

Correspondence from Govan Law Centre

Re: Bankruptcy Fees (Scotland) Regulations 2017

I am writing to express Govan Law Centre's concerns in relation to the above regulations that were laid in front of the Committee on the 20th February 2017.

These Regulations propose a number of fee increases and reductions in relation to bankruptcy in Scotland.

The stated policy objective of these increases are to ensure that the bankruptcy fee structure remains appropriate, fair and contributes towards the goal of the Accountant in Bankruptcy (AIB) minimising it's call on the public purse.

It's also stated in paragraph 6 of the policy note accompanying the draft regulations, that the approach that is being taken is aimed at ensuring the AIB continues to recover fully its costs in relation to the administration of bankruptcy in Scotland.

Cost of Realising Heritable Property

However, we are extremely concerned at some of the increases that are being proposed in clause 3 of the Schedule of the Regulations.

These increases relate to the AIB's fees when realising heritable and moveable property, such as a debtor's family home.

As you will see from the table below, in relation to heritable property, these increases are as great as 188% when a home with £50,000 of equity is realised.

Equity	Fee Under Old Rules	Fee under New Rules	Difference	Increase as a percentage
£10,000	£1,500.00	£1,500.00	£ 0.00	50%
£20,000	£2,000.00	£3,000.00	£1,000.00	105%
£30,000	£2,200.00	£4,500.00	£2,300.00	150%
£40,000	£2,400.00	£6,000.00	£3,600.00	188%
£50,000	£2,600.00	£7,500.00	£4,900.00	186%
£60,000	£2,800.00	£8,000.00	£5,200.00	183%
£70,000	£3,000.00	£8,500.00	£5,500.00	181%
£80,000	£3,200.00	£9,000.00	£5,800.00	179%
£90,000	£3,400.00	£9,500.00	£6,100.00	178%
£100,000	£3,600.00	£10,000.00	£6,400.00	50%

Hardship

Our concern is these fee increases will result in families suffering extreme hardship, as the effect of the increases, where there are sufficient funds to pay creditors in full, will be less or no funds being returned to the debtor and their family to assist them with the transition of losing their home.

We do not accept the AIB's statement in paragraph 13 of the Policy Note that all bankruptcy fees are borne by the creditors, as where the debtor is balance sheet solvent

in a sequestration (usually awarded on the strength of a creditor petition), it is the debtor that bears the cost of bankruptcy fees.

Our concern is that these fee increases place an unfair and disproportionate burden on those families worst hit by the effects of bankruptcy, in that they lose their home. This effectively means in cases where there may have been a surplus, there may now not be one or it will be significantly reduced.

This will mean families being forced out their home with no funds being returned to them where they may have been under the current rules.

Creditor Returns

We are also concerned that these increases in fees will result in other cases in a significant reduction in funds being distributed to creditors, who the bankruptcy regime is supposed to benefit.

This is even more concerning as it comes 2 years after the bankruptcy payment period in Scotland was increased from 3 years to 4 years, on the pretext of ingathering more funds for creditors. It appears this sacrifice by Scottish debtors, who now pay longer in sequestration than debtors do anywhere else in these islands, including the Republic of Ireland, is being squandered to increase AIB fees.

It also appears to be going against the recent direction of travel, which as can be seen with the Protected Trust Deed (Scotland) Regulations 2013, which introduced a new fee framework for private insolvency practitioners, has been to curb fee levels to maximise returns to creditors.

Reasons for Increase

It is quite clear these increases will be used to subsidise the bankruptcy regime in Scotland in order that cuts can be made to fees in other areas, such as those in Clause 4 of Part Two of the Schedule, which caps the level of fees the AIB can charge insolvency practitioners for determining their fees in a sequestration at £5,000.

As these fees are charge at 17.5% on the Insolvency Practitioners fees, this means the primary beneficiary of this cap will be private insolvency practitioners. This cap, however, will not benefit all insolvency practitioners, but only a minority of those with cases where their fees are more than £29,000.

This appears fundamentally wrong, that to benefit a minority of insolvency practitioners who have high feeing cases, substantial increases should be levied on those cases where debtors and their families lose their home, to the detriment of creditors and the worst affected debtors.

Even if a reduction was required on the AIB audit fee, we would have thought a lower percentage may have been a fairer way to proceed, therefore, passing on the benefit to more insolvency practitioners, than to introduce a cap that only benefits a few, most of whom will be part of the larger firms and, therefore, more able to afford the cost of the AIB audit fee.

It is quite clear also the justification for the increase in relation to realising heritable property is not simply these increases reflect the costs to the Accountant in Bankruptcy,

but are intended to meet the growing shortfall that is forecast in AIB funding, due to a declining caseload.

Paragraph 9 of the Policy Note makes this clear when it states:

As a result of the fall in case numbers, the AiB is forecasting a fall in operational income of £1.3 million in 2017-18, £4.2 million in 2018-19 and £3.0 million in 2019-20, when compared with the forecasted income level in 2010/17.

Accountant in Bankruptcy Costs

We strongly believe that before any further increases in bankruptcy fees are authorised, by the Scottish Parliament, a full review of the AIB's operating costs and expenditure must be undertaken.

In paragraph 7 of the Policy Note it is conceded by the AIB that there has been a significant decline in cases numbers since 2012-13.

However, from examining statistics produced by the AIB in their annual reports, it does not appear there has been a decline in AIB staff numbers, staff costs or effectively AIB expenditure that reflect the decline in case numbers. This is despite significant expenditure on software systems like ASTRA, BASYS and DASH, which one would presume were intended to introduce time and cost savings.

Equally, despite there being a large redistribution of administrative work being passed to the free and private advice sector, with the introduction of the Bankruptcy and Debt Advice (Scotland) Act 2014, we have not seen any reflection of this in AIB staff numbers or costs, although we have seen a significant reduction in the number of personal insolvencies and Debt Payment Programmes being applied for (50% reduction in relation to DAS), suggesting these sectors are not able to cope with the increased work load, or in the case of the private sector, it is no longer commercial for them to undertake it.

We do strongly believe despite the statement in paragraph 11 of the Policy Note that there is scope for the AIB to make further efficiency savings. It is clear that when the figures produced in the AIBs annual report are examined, as in the table below, there has been almost no significant reduction in staff numbers, staff costs or the AIB's costs overall over the last 9 years. There has, however, been significant reductions in the numbers of personal insolvencies.

<i>Financial Year</i>	<i>Total Personal Insolvencies</i>	<i>AIB Staff Numbers</i>	<i>AIB Staff Costs (£000)</i>	<i>AIB Total Expenditure (£000)</i>
<i>2008-09</i>	22410	139.5	4,178	12,465
<i>2009-10</i>	22,998	173.4	4,329	12,458
<i>2010-11</i>	<i>Not available on AIB website</i>			
<i>2011-12</i>	20,250	152.4	4,408	12,046
<i>2012-13</i>	17,015	157.0	4,756	12,797
<i>2013-14</i>	13,793	136.5	4,432	11,696
<i>2014-15</i>	11,167	150.9	4,682	12,563
<i>2015-16</i>	8,474	145.0	4,745	12,219

Full Cost Recovery

If such efficiency savings are not possible, it is quite clear to us that a policy of full cost recovery is not sustainable in Scotland for the Accountant in Bankruptcy. If the AIB's costs, without further reform, are added to the cost for creditors, debtors and insolvency practitioners, we ultimately believe we will continue to see a decline in the number of remedies being used, with more financial obstacles being put in front of debtors, creditors and insolvency practitioners going forward.

If there are insufficient cases to generate income from, which appears to be the problem at present, then clearly full cost recovery as a policy is not sustainable. To continue to add on costs now is to act like a debtor who borrows from Peter to pay Paul. It is fundamentally an unsustainable situation.

It is also important to note, we believe, that making a direct comparison between Scotland and other parts of the UK is not helpful, as ultimately our systems are different. If a direct comparison is to be made, however, it must be borne in mind no policy of full cost recovery exists elsewhere in the UK and there are clearly other factors in terms of scale and the volume of cases being handled that must be considered.

We ask that the Committee reject these Regulations until a full review can be carried out as to whether further savings can be made by the AIB and until further information is provided as to how many debtors are likely to be affected by these fee increases. Equally we believe more information has to be provided as to what effect these increases will have on creditor returns in sequestration.

Yours sincerely

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