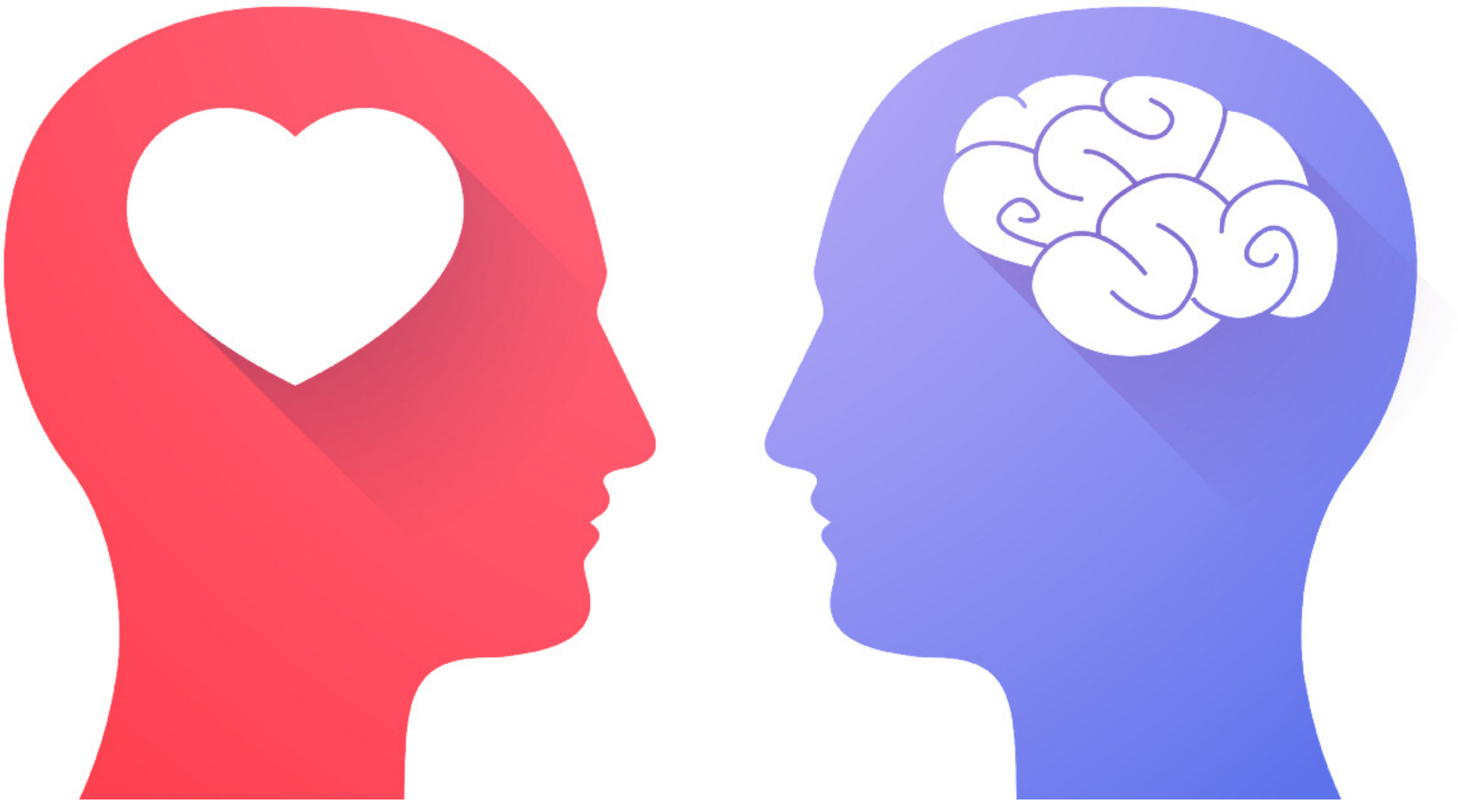
WalkerLove
Sheriff Officers • Collections • Investigations

Keeping you informed

Treating Vulnerable Customers Fairly



What needs to be done?

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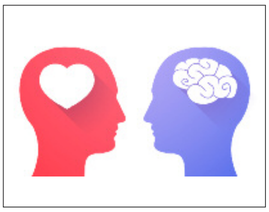

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Welcome

Welcome

to the Summer 2016 Briefing.

David Walker
Managing Partner,
Walker Love

Since the last Local Authority Forum in October it's been another busy and exciting period for Walker Love.

We became the first firm of Sheriff Officers & Debt Recovery specialists in Scotland to receive full authorisation from the Financial Conduct Authority (FCA) to carry out debt recovery and revenue collection services in the UK.

Receiving FCA authorisation is another significant milestone for Walker Love. As Officers of the Court responsible for enforcing the civil law in Scotland, treating customers fairly whilst safeguarding an individual's dignity and legal rights is in our DNA.

It has been our firm's ethos for many years to discharge our duties fairly and impartially, so it wasn't a giant leap for us to go through the rigorous application process in order to receive our FCA licence.

Following Neil Ferguson's presentation at the last Forum, we were also pleased to see the Commission on Local Tax Reform publish its findings & recommendations.

Based on the Commission's recommendations, we are unlikely to see any radical changes to the current council tax model, which from our perspective is a good thing. It provides certainty and lets us all get on with the job of improving collection rates in the year ahead without the threat of upheaval that significant reform would have created.

As Neil mentioned at the Forum, with an overall collection rate of >96% in Scotland, just 2.5% short of the collection rates for PAYE, it is a difficult tax to evade or avoid and the majority of Scottish people are happy to pay for their local services in this way.

On the business front, as well as winning a contract to assist HM Government/DMI to collect outstanding Corporation Tax and NI contributions, we were also delighted to be re-appointed by three key Local Authority Clients in the past few months: Glasgow City Council, Fife Council and Scottish Borders Council.

We are also experiencing an upturn in traditional Sheriff Officer Instructions, which is another positive for the firm.

The centralisation of our West of Scotland diligence centre is also well underway. Our new office in Smithhills Street, Paisley will shortly house our Glasgow, Dumbarton, Paisley & Hamilton diligence teams, which will help us to co-ordinate and deploy our resources more effectively.

This additional capacity will provide space to grow our collections operation and also help us to respond quicker to urgent requests and in turn drive further internal efficiency savings, as we seek to cut our cloth accordingly in the new economic environment we are all now operating in.

One final point to mention is that following our session from Alan Munro, TLT Scotland who gave a talk in October on what data can and cannot be shared under the Data Protection Act and the role of the data processor and data controller, we currently have a rather innovative pilot project running with Call Credit and one of our client's. I will keep you posted as this progresses.

We are also aware of imminent changes in EU data protection legislation which will feature in our next LA Forum, although given the Brexit vote outcome, we may have to wait and see if the legislation will be implemented in its current form in the UK. In the meantime we have included the short piece on Data Protection: Know the facts in this edition as an aide memoir from the last Forum.

We were delighted to be joined at the June Forum at Houstoun House Hotel, by Yvonne MacDermid, Chief Executive of Money Advice Scotland, Gary Weir, Revenue & Collections Manager, Glasgow City Council and Carol Kirk from the Accountant in Bankruptcy. A synopsis of their talks can be found on the following pages.

If you would like to discuss Data Protection and sharing information with us to improve collection rates, or discuss any of the other issues raised at the Forum in June, do drop me a note or give me a call. I would be delighted to hear from you.

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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 3rd party recipient of data who compiles it for the purposes of tax collection, are 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)).**

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 the 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 its 3rd party debt collectors is directly comparable to the quality of the outcome.
More data = more intelligence = better outcomes.

Missed an edition ?

You can download previous editions at walkerlove.com

Citation and Diligence
Revenue Collection & Enforcement
Professional Investigations
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Money Advice Scotland: Scotland's Money Charity

Money Advice Scotland (MAS) is the national umbrella organisation which promotes the development of free, independent, impartial, confidential money (debt) advice and financial inclusion.

MAS serves a membership of around 150 members covering organisations and individuals drawn from local authorities, CABs, and other voluntary projects, who all provide money advice. Other members who are supportive of our objectives include Insolvency Practitioners, creditor and debt collection organisations.

moneyadvicescotland
Scotland's Money Charity

We were delighted to be joined by Yvonne MacDermid OBE, Chief Executive of MAS at the recent Forum. Yvonne provided an overview of MAS's strategy and the everyday challenges MAS members experience in carrying out their work and how MAS is working hard to become the driving force for the financial wellbeing for the people of Scotland.

Money Advice Scotland – Strategy 2015-18

1. To lead and improve the education, training and qualifications of money advisers in Scotland.

2. To lead and improve the financial health and wellbeing of the people of Scotland.

3. To lead and improve public and social policy in Scotland.

"Keeping up momentum and being the driving force for the consumer and the broader community is key to realising our strategic aims", stated Yvonne MacDermid as she addressed the Forum.

"We've had a long association with, Walker Love and many of the Local Authorities in the room, and MAS has a very good understanding of the debt recovery and council tax collection business and the issues and challenges that you face as you attempt to recover the revenues owed to you".

"It's imperative as we work towards improving the financial health, knowledge and awareness of Scottish consumers, that all of the organisations involved in the debt recovery and money advice sector work together to devise and implement solutions that produce satisfactory outcomes for everyone, and solutions that truly create lasting change.

Solutions that tackle the underlying problems of financial illiteracy and consumers understanding of the consequences of debt and poor money management.

Solutions that prevent the spiral of debt and the follow-on symptoms which impact not only the individual's well-being, but the well-being of their families, friends and communities in which they live.

I'm pleased to say that by through the collaborative approaches we in the money advice sector are taking and the partnership working which is ongoing with the debt management industry, legislators, the Scottish Government and Scottish Local Authorities that we are on the right road to making the improvements we all know are needed.

It's pleasing for me to report that one of the most popular modules we offer through our Financial Capability Programme is the Budgeting module. We have over 2000 people currently undertaking the module and we are also rolling our training sessions for Local Authority staff to aid their understanding of how the tool works and the differences it can make to peoples lives.

This commitment to self-improvement provides us with a really good indicator that we are getting it right. If we offer the right advice and make it accessible and convenient for consumers to access then they will get involved. We're keen to see more people enrolled on the module and will be making a further push in this area over the next 12-18 months.

It will be of little surprise to many of you to learn that council tax debt queries are the number one query our referral helpline receives from worried consumers. Many other consumer debt agencies have been reporting similar trends over the past couple of years.

However, the difference between MAS and other agencies is that we offer follow-up calls following the initial referral.

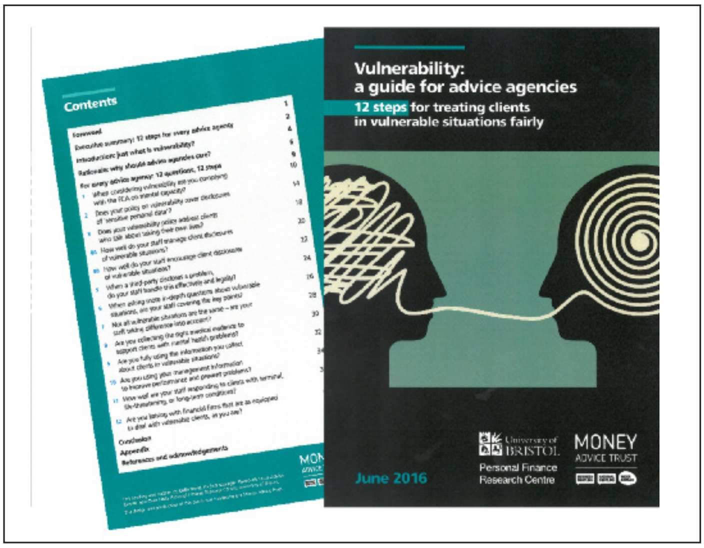
The follow-up calls have been a major success in tackling the issues surrounding debt. We're no longer experiencing the fall-offs we had in the past and as Walker Love and the Authorities are aware, once people fall-off it is very difficult to get them to re-engage. We're keeping up momentum and ensuring that once someone engages with the service we do all that we can to ensure they remain engaged.

What makes people vulnerable?

According to the FCA, "A vulnerable customer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care".

In a recent FCA occasional paper published in association with the Money Advice Trust (you can access from here: http://goo.gl/nKvUpj) entitled **Vulnerability: a guide for advice agencies – 12 steps for treating clients in vulnerable situations fairly**, there were a range of risk factors identified and solutions proposed to mitigate the risks and to avoid the risks arising in the first place.

I would recommend that you take a look at the guide and the recommendations contained therein. There were two points which came out strongly when dealing with vulnerable individuals - contact with NHS & social care providers; and the general sense of improvement that we are witnessing.



Partnership working between organisations like MAS, Walker Love and Local Authorities is being cited as key to addressing the issues that arise when working with people who are not only experiencing financial difficulty, but also a combination of personal, emotional, and other life problems.

To conclude, Yvonne posed the Forum two questions and provided her views on the solutions, with further discussion taking place during the workshop sessions.

What can the money advice sector do?

Ensure that advisers are well trained, knowledgeable and operate within CONC; and that advisers are aware of the FCA Occasional paper, of the various Codes, Mental Health guidelines and other relevant legislation.

The sector needs to continue to work more closely with the industry and share best practice with others.

What can creditors and debt collectors do?

They should recognise that the balance of power is leaning towards them and they should be cognisant of this and use their emotional intelligence accordingly.

They should treat individuals as individuals – one size doesn't fit all – and embed empathy within their practice, with consumers at the heart of all their policies and procedures.

The New Legislation: the experience so far

Carol Kirk from the Accountant in Bankruptcy joined us at the Forum to give us an update on the impacts and effects of recently implemented legislation and what we are likely to see coming forward in the next 12-18 months.

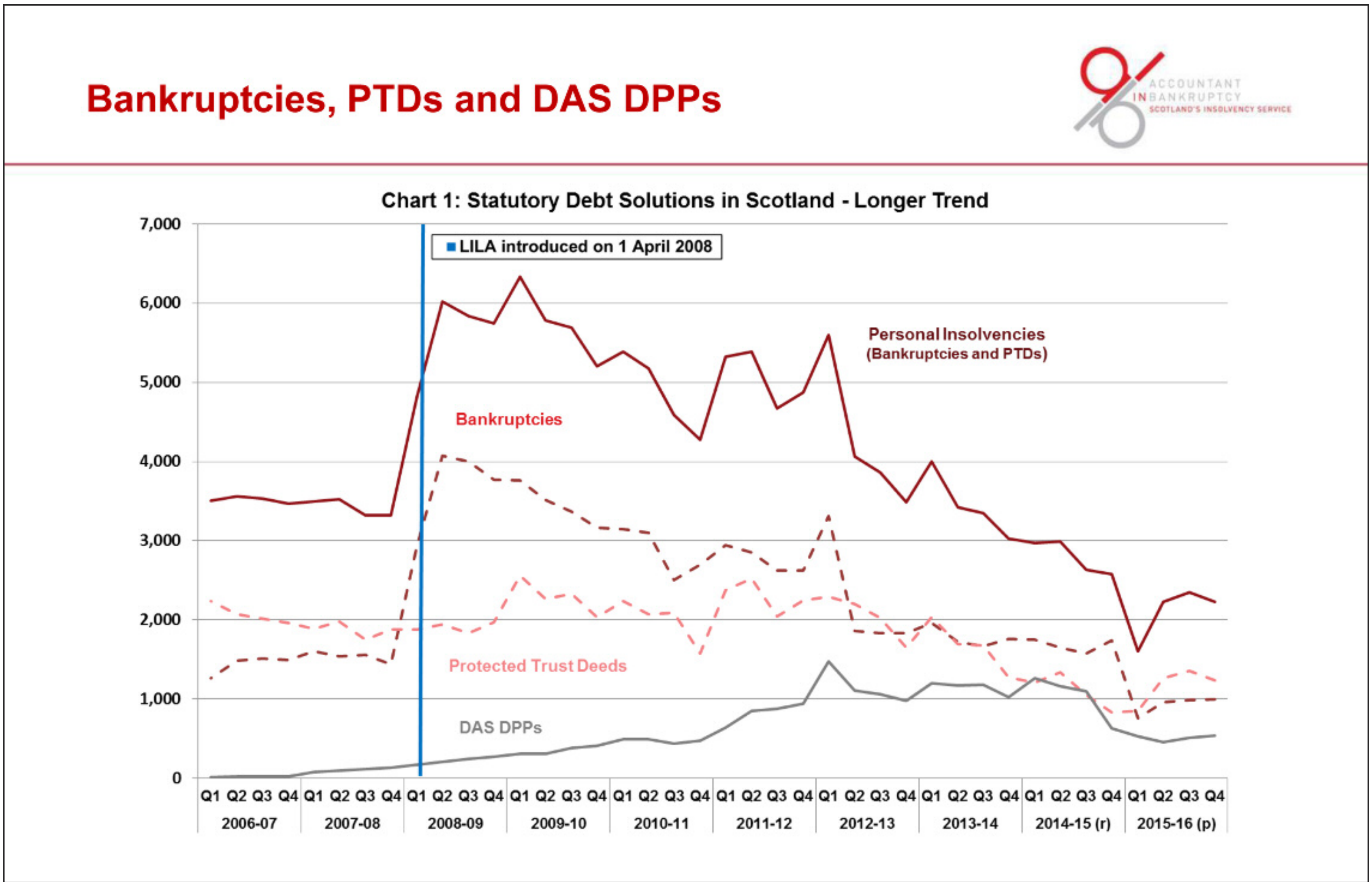
Recently implemented Legislation & Regulations	What's on the AIB's agenda 2016/17?
Protected Trust Deed (Scotland) Regulations 2013	Protected Trust Deed Review
Debt Arrangement Scheme (Scotland) Amendment Regulations 2013 and 2014	Debt Arrangement Scheme Review
Bankruptcy and Debt Advice (Scotland) Act 2014	Diligence Review
Bankruptcy Scotland Act 2016	Bankruptcy and Debt Advice Review
Other changes: introduction of BASYS	Bankruptcy Scotland Act 2016
	Corporate Insolvency – new rules

The situation in Scotland has been broadly similar to other countries around the world - bankruptcies and insolvencies are on the decline, in fact they dipped radically over the past 12 months.

This is thought to be in part due to the lack of availability of credit and the stricter terms and procedures that borrowers now need to adhere to and go through in order to pass lenders affordability tests and credit criteria.

However, we are beginning to witness an increase in consumer confidence and the spending that goes with that, and we do foresee a rise in personal insolvencies and bankruptcies as we move through 2016. However although we expect a rise, we do not expect them to reach the levels we were experiencing a few years ago – see graph below.

What has been difficult to square, and why we are expecting a rise in 2016/17, is what is being reported in the real world.



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Although bankruptcies and insolvencies are going down, the National Debt Line helped more than 430,000 people last year to tackle their debt. A recently published Money Advice Scotland report stated that 8 million people have problems with debt – 40% of people do not have a savings buffer of £500. When you add in the fact that Trussell Trust foodbanks gave more emergency food supplies to people last year than they did the previous year, it does appear that we are walking a very thin line.

Key areas for 2016-17

Due to the amount of recently implemented legislation and regulations our focus over the next 12-18 months will be on consolidating, reviewing and updating to ensure the aims and intentions of the new rules are being experience in practice.

We are currently looking at Protected Trust Deeds (PTDs) to determine the effectiveness of the changes brought in by the 2013 regulations and if any further development work could be carried out to enhance PTDs. Similarly, we are looking at DAS to see if any further refinements or improvements are required.

We received a good response to both the PTD and DAS consultations and hope to issue our findings shortly. We will then issue our response to the consultations over the summer.

As you'll be aware the Bankruptcy and Diligence etc. (Scotland) Act 2007 brought into force a range of diligence measures however there were few diligence measures that have not yet been brought forward: Land Attachment, Residual Attachment and disclosure of information. We received relevant feedback from the Society of Messenger at Arms and Sheriff Officers last year which is helping to inform a consultation document due to be issued shortly.

This will look at all diligence measures, including those that have not yet been brought forward. Based on this timetable, we will aim to publish the findings by the end of 2016, with any changes being implemented during 2017/18 parliamentary session.

The modernisation of the corporate insolvency rules in Scotland is long overdue and there are number of proposals on the table which we will be looking to take forward over the next 12 months.

Amending the receivership rules and the process of winding up companies to bring Scotland into line with England & Wales is a priority, as well as developing modernised corporate insolvency rules. The work is scheduled to commence in April 2017 and a working group has already been established to tackle this project.

The UK Insolvency service is also developing new rules for administrations and Company Voluntary Arrangements – it's part of the same UK wide project, which has an overall aim to achieve consistency and to create rules that work for practitioners, not against them.

You can keep up to date on these developments and the work of the AIB by visiting our website: www.aib.gov.uk.

Workshop Discussions

David Walker

Dorothy Lowe

Chris Bell

James Walker

The workshop discussion session hosted by Walker Love partners, David Walker, Dorothy Lowe, Chris Bell and James Walker focused on three issues:

- **Is DAS working for the creditor?**
- **What next for heritable property – land attachment / inhibition on summary warrant?**
- **How would information disclosure work in practice?**

As mentioned on the day, we intend to send the key points raised during the workshop discussions to Carol Kirk, AIB to feed into the review the AIB is undertaking of existing legislation and practices.

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Is DAS working for the creditor?

The general consensus of the room was that DAS is not working for benefit of local authority revenue collections. Various specific issues were identified including the following:-

Problems encountered in revoking DAS.

Customers are "playing the system".

Minimal return relative to value of the debt (e.g. paying £7.00 per month to a £7,000.00 debt).

No commitment to paying ongoing Council Tax liability.

Several cases have been allowed to repay the debt over 25 years.

The local authority is effectively excluded from the client / AiB / Money Advisor relationship.

Significant administrative overhead for the local authority personnel.

DAS does not achieve the Council's aim of breaking the cycle of debt.

Can be used to stop diligence / enforcement with no actual intention of repaying what is due.

Many delegates recommended that revocation should be automatic (possibly similar to Time to Pay Order / Direction).

Many delegates suggested that Council Tax should be regarded as a priority debt

Payment holidays are being abused.

Lengthy process to confirm debt and repayment offer (could this process be accelerated).

It should be the responsibility of the AiB or the Money Advisor to police compliance with the repayment scheme not the creditor.

There is no maximum number of times that the customer can default before being excluded from further DAS.

If an application for revocation is lodged, there is no reason given for non-acceptance.

Very labour intensive – start up time, a very significant problem, confusion over joint and several liability possibly included in a separate DAS.

Very few success stories – it would be better to set up a normal repayment arrangement.

The set up period should be less than 6 weeks, also the DAS repayment plan should not extend beyond 10 years.

What next for heritable property – Land Attachment/Inhibition on summary warrant?

The consensus of the room was that Inhibition should be available for Local Authority creditors to use on summary warrants as opposed to the current practice whereby, it is necessary to abandon the summary warrant, including the 10% penalty and thereafter commence a repayment action in the Sheriff Court.

Other comments included:-

Land Attachment should be available for second homes or other property not actually occupied by the customer / debtor.

At present, bankruptcy / sequestration is used to realise equity, possibly a high bred of Residual Attachment could be used to attach equity in the property as opposed to Land Attachment or Bankruptcy.

Inhibition on summary warrant would be very useful where it is identified that a property is being actively marketed as it is necessary to raise a separate court action. It is entirely possible that the property will be sold before the Inhibition can be placed.

Land Attachment on abandoned properties would be very desirable.

If Land Attachment is introduced then there should be a minimal threshold value, possibly £3000-£5000.

Land Attachment could be used for commercial premises as opposed to the customer / debtor's dwelling place.

How would information disclosure work in practice?

The consensus of all delegates was that information disclosure is highly desirable to facilitate efficient and effective recovery of Council Tax and other local authority debt.

Specific comments included:-

It is anticipated that there would be very significant volumes so a suitable infrastructure and interface will require to be created.

Information disclosure is only available following the issue of a decree / summary warrant and after service of charge for payment giving the debtor 14 days to settle.

There should be a reasonable fee which is recoverable from the debtor to pay for the administration of any new I.T. system or third party interface / relationship.

The creditor requires to have a minimal standard / level of information including date of birth and current / recent address (possibly NI number, if available)

It was noted that the primary legislation has already passed the DPA and Human Rights Test so this should not be an obstacle.

It would be necessary for the creditor to demonstrate that he has attempted all other conventional methods of enforcement prior to applying for information disclosure.

Since the abolition of poindings and warrant sales, Earnings Arrestment has been the preferred method of enforcement. Accordingly, creditors should be permitted controlled access to relevant employment databases.

It will be necessary to identify a trusted third party to manage the interface, on the basis that the current court administration may struggle to cope with the potential volume of enquiries and associated administration, this may be a role for the AiB similar to the DASH hub.

In terms of tracing, DWP / HMRC information would be invaluable.

The process should be relatively straight forward with minimal delays in feeding back the information.

Ideally direct preferred trusted access – possibly similar to CIS system, used for benefit cases

Possibly use a blend of commercial credit reference agencies to assist in profiling prior to making an application for information disclosure

Possibly supported by new Inland Revenue Scotland Organisation

It was noted that the Local Government Scotland Act 1992 has a provision for requesting specific information from a customer / debtor. Failure to comply results in a £50 penalty with no further recourse. Perhaps this legislation could be used to augment the provision for local authority / Council Tax recoveries as opposed to ordinary creditors.

Improvements gained by working in partnership

Glasgow City Council and Walker Love

Gary Weir, Glasgow City Council, Service Delivery Manager (Debt Management & Credit Control), provided the Forum with his views on the benefits of working in partnership with Walker Love and the improvements in collection rates they have experienced since the project began.

In 2015/16, GCC's Council Tax and Non-domestic rates collection rates were 94.75% and 97.43% respectively. Whilst recognising this is still below the Scottish average, it does represent a significant and sustained improvement in collection performance, in an extremely challenging environment, compared to 10 years ago when GCC was collecting less than 90% of Council Tax owed.

Innovation in our collections strategies, campaigns and methods of working were a necessity, rather than a desire. GCC's CT & NDR recovery strategy was re-vamped to focus on a number of key areas, including:

- **Breaking the cycle of debt**
- **Maximising in-year recoveries**
- **Segmentation of debt types to enable deeper analysis**
- **Making adjustments to our recovery timetable**
- **Devising a first and second debt placement strategy**
- **Passing warrants to their debt management partners**
- **Ensuring accuracy of all liabilities**
- **Streamlining internal processes and procedures, as well as defining clear court processes**

GCC view joint working as being one of the key elements in driving further improvement of collection rates. Sharing information, accessing combined resources, capabilities and experience of the Council staff and GCC's debt management partners, is at the centre of the approach now being taken.

Co-location of GCC debt management staff in Walker Love's Glasgow office has been a major success. Staff from the respective teams sit side by side in WL's Glasgow office, they share common goals, practices, intelligence and resolve issues quickly, thereby keeping up the momentum and making faster progress through the recovery strategies.

Walker Love matched our ambitions for joint working and by working together we have been able to make significant recoveries from a difficult case load. We knew before we began the project, that a different approach was going to be required to collect from this historic and reoccurring case load.

Additional joint working initiatives have also helped us to improve our collections performance and the intelligence we hold on debtors. The joint working initiatives have included, conducting joint interviews with clients, using and sharing information – Connexus, Callcredit, credit reference, Locta, landlord registration and financial / benefit profiling.

Finally, to be recognised at last year's IRRV awards by our fellow debt recovery professionals is an achievement on its own, to actually win the award, was truly fantastic reflection on all of the hard work the GCC and joint working teams have put in.

Council Tax: Case Study

The customer owed >£14,000 of CT. Visits had proven unsuccessful due to issues with the flat's position. The new owner has been verified and billed and we traced her using Locta and Credit Reference information. Walker Love traced her place of work to a remote Scottish island and made contact. An arrangement was agreed, but the customer defaulted and moved areas. We again traced her and made contact. The customer made a lump sum payment and a new arrangement was agreed and the empty property sold.

Non-Domestic Rates: Case Study

Clothes retailer in a city centre location, with a history of non-payment. The customer had registered the shop under a new company name and a new sub-lease was provided. GCC & WL investigated and found the customer to have been the director of the new company and the old company with the non-payment history. GCC investigated the liability issues (EPR and permission to sub-let) and conducted an interview with the customer and Walker Love executed an attachment. The customer made a lump sum payment and entered into an arrangement with GCC.

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34 Sheriff Officers and offices in 10 cities and towns across Scotland

Offices in: Aberdeen, Dumbarton, Edinburgh, Glasgow, Hamilton, Hawick, Inverness, Kilmarnock, Kirkcaldy and Paisley

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