OFFICIAL REPORT
AITHISG OIFIGEIL

Economy, Energy and Fair Work Committee

Tuesday 21 January 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 21 January 2020

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
PROTECTED TRUST DEEDS INQUIRY	2

ECONOMY, ENERGY AND FAIR WORK COMMITTEE
2nd Meeting 2020, Session 5

CONVENER

*Gordon Lindhurst (Lothian) (Con)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)
*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Jamie Halcro Johnston (Highlands and Islands) (Con)
*Dean Lockhart (Mid Scotland and Fife) (Con)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Iain Fraser (Association of Business Recovery Professionals)
David Hilferty (Money Advice Scotland)
Karen Hurst (Association of British Credit Unions Ltd)
Graeme Macleod (Carrington Dean)
Frances McCann (Scotwest Credit Union)
David Menzies (Institute of Chartered Accountants of Scotland)
Carlos Osorio (TDX Group Ltd)
Michelle Thorp (Insolvency Practitioners Association)

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Economy, Energy and Fair Work Committee

Tuesday 21 January 2020

[The Convener opened the meeting at 09:46]

Decision on Taking Business in Private

The Convener (Gordon Lindhurst): Good morning, and welcome to the Economy, Energy and Fair Work Committee's second meeting in 2020. I ask those in the gallery to turn any electrical device to silent.

Agenda item 1 is a decision for the committee on whether to take items 3 and 4 in private. Do members agree to take those items in private?

Members *indicated agreement.*

Protected Trust Deeds Inquiry

09:47

The Convener: Item 2 is our inquiry into protected trust deeds. We have with us David Hilferty, who is the deputy chief executive of Money Advice Scotland; Karen Hurst, who is the policy officer for Scotland for the Association of British Credit Unions Ltd; Frances McCann, who is the acting chief executive officer for Scotwest Credit Union; and Carlos Osorio, who is the director of United Kingdom debt recovery at TDX Group. Welcome, and thank you for coming along today.

Before we come to members' questions, I will open with a fairly general one on protected trust deeds. Some people think that there is evidence of harm to debtors as a result of PTDs. What are your views? Do PTDs cause harm to debtors, or are they a good vehicle for adjusting the relationship between creditors and debtors?

David Hilferty (Money Advice Scotland): Money Advice Scotland is a membership organisation: we have members in local authority organisations and in citizens advice bureaux and other independent advice organisations. I think that it is fair to say that our members in the free advice sector typically see cases involving protected trust deeds when something has gone wrong—for example, when the debtor has not been able to sustain the agreement or when the protected trust deed has failed to use the sort of parlance that we highlight in our submission. The person in debt then comes to the free advice sector, and such experiences influence the views of our members on protected trust deeds.

However, it is important to put the issue in perspective. Last year, about 8,000 people entered into a protected trust deed and we think that 150,000 people sought debt advice. Beyond that, 600,000 adults in Scotland are considered to be overindebted. Therefore, a low proportion of people in debt end up on protected trust deeds.

On the point about harm, it is fair to say that, when things go wrong, they go wrong considerably. If I were to mention another financial product whereby somebody could pay £3,000 or £4,000 and find themselves back to square one or worse, you would probably think that I was talking about a risk investment fund, rather than about a product that was designed to give people debt relief.

I do not quite know how widespread the harm is, but we should be sufficiently concerned by the level of harm when things go wrong and the impact on people in debt.

The Convener: I see others nodding.

Karen Hurst (Association of British Credit Unions Ltd): I am speaking as a creditor on behalf of the credit union sector. As David Hilferty said, protected trust deeds can be a good solution for many people, particularly those who are in a lot of debt and who do not wish to enter bankruptcy. However, some of the trends that we are seeing in the world of protected trust deeds are causing us particular concern.

The committee discussed advertising last week. We think that quite a lot of people are being brought into protected trust deeds when they are not the right solution for them. Our member credit unions are feeding back their view that, in many of the cases that they are seeing, protected trust deeds are not the right solution for the individual from the outset. We are talking about people who are already overindebted and not living within their means signing up to solutions lasting for a four or five-year period that involve them paying back a significant amount of money, that do not look to be sustainable from the outset and that are doomed to failure. We are seeing that in the failure rates among firms. As David Hilferty has said, when that goes wrong, it really goes wrong and the consequences are severe for the individuals concerned—they are not only back to where they started; they have probably paid a couple of grand in fees before the solution has failed.

The Convener: Do you have a view on the issue of creditors being bound by the majority to accept a protected trust deed in the first place?

Karen Hurst: We accept that a majority vote is largely fair and we accept that, under the current voting patterns, most creditors are voting at some point and in some way. I am not sure that we can do much to change that. That does not mean that we are not frustrated by some of what is happening, but I accept that, as smaller creditors, we are not seeking a veto over some cases. However, we are looking for the Accountant in Bankruptcy and the other regulators involved to apply the rules fairly and appropriately, which we do not think is happening.

Colin Beattie (Midlothian North and Musselburgh) (SNP): There are tensions between giving debtors freedom of choice in deciding how to deal with their debt and getting the best results for the creditors. To what extent should a decision to enter into a protected trust deed be controlled by legislation?

Frances McCann (Scotwest Credit Union): On the face of it, it is obviously good to give a debtor a choice. However, from my perspective, looking at the level of fees, and given what those in the insolvency sector tell us about how much it costs to manage a protected trust deed, surely the professional advice should be to give the debtor the solution that they need.

I do not see much difference between protected trust deeds and the debt arrangement scheme—DAS—when it comes to why a debtor would take one or the other. I know that there are issues about how long debtors want to be obliged to pay the debt off and how fair that is. With protected trust deeds, there is a potential option to pool the assets and to use someone's equity in their house, but that does not happen in reality.

The solution may be to have just one option, which could be a mixture of both approaches. We could just consider what it costs and how much the person can pay back, with the rest of their money going to the creditors. Legislation should protect the debtors, because they are vulnerable at the time when they choose which vehicle to use to get out of their debt.

Colin Beattie: But do they choose?

Frances McCann: That is hard to say. I see the money that is involved and the money that changes hands when passing over leads. If someone is paying £1,000 to get a lead for a protected trust deed, something must be going wrong. That is profiteering. I am not convinced that the vulnerable debtor is choosing a protected trust deed. When a debtor is struggling with their debt, they do not know where to turn to. If someone is sitting in front of them offering them a solution, all they are thinking is: "How do I best get out of this?"

Many debtors do get out of their debt through a protected trust deed, but it is important to consider whether it is proper that a debtor should be paying thousands of pounds in fees in order to get out of their debt, given that they may not understand at the beginning what they are entering into.

Colin Beattie: Do you think that the issue that arises at the point of choice for the debtor would be resolved if there was a statutory requirement that they first speak to an independent financial adviser, who would be able to lay out the choices, so that they could understand what they were getting into? Would that do it?

Frances McCann: Yes, there would be merit in having every debtor sit in front of an independent person and be offered their choices. I see a massive correlation between what has happened in the financial services sector and what is happening in our sector. Many of the issues to do with financial services were cleared up by laying things out clearly. There are some prescribed methods of passing on information to people, including information about the potential impacts, which should be made prominent. With protected trust deeds, that prominence is not there.

Everything is hidden away, and the only idea that is sold to debtors is: "We'll get you out of this."

Colin Beattie: There are two reform proposals in relation to protected trust deeds. One proposal is to increase the minimum debt level for entering into a PTD. Is that the right way to go?

Karen Hurst: I feel strongly that the minimum debt level needs to be increased considerably. We heard from the Accountant in Bankruptcy last week that the average fee for a protected trust deed is somewhere between £4,000 and £6,000—I cannot remember exactly. As Richard Dennis said, there is not a huge variation in the fee, irrespective of how big the debt is.

If someone has £30,000 of debt, I think that it is appropriate for the fee to be about £5,000. I do not think that anyone can say that it is appropriate for someone who has £5,000 of debt, which is the minimum level of debt for entering a protected trust deed, to have a protected trust deed as a choice of product—and there are a lot of PTDs for £5,000 to £8,000-worth of debt. I am a wee bit dubious as to whether it costs £5,000 to administer a protected trust deed. However, assuming that it does cost that amount, we cannot say that a protected trust deed is an appropriate solution for somebody who has £5,000 of debt, but we and some of our members are seeing PTDs being proposed as a solution.

I feel strongly that the minimum debt needs to go up considerably. I appreciate the argument that that could leave many people stuck in the middle, but I point out that that happens already—it happens as soon as a minimum debt level is set.

We need to consider another solution. I have heard some people speaking about PTD-lite, and we would be happy to engage with the AIB on that. At the moment, however, the product as it is and as it costs is not an appropriate solution for many people who are in it.

Colin Beattie: What is the right level?

Karen Hurst: The debt should be at least £10,000, if the costs are as stated.

Colin Beattie: Do the other panellists agree?

Frances McCann: Yes, I agree with that.

David Hilferty: An important point on introducing a minimum debt amount is that a small amount of debt could be causing a lot of problems for someone who is on a low income. Therefore, that proposal, and all proposals, have to be viewed against two tests. First, would it limit debt relief for people who need it? Secondly, would the changes address the huge harm that happens when things go wrong?

10:00

I come back to an earlier point about the requirement to explore all the options that already exist. The concerns from the committee and from the sector is that those options have not been sufficiently and robustly explored.

It is important to view the debt policy on a spectrum. At the one end, there is the view that debt solutions should maximise returns to creditors, and at the other end is the view that they should allow relief to people who are in debt and that they should allow them to make a fresh start.

I have concerns about the argument that a DAS that runs for five, six, seven or eight years is equivalent to a protected trust deed—or even to a bankruptcy—that runs for four years. Keeping people in debt for long periods is not progressive.

Research recently commissioned by Money Advice Scotland shows that people endure hardship in the lead-up to seeking advice and when they are repaying debts. In a lot of the cases that we have seen—in which a protected trust deed was perhaps not the best solution—the client should not have been in a DAS, but put into bankruptcy. The focus should have been on another debt relief option.

Colin Beattie: The second reform proposal is preventing a PTD from becoming protected if the debt can be repaid within five years. Is that reasonable?

Karen Hurst: Yes. I would support that.

Colin Beattie: Why?

Karen Hurst: In the lower debt range, a lot of people have been identified as being able to pay off their debts in a DAS if they did not have to make many more payments. Therefore, we consider that that is fairer to the creditors, who get a much more substantial return in those circumstances. It is also fairer to the debtor, because they have committed to making a number of payments over a number of years and they should benefit from paying off their debt as opposed to paying thousands of pounds-worth of fees and having their credit reference damaged.

Colin Beattie: Do the rest of the panellists agree?

David Hilferty: My answer is similar to my previous point. We need to consider how long people should be kept in debt. You need to consider—I know that we discussed this when the committee considered the Common Financial Tool (Scotland) Regulations 2018—how long someone should be kept in a scenario in which 100 per cent of their disposable income and every spare penny that they have goes towards paying their debts.

In the CFT, there is currently no way to assess whether the contributions that a person is making leaves them with a socially acceptable living standard. Again, we discussed that at length when the CFT regulations were before this committee.

How long should people be kept in debt? Four years is a long time—think about how much someone's life can change over four years, let alone five or six. Therefore, we have reservations about that proposal.

Andy Wightman (Lothian) (Green): Behind the problems that people face with debt is the fact that the UK has relatively high—and growing—levels of household debt. Is that the fundamental problem?

Karen Hurst: Obviously, that is a problem. However, when the AIB publishes the new insolvency statistics every quarter, it tends to state that any rise is being driven by an increase in protected trust deeds. I think that there would be a rise anyway, but I argue—these are the trends that we are seeing—that some of the marketing is driving people to enter into protected trust deeds. An example that we have previously discussed is the big debt payoff, which was a competition that was run last year that offered people the chance to have all their debts paid off. It is very clear that that was not aimed at people who already thought that they were in problematic debt. It was aimed at everyone. When people entered that competition, they were asked to provide four pieces of information: their name, address, phone number and, by means of a drop-down box, to state whether they had less or more than £5,000-worth of debt. It is very clear that people are being pushed into protected trust deeds.

Andy Wightman: We will come to marketing in a minute. My question is a more general one about the level of credit card and mortgage debt in this country. Does more need to be done to tackle that?

David Hilferty: Absolutely. That is one of the prevailing social policy challenges of our time. You mentioned consumer credit debt, but a growing number of people are struggling with cost-of-living debt. They are behind in paying essential costs, such as council tax and gas and electric bills, and they are cutting back on food, school uniforms and other basic, essential items.

The free advice sector is not well equipped to deal with that growing crisis, because it faces a funding crisis. Between 2015 and 2017, funding from local authorities dropped by 50 per cent. That came at a time when cases were becoming more complex, because of the rise in cost-of-living debt, which is more difficult to deal with, and people have fewer options to deal with it. That is the wider point that we need to address. If we have some concerns about how what might be described as the private or commercial market is operating, we need a strong, free, independent and impartial advice sector. Based on current trends, we are at great risk of losing that sector.

Andy Wightman: When I started looking at the issue, I was under the impression that we have three debt relief solutions: bankruptcy, protected trust deeds and debt arrangement schemes. My understanding—naively—was that entering a debt arrangement scheme would provide partial or full debt relief, that the person would pay money to their creditors under a statutory arrangement in which the rules were quite clear and that, at the end of that arrangement, the person would be free, the creditors would have got what they got and that would be it.

It seems that, when a protected trust deed fails, the person is back to square one. The data that insolvency practitioners have given us shows that, in many such cases, zero dividend is paid, so the only person who gets any money is the insolvency practitioner. Should we be seeking to tackle that issue so that, if a protected trust deed fails, the person is not back to square one, can at least be confident that they have paid off some of their debts and can possibly enter into another debt solution?

Karen Hurst: Yes; I agree.

Frances McCann: I agree. When we lend, the risk is that someone will not pay back their loan, they might enter into a trust deed and we have to write off the money. There must be some flexibility in the protected trust deed solution. It cannot possibly be right that someone can pay thousands of pounds and end up with nothing at the end of the process. There should be a risk for practitioners in the insolvency market that, if someone fails in a trust deed, the practitioners must write off their fees. Surely that is a risk of their business. However, as it stands, that is not how the system operates. As was pointed out during last week's session with the AIB, even when someone dies, they can still be held to account for their fees. That cannot be right, because it is so unfair to consumers.

Karen Hurst: I absolutely agree. We might want to consider the front loading of fees. At the moment, the insolvency practitioner takes their cut before anyone else can, so there is no incentive for them to ensure that protected trust deeds are sustainable. I agree with Frances McCann that the insolvency practitioners might need to take on that risk.

Andy Wightman: I want to ask about marketing. Karen Hurst began to talk about advertising. We have heard that the vast majority of people who face problems with debt do not go anywhere near statutory solutions. We do not

quite know what is happening in much of that territory. However, are you confident that people who are seeking debt relief through a statutory solution are, in general, getting the advice that they need to best serve their interests, so that they can make objective and fully informed choices about the schemes into which they are entering?

Karen Hurst: I do not want to make a sweeping statement on that. I am not in a position to say that most people are or are not given that advice. I appreciate that a lot of different agencies do a lot of different things, in different circumstances, so I will not say that a trust deed is the wrong decision for everyone who ends up in one. However, it appears to me that a significant number of those people should not be in a trust deed, and the stats reflect that.

Andy Wightman: The committee has heard evidence about lead generators, who are paid for information about debtors. Is that a legitimate practice? Is it a perfectly fair way of drawing to insolvency practitioners' attention that there are people who have problems, who might not know that there is a solution for them? Do you have issues with the practice?

Karen Hurst: It is real a concern for us.

I was interested to hear Richard Dennis tell you, in evidence last week, that the Accountant in Bankruptcy has had 50 websites taken down in the past year. Given what we have seen in the written evidence about how—on paper—the insolvency world is tightly regulated by a number of different agencies, it is astonishing to me that we do not know on whose behalf those 50 websites were operating, or with whom they had relationships. Like most people, I see the adverts a lot, and occasionally I go down the rabbit hole to try to get to a place at which I can work out on which firm's behalf the advert was placed. Most of the time, I cannot work that out; the ad is completely anonymous.

Lead generators are, on the whole, unregulated by the Financial Conduct Authority. There has been a suggestion that the recognised professional bodies increasingly require lead generators to be regulated, but from what I can see, they are not regulated. Where they are regulated, I should add that the FCA has already sent them a warning shot about some of their practices; it did so in a letter last year.

I want to know on whose behalf those 50 websites were working. Who were their clients? As far as I can see, despite numerous bodies having an interest in the matter, no agency is holding to account the firms that, I presume, take leads from those lead generators in exchange for money. That is of concern to me.

David Hilferty: There are probably issues to do with lead generation and marketing. I watched the committee's meeting last week, and it is clear that many members have come across the ads that we are talking about—indeed, some of you have been inundated with ads on social media after you have shown an interest in the subject.

It is pretty clear that, although there is a responsibility to explore all options when a case gets to an insolvency practitioner, some of the marketing gives people a clear steer down a particular path from the outset, at the initial point of contact. We are not talking about generic ads that say, "Get help with your debt now"; they say "Get 85 per cent write-off." The ads do not say that all debts might be written off if the ultimate recommendation is bankruptcy, and they do not talk about freezing interest and charges and the possibility of a person keeping their property, as they might do if the person were to be led down the DAS path. The adverts emphasise certain characteristics that are unique to a particular solution.

Karen Hurst: Sometimes the adverts contain outright lies. I have jotted down a couple that I noticed. One, which popped up on my Facebook feed, said that its service was completely free. I do not know who the firm was, but it was clearly promoting a trust deed, and I have never heard of a trust deed being administered completely free of charge.

Another advert talked about financial management skills. It said:

> "A Trust Deed develops your skills at budgeting. With sequestration your debt is gone but you may not have addressed your underlying poor habits".

Again, I cannot see how that is the case. In the context of trust deeds, I do not see education happening alongside debt management.

There are claims about creditors. One advert said something like, "We have a fund and we expect to write off a certain percentage of all debts." No such fund exists to soak up debts like that. Another advert claimed that creditors always prefer a trust deed to bankruptcy, which is a completely misleading statement.

Adverts do not just direct people down a certain path; sometimes they publish outright lies.

Andy Wightman: Thank you. I might come back in with more questions later.

The Convener: Does Carlos Osorio want to comment on the issues that have been raised? For example, is it fair that an insolvency practitioner takes fees of perhaps £3,000, £4,000 or £5,000, even though the protected trust deed fails and none of the debt is dealt with?

10:15

Carlos Osorio (TDX Group Ltd): Thank you for having me here. By way of context, TDX Group Ltd is an FCA-regulated business from Nottingham. A very small proportion of our business—perhaps 0.5 per cent—relates to trust deeds, so I will have to defer a lot to my colleagues on the panel who know more about the issue than I do.

Our approach at TDX is to put the customer at the heart of it and ensure that they get the right results. The success rate for trust deeds is quite high—there is some debate about the exact number, but it is somewhere between 80 and 90 per cent. Trust deeds work as a solution for the majority of people who enter into them, but they do not work for a small minority, and that issue needs to be a key focus for the committee.

I am not sure that I am best placed to decide whether fees are set at an appropriate level. The insolvency practitioner's obligation is to provide good and sound advice to the consumer, who is approaching the practitioner from a situation of overindebtedness. Fees need to be paid, because there are costs that need to be covered, but I think that the structure of the fees could be looked at. Karen Hurst mentioned changing the structure and there are some learnings from England and Wales around how the changes have improved the success rate there. It is an emerging picture, but the success rate of the trust deed equivalent in England and Wales has improved.

The Convener: Do you have any comments on Karen Hurst's point about the cases in which a trust deed fails, and the view that the fees should be written off? One could counter that with the argument that insolvency practitioners will not do protected trust deeds if they are not guaranteed a certain level of fee. Is there a balance to be struck, or is it as simple as saying that, if the protected trust deed fails, the practitioner should not get fees?

Carlos Osorio: There needs to be a balancing act and it would be helpful if the insolvency practitioner had some skin in the game to ensure that the trust deeds that they originate reach a successful outcome. To be frank, a successful outcome is not really about creditor returns; it is about ensuring that the consumer gets to the end of the period having made a contribution towards their outstanding obligations so that they can restart their life at that point.

Richard Lyle (Uddingston and Bellshill) (SNP): I have two declarations to make: I am a member of a credit union and, previously, I did what Carlos Osorio does in debt recovery.

We want to ensure that people get the best advice and that they get help when they get into debt. Debt is when you are not paying something, but it is called credit when you are paying for it. Creditors—particularly credit unions—have raised the concern that a significant proportion of repayments in a PTD goes to cover trustee fees. One suggestion is that trustees should no longer be able to claim an up-front fee; instead, they would be entitled to an on-going proportion of the money that is gathered from debtors. Do you think that that approach would work in practice?

Karen Hurst: I have no problem with there being a fixed fee, but there is a problem with the outlays that are added to the fee. It is fine if trustees set their fee at the outset, but I do not think that they should get priority when it comes to collecting that fee.

Richard Lyle: How can we justify a situation in which, as you have already mentioned, someone repays thousands of pounds and the money goes to the trustee but, if the trust deeds fails, nothing has been paid to the creditors? David Hilferty said that it is like walking into a shop, buying a television and then being told that you are not getting your television—you walk out the door with nothing. I am simplifying the situation.

There are three options that I would like to explore. The first option is that trustees would get a fee only at the end. The second option is that they would get a percentage of the debt during the repayment period. A creditor could set up their own repayment company—the Royal Bank of Scotland did that during the time that I worked there, basically for the creditor to pay back to the company. How would that work? Would it work?

Frances McCann: It is hard to say. It is an interesting thought.

We very often make arrangements with our members who are struggling. We will do anything that we can do—our members are at the heart of everything that we do.

There has been a lot of talk about pooling between creditors and debtors and trying to get consensus on this issue. We are concerned mostly about our members. We accept that a risk of lending is delinquency and that people will struggle with their debt. If people have to enter into a debt solution, that is fantastic and we will do everything that we can to help. However, in relation to protected trust deeds or any solutions that are supposed to maximise returns to the creditors, it is very hard to consider something to be a solution when most of the fees are going to the person in the middle who is sorting things out. We strongly feel that any arrangement should be for the benefit of the consumer—our members—but there should be more of a balance. You raise an interesting concept.

Richard Lyle: When I was doing that job—I did it for many years—I found that people were pressured into an arrangement. However, when they sat down with me, or with people who worked with me, we could negotiate. We might agree a weekly or monthly repayment fee, which we might reduce if they were facing a hard time.

As David Hilferty touched on earlier, things are hard out there. People face the weekly costs of food, lighting and heating. Sometimes, their lives change. When people start off, they might have no money, but when they are in their 50s or 60s they might have "loadsamoney", as somebody used to say.

The point that I am getting at is that debt collection, or credit recovery, is basically an art of negotiation with the debtor. If we get into a situation in which we have a middleman or middlewoman taking a percentage, the credit union will get nothing. Let us be honest—you might get back your payment or a percentage of it, but, if a middleperson is involved, you will get nothing. Is that correct?

Frances McCann: Yes.

Richard Lyle: What about the third option, which is that the Accountant in Bankruptcy should take on the issue and solve it for everybody?

Karen Hurst: That would be wonderful!

Richard Lyle: The AIB will love me for making that suggestion.

I do not want to labour my point, but there are people who owe money who have hidden from that, run away or stuck their head in the sand—use whatever terms you want to. They suddenly realise that they have to do something about their situation. They are then hurt by people who rip them off—I make no apology for saying that—and who take away the money that you have, quite rightly, lent them, which you will not get back.

I do not dispute that the current arrangements work for some people, but they do not work for lots of others. How do we solve the situation? You are the experts, so tell me how to do that.

David Hilferty: It bears repeating that, notwithstanding the concerns of creditors—particularly small creditors—when things go wrong, the impact is on the person who is in debt.

I mentioned that debt policy exists on a spectrum, with maximising returns for creditors on one side and, on the other, prioritising debt relief and giving people a fresh start. I think that we need to adjust to the changing profile of people who are in debt. As I said, the large majority of people who present for debt advice at the moment are not doing so because they are feckless or reckless or have low levels of financial capability; they are doing so because they have got into debt and have borrowed to meet essential living costs. With that changing profile of client, we need to look a lot more closely at what we are doing to prioritise debt relief and give people a fresh start.

We also need to fund the free advice sector properly. Of course, I would say that, but if you are concerned about people potentially making decisions that are incentivised, you will agree that the free and impartial independent advice sector needs to be properly funded to deal with the growing number of people who are in problem debt. At the moment, the trend is the reverse of that, as funding for those essential services is decreasing.

Richard Lyle: Right. So, why do you not take on a protected trust deed and take a percentage? That would give you an income.

David Hilferty: We are not a regulated debt advice provider—

Richard Lyle: I know that you are not. That was just a leading question.

David Hilferty: Again, that would be a regulated activity for insolvency practitioners.

Richard Lyle: The point that I am trying to make is that the situation is difficult when people get into debt. Although you guys and credit unions do a lot of good work, at the end of the day, someone has to take responsibility and devise something that helps people. That should not involve their paying out thousands to a trustee who then walks away, leaving them owing the money that they owed at the very beginning. That is wrong. I do not care what anyone says—if we are going to solve this, we have to look at what is happening and ask what we can do about it in a way that safeguards you guys and the debtor and that makes things better for people.

If you had a wish list, what would you do to resolve the situation?

David Hilferty: You have given me your three suggestions; I will give you my three suggestions.

First, we do not know enough about the people who are in protected trust deeds. That is not the case for other debt solutions. For example, we know the incomes and the make-up of the debts of people who are in bankruptcy and debt arrangement schemes. There is a huge data gap that must be addressed so that we get a broader picture of what is happening with protected trust deeds. We have all dealt with egregious cases in which things have not gone right, so the first thing that we need to do is address that data gap.

The second thing that we need to do is get insight from the people with most at stake, by which I mean the people who are in debt. As a

sector, we are really good at engaging with debt advice organisations, credit unions, creditors, insolvency practitioners and credit rating agencies such as Equifax, but we are far less adept at getting insight from the debtors themselves. I mentioned a piece of research that we are doing at the moment to better understand the client experience of the advice process. To its credit, the AIB recently carried out a piece of work about people who had gone through the minimal asset process for bankruptcy. I think that we need an equivalent piece of work to be done around people with lived experience of protected trust deeds—people for whom the process worked out well and people for whom it did not.

The third request concerns funding. A lot of the concerns are coming from the private and commercial part of the advice sector. The free advice sector faces a funding crisis at the moment. If we want to retain independent, free and impartial advice, it needs to be funded properly. That is to be a priority for the Scottish Government.

The Convener: I should say that the committee is happy to receive written submissions after today's meeting. You do not have to respond immediately to Mr Lyle's question, but you can say something if you want.

Karen Hurst: I echo what David Hilferty and others have told you about the funding of free advice. It is fair to say that the credit union sector supports the provision of well-funded free advice, although I am not sure that I have any practical solutions to the question of how we make sure that that happens.

10:30

I have noted a couple of things to do with solutions that we would like to see, some of which have gone through already. The first, which has already been discussed—there has been a commitment to it already—is a full root-and-branch review of insolvency solutions. That seems to have support across the board. It strikes me that things are not very neat at the moment, so perhaps we need to look at the full picture.

As I said, I would like to see a significantly revised minimum debt level. We would like to see something to effectively regulate the fees, which are astonishing in some cases. I would also like to see the AIB take something that it has consulted on—a general power to refuse cases. It already has a power to issue a direction in some circumstances, so I do not think that the power to refuse cases is significantly outwith what it already does.

I would like to see a ban on the front-loading of fees, and there should be a clear legislative requirement that everyone who is getting advice on a trust deed is offered the full range of options that are appropriate for them.

It is not within the jurisdiction of the Scottish Parliament, but we would also like to see insolvency brought within the full FCA regime. It is not there, and that is fairly unusual in financial services. The credit union sector is fully regulated by the FCA, and the standards that it tries to enforce are significantly higher than what we see in insolvency practice. I would like to see that happen at Westminster.

The Convener: We now come to questions from the deputy convener.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I should declare that I am a member of the Ayrshire Credit Union. I will pick up on some of the themes that have been discussed in relation to credit unions. What is unique about credit unions that makes them more vulnerable to this market than other sectors?

Frances McCann: Because of our business model, we are probably more vulnerable than the larger lenders, which can mitigate risk via their many business streams. We are also held captive, if you like, by the sort of agreement with the large lenders that means that we find ourselves entering into a "voluntary" arrangement in which we have had absolutely no say. Agreements are in place between the insolvency sector and the larger lenders in which they say, "As long as I get a 10 per cent return, that is fine," whereas the rest of us have no say.

We are vulnerable because we are smaller and we have no say in what happens. It is probably more of an issue for us because of our business model. We simply encourage people to save, and, if someone needs to borrow, we do what we can to help them. We do not really have any other ways of making any income, and any income that we make goes to benefit the members.

Karen Hurst: I completely agree with that.

Willie Coffey: Scotwest's submission says that, last year, you loaned £12.5 million. Do you get most of the money back, or do you lose a substantial amount of it because of these arrangements?

Frances McCann: I can get more specific figures to you. Last year, Scotwest wrote off over £0.5 million—that figure is not directly related to the £12.5 million—and about £260,000 of that went to protected trust deeds.

We generally find that our arrears are fairly manageable, sitting at about 0.4 per cent of our loan book. On many occasions, members who are not struggling or who do not seem to be struggling with their payments go to trust deeds, but, by and large, most people pay back the money. For many

people, we are the only ones who will lend to them.

Willie Coffey: If you give a credit union member a loan and they pay it back regularly, and then they come to you and say that they are struggling to repay it, are you able to keep that person with you or do you find that you lose them to the other mechanisms and they go into a PTD? How does that process work for your members?

Frances McCann: There is a mixture—it depends on the individual. We try to get the message out to our members. On our website and on all our loan pages, there is a link to a page that directs people to free advice. We encourage our members to speak to us if they have problems. We tell them that we will help them. However, it depends on how bad the person feels at the time. People also react differently. Some people will phone us and say, "I'm really struggling, can I have help?", and we might reduce their payments. We even write off debts when people become ill and cannot work any more. We always look at the person as an individual and try to do the best thing for them.

We have a massive amount of forbearance for people who are struggling, and we do what we can to the best of our abilities. However, we are competing against the massive marketing campaigns that are everywhere. I understand—this is anecdotal evidence from a colleague who has done some research—that a lot of lead generation is done from people searching loan sites, so it is targeted at people who already borrow rather than at people who are struggling.

We help the people we can help. We encourage members to contact us or to seek free advice if they need help. That is probably as much as we can do.

Willie Coffey: If credit unions were excluded from PTDs, as is suggested in several of your submissions, who would that benefit most—the credit unions or the debtors?

Frances McCann: I do not necessarily agree with that view. If a person is struggling with debt, where do we stop? I know that student loans are excluded, but what else is excluded? Do we exclude council tax or credit cards? The solution needs to be the best thing for the debtor. If credit union loans are excluded from trust deeds, the only ones to benefit will be the credit unions. I am not saying that that might not be good for us, but if a person is in a PTD and is struggling to pay their other debts and we are excluded, the chances are that they will not be able to pay us anyway. We need the best solution for the debtor, although obviously, as a creditor, I would like our returns to be maximised where possible.

Gordon MacDonald (Edinburgh Pentlands) (SNP): I have a question about AIB audits; I discussed the matter with the AIB last week. Over the past three financial years, there have been just under 20,000 new registered protected trust deeds, but the number of PTD audits that the AIB has carried out over that time is only 66.

This morning, we got information that highlights PTD performance by company against a wide range of measures. I will not mention individual company names. The administration cost in one company had, in 93 per cent of its cases, increased by 25 per cent or more. Another company paid zero dividend in 51 per cent of its cases. On failed PTDs, obviously every case is different, but some companies performed very well, while in one of the volume companies, 30 per cent of PTDs failed.

Does the AIB need to be more proactive and carry out more audits of PTDs? If so, why?

Karen Hurst: I say that it does. I am fairly well engaged with the AIB; whenever I have gone to the protected trust deeds team with something that I have come across, they have been incredibly helpful. However, there needs to be a system, because companies will not address the matter until it is raised with them.

The committee discussed fees last week, when Richard Dennis said that it is enough for the insolvency practitioner to provide evidence of a cost. I might be wrong, but that was my understanding of what he said. However, there is a requirement: the Insolvency Service report on the monitoring of RPBs said that

"Under SIP 9, IPs are ... required to explain how all their fees are fair and reasonable."

Therefore, the standard is that fees should not have just happened but should be "fair and reasonable".

I will give examples of typical fees. As far as I am aware, it is an on-going trust deed. There is a courier charge of £114, but there is no requirement in any rule that couriers need to be used to send paperwork relating to trust deeds. There is an anti-money-laundering check for £72, an identification verification for £48 and a personal payment insurance—PPI—search fee of £360, which was from a while back and would not apply now.

The credit union sector is subject to anti-money-laundering rules. We do not recognise the quoted costs of carrying out the necessary checks in relation to money laundering, in which the fees came to about £6,000, from about £7,000 that the individual was due to pay back through the trust deed.

I do not agree that it is good enough if a receipt is produced. There should be a judgment about why fees are applied in the first place. What third parties are companies using if they are unable to negotiate deals such as those that the credit union sector—which is not of their scale—can negotiate? We do our anti-money-laundering checks for a couple of pounds per case, but other companies are charging hundreds of pounds for one case. I do not understand that.

Gordon MacDonald: Does anybody else have views on the audit?

Frances McCann: I agree with everything that Karen Hurst has said. We queried the PPI search fee with one practitioner, because the fee was listed after the deadline for PPI claims. We got an email back, saying, "Yes—sorry about that; we'll call it something else." It was a joke.

The AIB team is massively helpful, but the AIB's approach could be more proactive. When we first started on the journey—for me, that was almost two years ago—to raise the protected trust deeds issues with Parliament, we found almost complacency from the AIB.

It is a confusing landscape and it has taken us a long time to understand who is responsible for what and to whom we can complain. There has been a lot of talk about the lack of complaints; that lack is because there is a lack of clarity. People say, "Just google it", but we need to know what we are looking for, and that is not always clear. I agree that the AIB could take a more proactive role.

Gordon MacDonald: Last week, the AIB told us that audits can be instigated by debtors, creditors or the AIB, but that most of the audits that it carries out are inspired by its own findings. Is there a stumbling block? Is there a reason why debtors and creditors do not contact the AIB to ask it to carry out audits? David Hilferty or Carlos Osorio might have views on that.

Frances McCann: I have good engagement with the AIB and the protected trust deeds team. However, we tend to be in touch about policy or about complaints about individual trust deeds. I am not sure that I could pick up the phone to Kelly Donohoe or Stacey Dunn and ask them to do an audit for us. Audits tend to come on the back of issues that have been identified via complaints. However, if Richard Dennis is telling us that we can ask the AIB to carry out an audit, I will bear that in mind.

10:45

David Hilferty: We should think about the fact that the person who is in debt will have two negative experiences when something goes wrong. They experience the original problem for which they need help, and when they reach out for that help, it does not work out for them. We should not be too surprised, therefore, that making a personal complaint would not sit high on that person's agenda. If a trust deed has gone wrong and they have lost perhaps thousands of pounds, but still have their debts to pay, the priority is always to ask, "Well, what now?" That is where the free advice sector comes in.

In general, we put a lot of responsibility on individuals and emphasise what they should do, and we expect them to understand complex financial products and complaints procedures. In my view, that level of expectation is pretty unwarranted. I would use the following analogy: when I go to my general practitioner, I do not need to be medically trained or qualified in order to know that the medication that I am prescribed will not cause me harm. Equally, a person should not have to be a trained money adviser or a qualified insolvency practitioner to be assured that accessing debt products will not cause them harm. That is what it comes down to, so we need to think about how we can address that harm.

Richard Lyle: When the AIB carries out an audit and comes up with findings and recommendations, it does not publish that information anywhere. What are your views on that?

Last week, I did a bit of digging and found the warnings page on the Insolvency Practitioners Association website, which lists the breaches of its ethics code that have occurred. I hasten to add that the examples are all anonymised. Is there a need for the AIB to publish—at least once a year, say—the findings from its audits so that people are more aware of the pitfalls of entering into a PTD?

Karen Hurst: Yes. I would absolutely welcome more transparency in that regard.

Jackie Baillie (Dumbarton) (Lab): My questions have, largely, been covered, but I have a couple. Some of the panel have mentioned their attraction to the idea of providing independent advice at the start of the protected trust deed process. How would that be funded? There are gaps across the country in provision of such advice. Perhaps David Hilferty would like to have a first stab at that.

David Hilferty: Absolutely. As I said, the context is that the sector is facing a funding crisis, the likes of which has not been seen before. On the other side, a lot of people are making a lot of money out of people who are in debt. It has always surprised me that various agents in the debt space—I am not talking about trust deeds in isolation—make so much money out of people who do not have any money. We could consider a

number of options—for example, increasing the statutory levy that is applied by the Financial Conduct Authority. Research over the past few years has shown that the main beneficiaries of debt advice are creditors. Ultimately, if more is paid in, there will, ostensibly, be more returns for the people who—I stress—can afford it.

I will go back to my previous point. Given the changing profile of people in debt, we will see over the next few years the development of new products and innovations that will enable us to help people to access debt relief and give them a fresh start far more quickly than we currently do.

Jackie Baillie: There are no other views, so I will pose another question. I am conscious that we are looking at statutory debt solutions, but I know that a lot of money advisers use informal debt solutions. Is a new statutory debt solution needed?

David Hilferty: That is an interesting proposition. Karen Hurst mentioned the concept of a "trust deed-lite"; I would be interested to see what that would look like in practice, because it is not clear to me. At this point, Money Advice Scotland might deviate somewhat from the views of our colleagues in the credit union sector. We go back to the idea of a spectrum. From a consumer perspective, it is always about accessing debt relief and providing a fresh start to people in debt. If a new debt solution or product were to be developed in the coming years, it would probably address the needs of the growing number of people who do not have disposable income but have intractable debt with no likelihood that there will be great change in their situation any time soon. They are people who are struggling with essential living costs. We need to look at other ways, if not statutory solutions, to help people in such circumstances.

Jackie Baillie: I am seeing nods from the witnesses across the panel.

Karen Hurst: I do not disagree with that. As was identified earlier, if a trust deed costs £5,000, we have to accept that it is not for people who have debt in certain ranges. I also appreciate that the DAS is not for everyone, because it requires that the debt be repaid over a specified amount of time, which for many people is simply not achievable.

If we accept both those points, we can acknowledge that there will certainly be room in the middle. I do not disagree with what David Hilferty just said. I am aware that there is a minimal asset process for bankruptcy—I think that the qualifying threshold is £1,500—but people have a lot of reservations about entering bankruptcy, some of which are justified and some of which are not. There is a challenge there, and that product is perhaps not working well. I do not know much about it, so I would not say that it is not working at all, but it is clear that people might not want to enter such an arrangement even if their debt is in the correct range. I do not necessarily have in my head an exact picture of what a PTD-lite or another such product would look like, but the idea is certainly worth exploring.

Jamie Halcro Johnston (Highlands and Islands) (Con): I have a couple of quick questions. At the earliest stage, how is most of the advice and the support that follows physically provided to people who are in debt? Is the majority of that support provided face to face?

David Hilferty: For trust deeds, I am not quite sure. The question might better be posed to the second panel. The majority of free advice in Scotland still comes from face-to-face providers. Earlier, I referenced research in which we asked a demographically representative sample of people in Scotland how they wanted to access debt advice, and 65 per cent said that they wanted to do so face to face. That gives us an insight into the current channel preference among people who access debt advice.

Jamie Halcro Johnston: This point has been touched on in previous evidence sessions and today. Throughout the different parts of Scotland, how consistent is provision of advice and support at the initial stages of, and throughout, the process of protected trust deeds, DAS and bankruptcy? Are there places where we are struggling to ensure that people can access the support that they need?

David Hilferty: Absolutely. Scotland is the part of the UK with the somewhat ignominious accolade of being the area where demand for advice most outstrips supply. The Money Advice Service, which is now part of the Money and Pensions Service, completed a good piece of work in 2019 that breaks the figures down by local authority area. I do not recall the specific instances of divergence across the board, but I will happily send that research to the committee after the meeting.

Jamie Halcro Johnston: That would be useful. Consideration of the solutions that are currently available might require a look at access to those services and at how advice can be provided in the longer term.

The Convener: I thank our four witnesses for coming in today.

10:53

Meeting suspended.

10:57

On resuming—

The Convener: We continue with our inquiry into protected trust deeds. I welcome our second panel today: Michelle Thorp is the chief executive officer of the Insolvency Practitioners Association; Graeme Macleod is the head of operations at Carrington Dean; David Menzies is the director of practice at the Institute of Chartered Accountants of Scotland; and Iain Fraser is the chair of the Scottish technical committee of R3, the Association of Business Recovery Professionals.

Thank you all for coming in. I will start by asking a general question. What are your views on protected trust deeds? Are they harmful to debtors or creditors? Do they need to be altered?

David Menzies (Institute of Chartered Accountants of Scotland): It is important to recognise that a PTD is just one of a number of solutions in the debt landscape. In the appendix to the ICAS submission, I set out the differences between various debt solutions. We have concerns about how some of the debt solutions have come together over the past few years, because some of them are not dissimilar.

At the end of the day, a lot comes down to debtor choice, which I think is right. Do protected trust deeds have a place? They absolutely do. They absolutely are beneficial for debtors, when they are the right solution. Are they always the panacea for every debtor? Absolutely not. The important aspect is debt advice, to ensure that debtors enter into the most appropriate debt solution.

11:00

I heard a number of your previous witnesses talk about PTDs as the "wrong" solution. That is dangerous, because I am not sure that those witnesses will have had the full details of people's circumstances. When I was in practice, my experience was often that the difference could turn on a very, very small bit of information. If someone does not have that information, they cannot come up with that assessment of the solution.

Given that, as I said, a number of debt solutions are very similar, it is difficult to see how one solution can be right and another can be wrong, when each is a slight variation of the other. One might have a slight advantage over another, and, at the end of the day, the debtor makes the choice.

The Convener: A protected trust deed might not be the best solution—if I can put it that way—in an individual case. I suppose that whether a protected trust deed or another solution is the route that should be taken in an individual's particular circumstances is a matter of judgment.

David Menzies: When I was in practice, I came across very few situations in which there was only one solution and nothing else was appropriate in the circumstances. That tended to be the case when there was just so much debt, with the client having no available income or assets and no ability to repay any of the debt, that the only debt relief solution was sequestration or bankruptcy. That tended to be my experience; I suspect that other IPs can give a view.

Iain Fraser (Association of Business Recovery Professionals): As an IP who is currently in practice, I concur with that. The best solution is not black and white. In the cases that I have dealt with—over the past 10 years, my partner and I have probably dealt with 5,000 to 6,000 protected trust deeds—the decision has very often turned on one piece of information, which sometimes cannot be fully disclosed to the creditors, for whatever reason.

Graeme Macleod (Carrington Dean): I will take the committee through the process for an individual who enters into a protected trust deed. At Carrington Dean, last year, we spoke to more than 40,000 people, 93 per cent of whose situations were not suitable for any of the solutions that we provide. We provide all three solutions—protected trust deeds, DAS and bankruptcy—and offer advice on what the appropriate solution is for the client.

We have an advice team. The team goes through the client's bank statements, pay slips and creditor details and offers advice based on its findings and assessment. At that point, the team runs a credit search to confirm the balances that the client owes. It then makes a recommendation. As David Menzies and Iain Fraser said, it is not always a simple case of there being one option. There might be a couple of options. For us, those options are most likely to be a protected trust deed and a DAS.

At that point, the options are discussed with the client and a way forward is agreed to. We then submit the client to a statement of insolvency practice—or SIP 3—compliance call, which is basically an interview to confirm the information that has been gathered. On pages 15 to 20 of our submission to the committee, we have set out the rough script that we use and the process that a client goes through when they sign up to a protected trust deed.

After that, if the client still wishes to go into a protected trust deed and we are confident that that is the best option for them, we produce a proposal, which is sent to the client. When the client has signed and returned the document to us, we

advertise the deed in the register of insolvencies, which the Accountant in Bankruptcy administers.

It is quite a stringent process. When the income and expenditure assessment is conducted, we use the common financial tool. There is quite a lot of investigation, and quite a lot of advice is given to the client at that stage. At Carrington Dean, we try to ensure that our clients always have a full view of their options and the pros and cons of each option.

Colin Beattie: Creditors have raised concerns that a significant proportion of repayments in a PTD goes towards covering trustee fees. One suggestion is that trustees should no longer be able to claim an up-front fee; instead, they would be entitled to a proportion of the money that is gathered from the debtor. How would that work in practice?

The response seems to be stunned silence. [*Laughter*.]

Michelle Thorp (Insolvency Practitioners Association): Thank you very much for inviting me to speak to the committee. I represent the Insolvency Practitioners Association, which is one of the RPBs that regulate protected trust deeds. We regulate about 90 per cent of the total number of protected trust deeds that are in existence. We do our work by investigating complaints. The committee heard a lot about that in the previous session, and I look forward to expanding on that later. We also carry out monitoring visits, in recognition of the need to regulate more deeply the larger number of PTDs as opposed to more traditional insolvencies. Last year, we undertook a transformation programme—

Colin Beattie: I am not sure that you are answering the question.

Michelle Thorp: I promise that I will get to it.

We now carry out up to five times more investigations into the advice that is given and the execution of protected trust deeds.

Colin Beattie: What advice?

Michelle Thorp: That is a great question; thank you very much for asking it. The advice sector does not just consist of the IPA. We investigate the work of insolvency practitioners and the Financial Conduct Authority covers other bits of the debt advice sector.

We look at SIP 3 or SIP 3.1 compliance calls—the latter is a statement of insolvency practice on individual voluntary arrangements in England and Wales—and the advice that is given to people who come through the door. One of the recommendations—

Colin Beattie: I hope that you will come on to answering the question at some point.

Michelle Thorp: We recommend that our IPs should be able to offer the full suite of advice across the range of debt solutions, not just on those that are offered by an insolvency practitioner.

Colin Beattie: That does not answer the question.

The Convener: Perhaps you could remind us of the question.

Colin Beattie: Concerns have been raised about how much is taken in fees. On the face of it, the amount seems disproportionate. One suggestion to resolve the issue is that the trustees should no longer claim an up-front fee. Instead, they would be entitled to a proportion of the money that they recover from the debtors.

Michelle Thorp: As I understand it, when the legislation was introduced, the system was designed to recognise that, unlike with other products, there is a hierarchy of creditors in a protected trust deed. Some of those are protected, with the trustee placed at the top of that hierarchy. It is interesting that there is a different arrangement for an individual voluntary arrangement, which is the tandem product in England and Wales, whereby the person can pay in parallel—a little bit like they can do under a DAS.

Colin Beattie: What does “pay in parallel” mean?

Michelle Thorp: It is as you suggested. Some of the trustees’ costs are paid off at the same time as the creditors are paid back. There is precedent for that happening in a similar environment elsewhere in the UK.

Colin Beattie: Does that result in lower overall fees?

Michelle Thorp: The introduction of the fixed fee in England and Wales has resulted in more transparency and lower overall fees. When I first took up my post just under 18 months ago, there was a lot of disquiet about the disbursements and challenges against the individual costs, as you heard in the previous session. That disquiet has largely gone away now following the introduction of a fixed fee, which has increased transparency and openness and has made the whole debate much easier.

Colin Beattie: How much is the fixed fee?

Michelle Thorp: It depends on the firm, but it is roughly £3,600. Some firms offer fees that are a bit less and others have fees that are a little bit more.

Colin Beattie: So, it is significantly cheaper than a protected trust deed.

Michelle Thorp: Not all protected trust deed fees are more than that. Quite a few are less, but some are more once they are aggregated with the disbursements.

Colin Beattie: We have not yet seen any protected trust deed fees that are less than that.

David Menzies: Perhaps I could come in on that point. There is a fallacy around the volume of the trust deed fees. To return to Michelle Thorp's point, if the IVA fixed fees are around £3,600, they are substantially higher than the fees for PTDs in Scotland, which tend to have a fixed fee of around £2,500.

Colin Beattie: Do protected trust deeds have a fixed fee of £2,500?

David Menzies: I will explain how protected trust deed fees are made up. We are talking about the IP's fees rather than the total cost of the administration of protected trust deeds, which might include asset realisation fees that are payable to auctioneers or estate agents if property has to be dealt with.

The Scottish Parliament passed the 2013 regulations, which substantially changed the way in which protected trust deeds are paid for. The regulations introduced the fixed fee element and an element that is based on a percentage of asset realisations or contributions.

The fixed fee element tends to be around £2,500. That has been agreed across the creditor base as being broadly acceptable and reflective of the statutory core work that an IP has to do in any circumstances. There are clear regulatory and statutory obligations for the IP, and that is what has been recommended. The information that I have received from our membership is that the average hourly rate that an IP recovers for work on a protected trust deed is around £55, which I suggest is not excessive. It is less than the hourly rate of a man with a van, a plumber or an electrician who does not have property or staff costs to come out of their rate. That is the true average cost of a protected trust deed.

Colin Beattie: The evidence that we have received is that the aggregate cost is substantially more than £2,500. We can look only at the evidence, and we are looking at a figure of £5,000 or more as the cost of a protected trust deed. I have a case at the moment in which the cost is substantially more than that. I do not know where your figures are coming from, but I never see figures of £2,500.

David Menzies: Well, I do not know where your figures are coming from, either. I have not seen those figures. We know from our members what the fees are and what their average hourly recovery rates are. That is the evidence. I cannot do any more than provide you with the factual evidence.

Colin Beattie: I return to the question, which was whether a fair way to do it would be for the trustee to be entitled to a proportion of the money that is paid in by the debtor.

David Menzies: What is fair for one person may be unfair for another. I hope that everyone recognises that the insolvency practitioner is entitled to a fair rate of pay for the work that they do.

Colin Beattie: I will move on slightly from an obviously contentious area.

Insolvency practitioners have highlighted that the demand for debt advice currently outstrips supply by a considerable margin. What will be the impact of greater regulation of protected trust deeds on insolvency practitioners' participation in the market?

Michelle Thorp: What do you mean by "greater regulation"?

Colin Beattie: A number of different things are causing concern, such as whether there should be a statutory requirement for independent financial advice to be given before someone enters into a protected trust deed. There are also other ideas that people are talking about.

11:15

Michelle Thorp: As we say in our written evidence, the IPA recommends greater availability of advice from insolvency practitioners across the full suite of debt products. They are currently limited to giving advice only on the suite of products that they offer unless they also have an FCA accreditation—that means that they are dually regulated, which can be quite onerous.

Other elements of the advice and suggestions that you have recommended would complement that availability, but the restrictions in the current set-up that prevent bits of an insolvency practitioner's suite of information from being passed on inhibit the ability of a person who is seeking help to get the information from the source that they are interacting with.

Colin Beattie: As far as I have seen, the evidence is that insolvency practitioners do not really give advice. They have a product that they make available; they do not give advice. If someone comes to an insolvency practitioner as a result of having seen an advert about protected trust deeds or how to write off their debt or whatever, they will not be sat down and have the difference between DAS, PTD and bankruptcy explained to them, will they?

Graeme Macleod: In fact, that is what happens—the client is given the full range of options. Carrington Dean is one of the organisations that, as Michelle Thorp said, are dually regulated: we are regulated by both Michelle's organisation and the FCA. We therefore offer DAS, trust deeds and sequestrations, and we give advice on all three.

Colin Beattie: Yet the evidence from people who have been involved in protected trust deeds seems to indicate that they do not get that advice and that there is a gap in the market.

Gordon MacDonald: I can speak only for the way that we do things, and we give advice on all three.

Michelle Thorp: With great respect to the evidence that has been presented to the committee, one of the imbalances that we, as regulators in the sector, experience is that the evidence that we have is not commensurate with the evidence that you have heard. That is one of the reasons why we welcome this investigation.

The number of complaints that we receive is very low, which tells us that the vast majority of people who go through a protected trust deed do not experience the kind of problems—

Colin Beattie: You refer to evidence. Are you prepared to share that evidence with the committee?

Michelle Thorp: I am more than prepared to share it with the committee, of course. We give some figures in our written evidence, and we are more than willing to give you any more evidence that you need on the number of complaints that were investigated and upheld.

Colin Beattie: You are making the assertion that the evidence that we have heard is not the full case. Therefore, I put it to you that it is for you to decide what evidence you want to give us to support the case that you are putting forward.

Michelle Thorp: Over the past couple of years, the total number of insolvencies, including personal insolvencies, in England, Wales, Northern Ireland and Scotland has been about 300,000, and we receive about 200 to 300 complaints a year. The number of complaints about PTDs is very low—it was just 13 in 2019, seven in 2018 and 17 in the year before.

I have heard from other committee members that there is concern that making a complaint is not the first thing on a potential complainant's mind when they go through financial difficulty and that the complaints system is difficult to engage with. There are other indicators of failure that we consider. We have quality assessment processes that look at whether our investigations of complaints have come to the right conclusions, and they are not overturning our decisions—we do not get lots of complaints about them. We are also not seeing successful judicial reviews, which would tell us that the processes were not working.

When I first started working in the IPA and was trying to work out how to complain, I found it really easy to find the complaints gateway. The benefit of the introduction of the single gateway is that every one of our insolvency practitioners is required to have a complaints procedure that is easily identifiable. Graeme Macleod's organisation has it on the front page of its website, and if you google the term "insolvency complaint", the introduction to the Government's gateway is on the first page of results.

That is not to say that there is not more that we can do. I have already engaged with the credit union representatives from the previous panel to talk about ways in which we can enhance their understanding, and their members' understanding, of ways to complain and engage. As they rightly pointed out, engagement does not have to be done by the complainants themselves; the credit unions and others can complain on people's behalf and we will still investigate.

Colin Beattie: When you talk about complaints, are you referring to complaints that are made to the trustee or those that are made to a regulatory or professional body?

Michelle Thorp: The numbers that I cited relate to complaints that were made to us through the gateway.

Colin Beattie: Those complaints were made to yourselves.

Michelle Thorp: Yes.

Colin Beattie: Did you investigate them?

Michelle Thorp: Yes.

The Convener: Let us go back to what Mr Menzies was saying. Your point about the average fee being £55 an hour was made to illustrate that that is not an unreasonable charge for a professional person's time. However, if someone has debt of £5,000 and you start with a fixed fee of £2,500—or even if the debt is £7,000 and you start with a fixed fee of £2,500—is that always a fair fee? Surely, in some circumstances, it may not be fair.

Is it fair to look at the issue as we might look at car insurance, for example? We all have to pay it if we drive a car, and the unfortunate person who has an accident benefits from the fact that everyone has paid in, which cross-subsidises the cost. Is that what is happening here, if we have fixed fees? Some cases will take a lot more time and effort than others. How are we to understand

the situation when we look at it from the point of view of fairness?

David Menzies: I am not sure that looking at fees against the debt is making an appropriate comparison. The debt is what it is, and the amount of work that the IP has to do will not vary significantly according to the level of debt. The work will vary, depending on the information that the debtor provides; how often the debtor contribution needs to be varied because of the debtor's change in financial circumstances; and the amount of assets that there are and how many of them need to be realised. The amount of debt is largely irrelevant to the amount of work that an IP has to do. Making a comparison between the debt and the fee is perhaps compounding the issue, and I think that it is an unfair comparison, because it does not reflect the work that the IP has to carry out.

The Convener: If the amount of work varies, how is having a fixed fee as a starting point fair?

David Menzies: Perhaps I did not make the point clearly enough: the £2,500 fee is broadly accepted by the creditor bodies, such as the Insolvency Exchange and other large creditor representatives, as being at an appropriate level for the statutory work that has to be carried out no matter what else is going on in the trust deed. The £2,500 covers the minimum amount of work that an IP would have to do over the four-year period of running the trust deed.

On top of that fee, there are the asset realisation contributions, which tend to be broadly around 20 per cent, although the proportion will vary from firm to firm. Therefore, the first level of recovery that the creditors make is four fifths of the debt direct, which is paid out to them.

The Convener: At £55 per hour, a fee of £2,500 is about 45 hours of work over a period of years. Would that include office overheads and costs as well as the time of the person who is involved? What are the additional costs?

David Menzies: Yes. The average early recovery rate of £55 an hour covers all the IP's costs, including its staff, building, technology and phone costs. In comparison to the rate of a plumber or electrician who works out of a white van and does not have many overheads, the hourly rate is not excessive.

The Convener: I suppose that whether there were overheads would depend on where the plumber operated—whether that was in Edinburgh or somewhere else. Is the situation not the same for a practitioner?

David Menzies: Yes.

The Convener: If that is so, why is there a fixed fee?

David Menzies: I reiterate that the PTD regulations require a fixed fee.

The Convener: I understand that the regulations require it.

David Menzies: The 2013 PTD regulations, which were passed by this committee, require that fixed fee to be charged.

The Convener: I understand that that is the regulation. My question is about why it is that way. What is the basis for it? Why do we have a fixed fee when there are all those variables?

David Menzies: Sorry—I am clearly not quite understanding the question.

The Convener: We will move on to other questions, then.

Andy Wightman: Thank you for your very useful written evidence. It is very full; we will take some time to absorb some of the data, but it is appreciated.

I have a few questions. Last week, in response to this committee's deliberations, you said on Twitter that you "look forward" to giving evidence and "trying to address" some of the "misconceptions". You also said:

> "Balanced views expressed by the AiB but there remains a huge misunderstanding of how PTDs work and how they are paid for."

Could you summarise what you think the misunderstandings are and who has them—is it society in general, or the committee or witnesses?

David Menzies: I am delighted to address that question. There is a huge misunderstanding across the board. Those words were not a reflection on the committee or anyone else—it is across the board. The evidence that we sat through and listened to from credit unions this morning also had issues that demonstrated a huge misunderstanding.

I would like to address two things. The first is the position of the debtor's write-off. There seems to be a misconception that debtors do not get debt relief at the end of the trust deed if it fails. We can talk about what failure is, as there are different versions. The AIB's statistics about the failure of a PTD are, in essence, when the debtor does not get the relief. There is debate about what that figure is, but Richard Dennis suggested last week that the rate is about 15 per cent, so 15 per cent of debtors do not get discharged from their debts.

The AIB's guidance and the requirement from us, as professional bodies, is that as long as the debtor has co-operated, they will get their discharge. That is the broad understanding of the arrangement. People have spoken about large numbers of debtors being left with a debt, paying

into a trust deed for four years and coming out with nothing, but I will say frankly that that is a fallacy in most situations. In 85 per cent of cases, debtors come out with their debts discharged and they move on in life.

Andy Wightman: However, 15 per cent do not.

David Menzies: Fifteen per cent do not. I guess that the appropriate comparator would be how many debtors in a sequestration do not get their discharge. Unfortunately, I do not have those figures and I am not sure that I have ever seen them published. Perhaps my IP colleagues will be able to come in on that point. I suggest that the percentage of debtors who do not co-operate is no less in sequestration than in a PTD; I think that the percentages are broadly comparable.

The second element concerns fees. I guess that there is a lack of understanding as to how the IP's fees and costs are paid. When a trust deed fails, it is not the case that nothing goes back to the creditors—something could still go back to the creditors, but it depends on the level of contributions that come in.

The order of priority for how the assets are realised and paid out is set down in statute. The IP is simply enacting what legislation requires them to enact.

11:30

Andy Wightman: I understand that. The committee is partly scrutinising previous legislation and is considering whether it is still fit for purpose.

The data that we have says that, for the volume providers—Pinnacle Insolvency and Carrington Dean—no dividend at all is paid in 21 and 30 per cent of cases respectively. That seems a substantial proportion. Some of the debate is about numbers, as people use different data. We will just have to live with that and try to improve it.

I have a specific question for Carrington Dean. In your written evidence, you say that

"93% of clients who we speak to are advised that a Trust Deed is not in their best interests".

Graeme Macleod: That is correct.

Andy Wightman: In section 5 of your written submission, you go on to say:

"We provide a free debt helpline, staffed 7 days per week giving advice to thousands of consumers".

You say that

"93% of these consumers do not become Carrington Dean clients".

Are those two 93 per cents the same?

Graeme Macleod: Yes. Apologies: that could perhaps have been clearer. To clarify those figures, in 2019 we spoke to 40,000 people. Of those 40,000, 93 per cent did not go through any type of solution with us.

Andy Wightman: They did not become a client. So, when you say

"93% of clients who we speak to",

that is wrong—they are not your clients.

Graeme Macleod: No, they are not. "Clients" is just the term that we would use.

Andy Wightman: So, 93 per cent of the people you speak to do not become your clients at all.

Graeme Macleod: Correct.

Andy Wightman: You say, "Bye-bye. Nothing that we offer is for you."

Graeme Macleod: It entirely depends on the kind of query. Much of the time, people are just looking for a chat about their situation. A few months ago, I spoke to a lady who had a small balance of unpaid council tax and a considerable amount of secured debt. She already had an arrangement in place with the council to deal with that. Secured debt cannot be dealt with through a trust deed, a DAS or a sequestration. The lady owned several properties. Her mother had sadly passed away, and the secured debt that was giving her trouble was on a property that she did not live in. After a brief chat about that and having talked through her options, she decided that the best option would be for her to sell that property. She would be able to clear the secured debt and pay off the small amount of council tax debt. That is an example of that type of situation.

Andy Wightman: Of the 40,000 people who contact you, you have a chat of varying length and complexity with 93 per cent of them, but they do not become your clients.

Graeme Macleod: Yes.

Andy Wightman: Seven per cent of 40,000, which is 3,000 people or so, become clients.

Graeme Macleod: Yes.

Andy Wightman: When it comes to debt relief solutions, how many of those people then take on protected trust deeds?

Graeme Macleod: Five per cent.

Andy Wightman: And the others either pursue bankruptcy or—

Graeme Macleod: They mostly go through a DAS.

Andy Wightman: It is the 7 per cent with whom you sit down and go through the checklist that you have talked about.

Graeme Macleod: Yes, exactly.

Andy Wightman: Thank you. that is helpful.

Referring to the comments that David Menzies made a few moments ago about failures, my concern, and that of Citizens Advice Scotland, is that, if a protected trust deed is not discharged and it fails, a person is left having paid nothing towards their debt, whereas at least with the other two solutions they will have paid something. Do you recognise my concern?

David Menzies: Yes; that is fair.

Andy Wightman: Is there a risk that entering into any of the debt relief solutions, as they are called, may be truncated by an event that could lead to them not running to their conclusion? If such a solution does run to its conclusion, that is it, and the person is finished with it, but those who do not get to the conclusion, for whatever reason, should know as a matter of principle that at least some of their debt has been paid off, given what they have been paying. Is that not a fair principle that should apply to any debt relief solution?

David Menzies: The answer is yes and no. The principle is fair, but there need to be safeguards against the abuse of process. If someone does not complete a PTD and does not get a discharge, that tends to be the result of a lack of co-operation. Therefore, in the balancing exercise between debtors' rights and creditors' rights, it is fair and reasonable that there be an element of risk for the debtor, so that, if they are wilfully non-compliant and are not prepared to adhere to the terms of their legally binding agreement, there is a consequence for that. That is what the legislation has put in place.

Iain Fraser: I would like to reiterate that point. As an IP, I have dealt with thousands of debtors over the years, and the majority of those who needed a discharge from their debts have received one, because they have co-operated. The fact is that some life event has happened that has meant that they genuinely cannot pay anything more into the trust deed and I, as a trustee, have given them their discharge.

As David Menzies has pointed out, the few who have been released from their trust deed without being discharged from their debt—I do not have any figures for that with me, and I am not sure whether the AIB has any—are those who have not co-operated with the agreement that they made with their creditors at the outset. In the interests of fairness to the debtor and the creditors, the creditors should have some rights in the event of a wilful lack of co-operation.

Andy Wightman: Okay, thanks.

Graeme Macleod, Carrington Dean is part of a larger group called Creditfix Holdings Ltd.

Graeme Macleod: Well, it is part of Finbora Group.

Andy Wightman: Its accounts say Creditfix, but I take the point about Finbora. Is Creditfix involved in insolvency and debt solutions, too?

Graeme Macleod: Yes. It handles insolvency solutions for the rest of the UK.

Andy Wightman: Going by its figures, in 2018, Creditfix had a turnover of £53 million and made an operating profit of £12.8 million. Is that a fair reflection of the market? That is a 25 per cent profit on turnover, so it seems relatively profitable.

Graeme Macleod: I am not familiar with those figures, but I would be happy to respond later in more detail.

Andy Wightman: I would like to discuss lead generators. We have been told that insolvency practitioner firms pay in the region of £1,000 for information about debtors, in order to find clients. Can you explain how that works and how that money is recouped?

Graeme Macleod: Carrington Dean does not deal with unlicensed lead generators. We self-generate 75 per cent of our business, as we say in our submission.

Andy Wightman: Where does the other 25 per cent come from?

Graeme Macleod: It comes from companies with FCA authorisations.

Andy Wightman: Do those companies come to you with information?

Graeme Macleod: Yes.

Andy Wightman: But you do not deal with lead generators.

Graeme Macleod: We do not do business with them if they are not authorised by the FCA.

Andy Wightman: Does anyone have any experience of how this operates? We have been told that it goes on.

Michelle Thorp: There are two sorts of organisations that provide a marketing service for some of the larger firms. There are debt packagers, who are usually licensed and provide advice and offer a full suite of FCA-related advice; and there are introducers, who provide leads and do not offer advice.

Andy Wightman: I am asking about the introducers.

Michelle Thorp: Until very recently, there was a bit of grey space in which some organisations were FCA regulated but others were not, as Graeme Macleod has just mentioned. Along with other RPBs, including ICAS and the Insolvency

Service, which provides the framework under which the IPA operates, the IPA has been working to produce new guidance to make it clear that all such introducers must be FCA regulated. At the moment, that is not a legislative requirement, but we have asked our members to undertake it, and they have agreed to do so.

Andy Wightman: If they have agreed to that, is it safe to say that no insolvency practitioner is commissioning the services or taking the products of lead generators who are not FCA regulated?

Michelle Thorp: There was a period in which some of our IPs would still have been closing down contracts. We only very recently negotiated and introduced the new agreement, in tandem with the Insolvency Service, which has carried out a review of the regulatory environment for insolvency. It has yet to announce its proposals, but the expectation is that they will include such a legislative requirement. We have acted in advance of that announcement. Our members have agreed that they want an environment in which the relevant protections are properly in place, which is why they have adopted the proposal early.

Andy Wightman: Okay. Thank you.

Richard Lyle: I am astounded. In the last couple of minutes I have heard Mr Menzies suggest that this situation is all Parliament's fault. If that is the case, we will have to remedy it. Michelle Thorp's view seems to be that everything is rosy and all is sweetness and light. With the greatest respect to her, if one person is getting ripped off, that is wrong. We will have to devise a solution that works for everyone and ensures that no one is ripped off.

If a fixed fee is charged, it does not seem to matter how much work a practitioner does for it. With the greatest respect to Mr Menzies and Mr Macleod, I point out that I used to do a similar job. I wish that I had been paid £55 per hour for it, because I would have made a fortune.

What do IP trustees do to earn a fee of £55 per hour? It seems that they make appointments and have meetings at which they sit down with people and fill out their details on income and expenditure forms, and they set up the solutions that they have devised for them. Then they sit back and the money rolls in every month. What do our witnesses really do for their fees? I apologise if they feel offended by my question.

Graeme Macleod: Not at all—I am happy to answer it. We do several things. As you have correctly pointed out, we undertake a process at the start of our involvement. As David Menzies mentioned, when clients are in financial distress we also deal with their creditors. As the committee heard at last week's evidence session, debt recovery companies selling debt on also creates a significant amount of work for insolvency practitioners. Often, when companies sell debt on to third parties those third parties are not informed that an individual has entered into a trust deed, so the contact, through phone calls and letters, which the debtor had previously received and which had been halted by the trust deed process, begins again. We undertake that work on the creditor's behalf, and we do—

Richard Lyle: I am sorry, I will stop you there. Surely when you are dealing with someone's debt you contact the creditor.

Graeme Macleod: Correct.

Richard Lyle: And you tell them that you are now administering the trust deed for that debtor, so that the creditor knows that they have entered into a trust deed.

Graeme Macleod: Correct.

Richard Lyle: So why are you saying that they do not know?

Graeme Macleod: The original creditor will know, but if it has sold the debt on to another firm, such as a debt collection firm—

Richard Lyle: Surely you would then tell that other firm that you are administering a trust deed.

Graeme Macleod: We do, yes.

Richard Lyle: Are you suggesting that firms are selling on debt repeatedly and ignoring the fact that debtors have entered into trust deeds?

Graeme Macleod: They are not ignoring it; they were probably not informed about it when they purchased the debts.

Richard Lyle: No, you are suggesting that they are ignoring it, because you have told them. Suppose that I am a debtor who has entered into a trust deed. That fact would be on my credit file. You would have told my creditor that I have a trust deed, so if he sells my debt on to someone else he must tell the next person about that.

Graeme Macleod: That is not my experience. We produce form 4s, which are annual reports to the AIB, and those are also sent to creditors. We also deal with the annual statements of clients' income and expenditure. A review similar to the one that was carried out at the start of the trust deed process happens once a year so that we can correctly assess a client's ability to pay. We also pay out dividends and deal with the closure of trust deeds. Overall we do a considerable amount of work.

11:45

Richard Lyle: Right. Let us say that I have a trust deed. When do you pay out the dividend?

Graeme Macleod: If possible, we pay out dividends in the second year.

Richard Lyle: Actually, I have your figures here. Again, I apologise if anyone on the panel is offended. Carrington Dean carried out 1,327 PTDs. The dividend that it paid out was 15.3p.

Graeme Macleod: Do you mean the average dividend?

Richard Lyle: Yes. Of 1,327 cases, zero dividend was paid in 476, which is roughly 36 per cent. In those, no one—apart from you—got any money. In 45 per cent of them your admin costs also increased by 25 per cent or more over the period.

The sad thing is that although you solved 70 per cent of the cases the other 30 per cent failed. That means that the people in 30 per cent of cases were no better off. Do you agree?

Graeme Macleod: I am afraid that I do not agree. Are the figures that you are quoting from the AIB's annual report?

Richard Lyle: Yes.

Graeme Macleod: I disagree with the way in which the AIB characterises our failure rate, which I think Richard Dennis alluded to in the committee's evidence session last week. I calculate it to be roughly 14 per cent. You mentioned that—

Richard Lyle: It would still be the case that 14 per cent of people are no better off. They have gone back to square 1.

Graeme Macleod: That is not necessarily the case. You mentioned cases in which we did not pay out a dividend. As David Menzies and Michelle Thorp said earlier, as long as a client is co-operating with us, we keep their case on our books. If they cannot pay, not only can we not pay creditors a dividend, but we cannot take our fee. So those clients—

Richard Lyle: But you would already have had your fee.

Graeme Macleod: Not necessarily. That would depend on the point at which the client falls down.

Richard Lyle: If I am a debtor who has not failed for three years, you will have had your fee from me for those three years. No one else will have got anything. The creditor will not have got any money, but you will have had your fee.

Graeme Macleod: Not necessarily. The situation is—

Richard Lyle: Are you saying that the creditor—

I am sorry. I interrupted you.

Graeme Macleod: That's okay.

Richard Lyle: I apologise. You collect a payment from the debtor every month.

Graeme Macleod: Correct.

Richard Lyle: That goes into your bank account from customer number 184, let us say. Do you then send a payment to their creditor every month?

Graeme Macleod: No.

Richard Lyle: When do you send that?

Graeme Macleod: I think that we do it, if collections permit, after 18 months and again after two years. I cannot remember exactly.

Richard Lyle: So, the creditor waits for 18 months before they get a single penny—

Graeme Macleod: Well—

Richard Lyle: Let me finish.

Graeme Macleod: Okay.

Richard Lyle: You would have taken a fee in each of those 18 months.

Graeme Macleod: Not necessarily.

Richard Lyle: You have just told me that.

The Convener: Mr Lyle, perhaps you could let Mr Macleod explain.

Richard Lyle: Okay. I am sorry.

Graeme Macleod: If the client has made their monthly payment every month, then we would have taken a fee. However, if the client fell down at month 6, for example, but was otherwise still co-operating, we would have been unable to take any fee except a nominal first amount. That does not necessarily mean that we will refuse them their discharge—or say that the trust deed has "failed", as you have put it. We would keep that client on and would ensure that we were doing regular financial assessments of their position.

That is why, in the figures from which you were quoting, you will see situations in which zero dividend was paid. That does not necessarily mean that the trust deed has failed; it can mean that the case is on our books. Roughly speaking, about 6 per cent of the cases on our books are clients who are co-operating with us and are proving beyond reasonable doubt that they cannot make payments. As David Menzies said, it is perfectly reasonable, going by AIB guidance and guidance from RPBs, for us to keep such cases on our books.

Richard Lyle: I apologise to each and every one of you if you feel that my questions have been pressing, but I think that, having dealt with a situation, we have to try and resolve it. My last question is this: do you honestly and truthfully

think that the system is fair to people who are in debt?

Graeme Macleod: I would say that it is fair.

Iain Fraser: Yes. To widen the answer out slightly, I say that in a developed society such as ours, we must have debt-relief solutions for people who find themselves in such situations. The vast majority of trust deeds—the statistical evidence speaks for this—work for both the debtor and the creditor.

David Menzies: My answer is, broadly, that the system is fair. Could there be improvements and could it be tweaked here and there? Absolutely. However, I caution against that approach.

Karen Hurst talked about a wider review of the debt-solutions landscape, which is something that ICAS put out there first—it has been in all our submissions to the committee in relation to DAS, CFT and everything else. PTDs have a place and they work for the majority of individuals who get debt relief. However, there is a need for a wider review, which would involve big societal questions. We would have to ask what the purpose of debt relief is, what the balance between debtors and creditors should be, what the impact is on housing and what the impact is on mental health. Those are not issues that are solely focused on debt. That is why ICAS is calling for a much wider review of the debt-solutions landscape.

Richard Lyle: Thank you.

Willie Coffey: I want to go back a wee bit to something that Mr Menzies said earlier, to the effect that as long as a debtor co-operates, they will get their discharge. I understand that discharge—to get people free from debt—is the goal for everyone involved. In a sense, the debtor does not mind where the money is going as long as they are discharged. Does "co-operation" mean "continuing to pay" or "continuing to engage"?

David Menzies: Continued engagement is fundamental. The AIB's guidance and the guidance from the RPBs is very clear that a person's being unable to continue to contribute should not be a barrier to discharge.

Willie Coffey: So, a person can be discharged from their debt as long as they co-operate, whatever that means.

David Menzies: That is absolutely our expectation.

Willie Coffey: Is that the case even if the person is unable to pay any money back?

David Menzies: Yes.

Willie Coffey: You also said something about "wilful non-compliance". What does that mean? Does it mean that a person can pay, but is not paying?

David Menzies: Wilful non-compliance would involve failure to continue to communicate and failure to provide appropriate information. It is not about not paying; it is when someone is simply not engaging. A person might hide assets or falsify their income or expenditure, but that is less likely these days. In circumstances involving those large transgressions, it would be a reasonable safeguard to question whether it would be appropriate for the debtor to get their discharge.

Willie Coffey: I want to pin you down on something that you said earlier about our colleagues in the credit unions. I think you said that they have misunderstood some aspects of the process. One of our colleagues, Karen Hurst, gave the example of multiple additional payments and payment terms being put in a repayment plan for one of their credit union members. She gave the example of a case in which, of the £7,200 that was to be paid back, £6,000 was soaked up in costs. About 12 additional categories of cost seemed to have come from nowhere. Is that process of seemingly inventing additional cost headings provided for in legislation? Can the industry keep adding fees as it sees appropriate? Examples of costs that were added include courier charges, a bond charge and storage costs. All sorts of costs were being applied and added to the debt. Is it fair to apply those?

David Menzies: Yes and no. There are costs that the IP is required to incur by statute: for instance, the bond is a statutory requirement of regulations under the Insolvency Act 1986. The IP has no ability to do anything about that.

All the costs are fully disclosed to creditors in the form 3 proposal. Creditors are fully aware of those costs at the outset and, as we have heard, they can object to the trust deed.

Are all the costs fair and reasonable? I do not necessarily agree that they are. I would like to see a bit more challenge in some cases. However, in IPs that ICAS regulates, our monitors have not come across the sort of figures that Willie Coffey cited.

Willie Coffey: So, are those figures exceptions, rather than the rule?

Michelle Thorp: There is also a bit of a legacy. In some quarters, there used to be an accretion of additional disbursements—as they are called in the legislation—that had to be charged to an estate. Quite significant challenge was brought to bear on that. It is partly because of that that a lot of providers in England and Wales have now moved to a fully transparent fixed fee. That is why we recommend that that be considered, and that we move away from the disbursements model.

Although monitors check that things are fair and reasonable, and committees look into that when they scrutinise monitoring reports, it becomes very difficult to justify what is fair and reasonable when the margins are reached.

As David Menzies said, creditors have the right to object to charges, and have done so in the past. When they are challenged—Graeme Macleod will tell me if I am wrong about this—the charges are scrutinised or addressed by the firms themselves and changed, if that is appropriate, or justified and explained properly to the creditor, who might then withdraw their objection.

As I said previously, we have found that a more full fixed fee that covers most, if not all, costs has been a positive step in England and Wales under the IVA model, and it might be right in Scotland.

Willie Coffey: Are there data, statistics or other information to show the success rates when people have objected to additions? Can we get a handle on whether people are successful in challenging ridiculous add-ons?

Michelle Thorp: I can check to see whether that is information that we can get: I can talk to other RPBs about getting a complete picture, if we can get that information.

Willie Coffey: I would appreciate that. Thank you very much.

Gordon MacDonald: Due to the time constraint, I will ask all my questions as one.

Earlier, there were questions about whether more audits should be carried out. There have been 20,000 new registered protected trust deeds over the past three years, but the AIB has carried out only 66 PTD audits. Clearly, there are problems, because a freedom of information request that was submitted to the AIB last summer highlighted, without going into detail, that there had been failures to provide services; inadequate standards of service; and disagreements with decisions. The Insolvency Practitioners Association's website refers to breaches of the ethics code and has a summary of complaints. Again, the information is anonymised, but it goes into some of the problems, such as significant voting omissions, fees being miscalculated, moneys being taken from estates when there was no approval to do so, and remuneration for more than the time costs incurred without approval. Should there be more audits? Should anonymised findings of those audits be published so that people can be made aware of the pitfalls? Should that also be done so that politicians are more aware of the issues that have been raised and that any review that comes up reflects those findings?

12:00

David Menzies: Again, we need to be clear about what are talking about when referring to an audit. There are two elements, but they can be conflated. In terms of the legislation and what Mr Dennis was talking about last week, the audit is around an examination of the trustee's fee. Some of what Gordon MacDonald was just talking about would not be covered by that audit.

Gordon MacDonald: Should they be?

David Menzies: That is the conduct monitoring side of things, which is robustly carried out by the recognised professional bodies: the Institute of Chartered Accountants of Scotland, which is my organisation, and the IPA—Michelle Thorp can talk about her organisation in a lot more detail.

Gordon MacDonald: Does your organisation find breaches?

David Menzies: We do not tend to find significant problems.

Gordon MacDonald: You find problems, but you do not recognise them as being significant.

David Menzies: We come across issues, but they tend to be minor. We publish an annual monitoring report that sets out the findings of our insolvency monitoring, which I am happy to provide to the committee.

Gordon MacDonald: That would be helpful.

David Menzies: It is also available on the ICAS website. We have routinely made our insolvency monitoring findings public for a large number of years now.

On whether it would be beneficial for the AIB to carry out more audits, we are already talking about the high level of costs that creditors have to bear. The AIB charges 5 per cent for every audit that it carries out, so more audits would simply add to the costs of the trust deed. The AIB's audit fee for bankruptcy is even worse, as it is 17.5 per cent. The costs and the tax take—the amount going into public services—are fairly substantial at 37.5 per cent in the case of sequestration.

I recognised your comments about the IPA warnings that were issued, because I think that you referred to those last year. I, too, had a look at the IPA's website, but I do not think that any of those warnings relates to trust deeds. They are generic warnings about the insolvency profession across the board and are not specific to trust deeds. In fact, I do not think that any of them relates to trust deeds.

Gordon MacDonald: No, but it would be handy to get clarification.

David Menzies: Perhaps Michelle Thorpe can clarify.

Michelle Thorp: I can confirm that, similar to the experience of David Menzies's organisation, we are not seeing from our monitoring visits significant, endemic and sanctionable issues. If something is sanctionable, that means that we are required to operate under something called the common sanctions guidance so that all the RPBs regulate in a consistent way. The issues that we are finding from IPs operating mainly in Scotland—IPs from England operate in Scotland, and vice versa sometimes—are not at the sanctionable level. Often, when challenged by our inspectors, the IPs react very quickly to redress matters. That does not mean that we are not regulating in areas where we need to. There are a small number where we have taken action when that has been needed. I cannot talk about them in a public forum, but perhaps we can find a way of anonymising that information in written evidence to the committee.

There is transparency around sanctionable events. Where a sanction has been given, the name of the IP is published on the Insolvency Service's website. We also publish warnings, which are not sanctions, so a fine is not incurred; rather, they are a warning about a need to change behaviour. The anonymised information to which you are referring is about those.

Gordon MacDonald: What are disciplinary consent orders? You issued 20 of those in 2019 and 23 in 2018, albeit across the UK.

Michelle Thorp: I will explain how the regulatory framework works. At the first stage, when the insolvency practitioner is challenged by the relevant IPA committee and the case is found against them, they can agree to accept a penalty. That is called a consent order. It is a sanction to which they have agreed—they have held up their hands, accepted it and carried it forward. That information is published.

If a practitioner does not accept the committee's sanction, there are further stages in the process. They can still be awarded a sanction, but it would not be consensual—the practitioner would be ordered by a disciplinary committee to pay a fine, or they might lose their licence if they have been very remiss in their duties.

Gordon MacDonald: The fact is that the Insolvency Practitioners Association publishes information about what is, in effect, bad practice. I accept that that is UK-wide and it does not necessarily relate to the issue that we are looking at today. Should the AIB be doing the same, including anonymising the information, as the IPA does?

Michelle Thorp: From my experience as a regulator, I find transparency to be enormously helpful. One of the innovations that we are bringing in in the next month or so is a benchmark report about our highest-volume providers of PTDs and IVAs in England and Wales. We hope that that will enhance the understanding of the system and the recognition of best practice.

As a regulator, we consider that transparency is definitely beneficial.

Gordon MacDonald: Can we get a copy of that report when it comes out?

Michelle Thorp: Of course.

Jackie Baillie: I will ask the question that I put to the earlier panel. It is suggested by some that the provision of independent advice at the very start of a debt solution would be valuable. Would you support that approach? If not, why not?

Separately, is there a need for an additional statutory debt solution?

David Menzies: Debt advice exists in legislation, and we cover that in our guidance notes on the legislation. Debt advice is taken—everyone who enters into a debt solution must have received debt advice.

Jackie Baillie: Is that independent advice? Many of the IPs will go on to provide their product. It is the independence element that I think is valuable.

David Menzies: The question then is what independence is, because the free money advice sector is not independent either. It is reliant on Government funding and therefore—

Jackie Baillie: It is not pushing a particular product though.

David Menzies: I disagree.

Jackie Baillie: Oh?

David Menzies: I suggest that, in some cases, people in that sector may well be pushing particular products. They may be putting forward things that are socially more acceptable rather than necessarily the right debt solutions. I can probably think of a lot of situations in which the free money advice sector is putting people into DAS when my fundamental position would be that they would be far better off getting the debt relief more quickly and moving on.

Jackie Baillie: That is interesting, because it contradicts our experience with the people who have been through the process whom we met last night in Greenock. I think that you were invited—maybe not personally, but as a sector—to provide people who had had a positive experience, but I do not think that we got anybody to tell us that. If you have examples, please provide them to us.

David Menzies: Graeme Macleod's submission includes a debtor survey, which provides information in that regard.

I will move on to the question on the need for an additional statutory debt solution. That is worth consideration. ICAS has called for that as part of the wider landscape review. I think that we need to accept that trust deeds were created in the time of Roman law and that, frankly, things have not moved on a lot since then. They are a mishmash of trust law, insolvency law and common law that serves no one right. They were set up at a time when there were not massive amounts of consumer debt—the product was never designed to deal with that situation. Therefore, it seems reasonable to me that an additional debt solution is put forward for consideration.

Jackie Baillie: I am conscious of the time, but if you have a particular model in mind, I am sure that the committee would welcome hearing from you again in writing.

The Convener: Yes, and if there are matters that we have covered that you would like to provide further comment on in writing to the committee, please feel free to do so.

I thank all our witnesses for coming in today.

12:10

Meeting continued in private until 13:00.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

The Scottish Parliament
Pàrlamaid na h-Alba