moneyadvicescotland

Scotland's Money Charity

Written submission from Money Advice Scotland

Economy, Jobs and Fair Work Committee

Bankruptcy Fees (Scotland) Regulations (Draft) 2018

About Money Advice Scotland

1. Money Advice Scotland is Scotland's Money Charity. Our mission is to be the driving force towards financial wellbeing for the people of Scotland.
2. We welcome the opportunity to comment on the Bankruptcy Fees (Scotland) Regulations (Draft) 2018. We would emphasise that we are supportive of the regulations. Our comments are intended to provide the committee with additional context from the perspective of the advice sector in Scotland.

Upfront debtor application fees

3. In our response to the Accountant in Bankruptcy (AiB) consultation on the future funding of the agency, we agreed with the proposals that debtor application fees should not be increased and welcomed the acknowledgement that an increase would make bankruptcy unaffordable for some people who would benefit from it.
4. The current upfront application fees are £90 for the Minimal Asset Process (MAP), and £200 for full administration bankruptcy. MAP is a route into bankruptcy for people with restricted income (either benefits only or having no disposable income) and with few assets. A debtor does not pay a contribution and, as long as certain requirements are met, can apply to be discharged from bankruptcy after six months.[1]
5. If a person is eligible for the MAP route into bankruptcy, it should not be surprising that they cannot raise the £90 fee. The median household income for a MAP application is £1,035 per month.
6. We are concerned by the assertion within the consultation paper that upfront fees are necessary to prevent ill-thought applications. In our experience, it is more likely that clients who are eligible for bankruptcy are often prevented from doing so as they cannot afford the upfront fee. The requirement that a client must first access an approved

[1] By contrast, under Full Administration Bankruptcy (FAB) a debtor will pay a contribution for 48 months and a £200 application fee must be paid.

money adviser already acts as an effective safeguard against what might be described as unsuitable applications.

7. We recently called on the AiB to undertake a research exercise on how individuals and households are funding upfront fees to help influence any evidence based review of upfront debtor application fees in future. In the experience of our members, clients typically rely on charitable grants or borrowing from friends and family to meet the cost of upfront fees. Members also cited examples of clients who meet this cost by forsaking essential expenditure.

8. We would also highlight that the recent independent review of advice funding led by Peter Wyman recommended that the AiB is funded so that it can return the upfront application fee for MAP bankruptcy to advice agencies.[2] Based on the latest application numbers, this would cost c.£170,000 per annum.

9. This recommendation was published last month and is, of course, not proposed as part of the regulations now laid before the committee. Nonetheless, we would take the opportunity to caution against this approach in future. At a recent consultation event with our members, there was considerable unease about this proposal and what could be construed as a transfer of money from the lowest income clients to advice agencies. In practical terms, it also seems inevitably bureaucratic. While we support more money going to the free advice sector, we are not convinced by this proposal.

10. In our view, a far better option would be to waive the MAP fee altogether. MAP is a statutory debt option which offers a fresh start to people on the lowest incomes. As we note, however, this solution remains unaffordable for many people who would benefit from it.

Full cost recovery and the public purse

11. We recognise that government bodies are asked to work to the general principle of full cost recovery. However, we agree with the comments set out within the consultation paper that bankruptcy application numbers, and thus income from fees, will be influenced primarily by external factors. As the paper notes, a focus on full cost recovery for each individual year will likely result in an annual cycle of significant fee revisions. This is not a desirable outcome.

12. A recent Money Advice Service report (*The Economic Impact of Debt Advice*, 2018) provides a timely reminder on the beneficiaries of debt advice, estimating that additional creditor recovery is increased by £133-360m annually. When creditors stand to benefit to this extent, we should consider whether there is scope to increase their support towards the costs of an effective debt relief and debt management system administered by the AiB.

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[2] https://www.moneyadviceservice.org.uk/en/articles/debt-advice-steering-group-dasg-supports-peter-wymans-independent-review-of-debt-advice-funding

The impact of cuts to advice provision

13. The availability of money advice will also influence the funds generated by the AiB. Analysis from the Improvement Service's Money Advice Performance Management Framework (MAPMF) shows that the number of FTE paid staff members has fallen by 18% between 2014/15 and 2016/17. In 2014/15, investment from local authorities was approximately £21m. By 2016/17, this had fallen to £11.7m – a 45 per reduction across a two-year period.[3]

14. This is unsustainable at a time when Peter Wyman's independent review of debt advice concluded that a 50% increase in the supply of debt advice is necessary to meet demand. It is our view that a correlation can be drawn between the decreasing capacity within the money advice sector and falling statutory applications. If this trend continues, the funds generated by the AiB will continue to diminish.

15. The AiB is set to consult separately on proposals that would allow AiB to fully recover Debt Arrangement Scheme (DAS) costs without reducing the overall return to creditors. As we note, creditors remain one of the leading beneficiaries of debt advice. Given that £37.8m was returned to creditors in 2015/16 through DAS – some 45% of the total repaid via the three statutory options – we are of the view that an increase in the 2% charge on payments made to creditors should not be off the table. If more public funds are directed towards the provision of debt advice, creditors are likely to recover more money and revenue from fees may correspondingly increase.

16. While the funding of debt advice is not within the remit of the AiB, it is important to acknowledge the extent of the reduction in provision experienced within the sector in recent years.

2 May 2018

[3] http://www.improvementservice.org.uk/2016-17-report.html