**Review of Scotland’s statutory debt solutions**

**Summary of responses to the 2024 Stage 3 Consultation**

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# Summary of Responses

## Summary of respondents

22 responses were received, broken down as follows:

Academia – 1

Charities – 6

Creditors, including creditor membership organisations – 3

Insolvency Practitioners, Insolvency Practitioner Membership Organisations and other commercial firms – 7

Legal Profession – 1

Local Authorities – 4

## Over-arching reflections on regime

### Questions asked

What are your overall views about the existing system?

What are the gaps in the system?

In respect of each of the statutory solutions, what works well, and what doesn't?

1. Sequestration. b. Minimal Assets Process. c. Protected Trust Deed. d. Debt Arrangement Scheme.

### Summary of responses

What works well: Most respondents felt the current system was largely effective and the range of solutions were coherent and provided effective support for most people’s needs. Some noted the Scottish system worked better than the approach in England and Wales. Others welcomed the investment into digitalisation of the insolvency application process and recent increases in funding to local debt advice.

What doesn’t work well: The Common Financial Tool was raised as a concern, particularly the level of and the use of spending guidelines, and the amount of disposable income it left available to clients. Creditor engagement and communication was cited as a concern by most advice sector respondents, particularly around accurate debt balances and when debt had been sold on.

Security and adequacy of funding for free and local debt advice was raised by many respondents as a cause for concern, with gaps in provision noted and a likelihood of greater gaps in provision in future. The burden of evidence required by the AiB to approve and process solutions was noted as a disproportionate barrier by many.

Gaps: The lack of a mental health moratorium was seen as a significant gap, with some stakeholders referencing the scheme in existence in England and Wales as something which would enhance the regime in Scotland. As noted elsewhere in this paper, a gap exists for those with deficit budgets and very low disposable income. They often struggle to achieve a medium to long-term positive outcome from any of the current solutions due to their financial situation. A lack of simple language and simple eligibility criteria around solutions was noted as a gap, creating a barrier to some people accessing help and debt resolution. A concern was also raised about a cross-UK approach not being taken for insolvency solutions and processes.

Sequestration: Broadly, most respondents felt sequestration worked effectively. That said, AiB evidence requirements to approve a sequestration were seen as a barrier by some. Others suggested more post-sequestration support was needed for individuals to assist their ongoing financial wellbeing, while others noted the 6-year impact on credit files as a significant barrier to people proceeding with sequestration, even when it was the best option for them.

MAP: Similarly, MAP was view positively by most respondents. Concerns were raised about the eligibility criteria being too restrictive however. This removed the option of MAP from some people who would particularly benefit from it, leading them to a more resource heavy insolvency option. Some stakeholders were concerned about any calls to remove or reduce the 10 year restriction about reapplying for a MAP, noting this would potentially allow abuse of the system.

PTDs: PTDs were seen as a good product fundamentally, and was noted as a good option for homeowners in particular. That said, there were several respondents concerned with how it was marketed, sold and operated in practice. This included the scale of the fees involved and inappropriate recommendations of PTDs. Some respondents wanted there to be a requirement for free and impartial debt advice before people could proceed with a PTD, while others felt more financial education and budgeting advice was needed alongside PTDs. Many respondents noted that it was challenging to move to another solution if the PTD was going to fail, causing disruption and past payments to not be taken into account.

More broadly, it was noted delivering PTDs was not commercial viable for many small volume IPs, meaning the market was only economic for scale providers. Others felt greater flexibility should be offered in PTDs, noting that IVAs in England and Wales offered a more appropriate level of flexibility. IPs noted the difficulty that could be created by not being able to resign as trustee of a PTD, while another IP was concerned the narrative around PTDs created a division between the free-to-client sector and the IP community, and greater cohesion would be beneficial for all.

DAS: Overall, DAS was also seen as broadly positive. The ability to protect assets within it, coupled with greater flexibility compared to other solutions, were seen as core benefits. Charitable providers were particularly concerned, however, about the level of responsibility placed on the money adviser and client in the solution and they called for greater transparency and responsibility for creditors. Others referred to the overly long duration of some DPPs and called for them being limited to 8-10 years.

Another key area of concern was composition, and revocation of missed payments. There was a call from one charity in particular advocating that interest, fees and charges should be written off following revocation. The allocation of 22% of debt repayments to fees was seen as high by some creditors and they called for a review of the level of fees. Business DAS was seen as less effective than personal DAS.

## Stigma

### Question asked

How do we address the stigma of debt and bankruptcy in particular?

### Summary of responses

The majority of respondent felt stigma remains an issue around insolvency. It was noted it caused delays in seeking help and deters some people entirely. Others felt it could lead to people choosing a solution which was not necessarily the best one for their circumstances – bankruptcy in particularly having a stigma around it.

That said, many respondents felt stigma had reduced in recent years. This was especially true of the younger generations.

In terms of solutions, there were several suggestions. These included:

* Marketing campaigns to improve awareness and understanding of insolvency and the benefits of getting help
* Greater cross-government department collaboration to highlight advice and explain insolvency
* Changing the language used in and around insolvency, such as reducing the use of ‘debtor’ and changing the names of solutions to explain them more clearly and avoid names that have strong connotations for people, for example ‘bankruptcy’
* Reforming the public insolvency registers to become private registers
* Changing some of the restrictions that come into place when a person becomes insolvent, including contract employment terminations and tenancy agreements

## Values and Principles

### Questions asked

What are your views on this proposal?

If you are in support, please set out your views on what the principles and values should be, and why.

### Summary of responses

Most respondents agreed that clear principles and values would be valuable in securing benefits such as greater fairness, better clarity, enhanced equality between stakeholders and better outcomes for clients. Some concern was expressed about additional legislative burdens however, as well as how principles and values could be open to interpretation.

Suggestions on values and principles included transparency, accountability, fairness, equality, easy access, trust, dignity, compassion, efficiency, effectiveness, rehabilitation and prevention. Mirroring the FCA’s Consumer Duty, those used by Social Security Scotland and those included in the Scottish Government’s Consultation on Bankruptcy (2012) was also suggested.

## Access to insolvency

### Question asked

What are the barriers to people accessing statutory debt solutions? What are potential solutions to remove those barriers?

1. For the general population. b. for those with protected characteristics. c. individuals who are self-employed and other small business owners.

### Summary of responses

1. General population: Respondents saw issues with digital exclusion, stigma, fear of impact on job and credit ratings and lack of knowledge and awareness of debt advice and insolvency options. Inappropriate advertising of insolvency solutions and advice was also mentioned. Concerns were also raised about process issues such as the public insolvency register and onerous evidence requirements in proceeding with a formal solution. More broadly capacity within impartial advice to serve people was noted as a risk.
2. Protected characteristics: Many of the issues above were noted as also having particular impact on those with protected characteristics. The system could be seen as intimidating, complex and lengthy. Respondents felt there were more material issues for people suffering from mental health problems, those who didn’t speak English as a first language, those needing to use Power of Attorney and those from communities where engaging with support like debt advice was not normalised.
3. Self employed / small business owners: Respondents recognised many in this group needed specialist advice, of which there is limited supply. Shame, reputational damage, concerns about access to credit and impact on business viability were particular causes of self-employed and small business owners being cautious about seeking help. This was one group where the existing solutions may not always meet the needs of the person in debt. The high prevalence of variable income in self employed people was not neatly aligned with the existing solutions which largely assume a steady income. The variation process is noted but is arguable unworkable for persistently fluctuating incomes.

Regarding solutions, respondents called for more funding and investment into advice services, this included for specialist advice services such as small business debt advice. There was also reasonably strong support for marketing / awareness campaigns around problem debt and advice service, with some suggesting this should be targeted at vulnerable groups and those not tending to access advice when they need to. This included publicity in multiple languages.

Other proposed solution included enhanced financial education, greater mental health expertise being built into debt advice service, a specific mental health moratorium and utilising technologic advancements to reduce barriers.

## Single Gateway

### Questions asked

What are your views on a single gateway to insolvency?

What alternatives are there to a single gateway which may improve access to insolvency and / or increase flexibility once in a debt solution?

### Summary of responses

There was reasonably strong support for a Single Gateway solution, with respondents noting the benefits of additional flexibility, the simpler process, the lower risk of people being on inappropriate solutions, the better oversight of insolvency, greater consistency and the potential marketing and communications opportunities of a simpler route to a statutory solution.

That said, even those in support wanted to know more detail about how it would operate, citing concerns about potential administrative challenges that may arise and the upheaval to the system. Others were concerned about whether a Single Gateway would be practical and the high level of resource required to implement it. There were also concerns it would eliminate customer choice and possibly be more open to manipulation.

At the Roundtable held in November 2024, there was broad consensus that the Single Gateway was theoretically a strong proposal but there are not significant enough issues with the current framework to justify this resource intensive change.

The alternatives suggested included:

* Providing a moratorium when a solution fails to allow a client time to get fresh advice.
* Easier transfer between existing solutions, including more seamless data transfer between eDEN, ASTRA and BASYS.
* Taking into account payments made to date if people switched to another solution.
* Clear, consistent early settlement/early discharge/ composition mechanism across solutions.

## Funding of advice

### Questions asked

Do you have any concerns about how money advice and solutions administration is funded? How could the funding regime be made more effective?

### Summary of responses

Almost all respondents who commented had concerns about the funding of free-to-client advice in Scotland, with public sector cuts having had a particular impact. It was noted inadequate and insecure funding was constraining access to advice and creating issues with staff recruitment and retention.

Regarding solution administration funding, some respondents highlighted concerns about the high fees in PTDs and the incentive that created for firms in recommending them. In a similar vein, it was also noted as concerning that where PTDs failed much of the money paid up to that point would be retained by the IP and not be passed to creditors.

For making the funding regime more effective, there were calls for more funding to be raised for the ‘free to client’ sector, and that funding should be based on longer-term agreements of 3-5 years to allow for longer-term planning and to give certainty to staff. There was some support for making debt advice a statutory requirement for local authorities to provide. However, at the Roundtable held in November 2024, there was a broadly held view that other statutory services in the public sector were still not adequately funded, and so this would provide no guarantee of resolving the current problems.

Other suggestions made included a streamlining of administration to reduce costs and improve adviser wellbeing, the formation of a 'financial emergency service' comprising the advice sector, a new tech portal and AI, which would push clients towards the correct support and social services and expanding the creditors sectors compelled to fund debt advice beyond financial services to include sectors like energy, water and telecoms.

## Repayments and conditions of insolvency solutions

### Questions asked

What are your views on the most appropriate way to assess what people can afford to repay when in problem debt?

Do you agree that proceeds of increased income should be shared between client and creditors? If so, what proportion should go to the client and what proportion to creditors (e.g. 50/50, 40/60, 30/70, a fixed £ amount etc)? Are there other incentives that could be introduced to help people improve their financial situation while in insolvency?

What is the appropriate timeframe for a person to be impacted by insolvency and should this vary dependent on solution? Are there other circumstances, other than the type of solution which a person utilises, which should impact on how long they face the impacts of the insolvency?

What are your views on what a proportionate and consistent approach to the treatment of the family home in insolvency should be?

### Summary of responses

There was significant diversity of views on the most appropriate way to assess what people can afford to repay when in problem debt. Some were concerned by use of the Common Financial Tool (CFT), be that based on the Common Financial Statement (CFS) or the Standard Financial Statement (SFS), noting both methodologies had issues. Others felt that the CFT remained the most appropriate method, but with some favouring SFS and some favouring CFS as the underlying methodology. Some held a view that the CFT was the best route, but broader tweaks were required against the current approach. There were alternative suggestions about making contributions based on income alone, although many raised concerns about this approach as it would unlikely take into account the personal circumstances of each individual and their expenditure needs. Use of the Joseph Roundtree’s Minimum Income Standard was also suggested or a similar measure based on people’s needs in Scotland.

There was more consensus, albeit not universal support, that proceeds of increased income should be shared between client and creditors. This was largely to give clients in debt solutions the incentive to increase income and take opportunities, such as higher paid jobs, and ensure the rewards were shared. There were mixed views about what the split should be. 50/50 had the highest support but other proportions also had reasonable levels of support. Others felt there should be more discretion in the approach, allowing the split to be based on individuals’ personal circumstances. Several other ideas to help people improve their financial situation while in insolvency were made. These included better credit ratings being given where people had complied with the terms of insolvency solutions, AI and Open Banking being used to give spending advice, increased saving contingency being made available within the CFT and tax incentives being made available for employers who hire someone undergoing insolvency.

Different stakeholder types took differing views to the question of standardising the timeline across insolvency solutions. Charities were generally in favour of a standard timeline but creditors, IPs, local authorities, academics and the legal profession generally against it. Often, where a reason was provided for opposing it, this was due to the value of having flexibility in the timeline. It should be noted some charities did support different timelines for different solutions. For example, some suggesting MAP should have a shorter timeline.

Regarding the family home, there were notable differences between sector respondents so these are separated out as:

Local Authorities: There were mixed views on whether the family home should be excluded from debt solutions, with some suggesting it should be treated as an asset if there is significant equity.

Charities: Most believe the family home should be protected in insolvency solutions to avoid rehousing costs and emotional distress. Options for protection of the family home included exempting the primary residence, setting a minimum property value limit, and providing greater certainty to individuals upfront.

IPs: There were many different approached suggested by IPs, ranging from the family home being always excluded to a government back fund being set up to provide security against the family home until it was sold. Some IPs noted a need for consistent assessment of equity, with small amounts excluded and larger amounts allowed in exchange for extended repayment periods.

Creditors: Creditors responded that modest equity should not be a barrier, but higher levels should be released if practical. Some consideration of individual circumstances should be built into the process.

Others noted the family home was always likely to be a controversial matter and achieving a consensus would be difficult. The need to strike the right balance of fairness between people in debt and creditors was also noted, highlighting there could be wider consequences if creditors go unpaid when assets are in place. This included a potential tightening of lending.

## Matters linked to but broader than insolvency

### Questions asked

Can the insolvency regime itself do more to help people experiencing deficit budget? If so, what?

How can the insolvency regime better link up with other government services and other support services to help them resolve their problems more holistically?

### Summary of responses

Deficit budgets: Debt advice providers responded highlighting the scale of the issue of deficit budgets, with figures provided suggesting it impacted between a third and a half of all their clients. While many respondents noted that many of the root causes of deficit budgets were due to social policy issues, the following suggestions were made which could improve support within the insolvency regime:

* Greater income maximisation, including grant and benefit calculators being used more frequently
* Removal of evidence requirements where a person’s income is so low that it is highly unlikely they will be able to make repayments
* Waiving application fees for those in deficit budgets
* Extension of the moratorium process beyond 6 months if there is a chance of the client’s budget turning positive
* Moratoriums to include rent and mortgage
* Reducing the time limits that apply before people with deficit budgets can use insolvency solutions again after their original application
* Ongoing comprehensive support and benefits/money advice during insolvency solutions – by AiB or its agents
* Implementing measures to prevent people paying more for certain products, insurance given as an example, post insolvency
* Increasing financial education

Better linking up with other government services and other support: Respondents saw value in money advice and the insolvency regime being better linked up to benefits advice, employability, and education. A ‘no wrong door’ approach when people need help would be seen as a strong development, and could be linked to a ‘tell us once’ policy, which would require more seamless data sharing. Broader services identified for involvement in a more joined up offer included local authorities, other government departments, mental health professionals and housing services.

## Use of technology and other innovation

### Question asked

What technology and other innovations could be utilised to make the insolvency regime more effective?

### Summary of responses

Many respondents had concerns about the use of technology in the debt advice process, highlighting the value of human to human interaction. There were also concerns about digital exclusion. That said, other respondents saw a role for technology in facilitating an integrated complaints process run by the AiB, better creditor communication, access to credit reports and to enable easier gathering of evidence to support applications for insolvency solutions.

Suggestions were also made for using application programming interfaces (APIs) to allow for easier data transfer between systems, online chat support and videos for sharing information with clients to replace long letters. Open Banking and mobile applications to support advice were also noted.

## Matters not covered by other questions

### Question asked

Please set out any other points not raised elsewhere which link to ensuring the insolvency regime is effective in the modern Scottish economy.

### Summary of responses

The role of AiB was highlighted by several stakeholders, noting it had multiple functions, some of which create the risk of conflicts of interest.

Some raised concerns over creditor compliance with the terms and conditions of debt solutions in Scotland, calling for the AiB to have greater powers to sanction creditors who do not comply.

One respondent noted that the law of diligence, insolvency laws, and debt solutions are intertwined, and that the consultation did not focus on that, especially about the family home. It was felt that failure to deal with the family home is holding up reform of diligence.

Some respondents called for a continuous review and evaluation of the insolvency regime. This would allow changes to be implemented in response to changes in the economy. Others felt insolvency legislation is currently piecemeal and needed a strategic roadmap to deliver a more joined up approach.

One who responded felt that the costs of improving and modernising the system had to be a key consideration in the review and for any next steps it recommended

There was a suggestion that a further consultation exercise would be needed to further detail the topic covered in the first one.