WalkerLove
Sheriff Officers • Collections • Investigations

Keeping you informed

Council Tax Changes Ahead?

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Changing debt landscape • Local Authority Forum

Bankruptcy: using the new legislation to maximum effect

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Welcome

Welcome to the Winter 2015-16 edition of our Briefing for Scottish Local Authorities.

David Walker
Managing Partner,
Walker Love

We were delighted to host our most recent Local Authority Forum at Airth Castle Hotel at the end of October on a beautiful autumnal day.

Unfortunately, since then the weather has taken a decided turn for the worse, however there were no signs of dampness or colder air in the room on the day, quite literally, but we have been assured by the hotel that if we do return in future a larger room with fully working aircon will be of the order.

I'm delighted to now have the challenge of accommodating more and more local authority delegates at the Forums, as this tells us that we are doing something right. The feedback forms you complete at the end of each session give us some great ideas for future events in terms of speakers, topics and the type of issues you want to discuss during the breakouts. Ultimately, it is your comments which will shape future events.

As I mentioned on the day, we fully intend the Forum to be an opportunity for all sides of the collection cycle to come together to discuss the everyday challenges, as well as the strategic and economic issues that directly impact on our abilities to collect monies that are rightfully due.

With presentations and discussions on Council Tax Reform, developments and trends in bankruptcy since the new Act came into force, as well as receiving insights on the changing face of debt, we certainly weren't short of questions and debating points on the day. I do hope the articles contained within this edition provide you with a useful aide memoir.

Business Update

Walker Love, working in partnership with the TDX Group was delighted to be appointed by HM Government to help collect the significant outstanding sums that are owed to HMRC, DWP, Home Office and numerous other governmental agencies.

A very select group of collection and enforcement agents have been engaged across the UK to collect the approx. £22bn of outstanding tax liabilities and other monies owed to the UK exchequer form both businesses and individuals.

It's a significant coup for us to have been selected following an extremely rigorous and demanding selection process, which left, literally, no carpet tile, in our office unturned!

The good news for our Local Authority clients is that the investments we were required to make in our collections technologies, systems and our processes to be selected will have direct knock-on benefits for our Scottish LA clients.

Furthermore, we were also recently appointed to the AiB Payment Distribution Panel, which is now giving us some unique insights into the other side of DAS and how it operates.

We have also submitted our application to the Financial Conduct Authority (FCA) for our full authorisation, following the granting of the interim permission we received just over a year ago. The core focus of the new regulatory regime surrounds the customer experience and the individuals who influence and control the business, as opposed to the business itself. This is a significant change from the previous regulatory regime overseen by the FSA/OFT, and in our view, a change for the better.

Finally, our journey towards absolute quality assurance continues with our recent award of Investors in People Silver Standard and the launch of our online management training portal, MY721. You can read more about our IIP award on **www.walkerlove.com**

Best wishes to you all for the festivities in the coming season and I look forward to seeing you all at our first forum in Spring 2016.

E: davidwalker@walkerlove.com

Commission on Local Tax Reform

Neil Ferguson
Co-chair of the Commission on Local Tax Reform

Neil Ferguson, a civil servant seconded to the Secretariat of the Commission on Local Tax Reform from the Scottish Government, joined us to provide an update on the Commission's work.

The Commission's remit is to 'identify and examine alternatives that would deliver a fairer system of local taxation to support the funding of services delivered by local government.

In doing so, the Commission will consider:

- The impacts on individuals, households and inequalities in income and wealth.
- The wider macro-economic, demographic and fiscal impacts, including impacts on the housing market.
- The administrative and collection arrangements that apply, including the costs of transition and subsequent operation.
- Potential timetables for transition, with due regard to the 2017 Local Government elections.
- The impacts on supporting local democracy, including on the financial accountability and autonomy of Local Government.
- The revenue raising capacity of the alternatives at both local authority and national levels.

In conducting its work, the Commission will engage with communities across Scotland to assess public perceptions of the emerging findings and to reflect on this evidence in its final analysis and recommendations.

The Commission will report to the Scottish Government and COSLA.

Taxes in Scotland – Income and Expenditure

The responsibility for collecting most taxes in Scotland is responsibility of the UK Government with the taxes being collected by HMRC and receipts going to the UK Treasury.

In terms of yield, the largest taxes in Scotland are as follows: income tax (£10.8bn), NIC (£8.5bn), VAT (£9.3bn), Corporation Tax (£2.9bn), Business Rates (£2bn) and with Council Tax amounting to around £2bn of revenue.

The £2bn raised via Council Tax in 2013-14 represents around 12% of Scotland's 32 Local Authorities' total expenditure of around £16.5bn.

In terms of local government spending on local services, around two thirds is spent on education, social care and housing with the other third being made up of range of local expenses and services, including financing long term investments, environmental services, culture and recreation services and amenities.

Features of Council Tax

Paid by 2.4 million households (2.7 million households pay income tax), council tax has a very good collection rate of >96%, which is slightly below income tax (PAYE) of 98.5% but significantly above the self-assessment collection rate of 80.1%. Compared to other taxes, Council Tax is difficult to evade or avoid.

It is tax with a high visibility in that people have to physically make the effort to pay rather than it being withheld by an employer or included in the sale price in a transaction.

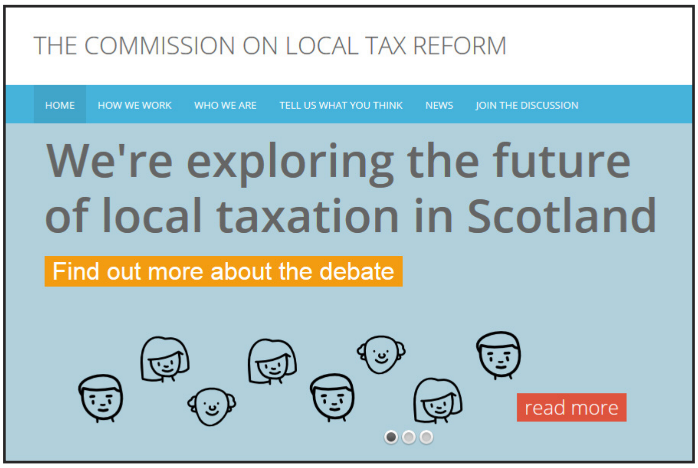
Council tax in relative terms has a low cost to collect, around <2% of receipts. This compares to Income tax PAYE which costs 0.7% and Income Tax self-assessment which has a cost of around 4.5% of receipts. Council Tax is also a fairly stable tax, in which receipts are very predictable compared to the pro-cyclical income and consumption taxes.

Some facts and figures

- 1991 Valuations – banding locked in until sale
- 25% Single Person Discount Legacy of Poll Tax
- Regressive – Local Authorities set the amount of tax due for homes in band D but legislation then sets out how much Council Tax that Local Authority is due for all the other bands using multipliers
- Band A is set at 2/3 of Band D
- Band H is set at double Band D
- 75% of properties are in Bands A-D, 1% are in Band H
- The agreement to freeze Council Tax has cost £70m pa and £560 million for 2015/16.

Commission Work to date

A great deal of the work to date can be reviewed and viewed online – cut and paste the following link into your browser: http://localtaxcommission.scot/.



Click on the 'Tell us What you Think' tab to review submissions, oral evidence sessions and if you go to the 'Join the Debate' tab you will see a list of public listening events that have taken place around the country. You can also review the minutes of the Commission's meetings and presentations/papers which have been presented before the Commission.

Emerging Evidence – Council Tax is unfair

The widely held view is that the present Council Tax is unfair due to its inherent regressive tax structure and the weak link to an individual's ability to pay.

Three alternative tax models have emerged from the evidence submitted to the Commission:

- A property tax – this could include a reformed form of Council Tax
- A local income tax
- A land value tax

The Commissioners are currently considering the evidence that has been received. The Commission is due to provide a final report shortly. The intention is that the report will help to inform the manifestos of the various political parties for the 2016 Scottish Parliament elections.

The Commission is not required to recommend a particular tax model, although it could. There is an expectation however that if a change is recommended and agreed upon that any change should mindful of the local elections in 2017.

Members of the Commission

The Commission is co-chaired by Marco Biagi MSP (SNP) and David O'Neill, President COSLA (Lab)

Jackie Baillie MSP (Lab) Shadow Cabinet Secretary for Finance, Constitution and Economy

Cllr Susan Aitken (SNP), Glasgow City Council

Cllr Catriona Bhatia (Lib Dem), Scottish Borders Council

Cllr Angus Campbell (Independent), Leader of Comhairle nan Eilean Siar

Cllr Rhondda Geekie (Lab), Leader of East Dunbartonshire Council

Dr Angela O'Hagan – Glasgow Caledonian University

Isobel d'Inverno – Law Society

Mary Kinninmonth – Citizen's Advice Scotland

Dr Jim McCormick – Joseph Rowntree Foundation

Don Peebles - Head of CIPFA Scotland

Andy Wightman (representing Scottish Green Party)

The Scottish Conservative & Unionist Party declined the invitation to take part.

Forum Discussion: Council Tax Reform

David Walker
Managing Partner,
Walker Love

Chris Bell
Partner,
Walker Love

James Walker
Partner,
Walker Love

Dorothy Lowe
Partner,
Walker Love

Andrew Fraser
Call Centre Manager
Walker Love

Julie Swan
Special Project Manager
Walker Love

What's your view?

Following Neil's presentation, the Local Authority delegates spent time exploring some of the issues being considered by the Commission. The discussions were facilitated by the Walker Love team: David Walker, Chris Bell, James Walker, Dorothy Lowe, Andy Fraser, Julie Swan and by Jill Hepburn from the Keylink Partnership.

Views of some of the participants included:

- Council tax should be reformed but we cannot go back to a model that resembles or is closely related to the Poll Tax, which failed people on so many different levels.
- Council Tax has a very low cost of collection – in today's financial climate and with most local authorities expecting further budget cuts it shouldn't be forgotten that council tax is very cost effective to collect and there is good collection rate >96%.
- Perhaps the name should be changed due to the negative perceptions that (may) have built up in some quarters. Change the name, but keep the tax and methods applied the same.
- There are numerous problems with a local income tax solution – probably too many to resolve in the time available, if some of the issues can ever be resolved.
- Good communications will be vital, especially if there is a change. It is paramount that whatever the Commission recommends, the solution(s) should be straightforward for all to understand and the transition from the current Council Tax to the new tax, or revised Council Tax, should take everyone with them – Councils, general public and everyone else who has a role to play in the collection of the tax.
- Fairness has to be the core aim. Whatever is recommended has to be fair to all, especially the most vulnerable members of society.

Commission publishes "Just Change" report

The present Council Tax system must end, with any replacement designed to be fairer, more progressive and locally empowering.

Those were among the conclusions of the cross-party Commission on Local Tax Reform – established jointly by the Scottish Government and Convention of Scottish Local Authorities (COSLA) – as it published its final report, Just Change: A New Approach to Local Taxation on 14th December 2015. **You can read the full report on the Commission's website: http://localtaxcommission.scot/**

Welcoming the report, Marco Biagi MSP, Minister for Local Government and Community Empowerment and Co-Chair of the Commission said: "From the outset – having agreed that the present system is unfair and in need of reform – we have worked together in a spirit of consensus to understand the alternatives available to us and to put to the people of Scotland a report that clearly sets out the steps that can be taken to deliver change.

"It is now up to politicians from across the political spectrum, to take the report and to use it to put to the Scottish people alternatives that are fair, workable and empowering for local communities."

Councillor David O'Neill, President of COSLA and Co-Chair of the Commission added: "As a result of our work, there is now a real prospect that Scotland's politicians are on the cusp of delivering lasting and meaningful reform. The opportunity to deliver lasting reform is one that must not be missed."

Bankruptcy: recent trends and what's new?

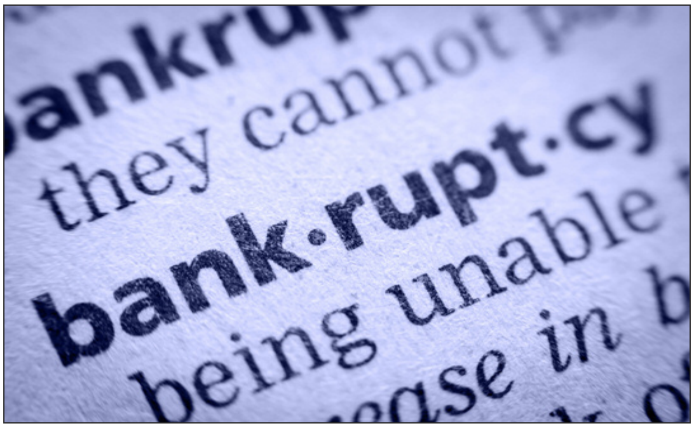
Recent trends in Bankruptcy

Alan Munro
Partner,
TLT LLP
alan.munro@tltsolicitors.com

Alan joined us to provide an update on current trends in bankruptcy and to highlight some of the decisions reached in some recent cases. He also took an in-depth look at using sequestration as a debt recovery tool, following the changes which came into play when the new Bankruptcy and Debt Advice Act came into force on 1 April 2015. Alan's presentation was given the day before the Q2 insolvency statistics were published by the AiB.

The overall trend in insolvencies has been downward since the LILA was introduced on 1 April 2008 and we have also witnessed a further sharp drop off in insolvencies since the new Bankruptcy and Debt Advice Act came into force.

There was a spike in the numbers in April 2015 which is likely to have been as a result of a small increase in applications before the new bankruptcy regulations came into force.



Creditor applications have remained steady since then, however debtor applications have fallen which may be due to a number of factors, but probably due, in the main, to debtors not having all information required to use the money advice tool. The tool forms a key pre-requisite step for debtors in the new Bankruptcy procedures.

The Q2 release has however bucked the recent downward trend and we have seen a 25%+ increase in the number of bankruptcies as well as a 14% rise in the number of DPPs compared to the previous quarter, however the overall year on year trend continues to be downward.

The key points from the AIB's Q2 Scottish insolvency statistics

- Total personal insolvencies for this quarter, which include both bankruptcies and protected trust deeds (PTDs) totalled 2,230 which, despite being 38.9 percent higher than the previous quarter, is 25.4 percent lower than the same quarter last year.
- There were 965 bankruptcies awarded this quarter, a 27.5 per cent increase on the previous quarter.
- The number of PTDs saw a sharp increase this quarter. The number of protected trust deeds rose 49.0 percent from the previous quarter to 1,265.
- The number of new debt payment programmes (DPPs) approved under DAS decreased 14.0 per cent to 456 this quarter.
- The total repaid through DAS continues to increase, a total of £9.6 million was repaid through the second quarter of 2015-16, an increase of 1.5 per cent on the previous quarter.
- The number of people accessing statutory debt solutions in Scotland increased for the first time in over a year. The total number of bankruptcies, PTDs and DAS for the second quarter of 2015-16 increased by 25.7 percent.
- The number of Scottish registered companies becoming insolvent or entering receivership decreased for the second quarter of 2015-16, with 180 companies becoming insolvent, down 8.6 per cent on the previous quarter.

You can view the full release on the AiB's website: http://www.aib.gov.uk/scottish-insolvency-statistics-2015-16-quarter-2-release

While the Q2 statistics represent a considerable increase in insolvencies compared to Q1, it is the sudden drop at Q1 which is more significant that the subsequent rebound.

Looking at the overall picture, there is a general downward trend in personal insolvencies. The peak was in Q1 of 2009/10 which saw the new availability of debtor applications combine with a global financial crisis to push quarterly numbers over the 6,000 mark.

We may see a return toward pre-2008 levels (between 3,000 – 4,000 per quarter), though presently the figures are lower. This has been partly due to mainstream lending being less readily available and mainstream lenders looking to forbearance rather than enforcement.

Sequestration as a debt recovery tool

Sequestration can be used as a remedy for the creditor where the debt is already established and it is normally used to maximise pressure on "can pay" debtors.

Profiling is vitally important – sequestration can produce a positive outcome in certain circumstances but not in others so the more homework, data analysis and profiling you do on each individual debtor the higher the likelihood is of you choosing a case which has good prospects of payment.

Sequestration also keeps up momentum built by earlier steps e.g. charge for payment, and if the sequestration proceeds, a trustee is appointed for the benefit of all creditors.

Requirements for a creditor petition:

- Debt of £3,000 or more
- Apparent insolvency (usually an expired charge)
- Must serve DAIP first (usually with the charge)
- Petition must be in Statutory Form
- May seek interim appointment on cause shown
- Warrant to cite will fix a hearing date
- Warrant requires personal service except on cause shown

A Sheriff must award sequestration if the statutory procedure has been followed. However, there are some exceptions which Local Authorities should note. The court can continue the case for 42 days for payment or if it thinks fit, for a debt payment programme to be entered into. In some rare cases a dispute over a debt or jurisdiction may require an evidential hearing. An extra-judicial settlement is often preferred by creditors.

So what's new in Sequestration?

There are a number of recent changes which came into force on 1 April, however I want to draw your attention to the 120 day rule for creditor claims.

If you are the petitioning creditor you still have to submit Form 4 in time. Furthermore, the Act has moved the scheme from three to four years.

Also, do beware of the new forms which have to be completed and filed with the Court. If you don't follow the new procedures and have all the right paperwork in place you could find your case thrown out.

If you're unsure, send me an email and I'll run over the changes with you.

Sequestration Outcomes

What can you expect if you are successful in your claim?

- Payment in full
- Payment of lump sum plus instalments
- Other negotiated settlement – communication
- Sequestration awarded –
- Expect dividend from property sale
- Expect dividend from DCO
- Housekeeping exercise

What have been the specific outcomes achieved by TLT/Walker Love in the last 12 months?

From 38 Walker Love petitions, we have achieved 15 settlements (39% settlement rate) and of these settlements: 5 have repaid in full, 5 paid a lump sum of over 50% of the balance with agreements in place for instalments and the remaining 5 paid a substantial lump sum with agreements for instalments.

Data Protection: Know the facts

- **A Local Authority is a "data controller" in relation to the personal information it holds in relation to taxpayers (DPA 1998 s1(1)).**
- **Walker Love, as a third party recipient of data who compiles it for the purposes of tax collection, is a "data processor" (DPA 1998 s1(1)).**
- **A "data controller" has a duty to comply with the data protection principles laid out in schedules to the Act (DPA 1998 s4(4)).**

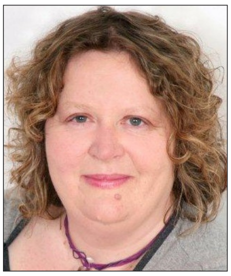
However, personal data processed for the purposes of assessment or collection of tax is exempt from the first data protection principle i.e. that the information shall be processed fairly and lawfully and shall not be processed unless one of the conditions in schedule 2 or 3 of the Act are met (DPA s29(1)(c)).

What does this mean? For the purposes of collecting tax the usual rules of compliance don't apply. A Local Authority is entitled to use the personal information it holds for the purposes of collecting local taxes. The Local Authority is the data controller and if it passes data to Walker Love, Walker Love becomes the data processor – because of the exemption, Local Authorities are allowed to do this.

The quality of information available to the Local Authority and it's 3rd party debt collectors is directly comparable to the quality of the outcome. More data = more intelligence = better outcomes.

Changing Debt Landscape

StepChange is the largest debt advice charity in the UK which provides, and creates greater awareness of, free debt advice and solutions. We champion the cause of people in, or at risk of, problem debt by speaking out on the issues that matter most to people in situations of financial distress, and by seeking to influence public and private policymakers and campaigning for change.



Sharon Bell
Head of
StepChange Debt Charity

Education is a vital component of what we do and we aim to enhance people's financial understanding and capabilities so that they can better manage their money and debts, and recover from problem debt.

Last year, StepChange helped around 300,000 clients across the UK, 16,000 clients in Scotland. Since the launch of our Scottish centre in 1996, we now have 32 staff and all of our advisers are fully trained, approved and fully briefed on the Scottish specific processes and statutory solutions.

What does Step Change do?

We are funded from the 'fairshare monies' provided by creditors and offer confidential and free debt advice, mostly over the telephone and through our online tool – Debt Remedy, to clients across the UK.

We also provide face to face meetings at one of our 8 centres across the UK to vulnerable clients. With 22 DAS approved advisers, providing DPPs for over two years, StepChange, as a continuing money adviser, retains the relationship with our clients from beginning to end.

We don't pass the file over to the AiB. Instead we maintain the continuity, and trust which has been built up in the client adviser relationship, during this personally distressing time to ensure that the client really does stand the best chance of breaking the cycle of debt.

Beyond debt advice, we provide clients with a range of services and advice, including: free credit checks, welfare benefits checks, secured lending arrears, debt advocacy, equity release for over 55s and we are also a member of the Panel of Insolvency Practitioners.

Creditor and Partner Engagement

StepChange has 800+ referral partners and over the course of the last year has witnessed partner referrals rise by 18% and creditor referrals increasing by 10% year on year.

Referrers include banks, utility companies, retailers, local authorities, NHS bodies, employers, other charities and the key social media platform operators. As well as partnering with key referrers in local communities, StepChange also organised 611 creditor and partner visits to their office network and held over 500 awareness raising sessions with community organisations.

Changing Debt Landscape

One of StepChange's core aims is to engage with people earlier and to educate people of all ages on how to manage their finances, the dangers of using credit as a safety net and explaining the reasons and the situations that can lead to how and why people fall behind in repayment plans.

As well as targeting individuals, particularly vulnerable individuals, StepChange is raising awareness amongst private and public policymakers on the impact that debt has on the UK economy and the knock on impacts on the individuals, the communities they live in and the longer term detrimental impacts of debt on our wider society.

Traditionally, StepChange clients had fallen behind with repayments due to the impact of a change in circumstance such as redundancy or relationship breakdown.

Their debts were more likely to be with a prime lender and consisted of, for example, credit cards, personal loans or overdrafts.

Once they had sought debt advice, their attitude was more optimistic and they could see how they could get back on track. However, we are now seeing more vulnerable people, living on the edge and in desperate need of help, not knowing if or how they can recover.

Recent statistical trends gathered from Step Change clients

In 2009, the difference between monthly income and expenditure was an income surplus of +£216. In 2014, this surplus figure has fallen to £129. In 2010, just under 24% of clients advised had rent arrears, in 2014 the percentage in arrears had grown to around 40%.

The average debt of each client in 2010 was around £17k-£18k, whereas the average debt last year in Scotland had fallen to around £12k-£13k. This is not surprising as the availability of credit has been significantly restricted by most lenders following the credit crunch, however, as the economy is now well into recovery we are beginning to witness more credit being offered more freely again and we would expect this figure to rise again during the next period.

Clients' average incomes in Scotland have risen overall, however there are some areas e.g. Perth and Stirling where average income has fallen.

The % of clients in arrears with their council tax in Scotland has risen from around 17-18% to 36%-37% between 2010 and 2014. We have also witnessed the arrears value rising from just over £1k to around £1.6k in the same period. Similarly, the % of clients in rent arrears in the same period was has risen from 20% to 30% with the value of arrears across Scotland also rising from around £600 to £650.

30% of clients are in social housing and 30% are behind in their rent. For those that have 3 or more children, 17% don't have enough money to live on – debt isn't always a choice for some.

Who uses our services and what do we recommend?

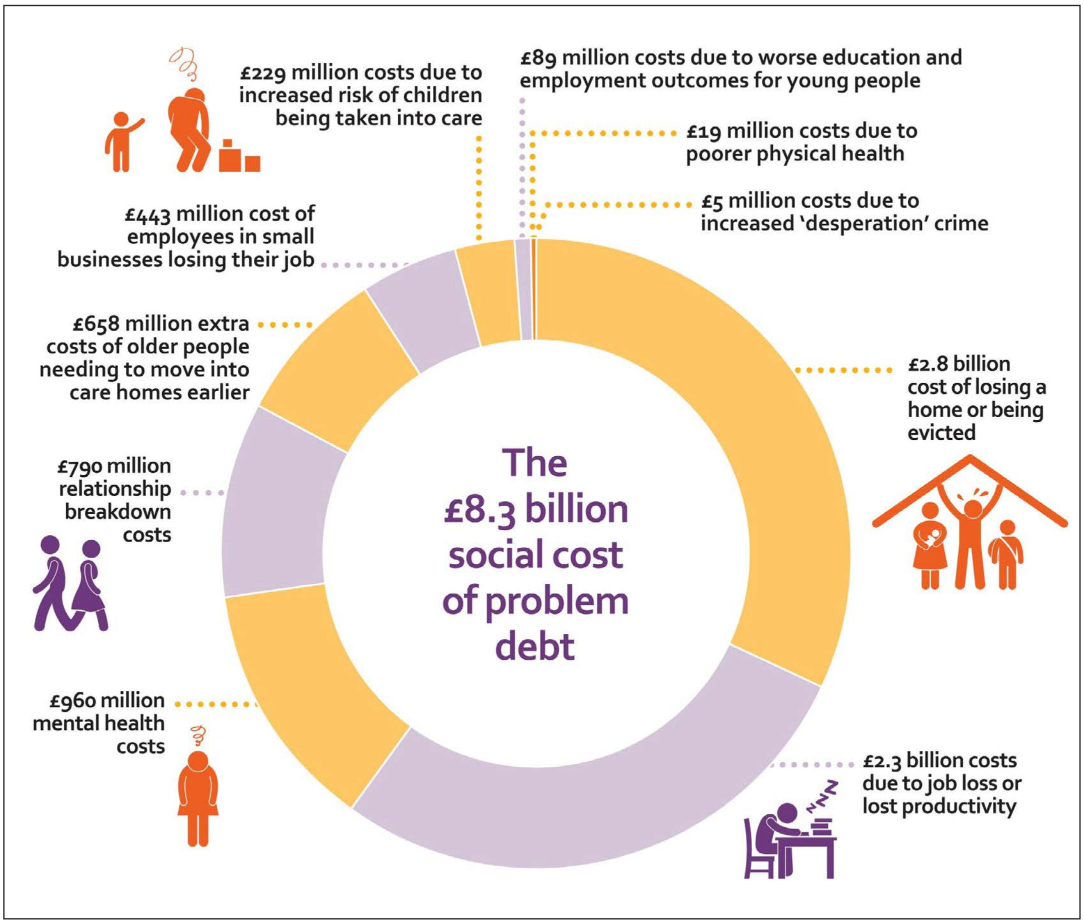
Just under 16,000 people contacted StepChange last year. We advised 7,770 via our Glasgow office and just over 8,000 via Debt Remedy. The average age of our clients is 42, with the 40-59 age group experiencing the highest levels of debt.

The average unsecured debt is around £12,350 down £1,184 since 2012 and just over 30% of clients have rent arrears and a similar number are experiencing mortgage repayment difficulties. Total disbursement for Scottish clients last year was £10,000,000.

There are a variety of solutions available to clients, however the main problem is that most people don't have the information they require to access some of the options available, which can often result in a longer process than necessary to collate all the information in order to select a specific option. The result – more debts accumulate during the information gathering process which is detrimental for all involved.

Scotland in the Red – 2014

The **Scotland in the Red** report looks at the changing nature of debt problems in Scotland. By analysing our extensive data, based on over 147,000 UK telephone debt advice sessions in 2013 (6,584 in Scotland) and over 96,000 (4,369 in Scotland) in the first half of 2014, we can see some of the key issues that are affecting people with problem debt. We also compare debts in Scotland with the other nations of the UK, the eight Scottish Parliament electoral regions, and the 73 Scottish Parliament constituencies.



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