

Alan McIntosh

Bankruptcy Fees (Scotland) Regulations 2018 (draft)

Please find below the submission I would like to make to the Economy, Jobs and Fair Work Committee in relation to the Bankruptcy Fees (Scotland) Regulations 2018 (Draft).

My Background

My background is I graduated from the University of Aberdeen in 2003 with an LLB (Hons) Degree and have worked in the money advice and personal insolvency industry for the last 15 years. In that time I have filled various roles, including working as a case carrying money adviser and a sheriff court lay representative. I have also been a trainer and social policy officer for Money Advice Scotland and a Senior Manager in the personal insolvency industry. In 2015, I also became a licenced Personal Insolvency Practitioner in the Republic of Ireland and worked there throughout 2015.

I am currently employed as the Senior Money Adviser and Financial Inclusion Officer for Inverclyde Council and I am member of Money Advice Scotland's Management Committee.

I am previously gave evidence to the Committee in 2017 in relation to the Bankruptcy Fees (Scotland) Regulations 2017 (Draft), which were later withdrawn by the Minister.

I make this submission in a personal capacity.

Bankruptcy Fees (Scotland) Regulations 2018 (Draft)

I welcome that the Accountant in Bankruptcy (AIB) consulted on these regulations after the Bankruptcy Fees (Scotland) Regulations 2017 were withdrawn last year.

I believe the overall approach that has been taken in these regulations is to be welcomed, in that they do not seek to increase the bankruptcy applications fees that are paid by debtors. I also welcome that the AIB do not seek to increase the fees that are charged against assets when they are realised, such as the family home, which was proposed in the 2017 Regulations.

To that extent, I believe Accountant in Bankruptcy have listened to the concerns that were raised last time and have addressed those concerns.

Debtor Application Fees

I was disappointed, however, on reading the Accountant in Bankruptcy consultation document ([Funding the Accountant in Bankruptcy 2018-19](#)) that the AIB were not willing to re-consider the application fee that debtors pay to apply for bankruptcy (it is a £90 application fee for the Minimum Asset Procedure (MAP) and £200 for a Full Administration Bankruptcy).

The Accountant in Bankruptcy describe these fees as a small contribution by the debtor towards the cost of administering their bankruptcy, however, I believe it needs to be stressed that the current level of fees are not “small” for many consumers and are acting as an obstacle to people seeking relief from their debts.

In my role as a Senior Money Adviser, I often have team members inform me of client’s having to cut back on food and heating in order to raise these funds; or having to borrow from family members, which I believe is unacceptable, considering we are aware these consumers are already unable to repay their existing debts.

In many MAP bankruptcies the vast majority of consumers are only in receipt of social security benefits, and for those only in receipt of £73.43 per week, even the £90 application fee is prohibitively high and unachievable, leaving many consumers with no obvious means to fund such applications.

The AIB do say they allow applicants to pay the application fees by instalments, however, many struggle to manage this, as they are already struggling on a deficit budget and often the debts they are seeking relief from are actually being recovered from their benefits, reducing further their weekly income. Unfortunately, these deductions cannot be stopped until the bankruptcy is awarded, which cannot happen up the application fee is paid.

I strongly believe there are several public interest reasons why fee waivers should be introduced for those on low income. First, I believe there is a moral issue of whether it is acceptable for a government agency to charge fees to consumers who have no identifiable means of paying them and in the knowledge that the fees themselves may be encouraging those consumers to borrow further, when it is already acknowledged they cannot pay the debts they have.

I believe, also, it creates an increased workload for money advisers working in the free sector (where local authority funded money advice services have been cut by 44% in the last three years). This is because often advisers have to assist clients to make applications to charitable organisations to raise the funds required to make an application. This can take up valuable time that could be used to assist other clients.

There is also a question whether this is an appropriate use of charitable funds, when many of these funds already are under substantial pressure.

I also do not accept the AIB’s argument in their consultation document at paragraph 10 (i) that the fees have a cautionary effect on applicants, by ensuring they do not take the decision to apply for bankruptcy lightly. Since April 2015, as a result on changes introduced by the Bankruptcy and Debt Advice (Scotland) Act 2014, consumers can no longer apply for bankruptcy themselves and can only do so through money advisers working in approved agencies or via a licenced insolvency practitioner. This ensures that no-one is allowed to make an application without fully considering the consequences and only after they have been advised as to the appropriateness of the solution. I believe the Scottish Government, should also have seriously considered the recommendation of the Money Adviser Service in their report [Debt Solutions in the UK: Recommendations for Change](#), that it should be

considered whether fee remission for low-income bankruptcy applicants should be reintroduced (this was the position in Scotland prior to April 2008).

Trust Deed Registration and Supervision Fees

I would also like to draw to the Committee's attention to the issue of the fees that the AIB charge trustees annually for registering, advertising and supervising the administration of protected trust deeds.

I do not, object to these fee, but note that in 2016-17 £0.44 million was raised in registration and advertising fees and £2.01 million was raised in supervision fees. I also note the AIB in their consultation document, at paragraph 23, state how these fees cover the related costs of the functions that they perform and generate a small surplus that cross-subsidises other functions the AIB perform.

However, I am concerned that the AIB are not performing the function of supervising trust deeds as effectively as they should be doing. I would draw the Committee's attention to page 100 of the AIB's [2016-17 Annual Report](#), which shows that for some insolvency firms the failure rate for protected trust deeds is as high as 74%. This is not a one year aberration, as the [2015-16 Annual Report](#), at page 96, showed some firm's failure rate was as high as 88%.

The problem with this is, usually what occurs when a trust deed fails, is the debtor gets their debts returned and loses any contribution they have made to the trustee, which can often amount to thousands of pounds. Also in both annual reports the AiB's tables show in the cases where there are high failure rates, the percentage of cases where no dividend is paid to creditors corresponds exactly with the failure rate, which suggests when the case fail, the trustee is retaining all the contributions that have been ingathered and no dividend is being paid to creditors.

The effect of this is the protected trust deed has failed the debtor and the creditors. Only the trustees have benefited. Although its appreciated inevitably solutions sometimes fails, when some firms have failure rates of between 5-10%, serious questions must be asked why other firms are having failure rates of 74%?

I would also add that in my own experience, and this is being echoed by other money advisers I know, free sector money advice agencies are now witnessing a sharp increase in the number of clients seeking help with protected trust deeds that have been granted, usually to firms with higher failure rates.

Again, as it is the AIB that is protecting these trust deeds, I question whether that role is being performed effectively, as I have seen many cases where a trust deed was not an appropriate solution for the client, the paperwork that the trustee provided was incorrect and it is difficult to understand why it was ever protected. The only logical explanation is the level of scrutiny being carried out by the AIB is unsatisfactory.

This again raises the question, which was raised when the Bankruptcy Fees (Scotland) Regulations 2017 were laid, and that is the AIB conflicted? Trust deed fees clearly are a major source of revenue for the AIB, raising nearly a fifth of their total operating costs, but clearly there are serious failures in the market and serious

consumer harm is arising as a result through ineffective supervision and regulation. It is unthinkable that any other financial product could be provided to consumers, where there are 74% failure rates, without serious concerns being raised about the firms providing the solutions and the role of the regulator is supervising the product.

Full Cost Recovery

I welcome that the AIB and the Scottish Government are prepared to consider whether full cost recovery is an appropriate model for the Accountant in Bankruptcy; however, I also note that in 2016-17, £81 million was distributed to creditors via formal debt solutions. This is £81 million after the Accountant in Bankruptcy and private insolvency practitioners have taken their fees from their cases.

It is clear there is no recovery from the funds ingathered to reflect the costs that free, local authority money advice services are incurring in providing consumers access to formal debt solutions and in dealing with the fall-out arising from protected trust deeds provided by the firms with very high failure rates.

In 2014, a clear policy decision was taken to make sure receiving advice was an integral part of the Scottish bankruptcy system. With cuts of 44% over the last three years to local authority money advice services, the question needs to be asked whether fairness requires that some of the costs incurred by the free sector in providing advice and assistance to clients seeking formal solutions should also be recovered by applying an advice sector levy to formal debt solutions in Scotland.

I am happy to give evidence to the Committee, should it be required.

Yours sincerely

Alan McIntosh