

Protected Trust Deeds Consultation Response



Protected Trust Deeds – Improving the Process

Consultation by the Scottish Government

Response from the Association of British Credit Unions Limited (ABCUL)

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Executive Summary

The Association of British Credit Unions Limited (ABCUL) welcomes the Scottish Government's consultation on improving the Protected Trust Deed (PTD) process, and we are grateful for this opportunity to convey the views of Scotland's credit union movement.

Credit unions have expressed concerns about the administration of PTDs and their impact on credit unions' operations for several years. Following input from credit unions across Scotland, this submission offers the credit union perspective on the questions asked in the consultation paper, highlighting the main areas of concern for credit unions and offering some additional suggestions to further improve the PTD process, including:

- ABCUL broadly welcomes the PTD Guidance, but would prefer it to be legislative. In particular, the Accountant in Bankruptcy (AiB) should have more powers to regulate the fees charged by trustees and their agents.
- We would like it to be a formal requirement that the Debt Arrangement Scheme (DAS) must always be considered, and only if demonstrably inappropriate for that debtor should a PTD be proposed.
- PTDs should be allowed to run for a longer period of time relative to the debt to allow for a greater amount of funds to be ingathered and distributed to creditors; at least 5 years rather than 3.
- The trustee should be required to declare whether any third parties receiving agency fees are from a related company to ensure full transparency.
- No PTD should ever be allowed to deliver zero to creditors; a minimum dividend should be introduced, and a minimum percentage of ingathered funds distributed to creditors should be established; for example, 50% of all ingathered funds.
- A new "Scottish Common Financial Statement" should be developed with broad stakeholder input to serve as the industry-standard budgeting tool, and in recognition of the unique status and value of credit union membership, contributions to a credit union account should be a category within it.
- If a creditor has devoted time and resources to secure an earnings arrestment, then it is not right that this should be declared void when a PTD is agreed.
- Agents' "fact finding fees" prior to the granting of a trust deed should not be treated as an outlay of the PTD and effectively charged to the creditors. Neither is it appropriate to charge a further fee for the trustee's verification of the information gathered by that agent.
- An "exclusion period" should be established so that loans taken out within say 8 weeks prior to the initiation of a trust deed should be excluded from that trust deed as there should be a presumption that the borrower withheld relevant financial information which prejudiced the lender's position.

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Introduction

The Association of British Credit Unions Limited (ABCUL) welcomes the opportunity to submit a response to the Scottish Government's consultation on improving the Protected Trust Deeds process. ABCUL is the main trade association for credit unions in Scotland, England and Wales. As a co-operative itself, ABCUL is owned, funded and democratically controlled by its member credit unions. The majority of Scotland's credit unions are ABCUL members, and they in turn serve the majority of Scotland's individual credit union members.

Credit unions are not-for-profit financial co-operatives owned and controlled by their members for whom they provide safe savings and affordable loans. Credit unions provide inclusive services to the whole of their communities rather than simply the better-off. Increasingly, some credit unions can offer more sophisticated products such as pre-paid debit cards, current accounts, cash ISAs and mortgages.

There are currently 109 credit unions in Scotland serving around 250,000 members, holding £210 million in savings and lending £180 million. ABCUL's response is also supported by the Scottish League of Credit Unions (SLCU). Together, ABCUL and the SLCU represent 96 of Scotland's 109 credit unions.

Scotland's credit unions have had concerns about the operation of PTDs for several years, which have been raised with the Scottish Government on a number of occasions. Although the proportion of all debt written off in PTDs which was owed to credit unions is low compared to the losses incurred by the major banks and other large scale creditors, the amount is very substantial to credit unions and can have a serious impact on their operations.

Credit unions occupy a unique position in Scotland's financial services landscape as – while still making appropriate checks to ensure responsible lending – they are often prepared to lend to people who may not be able to access credit from other sources, and do so at ethical and affordable rates of interest. As responsible financial services providers regulated by the Financial Services Authority (FSA), credit unions of course make provision for bad debt. However, the long term sustainability of credit unions' business depends on borrowers repaying their debts in full.

This may seem an obvious statement regarding any lender. However, considering that high cost lenders charge exceptionally high rates of interest precisely because they expect a substantial number of borrowers to default, and many banks restrict their lending only to those they regard as the most credit-worthy customers, the credit union model of lending based on the ability to repay – including to the financially excluded – in the expectation of full repayment is actually different.

Credit unions are also unique in that they are the only lenders in the UK that operate under an interest rate cap. Credit unions cannot charge more than 2% per month on a reducing balance (26.8% APR), and in truth, many of Scotland's credit unions choose to charge 1% per month (12.7% APR) or sometimes even less. Lending a relatively small amount at an ethical rate means that the income generated from the loan is fairly small – precisely the reason why many mainstream lenders simply do not offer low value, short term loans. Yet income from loans is crucial to the sustainable running of credit unions.

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To give an example, a loan from a credit union for £1000 over a year, charged at 1% per month on a reducing balance, will generate around £65 in income from interest for the credit union. If that debt is written off, then the credit union will have to make a further 16 such loans just to recover the full amount of capital lost. That may not sound like a lot, but when you consider that a number of credit unions are based in small communities with just a few hundred members, the impact of this loss on the credit union is very significant and can have a real effect on the credit union's capacity to pay a dividend to savers or to lend to other people in need.

Credit unions do of course recognise that sometimes people fall upon hard times and are genuinely unable to repay all their debts on time. As co-operatives and ethical lenders, credit unions have a proud track record of helping people restructure their debts and maintain payments at an affordable level. Indeed, over the years, Scotland's credit unions have helped hundreds if not thousands of people who were at real risk of losing their homes.

It is therefore a source of immense frustration for credit unions when a member enters a trust deed when no effort had been made to first come to an arrangement with the credit union, and a substantial amount of money – loaned from the savings of other members – must be written off as unrecoverable, given the extremely poor record of any dividend of substance being received from the trustee.

In what are difficult economic times for individuals, small businesses and social enterprises alike, we welcome the Scottish Government's stated intention to make the PTD process fairer, to minimise the impact of debt relief on the wider Scottish economy and to facilitate the financial rehabilitation of individuals forced to seek debt remedies. As local, ethical co-operatives often prepared to serve people whose only other option would be high cost alternatives, credit unions are especially well placed to support this financial rehabilitation, and we hope the Scottish Government will recognise the unique and positive role credit unions play in Scotland's economy and in communities across the country.

ABCUL would like to make it clear that we recognise that the vast majority of people requiring to enter a PTD do so because they have fallen into very difficult financial circumstances, and we support the availability of appropriate debt relief for those who cannot repay their debts. Similarly, we recognise that most insolvency practitioners administering PTDs do so in line with the appropriate guidance and good practice. However, as the Scottish Government acknowledges, there are a number of failings in the PTD process, and so it is upon those examples of poor practice and unfairness that we are focusing in this paper.

In this submission, ABCUL is conveying the views expressed to us by Scotland's credit union movement on the topics raised in the Scottish Government's consultation, and we will also be raising some ideas and suggestions which we believe would further improve the PTD process not only for credit unions, but for all involved.

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PTD Guidance

Q1-3 ABCUL welcomes the formal PTD Guidance which has been produced to facilitate a common approach to PTDs. We feel the Guidance addresses many of the concerns raised by credit unions about the PTD process and strikes a much better balance in its treatment of debtors and creditors. We would welcome the application of this Guidance to PTDs generally, and credit unions would be prepared to adhere to it as creditors.

In particular, credit unions welcome the Trustees' Obligations outlined in Section 7 of the Guidance, and we would like to see stricter duties imposed on debt management companies and insolvency practitioners (IPs) to advertise their services responsibly and to provide the best advice to customers which is genuinely in the *debtor's* best interests, and not those of the IP.

As previously identified by both the Office of Fair Trading and Citizens Advice Scotland, there have been a number of examples of debt management companies breaching the existing guidelines around marketing, and so the AiB must be empowered to act swiftly and decisively against any IP flouting these rules. While recognising the need to maintain awareness of debt solutions for people in genuine financial difficulty and the fact that most IPs are private enterprises competing for business, the very idea of a PTD being marketed as some sort of desirable product – as well as the impression often conveyed that someone can make themselves debt free with negligible consequences – is something that does not sit comfortably with us on a moral level.

There is also a desire for the duty to be clearly placed upon the trustee to identify and contact all the creditors in a PTD rather than placing the onus upon creditors to find out that a debtor has signed a PTD. For a credit union, and in particular smaller volunteer-managed credit unions, this can simply prove a further onerous task for busy volunteers, and it is not unreasonable for one of the trustee's duties – for which they already take a fee – to be the identification and contact of all creditors, as outlined in Section 5.2 of the PTD Guidance.

However, credit unions feel that the Guidance could go further in a number of areas to better improve the PTD process.

ABCUL believes that when examining the debtor's financial circumstances, the IP should be required to consider whether the Debt Arrangement Scheme (DAS) would be an appropriate solution, and only if this can be shown to be unviable should they then be able to propose a trust deed. ABCUL has welcomed the Scottish Government's recent reforms of DAS which have significantly improved both the process itself and its accessibility for debtors who need it. Where a debtor is truly unable to pay their debts within the agreed period, DAS is greatly preferable to a PTD as creditors know they will ultimately recover 90% of the outstanding amount owed, as opposed to a small and sometimes zero dividend in a PTD.

Having made efforts to make DAS more widely available as a debt solution, we would like to see the Scottish Government make its consideration an explicit requirement upon IPs in Section 3.1 of the PTD Guidance, with a challengeable declaration that DAS has been considered and rejected to be included in the standard front sheet.

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ABCUL also believes that the 3 year contribution period of a PTD is too short and that the Scottish Government should consider extending this, perhaps to a period of 5 years or even longer relative to the size of the debt. A number of credit unions have experienced PTDs where it appears a significantly greater dividend could have been achieved for creditors had the contribution period been allowed to continue beyond 3 years, especially when the amount owed was a relatively large sum of which only a fraction could ever possibly be recovered in 3 years. Allowing PTDs to run for a longer period of time would allow for a greater and fairer amount of funds to be ingathered and distributed to creditors, and an extension to 5 years would not represent a significantly greater burden upon the debtor.

We welcome the recognition given to the importance of transparency in the PTD Guidance. In addition to the measures outlined in Section 4, we would also like to see a requirement placed upon the trustee to declare any relationship between themselves and any third party receiving fees for work on the PTD, and this should be included in the information about agents which must be notified to creditors in Section 14.3 of the Guidance. For example, where there are shared premises, staff, directors or a parent company, this should be openly declared – ideally on the standard front sheet – with penalties applied for failure to do so.

Q7 It is our view that “guidance” which is dependent on the voluntary agreement of those involved in the administration of PTDs is not satisfactory and that a stricter legislative framework would be preferable. It is essential that the PTD process is fair and transparent, and the Accountant in Bankruptcy (AiB) should be given statutory powers to regulate and punish where these legally binding rules are breached.

Based upon experience, a number of credit unions fear that a system based upon voluntary guidance will always be vulnerable to those unscrupulous practitioners who seek to stretch the law to the limit in the pursuit of profit, and we would seek assurances that the AiB will be able to receive and act upon complaints of breaches with a range of tangible and legally enforceable sanctions.

Q8 While open to the idea of trustees having some limited discretion around accepting the value of a claim by a creditor, we would like to see the scope of this “limited discretion” more clearly defined. As above, credit unions would like to see a duty placed upon the trustee to seek constructive dialogue with creditors and for there to be a clear and prompt recourse to the AiB where creditors feel a trustee is not behaving appropriately.

Q9 Credit unions would certainly like to see trustees being required to make a payment to creditors no later than month 18 and at 6 monthly intervals thereafter. In fact, our preference would be for the first payment to creditors to be made no later than month 12.

We would also like to see a rule considered that trustees cannot take any fees for themselves before a payment has been made to creditors, as this would reassure creditors that a PTD is indeed the most appropriate debt solution for the debtor and that the trustee is seeking to recover the greatest possible dividend for the creditors.

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Q10 Credit unions feel strongly that the AiB should have increased powers over the fees that can be claimed in a PTD. As noted above, it is our preference that the PTD Guidance should be made statutory, but if this is not to be, we would certainly like to see the AiB at least furnished with the statutory powers to control fees.

A number of credit unions have experienced examples of PTDs where the trustee's fees seem extraordinarily and unjustifiably high, and we believe action must be taken to cap or at least control fees which at present appear open to abuse to the extreme detriment of creditors.

We note that the fees charged by the AiB for the bankruptcy cases it handles directly are often a fraction of those charged by trustees and related third parties. While appreciating that many IPs are seeking to cover costs and generate a profit from their administration of PTDs, the Scottish Government should consider introducing a cap on the hourly fee which trustees and third parties carrying out work for the trustee are allowed to charge, and for all fees and charges to be more tightly regulated.

It should never be acceptable for a PTD to deliver a zero return to creditors. Credit unions have experienced this on far too many occasions, and in such cases it cannot in any way be claimed that the PTD has been administered with any regard for the creditors' interests. When a debtor enters the Debt Arrangement Scheme, creditors know that they will ultimately recover 90% of the debt outstanding before interest. Along similar lines, ABCUL would like to see a minimum dividend established for PTDs, and this minimum should be set significantly higher than the current thoroughly unsatisfactory average dividend of around 14p in the pound.

If this were to lead to a situation where some PTDs saw little or nothing left for the trustee to claim in fees, then so be it, as this would demonstrate a failure on the trustee's part to recommend and administer the most appropriate debt remedy, and it is right that they – and not the creditors as at present – should suffer as a result of this failure. It is totally unacceptable that a trustee can profit from a PTD which fails to pay a dividend to creditors.

ABCUL also believes that a minimum proportion of all ingathered funds distributed to creditors must be established and enforced to ensure that PTDs are genuinely serving the interests of creditors. We would propose that at least 50% of all ingathered funds to a PTD should be distributed to creditors, as it has to be questioned whether a PTD which primarily brings in fees for the trustee is truly fit for purpose as a debt solution.

Q11-13 ABCUL supports the proposal to introduce a PTD Review Board, and we are largely satisfied with its proposed membership. However, given the unique status of Scotland's credit union movement as smaller scale co-operatives and ethical lenders, we would like a place for a credit union representative to be considered for membership of that Board.

Register of Insolvencies

Q14-15 Now that access to the Register of Insolvencies (ROI) is free, ABCUL is happy for trust deeds to be published online in the ROI rather than in the Edinburgh Gazette, and would welcome the additional information for each entry proposed in the consultation.

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Standard Summary Sheet

Q16-17 ABCUL would welcome the introduction of a standard front sheet to be used in all trust deed proposals, provided it is also a clear requirement that *every* section of it must be completed in full by the IP. We would like to see this requirement specified in Section 8.2 of the PTD Guidance.

Q18 Credit unions feel that the debtor's National Insurance number would be a further useful piece of information to add to the sheet, and in the spirit of making the process transparent, we propose that the IP should be required to declare on the front sheet where any third parties receiving agency fees are from a related company to the IP. Credit unions have reported a number of examples where fees are being charged to third parties that share staff and premises and a parent company, and seem to all intents and purposes to be the very same business, and we believe any such relationships must be declared and open to scrutiny.

As outlined above, ABCUL believes a money adviser or IP should be required to assess whether DAS would be an appropriate solution for each debtor's circumstances, and only if this remedy is not applicable should a PTD be pursued. We would like to see a declaration required on the front sheet that DAS has been considered and deemed inappropriate, and creditors should have recourse to the AiB to be able to challenge this judgement where they reasonably believe DAS could be used to protect the debtor while ensuring the maximum return for creditors.

Home Equity

Q19-23 Credit unions accept the arguments made in the consultation document regarding the proposed freezing and realisation of home equity, and we are happy to support those proposals.

Common Financial Statement

Q24-25 ABCUL agrees that a single industry-standard mechanism should be adopted to calculate a debtor's income, expenditure and reasonable allowances. However, we believe there are a number of flaws with the Common Financial Statement (CFS) trigger figures and that these should not be adopted as the standard for PTDs.

Q26 ABCUL would like to see a "Scottish CFS" developed; a new budgeting tool with a new set of trigger figures.

While of course no-one wants anyone to be forced into hardship, there is nonetheless a moral imperative for the law to recognise that being unable to pay back what you owe is a very serious situation, that it necessarily will involve a squeeze and cutbacks to your standard of living, and that it must absolutely never appear to be an "easy" or appealing option to escape debts.

Credit unions therefore feel that when a person is unable to pay their debts, there has to be an expectation that some luxuries must be forfeited so that they can pay as much of what they owe as possible. A situation which allows people to write off debts with no tangible impact upon their standard of living sends out a very dangerous and morally corrosive message which virtually says

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“repaying debt is optional” – a situation which is not only bad for creditors, but is socially and economically unsustainable.

Many existing financial statements which credit unions receive from trustees are slanted very unfairly in favour of the debtor, and often appear to be “maxing out” the allowances in each category so that little or nothing is actually available to pay to creditors. Not only is this a failure of the PTD process to deliver a fair return for creditors, but there have to be questions about whether the statements presented really paint a true picture of that person’s lifestyle, and whether it is really appropriate that, for example, the preservation of a heavy smoking habit or satellite television or the choice to drive to work should take precedence over the repayment of debts.

We believe there should be a requirement to compare the income and expenditure declared in the debtor’s loan application with that presented in the financial statement with their trust deed, since if both have been completed honestly with no major change in circumstances occurring, there should be no significant difference between the two. Any discrepancies there may be should be addressed appropriately, with a formal facility for creditors to challenge the allowances and figures in the financial statement.

ABCUL would like to see a new “Scottish CFS” drafted to be the industry-standard budgeting tool for all PTDs, and discussions on the categories and amounts allowed as trigger figures should be a process involving all relevant stakeholder groups, including credit unions.

In any new “Scottish CFS”, ABCUL would like to see a contribution to a credit union account established as one of the categories in recognition of the value of credit union membership and access to an ethical financial services provider, especially for people in need of “financial rehabilitation” who are seeking to rebuild their finances from insolvency.

Q27 When a debtor’s excess income has been calculated using an agreed standard budgeting tool, the view of credit unions is that 100% of that excess income must be paid to the trustee for distribution to creditors, as the message must be clear that debtors must pay back as much as they can afford.

Form 4 Statement of Status of the PTD to creditors

Q28-29 ABCUL supports the proposal to provide the Form 4 Statement of Status of the PTD to creditors on an annual basis, and for this to be displayed electronically on the ROI as part of the information held on that PTD.

A fixed timescale for the submission of creditor claims

Q30-32 Credit unions are satisfied for a fixed timescale for the submission of claims by creditors in a trust deed to be introduced, and for that timescale to be set at 120 days as proposed. However, credit unions want it to be clearly established that the 120 days starts from the date the creditor is first contacted by the trustee, and not from the date of publication of the PTD in the ROI/Edinburgh Gazette. As with other responsibilities around the administration of the PTD, credit unions are keen that the onus is clearly placed upon the trustee to identify and contact creditors, and his/her failure

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to do so does not create an obligation upon that creditor to stop collecting repayments as usual or disqualify them from making a claim.

Q33-34 In these circumstances, where the trustee has contacted the creditor and 120 days have passed, we are satisfied that the trustee should be allowed to reject claims submitted after this time. However, it is important that creditors have the right to appeal to the AiB if a trustee rejects a claim.

Earnings Arrestment

Q35 While understanding the argument made in the consultation for ending an earnings arrestment when a trust deed becomes protected, it is ABCUL's preference that this rule should not be introduced.

It is our view that if a creditor has taken the initiative – and devoted the time and resources – to secure an earnings arrestment which other creditors have not, then it is not right that this should then be declared void and all creditors treated “equally” when a PTD is agreed.

Should the Scottish Government reject our argument and propose the necessary legislative change to implement the proposal, we would at least like to see a mechanism introduced whereby the creditor who went to the expense of securing an earnings arrestment will be fully compensated by the AiB for the legal and other costs incurred to do so when this diligence is ended by a PTD.

Income Payment Orders

Q36-37 While supporting measures to ensure debtors make the agreed payments to their PTD and minimise the number of failed PTDs leading to sequestration, credit unions are unconvinced by the proposal to introduce Income Payment Orders (IPOs) to PTDs where they are deemed necessary.

In particular, there is concern that a trustee will simply add extra charges to the PTD for his/her time and costs in securing the IPO, and so creditors will ultimately see very little benefit from this approach.

Furthermore, there is concern that this option could be open to abuse if there was no ceiling on the fees charged by a trustee for pursuing an IPO and nothing to stop the trustee keeping all his/her associated fees even if the PTD does ultimately fail. Again, such a scenario does not seem in truth to serve the interests of creditors at all.

Future PTD product

Q38-40 It is our view that any sort of new “simplified” PTD product which could make PTDs more widely available and increase their take-up would not be welcome. As outlined above, credit unions would like to see greater use made of DAS and a reduction in the number of PTDs, so we would not support any measure which could see a greater number of credit union loans even more frequently and easily written off to PTDs.

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As noted in the consultation, future adherence to the stricter (and ideally legislative) PTD Guidance plus the recent introduction of the Certificate for Sequestration means that a more appropriate debt remedy seems to be available for those unable to pay their debts and in the circumstances outlined. While sequestration is always a last resort, we do not see the point in creating a new PTD product which we would regard as likely to either deliver a zero (or next to no) dividend to creditors or simply fail and lead to sequestration anyway, so we see no good argument for introducing any such new PTD product.

Q41-42 Should the Scottish Government nonetheless choose to introduce such a product, then given the likelihood of failure, we do believe the debtor should be required to enter an Income Payment Agreement in an effort to reduce this risk. We firmly believe that should it be introduced, a simplified PTD product should only be administered by the AiB as it would be wrong for such a product to become a profit-generating opportunity for IPs.

Debtor's Address

Q43-44 ABCUL agrees with the consultation's proposal to include a debtor's name, date of birth and former address in the ROI as this would be a welcome measure to assist with identification. We also support the grounds for the proposed omission of the debtor's current address where that person could be at risk, on the understanding that such risk must be shown to and accepted by the AiB.

Contributions from Social Security benefits in PTDs

Q45-47 ABCUL supports the proposal to stop trustees taking contributions to a PTD from a debtor's benefits where this is their only source of income, as an income-based PTD is not an appropriate debt solution for someone in these circumstances. If there are already examples of this happening in breach of existing guidelines, then we would be happy to see the Government legislate to put an end to this.

Fact Finding Fees

Q48-49 ABCUL strongly believes that it is not appropriate for agents' "fact finding fees" incurred prior to the granting of a trust deed to be treated as an outlay of the PTD and effectively charged to the creditors. Neither is it appropriate for the PTD to then be charged a further fee for the trustee's verification of the information gathered by that agent.

There is considerable feeling among credit unions that some IPs are milking the current system to maximise their own fees at the expense of creditors – and of the debtor's financial wellbeing. As outlined above, a number of credit unions have reported examples of IPs and agents sharing premises and effectively appearing to be the self same company, and yet charging "each other" very high fees to gather and then verify information. Where practiced, this behaviour can appear extremely grubby, and so in the interests of transparency, faith in the process and good relations between all parties involved, credit unions would like to see the charging of "fact finding fees" ended.

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Forms in PTD regulations

Q50-51 ABCUL would welcome a review of the statutory forms used in the PTD process, and we would like to see all the additional information suggested in the consultation document added to them.

Other issues for credit unions

In addition to the comments above in relation to the questions asked in the consultation, there are some other suggestions from the credit union movement which we would like the Scottish Government to take this opportunity to consider.

A number of credit unions have reported examples of a person taking a loan from the credit union only to enter a trust deed within a matter of weeks or sometimes even days. These cases lead to very strong suspicions that the person concerned probably knew they were in financial difficulty, withheld relevant information in their loan application, and possibly already planned on entering a trust deed when they applied for the loan they had no intention of ever repaying.

In such situations, we would like to see a presumption introduced that the debtor in such cases must have known they could not afford the loan and withheld their true financial situation to the detriment of the lender. There should therefore be an “exclusion period” established, where loans taken within say 8 weeks of a debtor approaching an IP or related party cannot be included in the trust deed and must be paid back according to the repayment schedule agreed.

There should of course be an opportunity for the trustee to appeal to the AiB that the debtor experienced a genuine unforeseen income shock between taking the loan and requiring a trust deed, and if this is proven then that debt could indeed be included in the PTD. However, we would like to see such an exclusion period established and the presumption placed in the creditor’s favour in such cases to ensure there is a clear disincentive to any such unscrupulous behaviour.

Furthermore, where there is evidence that a debtor has effectively committed fraud in supplying false information about their ability to repay a loan, credit unions would like to see tougher action taken, including a refusal by the AiB to allow them to enter a PTD.

There is of course a duty on creditors to ensure they lend responsibly to minimise the risk of being defrauded or suffering losses as discussed in the above example. However, it is significantly more difficult for creditors to access a full picture of a person’s financial circumstances when a number of creditors do not report to all – or in some cases any – of the credit reference agencies. A credit union could pay the fee for a credit check from Callcredit or Equifax or Experian or all three, only for thousands of pounds-worth of debt to high cost lenders or even public bodies to remain invisible because those creditors have not reported the debt.

A single national credit reference report would allow lenders to see a true and comprehensive picture of a prospective borrower’s circumstances when making lending decisions. While we appreciate that this may not be something the Scottish Government would be in a position to deliver, we believe the AiB should at least urge all creditors to report debts to the credit reference agencies, and in particular public bodies including local authorities should be required to report

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debts such as council tax or rates arrears etc so that lenders have the best possible information available to facilitate responsible lending.

Finally, credit unions would appreciate clarification from the Scottish Government to IPs of the fact that an individual in a PTD *can* retain their credit union membership, as a number of credit unions have experienced cases of IPs wrongly insisting that the debtor must give up their credit union membership – even though no such claim is ever made about their right to hold an account with any other financial services provider. Credit unions would also appreciate clarification of the rules around providing additional emergency credit to debtors in PTDs, as there is presently some uncertainty about whether this can be done, the maximum amount that can be borrowed and the requirement for written approval from the trustee.

Conclusion

ABCUL welcomes the Scottish Government's recognition of the need to reform the PTD process, and we broadly support the proposed PTD Guidance and many of the other measures outlined in the consultation paper.

However, there are a number of areas of concern for Scotland's credit union movement, and we hope the Scottish Government will consider the proposals in this submission which we believe would further improve the fairness, efficiency and transparency of the PTD process.