Keeping you informed

Bankruptcy & Debt Advice fit for the 21st century

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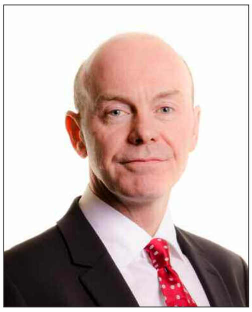

David Walker
Managing Partner,
Walker Love

Welcome to the second edition of our briefing for our Local Authority clients.

With contributions from both speakers at the last Local Authority Forum held in October 2013, Claire Orr, Accountant-in-Bankruptcy and Gary Caldwell, Corporate Debt Recovery Manager , Renfrewshire Council as well as the key discussion points aired during the workshop sessions, I do hope you will find the publication to be both useful and informative.

Although the economic and welfare reform challenges are continuing to have adverse impacts on cash collections and volumes, I'm delighted to report that all of our clients have improved cash collections and yields in 2013.

The collection strategies and tactics developed by local authorities across Scotland do differ due to their own diverse demographic & geographic differences from area to area, however there is one constant which runs through all – the key to improving collection receipts and performance is largely due to debtor profiling, systematic targeting and sharing intelligence with other authorities and debt recovery partners.

The Renfrewshire Council experience shared by Gary is an excellent example of what can be achieved through joint working and a collaborative approach to debt recovery.

We are continuing to invest in new technologies and systems which will further enhance the debtor profiling intelligence we provide to our clients and we will be discussing these enhancements with you at our regular operational meetings.

The new profiling tools and workflow processes will enable us to identify potential problem cases earlier in the recovery cycle – and as we all know this will ultimately lead to improved collection receipts and improved KPI performance.

Finally, in light of the talk we heard from Claire regarding the importance of having a common financial tool for all money advisers, public sector agencies, charities and insolvency practioners to use across Scotland, we will focus on the proposed new Common Financial Tool and how it might work in practice at the next Forum.

If you have any comments on any of the issues raised in this edition and/or suggestions for future LA Forum topics drop me a line at the address below.

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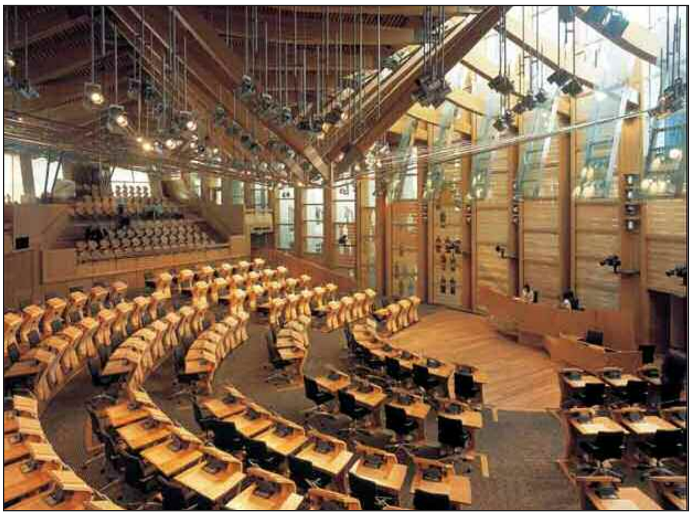
Bankruptcy & Debt Advice Fit For The 21st Century

What changes and improvements can we expect from the new Bill which is currently passing through the Scottish Parliament? Claire Orr, from the Accountant-in-Bankruptcy joined us at our October Forum to provide an overview of the new powers which are likely to come into force in spring 2015. The following provides an overview of the key points and impacts addressed by Claire.

When we set out to bring Scotland's bankruptcy and debt advice legislation into the 21st century our primary aim was to ensure access to fair and just processes of debt relief and debt management for all, better balancing the interests of all parties and ensuring that those who can pay their debts do pay.

The current bankruptcy legislation did not provide all of the tools needed to address the challenges we now face. With the changes in society and the radical advances in technology, communications and financial services since 1985; not to mention the changes in public attitudes to credit and debt, the availability of credit, the increase in debt management solutions and the spectrum of debt advice which was being made available in the public, third and private sectors, it became clear that we needed a range of new solutions and tools for debt relief and debt management.



The consultation we issued in early 2012 was well received by stakeholders with a good response rate. Proposals have been modified based on the feedback we received during the consultation.

We also wanted to ensure that those debtors who can pay their debts should pay, creditors got the best return possible and we wanted to try to break the debt-cycle for individuals through improved rehabilitation from debt problems, education for both those experiencing debt problems and by developing early intervention education strategies to improve people's financial awareness and confidence when dealing with financial matters.

Overview of the Bill

The Bankruptcy & Debt Advice (Scotland) Bill contains a range of powers – you can view the full bill on the Scottish Parliament website in the parliamentary business/current bills area of the site. You can also follow the current status and stages of the bill as it passes through the Parliament on this page. The Bill will complete its first stage of three in December 2013.

- **Advice and Education**
- **Payments by debtor following sequestration**
- **Minimal Asset Process**
- **Moratorium on Diligence**
- **Application Process**
- **Administration of estate**
- **Discharge**
- **Records**
- **Functions of Sheriff and AiB**
- **Review of decisions by AiB**

So what can we expect to see change around April 2015 when the updated Act is likely to come into force?

One of the most important changes will be that individuals will no longer be able to make themselves bankrupt without having first taken advice from an approved money adviser. Advice will ensure that people are aware of the range of solutions open to them and that they choose the solution most appropriate to their needs.

We want to ensure that bankruptcy becomes a last and final resort. Financial Education will be compulsory for some debtors who have been identified as vulnerable to recurring debts.

A common financial tool will be introduced as a mandatory part of the advice process. By ensuring that all money advisers use the same tool to assess income, expenditure and identify the surplus income available for a contributing towards debts we will improve consistency and transparency. The Common Financial Statement has been chosen as the common tool.

Key Stages and Dates

Consultation (129 responses received)	Spring 2012
Government response	Autumn 2012
Dialogue with key stakeholders	Ongoing
Bankruptcy and Debt Advice (Scotland) Bill introduced to the Scottish Parliament	June 2013
Amended DAS Regulations introduced	July 2013
PTD changes (corporate insolvency and business DAS to follow)	November 2013
BADAS Bill pass through committee stages and full Parliament	End 2013 - Spring 2014
Consolidation Bill (there are currently a number of bankruptcy and insolvency related Acts which will be consolidated into one Act)	Spring/Summer 2014
BADAS Bill becomes the BADAS Act	Spring 2014
Bankruptcy and Debt Advice (Scotland) Act comes into force	Spring 2015

This tool has the support of the money advice sector generally and it is accepted as a fair tool for the calculation of surplus income.

The debtor will be required to undertake to pay the contribution determined by the common financial tool for a minimum of 48 months, which is 12 months more than current sequestration.

Although this is a longer period, evidence has shown that the Common Financial Statement makes a fair assessment of the amount of money individuals and families need and therefore the level of contributions set through this tool are sustainable. The longer payment period reflects the desire to increase returns to creditors. A new 'debtor contribution order' replaces the Income Payment Order and debtors will also be able to apply for a payment break of up to six months, but they will still have to make a minimum of 48 monthly payments. The debtor will be required to sign a new statement of undertaking and if they don't sign it or comply with it's conditions, including paying the determined contribution, it could lead to a delay in discharge. The aim is to encourage more co-operation the debtor and more dialogue between debtor and their trustee. The aim is to encourage more co-operation from the debtor and more dialogue between debtor & their trustee.

A new moratorium is to be introduced across all statutory debt solutions which means if an individual gives notice that they want to apply for a statutory debt solution they will be given a six week period of protection from action against them by their creditors. This period of 6 weeks provides some breathing space and allows people to have the benefit of money advice.

During this period no arrestment, money attachment, interim attachment or attachment of estate can have effect. Individuals who give notice will have their details entered by AiB on RoI and DAS register for the duration of the 6 week period.

There will be no automatic discharge, except in MAP cases, and the trustee will have to apply to AiB for discharge at the end of the sequestration. If the trustee does not intend to apply for a discharge he/she must explain their reasons to the debtor. The debtor will be free to appeal to the Sheriff if they do not agree with the trustee. Furthermore, if someone has been discharged and subsequently inherits assets or assets are discovered that would have been vested in the trustee there will be a process for re-opening the case contained in the new Act.

To minimise the impact on the Sheriff Courts and to ensure that decisions are taken at the most appropriate level a number of administrative procedures will pass to the AiB, including application by a trustee for direction, recall of sequestration where debts can be paid in full and appointing a replacement trustee.

Preparing for the challenges and opportunities as a result of the new Bankruptcy and Debt Advice (Scotland) Bill.

The key aims of the Bill are to deliver significant reform to Bankruptcy and Debt Advice in Scotland and to ensure that fair and proportionate debt management and debt relief mechanisms are available to the people of Scotland.

Dorothy Lowe
Partner, Business Development
Walker Love

The workshop discussions focused on the potential impacts of the bill including, managing the anticipated increased take-up of DAS and how this will be resourced by Authorities, the challenges of monitoring long-term DAS payment plans and the practical aspects of how the DAS revocation process could, in practice, be managed. Recognising that maintaining high collection performance will be critical, Walker Love provided some examples of current joint working initiatives with Authorities and debt profiling techniques and how these could be tailored to meet the new potential challenges.

See the 2nd of our workshops **"Strategies for Debt Profiling and Approaches to Joint Working"** on page 8. **Email: dorothy.lowe@walkerlove.com**

Comments and observations included

- **All discussion groups agreed that the new Bill when it comes into force will be a positive step forward. The existing legislation required amending and updating.**
- **The new PTD regulations were also welcomed, with particular reference made to the poor returns creditors have experience with the current regulations.**
- **Concerns were expressed as to the resource implications from providing individuals with access to money advice. Money advisers appointments in a number of local authority areas have to be booked weeks, if not months in advance due to the limited number of advisers available.**
- **The new MAP process looks to be beneficial for those who have low debt and low assets.**
- **The new bankruptcy legislation will discourage people from abusing the system.**
- **The time local authorities spend reviewing individual arrangements e.g. DAS, PTDs is likely to increase leading to further pressure on resources.**
- **The common financial statement tool – very useful (essential even) to standardise this across all those providing money and debt advice.**
- **There were some doubts expressed as to the value of financial education – some groups said that by the time an individual is on verge of bankruptcy it is probably too late and steps should be taken early to educate people on handling money, budgeting, understanding credit/debt and the consequences. Could this be tackled earlier in Schools & Colleges?**

The groups also offered some pointers for Walker Love on what steps they should take:

- **Help local authorities to monitor payments in DAS, PTDs to ensure debtors are keeping up their contributions and reporting missed/late payments.**
- **A number of delegates mentioned that there are a significant number of people in their areas who do not keep up with the DAS repayment schedule.**
  NOTE:
  AiB keen to receive statistics from LAs and Sheriff Officers on DAS repayments - debtors defaulting on payments in DAS and/or current year liabilities.
- **More signposting for debtors required – point debtors to where they can get access to financial help, support, education and money advice.**
- **Should Walker Love consider employing money advisers to help local authorities overcome their backlog of appointments and limited resource in this area? There would be regulatory implications that would have to be looked at before Walker Love could take on this role, but it would be worth exploring.**
- **WL could recommend DAS for individual debtors after profiling has been conducted.**

Citation and Diligence | Revenue Collection & Enforcement | Professional Investigations | Debt Recovery | International Services

Debt Profiling: The benefits from a joint approach

Gary Caldwell, Corporate Debt Recovery Manager from Renfrewshire Council looked at the methods, approaches and joint working arrangements they have in place to tackle the non-payment of Council Tax and other sundry debts, and the success this has had on the bottom line measure: receipts.

With a team of thirteen in an average local authority area in terms of demographics and spread of properties, the collections and revenues team were achieving good results in their current year collection of Council Tax and Non-Domestic Rates however they were achieving below average performance in collecting outstanding monies owed from the previous year(s).

Determined to turn this performance around, the team developed a long term performance model and strategy to improve how they communicate with council tax payers, target specific segments of their debtor book in order to allocate resources more effectively, profile individual debtors and make improved case by case assessments, and work together with Walker Love to develop an improved approach to debt recovery and management.

Did it work?

In 2009/10 total collection receipts were £5.15m and last year they were £6.48m. That's a 25%+ increase in income in just over three years during a significant economic downturn. They have significantly reduced the number of arrangements in place and they are £340k ahead of this point last year in collection receipts as at 1/10/13.

How did they do it?

In 2007, the team launched the Pay-Up for Renfrewshire campaign which gave their collections performance statistics a much welcomed boost in the current year, however, overall receipts remained static which indicated that debtors payments were simply being redirected.

So the team decided to dig a little deeper into their outstanding debtors' information to see if they could uncover any similarities between types of debtors and apply similar recovery methods and monitor and measure the impact of different recovery techniques on different debtor segments.

In addition to the standard profiling – see table – the team developed four additional steps which segmented their debtors in four types: never paid, paid recently either in last 6 months or year or not paid for 2 years.

Standard Profiling	Additional Profiling
On Summary Warrant	Never paid
Debt split by tenure type	Not paid for 2 years
Benefits/Non-benefits	Not paid for 1 year
Council Tax Band	Paid in last 6 months

Specific campaigns and approaches for each segment, including revisiting some historic cases where Walker Love had been previously active were developed. In addition, the team developed a Council Tax Matrix which brought together their current and previous year(s) debtors to provide a holistic collections performance and recovery position.

Significant data matching and internal checks were made on the data to establish the real debt position. The team discovered a number of administration errors, landlord errors and billing system inaccuracies which once resolved reduced the overall number of debt cases which enabled the team to focus their efforts and resources more effectively – and making an immediate reduction to the real outstanding debt position.

The Council team focused their initial targeting on those who hadn't paid: owner occupiers, non-benefits, live accounts with debts greater than £3k, and no payments in the last 2 years, with the Walker Love team focusing on those who had made no payments last year or the year before.

Citation and Diligence
Revenue Collection & Enforcement
Professional Investigations
Debt Recovery
International Services

The focus of the team was to be proactive. To enable this all customers are now referred to Walker Love if they want to make a payment arrangement. This was a culture change for Renfrewshire Council which had previously encouraged in-house arrangements to supplement the work of Walker Love. The result is that internal arrangements have reduced from over 700 to less than 300.

The interesting statistic is that receipts associated to arrangements have increased despite the reduction in numbers. By removing incoming calls the debt team were able to focus on the real problem debtors.

Each of the collections team undertook training on court procedures, costs, processes and the Council also employed in-house solicitors with the aim of informing debtors what they options were and what the specific implications would be for them if they failed to pay up for Renfrewshire. The methodology developed for each segment varied but there were similar strands running through each campaign in terms of frequency of profiling, issuing debt packs, visits, debt manager and solicitor roles.

The major change is that a debtor is not automatically offered a repayment arrangement. Each case is looked at on its own merits and employment status, assets etc are taken into account when discussing the debt with the debtor and the debtor is expected to find a short term solution to repay the debt to prevent bankruptcy.

Furthermore, an income and expenditure assessment is only conducted where the case is referred to Money Advice and a DAS looks like an option.

Since August 2013, Julie Swan, Debt Recovery Collections Manager, has been working with the team in the Council Offices one day per week and whilst it is still relatively early on in this joint working project we are already beginning to see the benefits of this approach.

Julie is working a caseload, using the Renfrewshire Council methodology which in turn has released Debt staff to work on reviews. This has resulted in continuous court activity from Julie and an increase in the Council Tax base from the work being done with reviews.

Put simply, we have joined up our recovery methods with Walker Love and it is leading to an increase in overall receipts. Since Julie began she has prepared 42 packs for court (bankruptcy) with a debt value of around £350k. Twenty charges have been served, twenty-one await charge for payment with eleven having a court date set. We have received just over £10k in the last couple of months.

Finally, in order to improve our collections performance the team set Walker Love an annual financial target based on collection. Targets have been paramount to the success in increasing receipts and form the focus of the monthly liaison meetings. In the four years a bonus or penalty has been at stake Walker Love has achieved a bonus. This is a win win situation as Renfrewshire Council has seen a £1.3m increase over the same period in Sheriff Officer receipts.

A Problem Shared is a Problem Solved

Walker Love has developed a series of joint working initiatives developing tactics in partnership with Local Authorities across Scotland to intelligently assess and improve the understanding of our customers' financial and overall debt position.

Chris Bell
Partner,
Revenues & Collections
Walker Love

Joint working and effective profiling are key approaches taken to reduce bad debt levels, prioritise and fast track the most effective recovery procedures. Strategies include profiling cases by tenure type, benefit flags, Council Tax bandings, debt item counts, arrears value, together with utilising information obtained through Credit Reference Agencies confirming propensity to pay scores, credit activity & residency status.

A key component of this process is for information to be matched from the Council's system with full access enabled on the Walker Love platform to compare datasets and action cases as appropriate.

Our pro-active strategies include operating dedicated co-location team resources within Walker Love's offices through to organising our own specialist staff to work within the Council's offices to improve information and collection flow. It is our experience that customer profiling and the systematic targeting of accounts using shared resources results in significant increases in current and prior year receipts.

Email: chris.bell@walkerlove.com

L.A. Forum: Discussion Workshop No 2

Strategies for debt profiling and approaches to joint working

Comments and observations included

- **Encourage your debt advisers to visit debtors house to confirm profiling information.**
- **Joint targets – Council and Walker Love. This is something to be encouraged but both have to win.**
- **Online referral system from local CABs for DAS works far better than telephone calls.**
- **Tenure/debt flags should be added to systems.**
- **CRM systems being used by Councils are improving data capture.**
- **Use credit reference information earlier in the process.**
- **DAS needs to be better promoted – could WL do more?**
- **Accuracy of billing information needs to be improved (a number of Councils mentioned this) and improvements also required on background information held on debtors.**
- **Whilst profiling is useful it can be expensive if is done ad-hoc. It should be part of a wider systematic and strategic approach to debt recovery if cost benefits are to be realised.**
- **There are a variety of systems/approaches to profiling in use across local authorities – could this information be shared better in terms of sharing learning, approaches, successes?**
- **Corporate debt policy – not all local authorities currently have one. But all agree it is required.**
- **When measuring success set common benchmarks to compare year to year.**

Finding & Collecting From Ex-UK Debtors

When a debtor leaves the country it is not necessarily the end of the debt collection trail.

William Dolier
Partner,
Citation & Diligence
Walker Love

Many credit managers within the public sector are now reviewing their files for outstanding council tax and national non domestic rate arrears, and even other sundry debts, where the debtor has fled to another European country. Until very recently, it was common practice to write-off such debts as uncollectable.

However, things are changing and public bodies are beginning to instruct members of the Connexx network to trace debtors and collect all outstanding balances. This is one area where the debtor believes the old saying – out of sight, out of mind. It is an incorrect assumption, as the debt can now follow them all over Europe.

If you have debts which have been written off due to debtors moving to another country within the European Union, get in touch with us and we will look at the various options open to you and how we can use local knowledge and intelligence based tracing systems in range of countries including: Belgium/Luxembourg, Czech Republic, Estonia, Germany, England, Slovakia, France, Ireland, Wales, Poland, Portugal & The Netherlands.

Connexx's guiding principle is to facilitate efficient cross-border collections, by building a network of respected and experienced debt recovery experts from the judicial officer and legal sectors. For more information on recovering debts overseas, including EU and local legislation and regulations and pricing, send me an email at the following address.

Email: william.dolier@walkerlove.com

Citation and Diligence | Revenue Collection & Enforcement | Professional Investigations | Debt Recovery | International Services

Money Attachments: When to use, and not to use.

James Walker
Partner,
Non-Domestic Rates
Walker Love

The use of Money Attachment Orders are ideally suited for targeting at specific times throughout the year, such as the periods leading up to and around the Christmas and New year period, Easter holidays and most Bank and Public Holiday weekends, when there is more likelihood of there being cash on the premises. Targeting specific local events and festivals can also be a good time to execute attachments, as James Walker explains.

It is Walker Love's policy when attempting to execute a Money Attachment Order to also attempt to execute a traditional Attachment Order. This is done with a view to ensuring that the Officer is able to either attach 'moveables' or funds at the premises. This helps to maximise recoveries when our Officers undertake their field visits.

In our experience of executing successful Money Attachment Orders, with specific reference to the average amount of funds actually attached, the average amount recovered is around £325. Larger sums in excess of £1000 have been collected however they tend to be the exception rather than the norm. Nowadays, we are increasingly finding that ratepayers have very little cash on their premises at any one time which is possibly as a direct result of the current financial climate and the increased use of bank debit/credit cards.

When you take into account Sheriff Officers fees for executing this particular diligence is normally in the region of £250, on average there is little advantage to the Council of executing sporadic or untargeted money attachments. Furthermore, if there is less than £200 on the premises our officers will not execute the order as there would be very little financial benefit to the Council from doing so.

There are some specific circumstances though when the use of money attachments can prove to be effective tool for recovering monies due – especially if they are targeted.

Every year a sailing regatta was held in well know town on the west coast. The defaulting ratepayer owned a local hotel in the area and we were aware that an additional number of tourists were expected in the area and that the local hotelier would've been likely to experience an increase in trade over that weekend. We agreed with the Council to proceed with the execution of the Money Attachment Order on that weekend and were successful in attaching a large sum of money.

Using the property description field, we can extract all the cases from our systems that relate to the licensed trade e.g. public houses, restaurants, clubs, hotels, etc and working with our clients target the times of year when trade is likely to be up. In a number of circumstances we've found that local authority either had a direct or indirect role in organising local events and festivals. A quick cross-check with the annual calendar of local events is a very useful indicator of when trading is likely to be up and this can be used to target the timing of Money Attachments more effectively.

If the Council does want to target defaulters in the licensed trade, then we would recommend executing the attachment after 8.00pm, so as to maximise the amount of money held on the premises at the time of execution. Section 176 of the Bankruptcy and Diligence etc. (Scotland) Act 2007, prevents a Money Attachment Order from commencing prior to 8.00am or continuing after 8.00pm. We would therefore be required to apply to the local Sheriff Court, to have the authority to execute the attachment outwith the normal time frame.

In conclusion, the use of Money Attachment Orders can be effective, but it is all about targeting the correct cases and the particular diligence should not be used in a "scatter gun" approach. **Email: james.walker@walkerlove.com**

Out of Africa

David Walker

Managing Partner,
Walker Love

In addition to my day job as Managing Partner of Walker Love, from time to time I have the privilege of travelling all over the world in my capacity as a Board Member of International Union of Judicial Officers (UIHJ).

Possibly, my most interesting adventure thus far was the recent Africa – Europe Conference which took place in Lome, Togo, from the 25 – 27th September this year. As is the norm, when contemplating travel to such an exotic international location, my first port of call is our own Foreign and Commonwealth offices website and thereafter America's Central Intelligence Agency's site to establish the level of security and the likelihood of either being kidnapped or otherwise detained. Fortunately, both the CIA and our own FCO gave Togo a clean bill of health.

Having duly arrived in Lome, I was more than pleased with the VIP reception offered, being escorted into the diplomatic lounge to a very warm welcome from local dignitaries before being whisked away in a government Land Cruiser and escort.

Having travelled to Africa on several occasions before, I was already accustomed to the noise and clutter of a hectic African city and was completely at ease with the potholes, lack of street lights and the general absence of the kind of infrastructure which we take for granted in the UK.

After a good night's rest, our first morning involved visiting the business operation of a local Officer. Thereafter, I attended a meeting with the numerous African Presidents attending this international gathering.

The following day the actual Conference commenced in earnest which was very well attended by over 300 Judicial Officers from all over Africa. As is the norm, the Justice Minister was on hand to open proceedings followed by other speeches from other dignitaries including our own profession's World President.

Whilst the business session can be very informative, I have always found that the networking and informal discussions with the local delegates to be of greatest interest. Having spoken with numerous African colleagues and asking about the big issues in their country, there appears to be two reoccurring themes, being a lack of judicial recognition in terms of their national law and even more worrying, the complicated layers of bureaucracy and interference dependant on the debtor's political connections.

It was most gratifying and somewhat humbling to realise that in Scotland, we have a very stable, highly effective, transparent enforcement system which is completely free of government or political manipulation or interference.

UIHJ

For more detail, please refer to the full report which can be found at : **www.uihj.com**