

Gordon Lindhurst MSP  
Convener, Economy, Jobs  
And Fair Work Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Email ce@aib.gsi.gov.uk  
Tel 0300 200 2928

Date 14 May 2018

Dear Mr Lindhurst

### The Bankruptcy Fees (Scotland) Regulations 2018

1. I have seen the representations made to the Committee published on your website, and I thought the Committee might find an initial response helpful in its deliberations.
2. The **Money Advice Scotland** (MAS) submission supports the draft regulations, but highlights concerns around the difficulty some debtors have in meeting the current £90 application fee for Minimal Asset Process (MAP). The submission highlights that MAS have recently called on the Agency to undertake research on how households are funding upfront fees to provide evidence for any future assessment. In our published summary and response to the consultation that has led to these regulations – available at [https://www.aib.gov.uk/sites/default/files/aib - policy development - fees regulations 2018 - consultation response - april 2018 2.pdf](https://www.aib.gov.uk/sites/default/files/aib_-_policy_development_-_fees_regulations_2018_-_consultation_response_-_april_2018_2.pdf) - we agreed to commission such research within the current year, with the results to be published in advance of the next fees review.
3. MAS also highlighted references in the Wyman *Independent Review of Advice Funding* that the MAP fee be returned to advice agencies to help cover the cost of the free debt advice on which the system depends, cautioning against this approach. The Committee will know that the Scottish Government have asked the new Tackling Problem Debt Group, set up in light of plans for some further devolution of funding for debt advice, to consider how Scotland should respond to the Wyman Report – details of the Group are available here: <https://beta.gov.scot/groups/tackling-problem-debt-group/>
4. MAS go on to suggest that waiving the MAP fee altogether, drawing on the *Economic Impact of Debt Advice* report to suggest it would be fair to ask creditors to shoulder more of the burden. It may be of interest to the Committee that upfront application fees currently

An agency of  
Buidheann Ie

cover less than 7% of the costs of the bankruptcy system, with the remaining more than 90% met by the creditors. One of the fundamental principles of the decade of bankruptcy reforms that concluded with the 2016 Act was that the system should strike a fair balance between debtor and creditor interests. These draft regulations propose no increase in debtor application fees, so that the burden of the proposed increases falls almost entirely on creditors.

5. The final paragraphs of the MAS submission cover the funding of the Debt Arrangement Scheme, which is not addressed in these regulations. However, the Committee may be interested to know that our recent discussion paper, *Debt Arrangement Scheme – the Way Forward*, set out some proposals very much in line with the ideas set out in the MAS submission. This paper is available at <https://www.aib.gov.uk/debt-arrangement-scheme-the-way-forward>. We would hope to turn these proposals, following further consultation, into draft regulations to come to the Committee later in the year.

6. The submission from **Alan McIntosh** is also broadly supportive – but again expresses disappointment that we have not proposed to lower upfront application fees, and argues for fee waivers for those on low income. We have considered the issue of fee waivers very carefully and the comments raised in the consultation about the difficulties that raising these fees can cause are acknowledged. For now, we maintain it is appropriate to retain the upfront fees for debtor applications with no further increases proposed. The fee regime for self-nominated bankruptcy in Scotland compares favourably with other systems operating within the UK. I should say that research mentioned above in paragraph 2 will allow the collation of the first real evidence to assess the strengths of the arguments for change here.

7. Mr McIntosh goes on to raise serious concerns about the Agency's supervision of Protected Trust Deeds. I am entirely confident that the Agency is fulfilling its supervision remit as set out in current legislation. However, this is not to say that the Agency does not have concerns about how the current trust deed market is operating, and we will shortly be publishing proposals for changes to the regulatory framework to address these. If the Committee would find a separate briefing on the current regulatory framework for Protected Trust Deeds and why we believe change is necessary helpful, we would be more than happy to provide one.

8. The submission from **The Institute of Chartered Accountants** repeats the points raised in their response to the consultation, and many of these are fully addressed in our summary of the consultation referenced above. I do not propose to go over these again now – but I would draw the Committee's attention to three points. First, ICAS suggest that there is a need for a thorough review of the Agency's functions, on the grounds that if these were

reduced, then the costs of the Agency would also fall. As referenced above, the Parliament has just completed a decade of bankruptcy legislation (culminating in the Consolidation to which ICAS refer), which has seen the Agency's functions scrutinised in detail, and there is no new evidence that suggests those debates need to be had again. Second, ICAS are concerned that some of the Agency's functions should be funded by the public purse. This is exactly what the regulations propose for the foreseeable future – with the increases put forward aiming only to close something between a third and a quarter of the funding gap. And third, ICAS raise the question of the audit fee paid by private trustees on the grounds that this is not a fair reflection of the work done by the Agency in auditing those individual cases. We have set out clearly that we acknowledge and accept that – this fee is a simply a way of ensuring that those cases taken by private trustees contribute to the overall costs of the system. The most recent consultation on fees explored an alternative approach to achieving a fair contribution – but not a single insolvency practitioner responded. The Committee may also recall that in last year's fee regulations, we proposed capping the audit fee to reduce the perceived unfairness of the current approach – but the Committee itself was not in favour of such a cap, since the shortfall in such income would then fall to be raised elsewhere.

I would of course be happy to provide the Committee with any further information that they would find helpful.

Yours sincerely

Richard Dennis  
The Accountant in Bankruptcy