



**WalkerLove**

Sheriff Officers • Collections • Investigations

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# DEBT RECOVERY

## Trends, Reforms and the Consequences



### *Inside this Issue:*

- Sequestration: the new Inhibition?
- Need help with customer profiling?
- Welfare reform in the Borders.
- Tracing and enforcement overseas.



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# Welcome

Welcome to the first edition of our new briefing paper for the benefit of our Local Authority clients.



**David Walker**  
*Managing Partner,*  
**Walker Love**

With contributions from both keynote speakers at the last Local Authority Forum held in May 2013, namely Alan Munro, Director, TLT Scotland and Gary Smith, Revenue and Benefits Manager, Scottish Borders Council, as well as the other informative discussion points raised during the workshop sessions, I do hope you find it a useful and informative publication.

I would also like to highlight a couple of things we've been doing over the past year and what we've got planned over the next 12-18 months to improve the services and advice we provide to you.

We have continued to reinvest in our core service delivery and the technologies we use to provide you with an enhanced revenue collection, enforcement and tracing service. Following our ISO27001 accreditation in 2011 we have now achieved ISO9001.



We are also continuing to develop our client interface, Websphere and our new highly innovative management information Client Dashboard tool, which Chris Bell demonstrated at the recent Local Authority Forum, and we look forward to discussing this with you in detail during our regular operational meetings.

We have also upgraded our website to provide easier access to our payment portal, debt advice area and to provide your customers, and you as our clients

with more guidance on what we do, how we can help to recover monies owed. The Allpay mobile payment app was launched to your customers in May and is now available for download at [www.walkerlove.com](http://www.walkerlove.com).



Recently we have re-branded all of the Walker Love businesses under a single identity: Walker Love (Messenger at Arms and Sheriff Officers, Revenue Collection, Debt Recovery and Investigations) and were founder members of Connexx International – a truly international debt recovery and enforcement service. You can read more about this inside.



In light of the recommendations we heard from the Accountant in Bankruptcy at our last Local Authority client forum and the recent publication of the Bankruptcy and Debt Advice (Scotland) Bill, providing for the introduction of a common financial tool for all money advisers and agencies to use across Scotland, we are continuing to work proactively with Money Advice Scotland to develop a standard financial assessment tool – we'll talk more about this at the next Forum.

If you have any comments on any of the issues raised in this edition and/or suggestions for future Local Authority Forum topics drop me a line at **Email: [david.walker@walkerlove.com](mailto:david.walker@walkerlove.com)**

***During the house price boom inhibitions were a commonly used debt recovery tool however following the drop in confidence in house prices, they have become less viable with sequestration providing the better results.***



**Alan Munro**  
Legal Director,  
TLT Scotland Ltd

Alan's talk focused on the options relating to insolvency and sequestration which are available to local authorities to recover council tax, non-domestic rates and any other commercial and sundry debts.

The purpose of sequestration is to put all the debtor's assets into the hands of a trustee so he/she can realise those assets and distribute the proceeds to creditors. From a creditor's perspective, the threat of, and petition for sequestration helps to put maximum pressure on those who can afford to pay their dues.

However, the process can be expensive and it is not without its drawbacks – including the Sheriff's interpretation of the specific case, what the debtor knew and didn't know about his or her debt position and the efforts the creditor has made to ensure that the debtor is fully aware of his/her responsibilities, amounts owed and to whom.

Due to the expense, preparation and the selection process for cases which should be followed to improve the chances of success is important: a scattergun approach is unlikely to get the best results or value for money. It may improve "league table" positions in terms of outstanding sums to be collected but it is unlikely to improve the bottom line.

To maximise the opportunities for successful recovery extensive profiling of the customer base is required.

You should aim to establish if the debtors have, firstly, assets which are recoverable, secondly whether or not they are in employment and thirdly if they own or rent their home, before going down a sequestration route. By profiling the outstanding debtor book it will give you a better understanding of where the positive

results can be achieved and this will help to focus your human resources and budget on the most appropriate debt recovery techniques and sequestration /bankruptcy options.

Irrespective of whatever recovery process you adopt the most important element is to keep up momentum. It is vital that whatever route you choose that no momentum is lost. The various debt recovery and legal options open to you can take time to plan and implement, but when the process is started it must be kept moving as delays and downtime between the implementation of recovery tactics can adversely impact recovery rates.

Above all else, the key outcome from the bankruptcy process is that it will open up communication channels between the local authority and the debtor and with this there is a better chance of reaching a negotiated settlement.

## Recent trends in bankruptcies

Following the introduction of the BAD Act in 2008 there was a spike in the number of bankruptcies. This was in the main due to the change which enabled debtors to make their own application for bankruptcy. From 2008 to 2010 the number of bankruptcies in Scotland dipped, although there was a slight increase in 2010 due to a new product being introduced, a Certificate of Insolvency (COI), which allowed debtors to apply for sequestration without establishing apparent insolvency e.g. via an expired charge for payment. However, there wasn't as much uptake of COI as was expected. Turning to 2012, we witnessed bankruptcies falling substantially. During the last quarter of 2012, there were around 1800 bankruptcy applications, of which around 1500 were personal applications with the remainder being creditor applications.

## Bankruptcy and Diligence Act reforms

The biggest change introduced related to the discretion afforded to Sheriff Courts to continue consideration of a petition for the purposes of payment in full or to apply for a Debt Payment Programme (DPP). If for instance the debtor, whilst in front of the Sheriff, offers to settle in full, the hearing may be continued for up to 42 days to give the debtor



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time to pay his/her debts. However, be aware that in practice this change is still in its infancy and not all Sheriffs are applying this discretion. Broadly speaking, present practice is that most courts are using their discretion to give debtors extra time to pay.

The DPP is also creating some issues for creditors who apply to make their debtor bankrupt. A sheriff has wide discretion to continue consideration of a petition for such period as he sees fit where the debtor intends to apply for a DPP. In some instances it is taking up to 10 months between the application being lodged and the court process being conducted before the bankruptcy is granted. In these cases it is only allowing the trustee 8 weeks to fully establish the asset position and allocate assets to the creditors before the debtor is discharged.

Sheriff Officers now must hand the petition to the debtor in person (to ensure he/she receives – and importantly – cannot deny awareness of the petition and what it relates to). If this is not possible, then the petition can be “letter boxed” and/or advertised on the walls of court. However if the debtor claims not to have received the petition or is not aware of the debt, this can often lead to a continuation of the case – and increase the costs for LA for additional Sheriff Officers visits.

#### Future Reforms

The Scottish Government is not wholly in favour of protected trust deeds and they are likely to be phased out. A whole new industry has developed out of the

“packaging” of debtors for trust deeds and some of the practices are not in keeping with the intention of the legislation – in some instances, by the time the trustee takes a fee there is not a great deal left for the creditors which goes against the spirit of the trust deed legislation.



We expect to see a common financial assessment tool to be adopted by all money advisory and public sector agencies providing debt advice and assistance. We are also likely to see a range of new sequestration products introduced and the selection of each will be dependent on the debtors ability to repay (hence the reason for debtor profiling becoming increasingly important). Compulsory money advice is also likely to become one of the key stages which must be performed before sequestration and the Accountant in Bankruptcy will take over many administrative functions from the courts as the shake-up in how Scotland’s courts are run continues.

**Latest news on [www.walkerlove.com](http://www.walkerlove.com)**



#### Simple Guide to the BAD Act

The Bankruptcy & Diligence Etc (Scotland) Act 2007 contains 17 Parts and Six Schedules. **Download an edited highlights version.**

#### Payments and advice

Customers can download the new **Allpay** mobile payment app to make payments from their mobile device and manage their monthly incomings and outgoings.

#### Looking for debt advice?

Point your customers in the direction of our website. The debt advice area contains a range of useful information and further links to money advice, Accountant in Bankruptcy and local citizens advice and money advice services. Information included: what can I do about my debts? What actions can a creditor take? What is Walker Love’s role?

#### Latest news and developments:

Changes to legislation, new rules and procedures and Walker Love chairing recent Law conferences: commercial litigation and criminal law.



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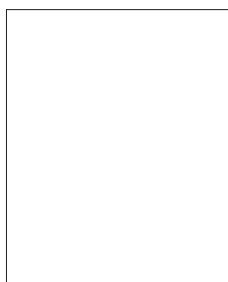
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Gary's talk focused on the key impacts of welfare reform in the Scottish Borders and the many unforeseen consequences which the council is now contending with due to the speed at which the changes are being implemented. He also touched upon a number of concerns the council has about the focus moving away from debt recovery and collection to getting ready for welfare reform. The consequences of this shift in focus are yet unknown, but the early prognosis is amber/red.



**Gary Smith**  
*Revenues & Benefits  
Manager,  
Scottish Borders  
Council*

(currently seconded as project manager for Welfare Reform at Scottish Borders Council)

## Key concerns and issues

### Financial

The administration subsidy SBC received for Housing Benefit and Council Tax Reduction is being removed incrementally and the c£1m they receive every year is to be cut by 5% each year.

There is also a 10% cut in the amount of money available to support the Council Tax Reduction scheme. The Scottish Govt has mitigated the impact of this for 2013/14 however there is no plan yet for 2014/15 Council Tax Reduction Scheme. This is significant financial black hole at the moment which will have to be resolved one way or another soon. We need to be able to plan ahead with more surety given the extra demands welfare reform is creating on our resources and current process and procedures.

### Planning for welfare reform

The key impacts are on existing service delivery as resources are moved around within departments to deal with the increased requirements of welfare reform. This has had a number of knock-on impacts, including the reducing the resource we have to recover monies due. Sundry debt recovery has been moved out of the Revenues department to the Accounting departments.

We have experienced early retirements of experienced staff and staff choosing to move on to new jobs and we have brought in a range of temporary staff to deal with resource gap. However, the loss of experience and collective wisdom will take a while to replace. Temporary staff can plug process gaps but they can't fill the experience gaps.

As Universal Credit will be paid direct to the claimant on the (monthly/weekly) anniversary of their application we will not know when this payment will be made and therefore this makes it more difficult to know when the best time is to conduct enforcement/recovery actions.

The Scottish Welfare Fund has been handed over to Local Authorities to manage. There are number of preparations (and budget required) which we had to make e.g. setting up customer areas to visit to discuss the welfare issues; telephone helplines.

The difficulty with discretionary housing payments is that the guidance requires cases to be considered on individual merits and the funding we have available is roughly about 10% of the cuts that will be experienced - £1.5m in housing benefit cuts are expected.



Personal Independence Payments – we are moving away from the disability living allowance to PIPs and there will be much stricter tests and criteria for those who apply. Again we know that there is expected to be a 20% reduction in the amount of benefit paid out.

There are number of challenges facing us to get ready for launch including providing public access to computers to help them to apply; migrating caseloads – split between those under 60 and those over and we will have no idea when the payments will be made to individuals – this will impact our potential recovery options and their timing.

### The local economy

Those on benefits tend to spend a significant proportion in local shops and establishments. It has been estimated, for every £1 cut in benefit it leads to a £1.80 reduction in what those receiving benefits spend in the local shops and businesses.



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## Gathering intelligence

In the past housing and council tax benefit claimants informed their LA of any changes in their housing status reasonably quickly because it was their means to get the rent paid. However, claimants no longer have to do this so we now have to get our information from elsewhere. This requires additional resource, time and effort.

It is vital to develop closer relationships with RSLs and agencies in the area as we will be chasing the same for different debts. A point worth noting, of those people who have been hit by the bedroom tax and have failed to engage with the landlord, more 47%

are currently in arrears with their rent or have a history of rent arrears.

We have a social responsibility and we have taken a holistic approach. We are working much closer with the local Police, CABs, Social Services, Money Advice to look at the best ways to tackle the current issues and the foreseen and unforeseen consequences of Welfare Reform. We have amended our recovery policy to incorporate how the LA works with the tenant, money advice and social services to ensure we involve all groups and have the right projects and processes set up. **Email: [gsmith3@scotborders.gov.uk](mailto:gsmith3@scotborders.gov.uk)**

## L.A. forum: Discussion Workshops



The following issues and discussion topics were captured following the two main presentation talks from Alan and Gary.

There were 4 discussion groups made up of revenue, benefits and collection staff from 11 local authorities and four Walker Love partners.

The workgroups explored case-studies and discussed current challenges Local Authorities are being faced with in selecting the correct cases for bankruptcy and sequestration.



**Dorothy Lowe**  
*Partner,  
Business Development,  
Walker Love*

Data protection is a primary concern for many authorities as sharing customer information with other council departments is completely prohibited for many authorities. It was recognised that getting smarter at profiling customer data is critical in tackling the most difficult cases, however cost, timing and inflexible recovery strategies proved challenging for many.

Low prioritisation with in-house legal departments is a common issue as resource constraints are making it difficult to allocate dedicated expertise to deal with high profile cases. It was recognised that co-location working with external partners was definitely a good investment (if budget is available) to improve collections performance. **Key issues highlighted included:**

### Discussion workshop one

- Abandoned properties are a big issue in some local authority areas.
- Rates assessors are not keen on removing properties from the role. This is having a negative impact on NDR collection rates.
- DAS: Debtors do not always keep up their side of the bargain and best practice isn't clear.
- Due to the ongoing slump in residential property market, there is less value appreciation of property and less to recover.
- Local Authorities would like to work in partnership more frequently with debt recovery firms like Walker Love, however, the reduction in legal resource available has made this more challenging.
- Sequestration is becoming a favoured route again due to the lack of availability of credit in the housing market.
- Co-location working with the debt recovery partner and keeping up momentum are key to achieving more successful outcomes.
- There are not many new solutions available to improve NDR recoveries.
- It is vital to build rapport with a debtor through communication, empathy and providing them with the advice and support they need to break the debt spiral.
- Fraudulent landlords are becoming an increasing problem – especially those who have multiple properties across LA boundaries.

The second workshop focused on the common challenges, concerns and potential solutions as Local Authorities implement the new Welfare Reforms in their areas.

The general discussion centred on concerns related to

Welfare Reform's one-size-fits-all policy and implementation timetable. Significant concerns were discussed as to the policy's perceived lack of appreciation of people's disabilities, family circumstances, economic conditions or the lack of



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availability of smaller houses in local areas.

Under the new reforms, those currently in receipt of benefits will now have to make their own online welfare claims, which will undoubtedly bring another wave of challenges for Local Authorities, RSIs and other public service providers. Council Tax Credit and the way it will be allocated is still to be defined however most authorities have begun planning and are currently

gathering customer data and intelligence in preparation for CTC implementation.

Most authorities are also in the process of reviewing their internal policies and procedures to ensure that they are compliant with the new welfare regulations. Dealing with critical issues, such as homelessness or awarding a crisis loan requires careful forward planning.

**Key issues highlighted included:**

### Discussion workshop two - Key Welfare Reform concerns

- Due to the reduction in budgets and the implementation of the reforms, resources in LAs becoming very thinly spread.
- Will people really be able to manage their own financial affairs following the introduction of UC and pay their dues accordingly?
- Impact on local economy – the multiplier effect. For every £1 cut in benefits this leads to a £1.80 reduction in spending in the local economy. This could be devastating for some already struggling local high streets.
- Applying for emergency crisis loans – local authorities are taking different approaches. In some areas you can visit a customer service office, in others you have to apply by phone.
- Early intervention strategies will become more vital but timing is an issue.
- Creditor prioritisation will need to be addressed before debt recovery options are pursued. Vulnerable people have to be protected.

## Looking to recover debt overseas, or trace someone who has moved overseas ?



### An international citation, enforcement and debt collection service delivered locally.

Walker Love has a network of contacts and service delivery partners throughout Europe, and further afield, to help our clients trace, enforce and recover debts from debtors across international borders.



**William Dolier**  
*Partner,  
Citation & Diligence  
Walker Love*

Managing Partner, David Walker is an active board member of the International Union of Judicial Officers, which facilitates unparalleled access to a world wide database of the most professional Officers of Court and debt recovery specialists.

**The firm is also the only Scottish member of the Connexx.** Connexx is a collaboration between different European partners who are all specialised in collecting outstanding debts, in their respective countries, including: England & Wales, Germany, France, Portugal, Poland, The Netherlands, Ireland, Belgium, Luxembourg, Estonia, Czech Republic and Slovakia. **Visit [www.connexxeu.com](http://www.connexxeu.com) to find our more.**

Through our international network, we manage

instructions for a range of enforcement and debt recovery services, including:

- **Pre-sue enquiries**
- **Pre-court debt collection**
- **Citation, service and notification**
- **Comprehensive civil enforcement**
- **Tracing and investigations**

Don't worry, we don't just hand over your instruction to one of our international partners – we manage the case locally on your behalf and will provide you with regular updates on how the case is progressing.



For more information on recovering international debts or initiating enforcement in another jurisdiction give us a call and we will discuss the options available to you.

**Email: [william.dolier@walkerlove.com](mailto:william.dolier@walkerlove.com)**



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# Need help with Debtor Profiling ?



**Chris Bell**

*Partner,  
Revenues & Collections  
Walker Love*



**James Walker**

*Partner,  
Non-Domestic Rates  
Walker Love*

If you are considering sequestration but don't have access to all the information you need or you need some extra help to establish the exact whereabouts of a debtor, Walker Love will be able to provide you with extensive profiling and debtor tracing support.

To help you to build up accurate profiles of your customers we make extensive use of credit reference databases held by Callcredit, Experian and Equifax. We will also work in partnership with your operations teams accessing products such as Experian Citizenvue and Investigator to fill in the blanks between the financial data.

Our professional investigators use tried and tested methods and the latest tracing, surveillance and

monitoring technologies, to build up a fuller customer picture. We provide a sensitive, confidential and efficient service, which will help you to trace debtors and missing persons, establish whether or not housing benefit fraud is taking place, employment tracing and asset tracing.



Not only will this help you to have an accurate assessment of each customer it will also help you to decide on the most appropriate course of action, whether that be sequestration, bankruptcy or some form of negotiated settlement. See the table below for some practical sequestration issues to consider.

**Email:** [chris.bell@walkerlove.com](mailto:chris.bell@walkerlove.com)

**Email:** [james.walker@walkerlove.com](mailto:james.walker@walkerlove.com)

Sequestration: Practical issues to consider	Expected Outcomes
<p><b>Provide as much evidence of the debt as possible prior to case being heard in court.</b></p> <p><b>Package for sequestration should include: summary warrant, print(s) of outstanding debts, statement of debt and any other evidence you have of letters, notices, petitions being delivered to the debtors address – and any evidence you have of the debtor living at that address.</b></p> <p><b>Sheriffs require prima facie evidence of debt (a statement of debts due and signed by a Council official) and in some instances copies of the summary warrant petition listings.</b></p> <p><b>Sheriffs allow service by any legal mode – newspaper advertisements can be a useful tool to make those debtors who cannot be contacted by other means aware of the debt.</b></p> <p><b>Debt Payment Pack applications can bring about a 2-3 month delay in the process.</b></p>	<p><b>Payment in full</b></p> <p><b>Payment in lump sum plus instalments</b></p> <p><b>Other negotiated settlement achieved through communication</b></p> <p><b>Sequestration awarded</b></p> <p><b>Dividend from property sale</b></p> <p><b>Dividend from IPA/IPO</b></p> <p><b>Housekeeping exercise</b></p>

**Walker Love, 16 Royal Exchange Square, Glasgow G1 3AB T: 0141 248 8224 E: [sheriffofficers@walkerlove.com](mailto:sheriffofficers@walkerlove.com)**

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