS and SFS trigger figures. Advisers anticipated more regular interactions with AiB staff to discuss why levels of expenditure that had previously been ok under CFS were now breaching the SFS trigger figures. We think that the uprating in SFS trigger figures,
released just after the consultation in 2017, now means that there would be a similar amount of interactions with AiB staff if SFS or CFS was used - although the individual debtor's circumstances that trigger interventions may be different due to the different structures of CFS and SFS.

Whilst most debtors will be able to meet these evidential requirements, there are some who cannot for reasons of literacy or chaotic living and this essentially precludes them from accessing debt relief. Regrettably there are also occasions where the provision of evidence can deter clients from seeking a statutory solution when it would suit their circumstances. CAB debt advisers also do not always agree with the AiB on the evidence requirements, but the AiB has the power to close an application after 21 days where the adviser has failed to provide evidence. This is a cause of disharmony between debtors, advisers and the AiB.

We would also note that following the transfer of the administrative burden to the advice sector numbers of bankruptcy cases dropped significantly as the sector got to grips with the new evidential requirements. At the same time, since 2014, there have been significant cuts in local authority funding for free debt advice and both factors have reduced the capacity of the advice sector.

CAS therefore believes that a more common sense approach is required to ensure that the burden of evidence does not cause detriment to debtors who need debt relief and an additional burden to the advice sector. We will continue to work with the AiB on this point through the Common Financial Tool Working group.

**New evidential requirements**

Unlike the CFS the SFS does not have a trigger figure for travel expenditure. CAS acknowledges that having a trigger figure for travel is a double edged sword. Having a trigger figure suits metropolitan living in that most people's travel will not exceed the trigger and therefore there is no evidence requirement to submit to the AiB. However it is seldom enough to cover the most rural of living, for example in areas of Scotland where regular ferry tolls are required and long distances are travelled to and from work. Debtors in more remote locations will often exceed the travel trigger figure and have to provide evidence.

However the removal of the travel trigger figure under SFS extends the issue to all debtors. Bearing in mind that evidence of travel could include easily disposed of public transport tickets and un-receipted taxi fares, there is a risk of under reporting. In the survey we carried out prior to our consultation 92% of advisers felt that evidencing travel would be difficult or very difficult for their clients.

CAS would therefore recommend that the evidential tolerance for travel will need to be quite wide if the SFS is adopted in Scotland and will pursue this agenda in the Common Financial Tool Working Group.
Conclusion

In summary, CAS is now ambivalent as to whether the CFS or the SFS are best suited to calculating debtor contributions, and therefore have no strong feelings about the adoption of the SFS in Scotland.

However in line with our consultation response we remain concerned that the adoption of the Common Financial Tool regulations 2018 is a missed opportunity to look at other ways of setting a debtor contribution.

We also remain concerned that the current and future evidential requirements of the Common Financial Tool guidance needs to be addressed to ensure that debtors can access debt relief when they need it and that the resources of much needed debt services are not constrained by excessive evidential administration.