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

**Stage 3 Consultation - March 2025**

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# Foreword from Stage 3 Project Team

Thank you for reading this second formal document produced as part of the Stage 3 Review, which we hope you will respond to.

Also, thank you to those who responded to the earlier call for input and those who participated in the various Roundtable events held as part of the Review. This has been a journey for everyone, and one which we are still on, with a destination in sight. We have been really impressed by the passion that has been shown by all stakeholders. Also, the amount of time and effort that everyone has given to the project. We are conscious that this current round of consultation will be time consuming, and effort required. We hope that the twelve-week consultation period will enable as many stakeholders as possible to participate.

To give a flavour of what is in store, a broad view has emerged from the initial part of our work that much of the existing framework works well. This is welcome and has allowed us to conclude that wholesale change is not required. However, that is not to say there are no issues to address. These include in around how the framework is delivered. Not to mention, the limits of its effectiveness for those in “deficit budgets”. Here debt relief is only a temporary respite, while the underlying issue remains.

We are mindful of how many changes there have been to the regime in recent years. These have been positive overall but, naturally, changes do create burden for those operating in the sector. We do not want to add to that burden unless there are clear benefits to be achieved.

That said, like others, we want our personal insolvency regime to be highly effective and something Scotland can feel proud of. We call on you to respond in this spirit of ambition. We also ask you to represent your organisation and your sector well, while challenging yourself to put people in problem debt at the heart of your responses.

## Background and overview of review

* Stage 1 and 2 of the review were completed.
* The Minister has made it clear that this Stage 3 review should take as long as needed, as it is unlikely that any change in legislation will be curtailed by the availability of Parliamentary time.
* Tom Arthur [in providing evidence at the Economy and Fair Work Committee](https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/%20cj-21-12-2022?meeting=14075&iob=127481) on 21 December 2022 as part of its scrutiny of the Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023 advised that Stage 3 of the review would be a far more wide-ranging review. This was in response to a question from Colin Beattie regarding independent financial advice. Mr Beattie asked that the work undertaken by the Committee on PTDs be included in the review.
* To kick start the Review a Roundtable of stakeholders from various organisations, were invited to take part.
* The previous consultation process ran from 27 April until 21 June 2024.
* Subsequently responses have been analysed and assessed.
* A further Roundtable took place in November 2024 and sector specific workshops in December 2024. A Roundtable to consider the values and principles took place in January 2025. These have informed this document.

## Instructions to respondents

* Please respond to yvonnemacdermid@yahoo.co.uk and in the subject bar put STAGE THREE REVIEW CONSULTATION
* The consultation runs for 12 weeks. Please respond by 4 June 2025.
* Where points are raised it would be more powerful if you can provide evidence, which will be dealt with on a confidential basis
* Please note stakeholders do not need to respond to every question

Please DO NOT share any files which may contain personally identifiable information (PII).

## Confidentiality and data protection

Your responses to this consultation will be treated with confidentiality, except as required by law. While your personal information will not be shared with third parties without your consent, please be aware that some information provided may be subject to publication or release to other parties or to disclosure in accordance with access to information regimes such as the Freedom of Information Act 2000, the UK GDPR, and the Data Protection Act 2018. However, any personal data will be anonymised or redacted before publication to protect your or client’s privacy.

## Final report

The report published at the end of this review will include a list of organisations who responded to this document, and our initial document, but not the names of individuals. We will refer to respondents based on the sector they operate in our final documentation.

## Notes to readers

A summary of responses can be found as an attachment to this document.

Finally, at this juncture, we would like to thank our colleague Professor Elaine Kempson for her advice, guidance, and considerable contribution to the Project.

**Yvonne MacDermid and Craig Simmons**

**March 2025**

#  Setting the scene

Insolvency is generally understood to describe a situation when an individual (or company) can’t pay what they owe on time, or when the value of their assets is less than the money they owe. In such circumstances societies generally make legal provision to ensure that, where a person entering insolvency has the resources to do so, creditors are repaid the money they are owed in a fair and equitable way. This is usually accompanied by consumer protections. The extent of these protections varies between jurisdictions, with some aiming to provide a fresh start for those entering insolvency by cancelling some, or all of their debts.

In April 2015, the Bankruptcy and Debt Advice Scotland Act 2014 ("the 2014 Act") came into force introducing some significant reforms to the bankruptcy process in Scotland. The 2014 Act amended the Bankruptcy Scotland (Act) 1985 in several key areas and was the latest of a number of legislative instruments which have been targeted at improving and modernising the bankruptcy system in Scotland. These changes were explicitly designed *‘to deliver a fair and equitable insolvency system that balances the needs of those struggling with unsustainable debts while safeguarding the interests of both creditors and other borrowers by providing that those who can pay their debts do pay their debts’[[1]](#footnote-2)*.

Moreover, the aim of the reforms was ‘*to encapsulate the following key principles:*

* Ensuring that fair and just processes of debt advice, debt relief and debt management are available to the people of Scotland.
* Those debtors who can pay should pay their debts, whilst acknowledging the wide range of circumstances and events that contribute towards financial difficulty and insolvency for both individuals and businesses.
* Securing the best return for creditors by ensuring that the rights and needs of those in debt are balanced with the rights and needs of creditors and businesses - and in doing so help ensure that all those who need to borrow can do so as economically as possible’[[2]](#footnote-3)

## 1.1 The current insolvency regime

The Scottish insolvency regime is widely considered to be one of the most comprehensive, compared with other jurisdictions and offers four distinct solutions that are designed to provide solutions across a range of circumstances:

* Two solutions to deal with cases where there is disposable income or assets that can be realised to repay creditors, at least in part: *Protected Trust Deeds* and *Debt Payment Programme* under the *Debt Arrangement Scheme*.
* Two forms of bankruptcy for people who are unable to repay what is owed. Creditors can also petition for bankruptcy. *Full Sequestration* and the *Minimal Assets Process.*

Each of these four solutions is described in more detail below, including changes in the numbers of awards over time, while the eligibility criteria for them are covered in section 2.

**A Protected Trust Deed (PTD)** is a formal debt solution where an agreement is made between a debtor and creditors to repay part or all of their debt. It is available to consumers owing £5000 or more, who have some disposable income but it is insufficient to pay off their debts in full in less than 4 years.

The debtor conveys their estate to an insolvency practitioner (the trustee) to administer for the benefit of creditors. All types of debt can be included in a PTD but the following debts will **not** be written off at the end:

* court fines
* personal injury payments a court has told you to pay someone
* secured loans (for example, mortgage arrears)
* student loans

The arrangement normally includes a contribution from income for a set period. Assets are also taken into account. Further details of the eligibility criteria are included in Section 2.4. It is, therefore, a beneficial solution for those who do not have the prospect of repaying the debts in full and want to avoid bankruptcy. Provided the debtor complies with the terms of their deed, the creditors can take no further action to pursue the debt or to make the debtor bankrupt. This is similar to Individual Voluntary Agreements in England and Wales, although there are important differences in the way they are set up and administered. A debtor in a PTD is normally discharged after 48 months. If the debtor makes the agreed payments and cooperates with the trustee then the trustee will apply to AiB for the debtor to be discharged. After the debtor has been discharged, the trustee may remain in office as long as necessary to conclude the administration of the trust deed.

1,327 PTDs were registered in 2024-25 Q2, a decrease of 11.8% compared with the same quarter in 2023-24[[3]](#footnote-4). The number of PTDs has, in fact, declined substantially in recent years, following a substantial increase between 2014-15 Q1 and 2019-20 Q1 (Figure1). This fall had already started well before the COVID pandemic hit, but was accelerated when the first lockdown was implemented. The numbers have increased slightly from the lowest point in Q1 2020-21 but remain at well under half the level a year prior to that.

**Figure 1 Recent trends in numbers of bankruptcies and Protected Trust Deeds, 2015-2024**



**The Debt Arrangement Scheme (DAS)** is a statutory solution debt management solution, administered by AiB. The design of the scheme was influenced by a Working Group Report “Striking the balance: A new approach to Debt Management”[[4]](#footnote-5) which was charged with finding a humane alternative to poindings and warrant sales. In addition, the Report set out a number of recommendations including the need for information and money advice at an early stage, to sit alongside a new remedy of a Statutory Debt Arrangement Scheme. The legislation brought in a new role for Money Advisers, in the public and voluntary sectors, who were central to the delivery, and success of the Debt Arrangement Scheme (DAS). Significant funding was available to local authorities to pump prime the new system and develop accredited money advisers.

Since its inception there have been many changes made to the DAS, and these have enabled more people access. Changes have included freezing of interest and charges, and payment breaks, under particular circumstances. Also, the system was opened up to include the private sector, who are referred to as “Continuing Money Advisers”.

It is a solution aimed at consumers with debts who have sufficient disposable income to repay back their debts in a reasonable period of time. (See Section 2.5 for full criteria). It is not, however, available to consumers who:

* are already in a Protected Trust Deed
* are bankrupt
* have a Bankruptcy Restriction Order in place, or
* only have one debt and a Court has given time to pay through a Time to Pay Direction or Time to Pay Order

Under the DAS, a debtor commits to a Debt Payment Programme (DPP) which allows them to repay their debts based on their disposable income while they are protected from creditors taking any action against them to recover their debt. It is particularly beneficial for home-owners, small businesses and others with assets as these are disregarded. If the DPP is approved, all interest, fees and charges on the debt will be frozen and waived if the programme is completed in full. A DPP reaches completion when the debt has been paid in full, minus the fees paid to the DAS Administrator and the payments distributor. According to the AiB the average expected length of a DPP under DAS is around six years.

In 2024-25 Q2, there were 1,368 approved DPPs under the DAS, an increase of 10.8%. compared with a year previously in 2023-24 Q2, continuing the upward trend since Q1 2015-16 (Figure 2). Indeed DAS was the only solution where the numbers were not hit at the time of the pandemic. As a consequence in Q2 2024-25 there were more DPPs under the DAS than there were PTDs. And, as we see below, they greatly outnumbered bankruptcies.

There is also a special Business DAS scheme, which is discussed in Section 6.

**Figure 2 Trends in numbers of Debt Payment Plans under the Debt Arrangement Schemes 2015-2024**



**Sequestration** is a legal declaration that a person cannot pay their debts and takes two forms: Full Administration Bankruptcy (FAB) and the Minimal Assets Process (MAP). As we discuss further in Section 2 there are tight eligibility criteria for MAP, including, home-ownership, debt levels, asset-holding and disposable income that need to be proven by a financial statements. Those not meeting these criteria would qualify for a FAB, if their debts are over £3,000.

Both forms of sequestration cover bank overdrafts, unsecured credit and missed payments (arrears) for utilities, rent or council tax. The following debts cannot be included:

* benefit overpayments due to fraud
* child maintenance payments (unless unpaid before bankruptcy),
* court fines, penalties, compensation and orders imposed by any court and
* secured loans such as a mortgage

Unlike PTDs and DAS there are limitations on the frequency with which an individual can be awarded a sequestration. An individual can only apply once for MAP in a 10-year period compared with once in 5 years for full sequestration. While the fee for the MAP was removed in response to the Covid pandemic and cost-of living crisis, a fee of £150 is still payable for a FAB.

If a person is declared bankrupt, control of some things that they own are passed to a trustee who may sell them to pay money owed to creditors. In Scotland, a trustee is appointed to administer each sequestration. The Accountant in Bankruptcy (The Accountant) will be the trustee unless an insolvency practitioner is nominated to act. In all cases awarded under MAP, the Accountant must act as trustee. In the second quarter of 2024-25, The Accountant was appointed trustee in 488 cases awarded. This is 86.5% of sequestrations for the quarter.

There were 564 sequestrations awarded in 2024-25 Q2, a decrease of 2.3% when compared with 2023-24 Q2. Of the 564 awards, 77.5% came from ‘debtor applications’ (Table 1). The remainder came from creditor petitions (22.5%). There was a sharp decline in the number of sequestrations awarded in Q1 2020-21, and although there was a small bounce back in the following quarter, levels have remained at half the level that they were at the end of 2019-20.

The majority of sequestrations awarded through ‘debtor applications’ are MAP cases. In Q2 2024-25 there were 299 MAP bankruptcies and 138 FABs. Both had declined in number since Q2 in 2023-24: MAP by 8.8% and Full Administration by 12.1%.

For further information on Scottish Insolvency provisions see the [debt solutions section](https://www.mygov.scot/browse/money-and-tax/money-and-debt-advice/debt-solutions) on mygov.scot.

## 1.2 Profound societal changes are impacting the insolvency regime

It is ten years since the 2015 reforms were introduced, and since then there have been two major economic shocks that could be expected to impact on the insolvency regime. First the COVID pandemic, which hit household incomes, and subsequently a sharp cost-of-living crisis with inflation peaking at 13%. Moreover, they occurred following a ten-year decline in real terms of both social security payments and wages. As the Resolution Foundation noted in their 2023 report ‘*Ending stagnation’*

…real wages grew by an average of 33 per cent a decade from 1970 to 2007, but this fell to below zero in the 2010s. In mid-2023 wages were back where they were during the financial crisis. 15 years of lost wage growth has cost the average worker £10,700 a year.[[5]](#footnote-6)

These economic shocks have put a strain on all households but particularly on those with reduced incomes, or who were already living on low incomes (generally on social security payments) when the pandemic hit. Together the twin shocks have had a profound effect not only on the numbers of individuals, household and small businesses defaulting on their commitments[[6]](#footnote-7) but also on the numbers with deficit budgets – discussed further in Section 3.1.

Until 2020, when the COVID pandemic hit, official figures show that applications under each of the insolvency solutions and the Debt Arrangement Scheme was increasing substantially. Only the use of the Debt Arrangement Scheme has continued to increase since that time. All the others have seen a substantial drop, despite a rise in levels of arrears.

In addition, there has been a shift from full administration bankruptcies to those under MAP. These shifts almost certainly reflect the two major changes in household circumstances noted above. With a decline in assets, often the only asset a household has is their family home and often with low levels of equity in it. In such circumstances the DAS scheme is generally more appropriate than a PTD. At the same time, the rise in households with no disposable income and no assets either explains the shift in bankruptcies involving full administration to those under the MAP. What is perhaps surprising is that the number of applications under MAP has fallen and not risen from the levels seen pre-pandemic.

## 1.3 The purpose of insolvency: what does society want from an insolvency regime

Any insolvency regime must balance the rights of creditors to recover the money they are owed, with the provision of protection for their customers who lack the means to pay in full. We have come a long way from the debtors’ prisons of the nineteenth century. Over time, and in response to societal and economic changes, insolvency regimes change in the degree of harshness/leniency with which debtors are treated. The Scottish system is no exception. We are, once again, at a watershed moment where it is appropriate to address the fundamental questions above and ask whether we need a fresh assessment of the rights of creditors and defaulters.

Indeed, we were challenged in the consultation to address two fundamental questions ‘*What does society want from an insolvency regime*?’ and ‘*Can the current regime deliver it*?’. The consultation has, to date, included considerable discussion of the need for a set of values and principles to underpin the design and delivery of the insolvency regime. The issue was raised in the initial round table, was consulted on in the first consultation paper and was discussed in depth in a specially convened round table that was devoted to the topic. The conclusion reached at the bespoke round table was that a set of principles is needed that underpins the design and redesign of the insolvency regime. But a set of principles and values for the delivery of insolvency services is not required because the key players are regulated entities that also have detailed codes of practice.

Our starting point, therefore, was the aim of the 2015 reforms noted above. On the whole, we believe that this aim is still broadly appropriate, although we would add to the end of this statement the words ‘*and those who can’t are supported to rebuild a stable financial situation’,* to reflect the submissions we received in the consultation.

So our proposed aim for the insolvency regime is:

‘To deliver a fair and equitable insolvency system that balances the needs of those struggling with unsustainable debts while safeguarding the interests of both creditors and other borrowers by making provisions so that those who can pay do pay their debts and those who can’t are supported to rebuild a stable financial situation.’

We have also reviewed the three Principles that were spelt out for modernisation of the insolvency process under the 2014 Act, in the light of discussions held during the current consultation. Broadly, we agree with these principles, but recommend substituting the word ‘consumer’ for ‘debtor’ and ‘people in debt’ in the second and third principles so that they read as follows:

* Ensuring that fair and just processes of debt advice, debt relief and debt management are available to the people of Scotland.
* Those consumers who can pay should pay their debts, whilst acknowledging the wide range of circumstances and events that contribute towards financial difficulty and insolvency for both individuals and businesses.
* Securing the best return for creditors by ensuring that the rights and needs of consumers are balanced with the rights and needs of creditors and businesses - and in doing so help ensure that all those who need to borrow can do so as economically as possible.

In addition, we would add a fourth principle to reflect better the current circumstances in which the insolvency regime operates:

* Providing a safe route out of debt that supports consumers to rebuild a stable financial situation.

**Q1.1 Do you agree that the aim, set out in the 2014 Act , for the insolvency regime is still appropriate, with the amendments suggested?**

**Q1.2 Are the four principles set out above appropriate?**

## 1.4 Is the insolvency regime still fit for purpose?

At all stages in our consultation, it was clear that there was a general view that the individual solutions offered are appropriate and, on the whole, work reasonably well *for the types of circumstances they were designed for*. This is due in no part, to the fact that it has been reviewed on a number of occasions and changes made to improve its efficiency. Never-the-less they do need some reforms to reflect the changed circumstances of many people needing to enter insolvency. These reforms are discussed in Section 2 below and include operational issues such better facilitation of switches between insolvency solutions as defaulters’ circumstances change during insolvency and another solution is more appropriate, as well as revising some of the eligibility criteria of individual solutions, such as how assets (and especially the family home) are treated in bankruptcy.

However, here was general agreement among consultees, that there has been an increase in the numbers of individuals and small businesses whose needs are not being met adequately by existing solutions. Many of the consultation responses reported a rapid rise in the numbers of money advice and IP clients who are potentially eligible for an insolvency solution who have deficit budgets – where outgoings exceed incomes - and that this has been accompanied by an increased number of clients who, even if they do have some disposable income, have no assets that can be realised other than limited equity in the family home and vehicles that they depend on, either for work or through disability. Here the way forward is much less obvious and there are limits to how far an insolvency regime can be expected to make good wider social policy issues and find solutions for people whose needs are not adequately met at present. We discuss this more fully in Section 3.1.

Recent changes in the financial circumstances of money advice and IP clients also raise some important issues for the smooth functioning of the ‘insolvency marketplace’; not-for-profit money advisers and for-profit insolvency practitioners, both of whom have seen big changes in the circumstances of the people who come to them for help and in the nature of the work they undertake. Both sectors are experiencing strains at present. This is addressed in Section 4. The policy and operational roles of the AiB are discussed in Section 5. While Section 6 focusses on the specific needs of self-employed people, small businesses and charities.

#  Incremental improvements to the current solutions

In almost all responses throughout the consultation, Roundtables and other discussions, it was clear that the current system broadly meets the needs they were set up to meet. However, an issue exists of moving between solutions, when one is no longer workable for consumers (usually based on ability to pay), and having to navigate a new system, and almost start all over again. The levels of evidence requirements within solutions differ, which adds complexity, and time to the money adviser’s role in particular.

## 2.1 Joining up the solutions

One of the big issues identified is where people are unable to complete their solution. Most commonly this would apply to someone being unable to continue repayments in a PTD or DPP. The process for these clients to move into a bankruptcy or MAP, or between solutions generally, is not seamless and the solution often has to fail before a new one can be set up. In the intervening period, creditor action can restart, causing distress for the client and potentially wasting the resource of creditors and agencies supporting the person in debt. Furthermore, previous repayment is generally not taken into account.

We see this as unnecessarily burdensome and unfair. We consider below some possible processes to enable more seamless transfer between solutions where needed, including a Single Gateway solution and better data transfer between AiB systems.

In the consultation, there was reasonably strong support for a Single Gateway solution initially, 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.

However, in the more detailed discussion it appeared there were more disadvantages than advantages. Even those in support had concerns around eliminating customer choice and taking the human element out of advice giving and solution selection. Many also cited 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 are clear potential benefits to a Single Gateway solution at a conceptual level, including reduced complexity, greater flexibility and more consistent treatment of those in problem debt. It is arguably the solution we would propose if we were starting an insolvency regime from scratch. However, given the broad stakeholder feedback that the existing regime works generally well as it is, it would be unreasonable to suggest such a wholesale change. This is particularly true when there are potential unintended consequences of the Single Gateway solution, which may only be realised if it was implemented. We are therefore drawn to the suggested alternative solutions and intend to include recommendations to this effect in our final report.

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.

**Q2.1 Do you agree these alternative measures should be taken forward? Are there any implementation considerations that should be taken into account?**

## 2.2 Minimal Asset Process (MAP)

Access to the MAP process is open to consumers who:

* owe less than £25,000
* not own property or land
* not own a single asset worth over £1,000
* not own assets over £2,000 in total (except for a vehicle up to the value of £3,000 you cannot do without), and
* also have no disposable income (verified by a financial assessment).

On the whole, MAP was view positively by most respondents. Concerns were raised about the eligibility criteria being too restrictive however. Many stakeholders argued for the upper debt limit of £25,000 for MAP to increase, noting the costs and burden of full administration bankruptcy is unnecessary for those with no, or very limited, assets, regardless of the level of debt a person has. It was suggested it should increase to £50,000. Putting an individual through a full administration bankruptcy when there are no assets to realise drains resource from those administering the solution and the AiB. It also adds burden to the person in debt and realises little to no money to repay creditors. The evidence requirements for MAP also played a part in restricting access, due to individuals being unable to meet the required evidence requirements, which are seen by some as stringent and unnecessary, given the circumstances of individuals.

There was support for reducing the time limit for the MAP from 10 years and aligning it with the limit for sequestration, currently 5 years. However, some expressed concern about reducing the 10 year restriction, due to potential for abuse of the system. Indeed, in combination with an increase in the upper debt limit it could create moral hazard.

Our proposal recognising this dilemma is that the upper debt limit should be increased to £50,000 for the first MAP a person applies for and the time limit should be reduced to 5 years. However, the upper debt limit of £25,000 should be retained for subsequent MAPs.

**Q2.2 What are your views of this proposal?**

In the consultation arguments were made for amending the MAP so that anyone owning land or property should be eligible if the equity is low. One suggestion was that the figure of £3,000 for total asset holding could be adopted. Whilst this would increase fairness, it would also increase complexity. We are minded to not recommend any change here on the basis of maintaining simplicity in MAP.

**Q2.3 Do you agree with this conclusion?**

## 2.3 Full Administration Bankruptcy (FAB)

A consumer can apply for a FAB if they do not qualify for MAP, but must:

* live in Scotland
* owe at least £3,000
* be unable to pay the debts they owe (again, proven by a financial assessment)

Broadly most respondents felt that FAB worked effectively. There are no specific issues we intend to tackle relating to FAB. There are however interlinked issues which are picked up elsewhere in this paper.

## 2.4 Protected Trust Deeds (PTD)

For applicants to be able to access a Protected Trust Deed the following applies:-

* live in Scotland
* have debts of £5000 or more
* not rely on benefits as sole income
* not be a director of a company
* not have enough disposable income to be able to pay off your debts in full in less than 4 years

Debtors cannot sign a trust deed if they have already been made bankrupt, and the trustee has not yet been discharged.

If a debtor has assets, particularly a home or a car, the trustee will need information about their value as they may need to be sold to pay off debts. If a home is jointly owned with someone else, the trustee can only take the debtor’s share of the property equity. That is the amount of money the debtor would have left after selling the home and paying off the mortgage. It may be possible to set up a trust deed that does not include the home. This would be agreed with the trustee before a debtor signs the trust deed. If a debtor sells a home that was not included in the trust deed, any money left after the cost of the sale must be passed to the debtor’s trustee.

Respondents to the consultation saw the PTD as fundamentally a good product for those for whom it was intended. Although, there were some concerns, such as the scale of the fees involved. Broader issues with how PTDs are marketed, recommended and administered are covered in Section 4.4.

## 2.5 Debt Arrangement Scheme

As mentioned in Section 1, DAS is a statutory debt management solution. To access a Debt Payment Programme, a consumer must:

* live in Scotland
* have one or more debts
* have disposable income, and
* be able to pay back debts in a reasonable time

Where consumers have joint debts they can apply for a Joint DPP, thus affording protection for both parties.

The system would appear to work for those who can access it, and have disposable income. However, from a money adviser point of view, particularly in the free sector, real concern has been expressed about the level of evidence requirements, and the amount of time spent compiling the DPP information, and indeed getting feedback from creditors. The levels of responsibility, and significant time required to administer DPPs felt by the money advice sector are significant, and often can result in other clients having to wait for an appointment due to the time limits for responding to DAS applications.

Money advisers expressed concern that for some consumers who had paid faithfully over often extended periods, then due to a change in circumstances, they could no longer afford to pay. These circumstances often resulted in the revocation of a DPP, and therefore the re-application of interest, fees and charges.

**Q2.4 Do you think that interest, fees and charges should be removed on revocation? If not, why not?**

## 2.6 Setting affordable repayments

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.

**Q2.5 Do you agree that a different approach is required outside of the Common Financial Tool? If yes, would you agree that the Joseph Roundtree’s Minimum Income Standard should be adopted?**

## 2.7 Allocating any increase in income during insolvency

There was support, albeit not universal, that proceeds of increased income should be shared between client and creditors. The argument made for this for this was to give clients in debt solutions the incentive to increase their income and take opportunities, such as over-time or higher-paid jobs, by ensuring the rewards were shared. There was no clear consensus about what the split should be although 50/50 split had the highest level of support. Some respondents felt there should be more discretion in the approach, allowing the split to be based on individuals’ personal circumstances.

As such we are minded to recommend that any additional income should be split 50/50 between the person in debt and creditors. Ultimately the level of the split is a judgement call and we see 50/50 as the fairest way to balance the interests of clients and of creditors.

**Q2.6 Do you agree with the proposed 50/50 split of any increased income?**

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.

## 2.8 Asset holding

A number of issues were raised relating to asset holding, most significant of these was the family home. It is also included money in accounts, vehicles, and mobility scooters.

### 2.8.1 Family home

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

*Money Advisers*: There were mixed views on whether the family home should be excluded from debt solutions, with some in the local authority sector suggesting it should be treated as an asset if there is significant equity. Of those operating in the Charitable sector 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.

There are two possible solutions we see, which would balance the various interests. The first would be to set a level of equity which is dis-regarded due to the costs of selling the family home, including solicitor’s fees, home reports, removal costs, and potentially disruption to the family unit.

**Q2.7 Please tell us your views on this approach of dis-regarding some of the equity in the family home and, in particular, any unintended consequences. What should the level of equity dis-regard be?**

An alternative solution would be to take the family home into consideration only if it was larger than a household of that size would normally live in. This is the approach taken in Scandinavia. It is recognised this would be more complex to operate than the first option.

**Q2.8 Please tell us your views on this option. Please tell us any issues you see in its operation.**

### 2.8.2 Vehicles

Vehicles being considered as an asset has been an issue. Concern was expressed that often vehicles are required for businesses, getting to work and for those living in areas with no or little public transport. The current limit of £3000 has not kept pace with the increase in car prices. The existing figure is seen by many as too low to cover a roadworthy car/van, which won’t require repeated garage bills.

**Q2.9 Do you agree that the current limit for vehicles should be increased?** **What is a reasonable level?**

There was support for mobility scooters to be exempt from consideration as an asset in insolvency.

**Q2.10 Do you agree with this proposal?**

### 2.8.3 Bank accounts

Questions were raised about the amount of money allowed in accounts when applying for a MAP.

Mention was made several times that debtors often have more than £1000 in their current account due to the timing of their Universal Credit payment, which includes housing allowance. The timing of making applications for bankruptcy is crucial.

**Q2.11 Do you agree that to improve access to bankruptcy the levels of funds allowed in a current account should be increased? What is a reasonable level?**

## 2.9 Continuous review of the system

During the consultation, and in various discussions it became clear that stakeholders wish to continue to be included in future discussions, and indeed any developments/improvements to the system. To that end we recommend that as part of the system going forward that as a minimum an annual review of the policy, and how that is working in practice. The review would be administered by AiB, which would build on existing quarterly review meetings, with stakeholders.

**Q2.12 Do you agree that there should be an annual review as a minimum, and build on existing quarterly review meetings**

# Insolvency in a wider social policy context

The consultation has raised a number of broader issues that relate to changes in the economic circumstances facing households and, in particular, those who default on their commitments. First, there is the issue of how best to meet the needs of defaulters with deficit budgets. Secondly how the insolvency regime needs to adapt to the decline in asset-holding by defaulters. Thirdly, how to ensure that insolvency solutions endure through changes in circumstances. Fourthly, how to ensure that everyone for whom an insolvency solution is appropriate gains access to it. And, finally how best to provide assistance to people with vulnerabilities that go beyond their financial problems.

## 3.1 Deficit budgets

The growth of deficit budgets is one of the defining issues of the past decade. It has links to some of the most fundamental issues in our society and, as such, our intent is to make better supporting those with deficit budgets a central feature of our final report.

Indeed, they have been a recurrent theme throughout this consultation. The issue was raised as a key problem in the first round table and the subsequent consultation paper asked for specific input on whether, and if so how, the insolvency regime can do more to help people experiencing a deficit budget? The topic was discussed further in the second round table and arose spontaneously in the subsequent discussions with money advisers and insolvency practitioners.

### 3.1.1 The extent and nature of the problem

In their submissions, money advice providers highlighted the scale of the issue of deficit budgets, with the figures they provided suggesting it impacted between a third and a half of all their clients. This accords with the evidence collected for the Money and Pension Service review of deficit budgets in England[[7]](#footnote-8). Moreover, an insolvency practitioner firm that undertakes a large volume of work on insolvency noted that it, too, is now being contacted by people with deficit budgets who cannot get an appointment at a free money advice service.

Cases involving long-term deficit budgets are complex and time-consuming since they are frequently accompanied by a wider range of problems such as ill-health, neurodiversity, mental -ill-health, housing, relationship difficulties, including financial abuse, housing and employment. These both compound and are compounded by the financial difficulties being faced, creating a vicious circle. And they impede people’s ability to deal with the problems they face, including engaging with debt advice and the insolvency regime.

### 3.1.2 Proposals for changes to the insolvency regime

It was widely acknowledged that sequestration, and the MAP in particular, can help to relieve a key area of stress for people living with a deficit budget alongside other problems, by removing liability for existing debts and stopping further creditor enforcement activity. However, that relief can be short-lived as bankruptcy does not address the deficit budget and a further debt in future is inevitable.

That said, there are some situations where bankruptcy can help, even where there is a deficit budget. These include where: there is a possibility of the budget turning positive in the medium term; the deficit can be reduced or eliminated by reducing priority debt repayments or benefit reductions; there is imminent enforcement by a priority creditor, or there are consumer credit debts as future use of credit will be restricted.

Yet there are current barriers that restrict access to bankruptcy for people in these circumstances and a number of proposals were made during the consultation that could ease this and have been discussed in Section 2.2, with accompanying conclusions and consultation questions. These include:

* Raising the debt limit for the MAP. It was argued that if someone has no income or assets the level of liabilities is immaterial and that collecting this information is extremely difficult where there are compounding vulnerabilities.
* Reducing the time limits that before people with deficit budgets can reapply for sequestration or the MAP after their original application.
* Allowing home-owners access to the MAP if the equity in the property is low.
* The introduction of a mental health breathing space as in England and Wales. This is discussed in Section 3. 6 below.

In addition, meeting the full AiB evidence requirements for bankruptcy is extremely difficult when a defaulter has compounding problems, and this is acting as a barrier to applications being made. This too has been discussed in Section 2.2.

**Q3.1 Are there any further amendments to either insolvency rules or procedures that you think should be included to enable access for people with deficit budgets?**

### 3.1.3 Money advice to support people with deficit budgets

It is clear from our consultation to date that providing money advice to people with deficit budgets is complex and time-consuming – especially where there are compounding issues as described above. This resonates strongly with the findings of the Money and Pension Service investigation[[8]](#footnote-9).

Key to this is the process of income maximisation: applying for grants and social tariffs where available, ensuring that appropriate social security payments have been claimed and resolving any difficulties over payments. Doing this comprehensively takes time and requires considerable expertise, yet it is essential to providing access to insolvency solutions for people with deficit budgets. The large increase in the numbers of people needing this kind of assistance is undoubtedly putting a substantial strain on free money advice services that needs to be addressed. Moreover, dealing with the complexities of the social security system is an area of expertise in its own right. The great majority of local authorities in Scotland have a welfare rights service and it is important that debt advisers and welfare rights advisers work together to resolve the problems of deficit budgets.

**Q3.2 Please can you provide examples of where money advisers and welfare rights advisers work closely together to find solutions for individual clients with deficit budgets and the general lessons that can be learnt from the collaboration**

**Q3.3 Can you provide examples of where full income maximisation has been successfully integrated into debt advice services?**

We discuss the provision of on-going money advice and money guidance both during and on exit from insolvency solutions in Section 4.7.

### 3.1.4 The role of the social security system

It is also important to recognise that the gradual erosion of the value of social security benefits – by repeated failures to up-rate in line with inflation – together with other changes such as the benefit cap and two-child limit and restrictions on the local housing allowance have all contributed to the numbers of people with negative budgets[[9]](#footnote-10). We note that the Scottish Government has taken steps to reduce the impact of this erosion. But more action is needed, as this is the one action that can bring about any real reduction in the numbers of people with deficit budgets who cannot benefit from the help offered by the insolvency regime.

## 3.2 Adapting the insolvency regime to the decline in asset-holding by defaulters

This was an issue that was predominantly raised by insolvency practitioners, who noted the trends for more sequestrations under the Minimal Assets Procedure and the gradual shift from Protected Trust Deeds to use of the Debt Arrangement Scheme. As these two solutions are now dealing with much larger proportions of consumers facing insolvency, it is important that the reforms suggested in Section 2 are implemented.

**Q3.4 What change to the system, if any, is needed to deal with this situation?**

## 3.3 Creditor behaviour

Concerns were raised –by money advisers and IPs – about creditor understanding of, and therefore compliance with, the terms and conditions of debt solutions in Scotland, and of the DAS in particular. This included:

* a failure to provide timely and accurate balance information when requested ‘This creates additional work for the adviser, slows down the application for DAS, sometimes to beyond the time limit so that the application process has to start again.
* continuing to take payments or chasing consumers for payments or interest while a DAS DPP is in place and the client compliant
* demanding payment and threatening further action when a DAS DPP has been completed successfully – based on a lack of creditor understanding that even though the client pays all of what is owing, the full amount they will not receive the full amount because there are DAS administration and payment distribution costs
* selling on a debt but not telling the purchasing firm that a DAS is in place – or telling the DAS administrator that the sale has taken place. And failing to provide a copy of the ‘Notice of assignment’ when it is requested by a money adviser or insolvency practitioner.

These cause immense distress to consumers and create needless extra work for advisers and insolvency practitioners. All are long-standing issues for advisers and insolvency practitioners and arise from an obvious lack of understanding of DAS, especially by UK-wide creditors possibly because it has no equivalent outside Scotland. Advisers have to resort to quoting FCA regulation in order to seek resolution. It is also a particular problem with ‘smaller’ creditors.

Some respondents to the consultation called for the AiB to have greater powers to sanction creditors who do not comply. Others argued for an awareness campaign, about how debt solutions in Scotland operate and the requirements placed on creditors, to improve working relationships with money advisers and insolvency practitioners.

We acknowledge the concerns raised about creditor compliance with their responsibilities when a customer enters a DAS DPP and are minded to recommend that the AiB should be more proactive in ensuring that creditors are made aware of their responsibilities. This could be in the form of an AiB notice that money advisers and insolvency practitioners can send to creditors when they approach them for details of claims. At the same time, we feel that the AiB should alsobe more proactive in ensuring higher standards of creditor behaviour, by collecting information from money advisers and insolvency practitioners about firms that repeatedly fail to fulfil their responsibilities and reporting them to their regulator if they are in breach of the regulations, such as the FCA Consumer Duty, or other industry codes.

**Q3.5 Do you agree that the AiB should ensure that creditors are aware of their responsibilities in relation to DAS DPPs. Would an AiB notice that money advisers and insolvency practitioners can send to creditors when they approach them for details of claims, meet this need?**

**Q3.6 Do you agree that the AiB should** **be more proactive in collecting information from advisers and insolvency practitioners about creditors that repeatedly fail to fulfil their responsibilities and reporting these creditors to regulators as proposed above?**

## 3.4 Consumer access to insolvency

The issues of barriers to access to insolvency solutions and stigma, were both raised as discussion topics in the first round table and both were covered in the subsequent consultation. It was difficult, however, to assess how substantial the problem of access is from the submissions we received.

We have, therefore, commissioned some bespoke analysis of the most recent data collected by the Money and Pension Service and used this to calculate the level of need for debt advice[[10]](#footnote-11). Our starting point was the five per cent of the population who were considered to be in need of money advice because of serious debt problems. Only one in five of these said that they were currently behind with payments on several bills - taking the estimate down to one per cent. We recognise that this is a rough approximation, which is severely limited by the data available. However, in the absence of better data it gives us a broad order of magnitude of the numbers of people whose circumstances suggest that they might need access to insolvency. Taking the upper estimate of one per cent, this would equate to around 44,000 people – compared with 13,360 people who entered one of the insolvency solutions (including a DPP under the DAS scheme) in 2023-24[[11]](#footnote-12). In other words, around 30 per cent of the people who might have needed access to insolvency actually did so.

When we restricted the definition further to those who never or seldom had money left over at the end of the month (a broad indication of a deficit budget) the proportion fell again to around 0.5 per cent – equivalent to 22,000 people. So up to half of these those who might need an insolvency solution could be people with deficit budgets. And as we have discussed in Section 3.1.2 above, they face a range of barriers to getting relief through the current insolvency regime.

It is also clear from the consultation responses we have received, and subsequent discussions, that there are potentially other barriers too. Some people are deterred because they are unable to cope with the process of compiling the information needed to apply – especially when they have crises in other parts of their life. Consequently, they decide not to proceed with their application. This barrier was also mentioned in the Money and Pension Service report (Money and Pension Service, 2023).

Fear of the losing their job, concerns over losing their home or a vehicle needed for work or because of disability and the impact on credit ratings when people relied on credit for day-today expenses were also mentioned as important barriers. So too, were lack of knowledge and awareness of debt advice and insolvency and digital exclusion.

Shame and stigma have reduced in recent years partly as a result of cultural change, awareness campaigns and significant events, such as the COVID-19 pandemic and the recent cost of living crisis. However, they were still thought to play a part use of both money advice and insolvency solutions, often causing people to delay seeking help at all or to opt for a sub-optimal solution to their problems, with people wanting to avoid sequestration. The public nature of the insolvency register was thought to reinforce this.

All these issues were seen as having a disproportionate effect on people with protected characteristics, who can find the system as intimidating and overwhelming. Respondents to the consultation felt there are specific barriers for people who do not speak fluent English, cases involving Power of Attorney and people from communities where engaging with money advice is known to be very low.

There were a number of suggestions to tackle these problems. First, the need for marketing campaigns to improve awareness and understanding of insolvency and the benefits of getting help. We were told that the AiB had held such campaigns in the past, involving press articles, posters, and local radio advertisements. These had been successful in terms of raising awareness, but this did not translate into an increase in applications for insolvency solutions. However, the AiB ceased to have a budget for this work when the debt advice function was moved to the Scottish Government.

**Q3.7 In the light of the experience of previous marketing campaigns, is there compelling evidence for the Scottish Government funding another?**

Secondly, changing the language used in and around insolvency, most notably replacing the word ‘debtor’ with consumer in all official publications and on all websites. Some went further and suggested changing the names of solutions so that they are more self-explanatory and avoiding names that have strong negative connotations for example ‘bankruptcy’. We are inclined to recommend that the AIB and Scottish Government should use the word ’consumer’ rather than’ debtor’ in documents and websites, following the practice in England and Wales. We are also inclined to recommend that all money advice service and insolvency practices should do the same.

**Q3.8 What are your views on these recommendations to change the language used?**

Thirdly, and related to the point above, the discussions at the round table convened on the need for a set of values and principles arrived at a recommendation that the Debt Advice and Information Package should be revised so that it not only covers what is expected of the consumer, but also that they should in turn expect to be treated with dignity and respect by the AiB and others involved in providing debt advice and administering insolvency. We are inclined to take this forward.

**Q3.9 Do you foresee any problems arising from amending the Debt Advice and Information Package in this way?**

At the same round table, it was said that a broader set of principles covering how consumers entering insolvency should be treated is not needed because creditors, money advisers and insolvency practitioners are all regulated entities. Moreover, money advisers and insolvency practitioners additionally have to comply with professional service standards. A check of these, however, has found that not all have sections on how customers should be treated. We intend, therefore, to recommend that all should do so.

**Q3.10 Please may we have your views of this suggestion and details of which standards do not currently cover this issue.**

Fourthly, it was suggested that the public insolvency registers should become private registers, with access limited to those with a legitimate need to do so. However, we were also told that there could be practical difficulties ensuring access to a private register for small creditors, such as tradespeople. It is worth noting that to check the register someone needs to have a good deal of information about a person to be able to find them in the register. So, the problem might be one of perception rather than reality. In view of the difficulties that would be faced by small creditors, we are minded not to recommend that the Insolvency registers should become private.

**Q3.11 Do you agree with our conclusion? If not do you have any suggestions on how the difficulties faced by small creditors might be overcome?**

**Q3.12 Would allaying consumer fears about anyone being able to access the registers in the Debt Advice and Information Package serve any useful purpose?**

Fifthly it was suggested in replies to the first consultation that changing some of the restrictions that come into place when a person becomes insolvent, including contract employment terminations and tenancy agreements, would help to alleviate the stigma some consumers feel. Whilst we fully appreciate this problem, we do not currently see a case for legislating to curb such restrictions that are placed on people when they become insolvent. Rather we feel that it should be covered in the AiB notice to creditors that we propose in section 3.3 above.

**Q3.13 Do you agree that this issue can be satisfactorily dealt with by an AiB notice to creditors?**

Other suggestions included the need for greater cross-government department collaboration to highlight the availability of money advice and explain insolvency is picked up in section 3.5 below. And the need for improved availability of money advice, which is covered in section 4.3.

## 3.5 Broader support for vulnerable people

A significant number of people in serious default with payments have vulnerabilities that go beyond their financial problems. Almost half of people in arrears with payments have mental ill-health[[12]](#footnote-13), which is often the root cause of their inability to manage their finance. Moreover, submissions to this review made it clear that financial difficulties are often linked to problems relating to housing, relationships and family life and employment. And alcohol and drug dependencies can also play a part in some cases. This accords with the findings of the Money and Pension Service investigation[[13]](#footnote-14).

Dealing with such a wide range of compounding factors is complex, time-consuming and more than can reasonably be expected of money advisers. The current six-month moratorium was widely regarded as too short with submissions advocating a longer moratorium in cases where there are mental health problems, modelled on the Mental Health Breathing Space in England and Wales. We broadly agree with this conclusion, however we note that this issue is the subject of a separate consultation and will not duplicate that work.

There was a general consensus that there is a need for better linking up of money advice with other government services and other support in the delivery of services to clients. This included local authorities, other government departments, mental health professionals, general practice and health centre staff and housing services.

**Q3.14 Are you able to provide detailed examples of joined-up services of this kind that could be rolled out more generally?**

**Q3.15 Are there new ways of joining up services that should be considered?**

Some submissions went further and advocated a ‘no wrong door’ approach when people need help. It was also suggested that this could be linked to a ‘tell us once’ policy, which would require more seamless data sharing.

The first of these- no wrong door – is somewhat easier to achieve. But even so, may require an up-to-date register of the expertise of all agencies in the not-for-profit and for-profit sector, which could be promoted and made available to all agencies likely to identify people needing debt advice and access to insolvency.

**Q3.16 Do you support the development and promotion of such a register to support a ‘no wrong door’ approach? If so, who should be responsible for compiling it and keeping it up to date? Can you provide details of any current or previous attempts to do this?**

**Q3.17 Do you envisage any other routes to achieving a ‘no wrong door’ approach for people seeking debt advice?**

The second – tell us once – is likely to be more complex and could, potentially be achieved in one of two ways. First, by creating a central resource accessible to money advisers and insolvency practitioners, where consumers can record and up-date all the details needed for insolvency solutions. This could be modelled on the Support Hub run by Experian[[14]](#footnote-15) that allows consumers to share their support needs with multiple businesses in a simple, standardised way. Alternatively, a digital ‘passport’ containing the same information could be developed that consumers can provide to each new agency they interact.

**Q3.18 Do you support the development of a ‘just tell us once’ facility? If so, how do you think this could be best achieved?**

## 3.6 Financial education

There were a number of calls for better financial education, but no specific proposals were put forward. We have covered the issue of improving awareness and understanding of insolvency and the benefits of getting help in section 3. 5 above.

The other time where some form of financial education could be appropriate is at the point where people contact a debt adviser or insolvency practitioner about their payment problems. Unlike in England and Wales, access to bankruptcy in Scotland generally requires prior advice from a money adviser – the exception to this is Protected Trust Deeds. This provides a base on which to build both by discussing the wider topic of money management and budgeting as the income and expenditure statement is compiled and by explaining in detail the options open to consumers though the insolvency regime. Moreover, this is likely to be the most productive time to do this. However, it has resource implications.

**Q3.19 Do you think that broader advice on money management and budgeting should be built into pre-insolvency money advice?**

**Q3.20 Should money advice, including money management and budgeting be required prior to a Protected Trust Deed?**

# The ‘market’ for delivering advice and solutions in Scotland

## 4.1 The currently distinct roles of not-for-profit money advisers and the commercial sector

Whilst there is some blurring between the two sectors, the commercial sector takes a lead role in delivery of the repayment solutions, PTDs and DPPs. AiB data shows that in the first three quarters of 2024-25, effectively all new PTDs were being administered by the commercial sector. In the same time period, the commercial sector was administering 66% of all new DPPs in DAS, with 20% administered by the AiB. Our understanding is the not-for-profit sector conversely takes a lead role in advising on MAP cases, albeit with AiB acting as trustee. Sequestration is slightly less clear. However, in the first 3 quarter of 2024-25, AiB was acting as trustee in 72% of new sequestrations.

The drivers of these differences are not fully evidenced but we were told in group interviews with money advisers and insolvency practitioners that they reflect the different clients bases of each sector, driven by distinct marketing and different operating models. The fees attached to solutions also appears to drive provider behaviour in the market. This is demonstrated by material shifts in the numbers of solutions administered following policy changes to the fees attached to them. Arguably the significant growth in DPPs in DAS following changes to the fee structure in 2019 is an example of this. It is unclear if this is as a result of additional/lesser capacity to serve people becoming available in response to greater/lesser fees being on offer or whether the fees attached create an incentive for providers to ‘lead’ more people to the solution which generates greater profit for them. A question is posed on this later in the section.

For both not-for-profit and commercial sectors however, there is a common theme which connects them; namely concerns over the longer-term financial viability of each sector, albeit for different reasons.

## 4.2 The medium to long term viability of the for-profit and IP sectors

We heard feedback in the original consultation and at a group interview with the IP community in December 2024, that delivering PTDs was not commercially viable for many small volume IPs, meaning the market is dominated by large scale providers. In the first three quarters of 2024-25, three providers were responsible for 79% of all new PTDs. This is primarily related to the fees which can be charged, which only become profitable where technology has been invested in to drive efficiencies, and economies of scale are being achieved by administering higher volumes of solutions. Meanwhile it was noted the total number of insolvency practitioners dealing with personal insolvencies in Scotland has been consistently decreasing in number in the past 10-20 years. We have heard that recruiting new staff into the sector is increasingly difficult.

A similar picture exists for DAS. Although changes made to DAS were intended to bring not-for-profit providers into the market for delivering DPPs that aim has not been achieved. Here too the market is dominated by two commercial firms, who account for 60% of all new DPPs approved (with AiB responsible for a further 20%) in the first 3 quarters of 2024-25. These were also the two main providers of PTDs. Only one charitable provider offers administration of DPPs and its market share in the same period was 15%.

We are concerned, therefore, that the capacity to administer and service PTDs and the DAS may become limited or even be removed if either of the two largest commercial providers withdrew from either of these insolvency solutions.

**Q4.1 What is needed to ensure a healthy, vibrant and ethical market for for-profit firms could be enabled for the medium to long term.**

**Q4.2 Tell us if, and how, provision of repayment solutions could be maintained if the for-profit sector exited the market.**

## 4.3 The medium to long term viability of charitable and not-for-profit debt advice

### 4.3.1 Informing funding decisions

Debt advice is integral to the operation of both bankruptcy and DAS. While there was general agreement that access to advice is inadequate, empirical evidence on the current shortfall in the number of money advisers in Scotland does not exist.

To ensure adequate funding is available to meet demand for debt advice, we believe more insight is needed to make informed and prudent decisions. At present, there is a gap in knowledge about the actual level of provision needed to meet demand and this is a key source of information for decision-making.

**Q4.3 Tell us if, and how, the Scottish Government could effectively carry out a study of the level of debt adviser provision needed to meet known demand for debt advice? Are there others sources of information that should be considered in setting funding levels?**

### 4.3.2 Sourcing additional funding

Across all sectors, almost everyone contributing to the consultation had concerns about the funding of free-to-client advice in Scotland, with public sector cuts having had a particular impact. It was noted that inadequate and insecure funding was currently constraining access to advice and creating issues with staff recruitment and retention.

We share the concerns of respondents about the current funding landscape for charitable and not-for-profit advice services. There is already something of a ‘postcode lottery’ on whether people can access community-based advice. It is possible funding is reducing at a time when, arguably, it should be increasing and this has knock on implications on the accessibility of solutions, and other help.

We agree that funding levels need to increase and see four routes to deliver this:

* Expanding the current debt advice levy charged to financial services, so that other significant creditor sectors are also compelled to fund debt advice. Our understanding is this would be ultimately a matter for the UK government to deliver but we are minded to recommend that the Scottish Government lobbies for this.
* Making debt advice a statutory requirement for local authorities to provide. At the Roundtable held in November 2024 however, many participants pointed to other statutory services in the public sector which were still not adequately funded, and so this would provide no guarantee of resolving the current problems for debt and money advice. We acknowledge this concern.
* As an alternative, making legislative change to make access to debt advice a statutory right for people when they seek an insolvency solution. A similar measure was advocated by the (then) National Consumer Council in its 1977 publication ‘A Fourth Right of Citizenship’. The argument made at that time was that a statutory right would be more enforceable by consumers than a statutory duty and we believe this may still be the case. In any event, any change would need to backed by government and would need to ensure dedicated and adequate funding was made available.
* Changes to the fees structures of insolvency solutions to open up new routes to funding for the not-for-profit sector. However, we note previous attempts to do this through the DAS Scheme have generally been unsuccessful.

**Q4.4 Please tell us your views about whether these measures will be effective. What would you propose to ensure these measures are effective / what alternatives would you propose?**

### 4.3.3 Improving use of funding

As well as raising more funding for the ‘free-to-client’ sector, there were calls that its funding should be based on longer-term agreements of 3-5 years to allow for longer-term planning and to give certainty to staff. We agree that funding agreements need to become more long-term. The Scottish Government, in its commissioning of services funded by the debt advice levy, should increasingly look to move towards funding agreements of 3 years or longer.

Other respondents to the consultation noted the potential for efficiency gains to be made in the delivery of not-for-profit debt advice. This included suggestions to streamline administration heavy aspects of debt advice delivery to reduce costs and improve adviser wellbeing. Investment in technology to enable back-office process efficiencies has been successful where carried out in the commercial sector, as demonstrated by the ability of some to deliver repayment solutions profitably. However the not-for-profit sector generally lacks the access to capital to carry out this level of investment. We also recognise that efficiencies can be delivered without investment in technology, such as by delivering other process efficiencies or directing people to cheaper methods of delivery, if there capability and circumstances allow.

We acknowledge the desire for efficiencies in services and believe there is a key role for funders and commissioners to promote this. The Scottish Government should be tasked with undertaking an investigation into how greater efficiencies can be achieved, especially using technology solutions, and develop a programme of investment in the sector if viable opportunities are identified. This should be done collaboratively with stakeholders in the sector. The broader findings on better joining up services and technology in debt advice in sections 3.5 and 4.6 respectively should be considered in this exercise.

**Q4.5 Please tell us your views and key considerations about the proposal for Scottish Government to investigate and provisionally fund a programme of investment in the sector.**

### 4.3.4 Marketing not-for-profit advice services

As referenced above, previous changes to the fees structure of the DAS Scheme were intended to open a route to more funding to not-for-profit providers. However, providers tell us the clients that present at their services are rarely suitable for structured repayment solutions, meaning the funding available through DAS is limited.

The example of DAS and the different client bases the not-for-profit and commercial sectors see highlights a broader point; namely that where and how the sectors acquire clients can dictate the nature of the cases they see. We are considering the merits of a marketing campaign to raise awareness of debt and money advice services. It is important the objectives of such a campaign are clear and one objective we are considering is whether a marketing campaign can and should be used to create greater awareness of the not-for-profit sector, given there is greater marketing spend already in existence in the commercial sector.

**Q4.6 Do you have views on whether a marketing campaign around debt advice and insolvency should prioritise not-for-profit provision?**

**Q4.7 If the marketing campaign was to attract more clients suited to repayment solutions to not-for-profit providers, is there appetite in the sector to play a greater role in those solutions?**

## 4.4 Differing practices of not-for-profit and for-profit providers

During our review, the most commonly reported different impacts of the differing approaches and incentives that currently exist for the for-profit and not-for-profit sectors were around completion of income and expenditure assessments and the recommendation of solutions. We heard anecdotal feedback that assessments of clients’ income and expenditure are not being completed neutrally, with affordability assessments being shaped to fit a particular solution. The inferences being made were varied but centred around suggestions that some for-profit firms would aim to exaggerate disposable monthly income to ensure the client qualified for a repayment solution and increase fees, while some not-for-profit advisers would do the opposite to ensure qualification for a debt relief solution. We received very little evidence to support or discount these inferences. Conversely, we heard from money advisers that the AiB return many income and expenditure statements that support applications for bankruptcy for further evidence. It was felt the level of evidence required was much higher than that required in England and Wales for similar solutions administered by the Insolvency Service. There was a view that, as money advisers are generally regulated by the FCA or are otherwise accredited, the AiB should have greater trust in money advisers and the statements they provide.

At our request, the AiB recorded the outcomes of their checks of consumer applications for MAP and bankruptcy over a two-week period in January 2025. This found that around a third of the approximately 100 cases required amendments to the CFT, including one in ten that resulted in increased DCO calculations, which were frequently substantial.

While this was a small sample, it is a potential cause for concern and something we want to understand better. We are seeking additional evidence to allow us to validate or discount these concerns, understand the drivers and get a viewpoint on how widespread any issues are.

Money advisers were of the view that, despite recent changes to PTDs, there are still some clients who are being recommended and assisted to enter an insolvency solution that is inappropriate for their need and is consequently unsustainable. Further discussion suggested that this might be a minority of smaller providers. They were not, however, able to provide us with statistics on the incidence.

AiB data shows low levels of PTD and DAS solution breakages and few examples of bankruptcies or MAPs later being shown to be inappropriate. This would suggest the scale of this problem of people entering inappropriate solutions is relatively small and it is not a systemic issue but would welcome evidence to inform us otherwise. While even a small number of inappropriately processed cases is a concern, this issue is best dealt with through the regulatory regimes.

**Q4.8 Please share with us any experience you have of AiB evidence checks resulting in you having to change the CFT submitted and the reasons for this.**

**Q4.9 Please share with us the evidence you have of inappropriately completed income and expenditure assessments and inappropriately recommended solutions. Please tell us the frequency you see cases like this.**

## 4.5 The role of technology in advice and solutions

Many respondents to the original consultation had concerns about a Single Gateway to insolvency, fearing that technology-driven decisions would replace discussions of the most appropriate solution for the individual, taking into account their subjective feelings as well as the facts of their circumstances. It was also felt that an over-reliance on technology to provide to access insolvency would act as a barrier for those who lack digital skills or are digitally excluded.

That said, respondents did see a role for technology in delivering efficiencies in back-office processes, particularly for the money advice sector. The strongest opportunities are not necessarily in replacing human interactions, but rather in data and evidence gathering, case recording, improving and increasing access to services, compliance and reducing administrative burdens. This includes facilitating better creditor communication, access to credit reports and enabling 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, increased online chat support and introduction of videos for sharing information with clients to replace long letters. The potential benefits of Open Banking and mobile applications to support advice were also noted. Income maximisation is an example of a relevant area where technology is already in use, which is providing additional value for clients, advisers and creditors.

As noted in section 4.3 above, we believe the Scottish Government has a role in identify technological opportunities and good practice in partnership with the sector and examine ways these can more consistently be used across the entirety of the sector. This is with a view to avoid every single advice agency having to make multiple different investments in technology and allow some coordination to drive a more efficient approach.

**Q4.10 Are there any other ways to promote appropriate use of technology in the debt advice / insolvency landscape in a coordinated way?**

## 4.6 Ongoing availability of debt advice for people within an insolvency solution

During our engagement to date, a potential gap has been highlighted by stakeholders for people in need of debt advice post-approval of their insolvency solution, where that solution does not have a continuing money adviser attached to it. Furthermore, some respondents felt there were missed opportunities to support people with wider money guidance as they progressed through and exited their insolvency solutions.

There may be merit in the suggestion made that broader money guidance being made available to people during and as they exit their insolvency solutions but we have concerns about the uptake of this offer from individuals, the capacity for providers to offer it and the effectiveness of it.

If taken forward, we are minded to recommend that the Scottish Government should incorporate an assessment of the number of money advisers required for this additional work in the broader assessment of money advice shortfalls we advocate in Section in 4.3 above

**Q4.11 Do you agree with our proposed approach to making debt advice available to people during and as they exit insolvency solutions? Are there broader considerations we should take into account?**

**Q4.12 Do you have views on the proposals for broader money guidance being made available to people during and as they exit insolvency solutions? Do you have comments and / or evidence to support or challenge our concerns here?**

**Q4.13 Do you agree that the Scottish Government should be tasked with assessing the number of money advisers required to deliver these two facets of advice as part of the broader exercise referenced in section 4.3?**

# The role of the AiB

The role of AiB was highlighted by several stakeholders, noting it had multiple functions, some of which create the risk of conflicts of interest. It is understandable why several stakeholders have raised questions over conflicts of interest in the AiB’s role and if it is appropriate that its various functions can be delivered together ‘under one roof’. We are open to further exploration of how AiB’s various functions could be delivered. That said, we are mindful there may be some benefits to the relevant functions being together, as it may make for better joined up and informed delivery. We are also lacking evidence about whether the conflicts of interest are being sufficiently well managed or are translating into inappropriate practice.

There were also mixed views shared with us during the review to date about the level of involvement the AiB could and should have in administering solutions and acting as Trustee in solutions. Some, noting the above points about conflicts of interest, felt the AiB may be incentivised to drive changes in policy which result in greater income generation for its operation, as a result of having this function. Others, however, felt the AiB was well placed to take a bigger role in administering solutions and acting as Trustee, some partly due to perceived lower overheads in the AiB’s delivery and some due to providing a more effective route for consumers who private IPs felt could be better served by AiB.

**Q5.1 Please tell us your experience of any actual conflicts of interests in the current role the AiB has. Please provide any specific examples or evidence where this has created risks or issues.**

**Q5.2 If you believe the functions of the AiB should not all sit within one portfolio, please tell us your views about why as well as how and where they should best be delivered.**

**Q5.3 Please tell us your views on the role AiB should have in solution administration. If you think the AiB’s role should change or evolve in this sphere, please explain why and provide any evidence to support your position.**

# Access to insolvency for self-employed people and small business owners and charities

Small businesses are an important part of the Scottish economy. According to [Businesses in Scotland 2024](https://www.gov.scot/publications/businesses-in-scotland-2024/documents/)[[15]](#footnote-16), in March 2024 there were an estimated 355,805 SMEs operating in Scotland, 30 per cent of which had employees (105,905 enterprises) providing an estimated 1.2 million jobs. Reports from Begbies Traynor[[16]](#footnote-17) show a continued increase in the numbers of firms facing significant financial distress and in Q4 of 2024 32,696 firms in Scotland were affected in this way – 2,353 of which were in critical distress.

Yet responses to our consultation showed that there is a particular problem of access to both debt advice and to formal debt solutions for self-employed people, small business owners and charities. It is telling that 12 of the 22 respondents to the first consultation either gave no response at all to the question regarding access to insolvency by such entities or said that they were unaware of any particular issues. And a further two made no comment beyond the fact that there is a lack of specialist advice and help. Only five respondents (three money advice services and two insolvency practitioners) gave replies that drew on their experience.

The issues raised in these five responses, and subsequent follow-up with key respondents, could be grouped into the following broad areas: reluctance to enter insolvency; a paucity of specialist money advice and help with insolvency; difficulties separating personal and business finances; insolvency solutions that do not accommodate the circumstances of many self-employed people, small business owners and charities and negative budgets.

It should also be noted that none of the responses referred to charities, suggesting that knowledge of needs in this area is very limited.

## 6.1 Reluctance to enter insolvency

Responses suggest that reluctance to enter insolvency is fuelled by concerns about reputational damage, restricted access to credit needed to continue trading and the impact of insolvency on the viability of their own business as well as the potential impact on suppliers and associates. This reluctance acts as a deterrent to seeking advice help, even where it is available. Moreover, it was noted that marketing of insolvency solutions generally focusses on consumers and does not address the needs and concerns of self-employed people and small business owners and charities.

**Q6.1 How might this reluctance best be addressed?**

## 6.2 The funding, and availability, of specialist money advice

Money advice for sole traders, partnerships and other smaller businesses in Scotland was considered inadequate. There are very few money advice agencies in Scotland with the knowledge and capacity to undertake this highly specialised area of work. The 2023 Money Advice Trust Outcomes report[[17]](#footnote-18), for example, showed that 43 per cent of clients of Business Debtline needed help with Bounce Back Loans and 26 per cent with money owed to HMRC - both highly specialist areas of advice.

The main UK-wide specialist provider of business debt advice, Business Debtline, helped 37,200 clients across the UK in 2023. And estimated for us that about 1,800 of these were in Scotland. But they have inadequate funding to facilitate any of the insolvency solutions in Scotland or to be an accredited adviser under DAS. In the past, they had referred many cases to a for-profit firm but this firm no longer handles cases in Scotland. They are now unable to provide a ‘warm referral’ for Scottish clients who need access to one of the insolvency solutions. It is apparent there is a significant gap between the need for this type of advice and the supply of it.

As small business debt advice is a specialist and relatively niche aspect of overall debt advice, it is not a cause for concern, in and of itself, that there are few agencies who have the capacity to deliver it. This allows those providers to work at a scale which is efficient and means they see relevant clients often enough to keep their knowledge up to date. We are concerned, however, about the limited funding that is reaching these services and believe expanded funding is needed to increase capacity. One of the most appropriate and viable funding sources to increase funding to small business debt advice is from the Scottish Government, through its function which administers the debt advice levy. This could go hand-in-hand with the above proposal to increase and expand the debt advice levy and would allow for central commissioning of a key aspect of advice. Again, in line with the points made in section 4.3, the Scottish Government should be tasked with delivering a robust assessment on the adviser provision needed to deliver sufficient business debt advice to meet demand.

**Q6.2 Do you agree small business debt advice should receive an increased level of funding through the debt advice levy administered by the Scottish Government?**

**Q6.3 Are there other funding sources which should be considered for increasing funding for small business debt advice?**

**Q6.4 What is the best way of meeting the need for specialist advice? Further funding to the main bodies currently working in this area? Or setting up a new, bespoke service?**

## 6.3 Difficulties separating personal and business finances

All five respondents who commented in more detail in the consultation noted the difficulties that are often encountered with separating personal and business finances – which makes it very difficult to produce an accurate financial statement.

## 6.4 Negative budgets

Negative budgets appear to be very common. Business Debtline reported in 2024 that 51 per cent of its clients had a negative budget and the average monthly deficit was £579[[18]](#footnote-19). Indeed 39% were in receipt of Universal Credit. An earlier report[[19]](#footnote-20) had noted that although money has a vital role to play in supporting self-employed people and small businesses in these situations, it can be much more challenging to find a longer-term, sustainable solution.

## 6.5 Problems with existing insolvency solutions

The Business Debt Arrangement Scheme is the only bespoke insolvency solution for self-employed people, partnerships, small businesses and charities. It is not available to limited companies. The following conditions must be met:

1. the programme has reasonable prospect of being completed
2. the debtor should be able to make all payments under the programme within a period of 5 years, after date of application
3. the debtor is continuing to trade.

However, since its introduction has been used only three times, indicating it is not meeting a need. Indeed, this was confirmed in the responses to the consultation. Applicants must be able to repay the money owed within five years, and the financial circumstances of self-employed people and small business owners who seek debt advice from Business Debtline[[20]](#footnote-21) show that this is not a viable option.

Other insolvency solutions have largely been developed with consumers in mind, and it was clear from the consultation responses that they do not necessarily work well for other entities. In particular, it can be very difficult for them to continue trading, by setting up a DPP under the DAS or a PTD. Two respondents and a published report from Business Debtline[[21]](#footnote-22) highlighted that many self-employed people and small businesses have highly variable incomes which do not align with either PTDs or debt payment plans under the DAS. We acknowledge that variation processes are available under both PTDs and DAS DPPs, but in practice these are found to be unworkable for clients with persistently fluctuating circumstances.

A further barrier to the use of PTDs is created by assets being taken over by the Trustee administering Trust Deeds, which does not happen with IVAs in England and Wales.

So, for many self-employed people and small business owners, sequestration may be the only viable option. In practice, though, many small businesses or self-employed do not qualify for the MAP because of their higher-than-average value of debts (£49,900[[22]](#footnote-23)), putting them well above the MAP threshold. Indeed, Business Debtline told us that whereas they are more likely to refer clients for full bankruptcy than a MAP in Scotland, the reverse was true in England and Wales where Debt Relief Orders are recommended far more often than full bankruptcy. This is because DROs have a higher debt limit for DROs than MAP. This leaves full administration as the only option for many, which was often anathema to them. And it should also be noted that income variations also complicate the process of applying for sequestration.

These concerns suggest that consideration should be given to: (a) the desirability of more specific insolvency provision for sole traders/business debtors and/or (b) whether business and other entities, e.g. partnerships, trust estates and corporate bodies (other than registered companies or LLPs), would be more suitably dealt with in a modified corporate insolvency regime (see e.g. England and Wales) or in some other alternative regime. There may be merit in modifying the rules for statutory debt solutions to take account of the needs of business debtors, including entities and sole traders.

**Q6.5 Do you agree there is a need for new, or amended, insolvency solutions for self-employed people, small business owners and charities?**

**Q6.6 If yes, what should be the key features of these new or amended insolvency solution(s), noting the prevalence of highly variable incomes, the need to continue trading and difficulties separating out personal and business finances in this cohort?**

**Q6.7 Do you think new or amended solutions sit better in the personal insolvency regime or the corporate insolvency regime? Please can you give the reasons for your response.**

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2. <https://www.gov.scot/publications/review-changes-introduced-bankruptcy-debt-advice-scotland-act-2014/> [↑](#footnote-ref-3)
3. All figures in this section are from [Accountant in Bankruptcy - Scotland's Insolvency Service - Scottish Statutory Debt Solutions Statistics: July to September 2024 (2024-25 Quarter 2)](https://aib.gov.uk/publications/scottish-statutory-debt-solutions-statistics-july-to-september-2024-2024-25-quarter-2) [↑](#footnote-ref-4)
4. Striking the Balance Group Report was a Cross Party Report, which assisted in shaping the Debt Arrangement and Attachment Act 2002 [↑](#footnote-ref-5)
5. <https://economy2030.resolutionfoundation.org/wp-content/uploads/2023/12/Ending-stagnation-final-report.pdf> [↑](#footnote-ref-6)
6. <https://www.bristol.ac.uk/media-library/sites/geography/pfrc/documents/The%20financial%20wellbeing%20of%20UK%20households_January%202025.pdf> [↑](#footnote-ref-7)
7. Money and Pension Service (2023) *Debt advice clients with deficit budgets: findings and opportunities from call for evidence.* [↑](#footnote-ref-8)
8. Money and Pension Service (2023) D*ebt advice clients with deficit budgets: findings and opportunities from call for evidence.* [↑](#footnote-ref-9)
9. <https://www.lboro.ac.uk/news-events/news/2024/february/cost-of-a-child-scotland/>

<https://www.gov.scot/news/impact-of-uk-welfare-cuts-revealed/>

<https://ifs.org.uk/sites/default/files/2024-06/The-distributional-impact-of-tax-and-benefit-reforms-since-2010.pdf> [↑](#footnote-ref-10)
10. <https://maps.org.uk/en/publications/research/2024/need-for-debt-advice-2023-estimates-for-uk-constituencies-and-local-authorities> [↑](#footnote-ref-11)
11. <https://aib.gov.uk/publications/scottish-statutory-debt-solutions-annual-statistics-2023-24> [↑](#footnote-ref-12)
12. Holkar M. *Mental health problems and financial difficulty*. Money and Mental Health Policy Institute. 2019. Derived from Adult Psychiatric Morbidity Survey 2014: [↑](#footnote-ref-13)
13. Money and Pension Service (2023) *Debt advice clients with deficit budgets: findings and opportunities from call for evidence.* [↑](#footnote-ref-14)
14. <https://www.experian.co.uk/business-products/support-hub/> [↑](#footnote-ref-15)
15. [Supporting documents - Businesses in Scotland: 2024 - gov.scot](https://www.gov.scot/publications/businesses-in-scotland-2024/documents/) [↑](#footnote-ref-16)
16. [Historic jump in the number of firms in critical financial distress - Begbies Traynor Group](https://www.begbies-traynorgroup.com/news/business-health-statistics/historic-jump-in-the-number-of-firms-in-critical-financial-distress) [↑](#footnote-ref-17)
17. [MAT-Outcome-report-2023.pdf](https://moneyadvicetrust.org/wp-content/uploads/2024/03/MAT-Outcome-report-2023.pdf) [↑](#footnote-ref-18)
18. <https://moneyadvicetrust.org/wp-content/uploads/2024/09/Money-Advice-Trust-Broken-Budgets.pdf> [↑](#footnote-ref-19)
19. <https://moneyadvicetrust.org/wp-content/uploads/2023/06/Shrinking_margins__-_impact_of_the_cost_of_living_on_callers_to_Business_Debtline.pdf> [↑](#footnote-ref-20)
20. <https://moneyadvicetrust.org/wp-content/uploads/2024/09/Money-Advice-Trust-Broken-Budgets.pdf> [↑](#footnote-ref-21)
21. <https://moneyadvicetrust.org/wp-content/uploads/2024/09/Money-Advice-Trust-Broken-Budgets.pdf> [↑](#footnote-ref-22)
22. <https://moneyadvicetrust.org/wp-content/uploads/2024/09/Money-Advice-Trust-Broken-Budgets.pdf> [↑](#footnote-ref-23)