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Keeping you informed

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Are you ready for the GDPR?

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Welcome

David Walker
Managing Partner,
Walker Love

I do hope that you all enjoyed the last Local Authority Client Forum, which was held at MacDonald Houstoun House, just outside Livingston. We had really good feedback from the previous event, held their last spring and decided to re-book for the Autumn Forum. I think it may well become a semi-permanent home for the Forum but do let me know what you think before we make the booking for the Spring 2017 event.

I thoroughly enjoyed hearing from Jim McCafferty, Immediate Past President of the IRRV and his lifetime views on the operation of public services in the UK. I'm sure Jim's talk resonated with many in the room. If you missed it, there's coverage in this edition and Jim has also provided us with an opinion piece, which captures the essence of much of what was said on the day.

We were also delighted to have Ross Nicol an IP specialist lawyer from Maclay Murray & Spens LLP at the Forum. Ross gave an extremely informative talk on the new General Data Protection Regulations (GDPR) and the implications for local authorities. The GDPR will replace the Data Protection Act 1998 and it comes into force soon, with compliance required by 25 May 2018. I think the silence in the room was very telling. We will all have much to do to get ready to comply.

I would like to extend my special thanks to Kelly Quigley and Fiona Wilson, AIB who agreed to speak at the Forum at the very last minute! They definitely enhanced our programme for the day and there's a short summary included on p11. As Kelly stressed on the day, if you did miss out on providing your views during the AIB's recent consultation, then do take her up on the offer to send her your comments on how you think DAS can be improved.

Since the last Forum in June, it has been yet another busy and exciting period for Walker Love. We've seen an upturn in traditional Sheriff Officer instructions, which have been most welcome following the rather fallow period during the recession. We're also just about ready to move into our new Westcoast Diligence Centre in Paisley. We are centralising our diligence operations as well as basing our over-flow collections operations and some of our debt recovery operations in the new office. Our Glasgow office is quite literally bursting at the seams, so we are all looking forward to December when the office opens for business.

We've also completed our Collection Department restructure and have made a few changes, including appointing Andy Fraser as our dedicated training manager and we have appointed Moira Morrison as our new Compliance & Oversight Manager.

Andy Fraser
Training Manager,
Walker Love

Moira Morrison
Compliance & Oversight Manager,
Walker Love

We're also currently working with SMASO and the AIB to conduct a diligence review of the BAD Act 2007 and we are working with CallCredit 360 and Argyll & Bute Council to look at the most effective way of sharing data to improve collection rates. I hope to provide an update for you at the next Forum in the Spring.

I hope to see you there. But before that, I do hope you and your family have a wonderful festive season and on behalf of all the partners and staff at Walker Love I wish a guid new year to ane an'a.

Data Protection on Steroids: Are You Ready For The GDPR?

Data Protection Update

Ross Nicol, Partner, Maclay Murray & Spens LLP
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The present regime

In the UK, the primary legislation governing the collection and use of personal data – data which is capable of identifying a living individual, such as a name or an email address - is the Data Protection Act 1998. This legislation provides that where an organisation is using or storing the personal data of an individual – also known as a "Data Subject" – they must do so fairly and securely.

Under the Data Protection Act 1998, there are 8 data protection principles which organisations that are responsible for the processing of personal data (“Data Controller") must adhere to. If organisations do not comply with these principles, the Information Commissioner's Office has the power to impose financial penalties and it is not uncommon that fines of up to several hundred thousand pounds are imposed for personal data breaches.

However, over the coming months, businesses and other organisations, including public bodies such as Local Authorities, will also need to consider the impact that the incoming EU General Data Protection Regulation (“GDPR”) will have on their activities before it is implemented into UK law in May 2018. It should be noted that GDPR should become part of UK law before Brexit takes effect and so organisations would be well advised not to postpone considering the changes they may be required to make to their data processing practices until an agreement is reached in respect of the application of EU law in the UK post-Brexit.

In very broad terms, the principles set out in the 1998 Act will continue to apply under GDPR but the obligations have been enhanced in a number of important ways. Furthermore there will be some important changes; for example local authorities will no longer be able to rely upon "legitimate interests" as a basis for processing personal data.

Now is the time to act

Notwithstanding that there are 18 months to go before compliance with the GDPR is required, organisations should now be beginning to consider how they will create, adopt and follow the new policies and procedures that will allow them to process data in conformity with the new legislation. Under the GDPR, Data Controllers may find themselves facing fines of up to EUR 20M or 4% of their annual global turnover for personal data breaches and so it is exceptionally important that they are aware of the changes the new legislation will make to their current data protection obligations, at the risk of falling foul of considerably higher fines than may presently be imposed.

Data protection obligations are currently the responsibility of Data Controllers, who may not always be the party that is responsible for collecting the data; indeed, it is not uncommon that a 3rd party is used to collect and process personal data on behalf of the Data Controller ("Data Processor"). This is soon set to change under the GDPR, which provides that Data Processors, in addition to Data Controllers, will have to conform to a number of obligations, breach of which may result in a fine being imposed, and so it is important that Data Processors also consider the impact the GDPR will have on their activities.

Consent

The GDPR will require organisations to be given express consent from the individuals whose personal data they process (“Data Subject”). They will also be required to demonstrate how they obtained the Data Subject’s consent and how they have stored and used the data within the specific parameters the Data Subject has permitted and agreed to.

Under the current data protection regime, it is possible that Data Subjects may give their implied consent to Data Controllers processing their personal data and there is likely to be a significant amount of personal data currently on organisations' databases which is held on this basis. Organisations may therefore need to reconsider their approach to obtaining Data Subject consent and amend their practices as required to ensure that explicit consent is given.

On a practical level, most organisations will be in touch with the Data Subjects from whom they collect personal data on a regular basis and so a procedure could easily be introduced to request explicit consent from Data Subjects in the normal course of business or other activities of the organisation, for example, by introducing a "consent to data processing" check box in communications. However, where there is less direct contact between the Data Controller/Processor and the Data Subject, strategies may have to be developed to ensure compliance with the GDPR.

Accountability

An outcome of the GDPR will be that Data Subjects will be much more aware of what their data is being used for and will give them the opportunity to object to its collection, storage and usage for purposes which are unnecessary, unlawful or unreasonable.

Local Authorities will have to make efforts to provide their customers with information at an appropriate juncture if they want to collect, store or use their customers' data. An appropriate juncture would be at the data collection point or promptly after obtaining data from a third party source (including as part of the first communication and certainly prior to the disclosure of data to a third party).

In certain circumstances, Data Subjects will have the right to: object to organisations holding their data; request that their data is deleted and; the right to restrict how their data is processed. Individuals will also be able to withdraw their consent to the data processing at any time. Additionally, if a Data Subject requests access to the data held about them by an organisation, the organisation must not delay their response and in any case, respond within one month.

It has been suggested that a best practice measure will be for organisations to provide data subjects with self-service access to the data held on them. This would enable people to review exactly what information organisations hold and how they have used, or will use the data. Providing access via the organisations website/portal which leads to the customer database has been suggested as a way of achieving this, but this will present most organisations with additional and significant data security risks. It remains to be seen what developments there will be in this area.

As with the existing law, data transfers outside of the EU are covered by the GDPR. If an organisation intends to transfer data outside the EU for whatever purpose, the data subject must be informed about the transfer and how the data will be stored and used. Additional obligations will apply to such transfers outside of the EU and organisations will need to ensure compliance.

Action Plan

Local Authorities should begin formulating the compliance strategy now so that they are ready and prepared for compliance by May 2018.

An audit of all data procedures, policies, use of service providers, processing & analysis activities and storage should be undertaken now under the guidance of the organisation's Data Protection Officer.

As well as undertaking thorough risk assessments and data privacy impact assessments, Local Authorities should also consider what exemptions may be available for legal compliance and legal claims. Could use be made of available exemptions to assist with the collection of council tax? This remains to be seen and will only become clearer once the Information Commissioner's office provides further guidance on the application of the GDPR.

mms | Maclay Murray & Spens LLP

If you have any questions or wish to clarify any of the points raised in this article, send an email to Ross Nicol at MacLay Murray & Spens. He would be delighted to hear from you.

There May Be Trouble Ahead

There may be trouble ahead... that was the title of Jim McCafferty, past president of the IRRV's talk to the Walker Love Local Authority Forum on 3rd November.

Jim provided his views on a range of challenges, risks and obstacles local authorities are currently facing and will face over the next couple of years. Jim's thoughts covered the potential impacts of local taxation reform; council tax and non-domestic rates and welfare reform; housing benefit and universal credit and on to issues around public services delivery models, the wider economic environment and Brexit.

Council Tax: the current issues

Before we look at reforms it's worth reminding ourselves of the key issues faced by Local Authorities in the collection of council tax.

Social care funding pressures; the council tax freeze finishes and the annual funding linked to the council tax will also discontinue (in its place councils will be able to raise council tax by up to 3%); banding adjustments (MSPs voted through a motion on 3 November to allow Local Authorities to raise council tax for the top four bands); more scrutiny and integrity checks (discounts and exemptions); different approaches to enforcement across local authorities; and, increasing digitalisation in every area of life are among the key headline influences on Scottish LAs ability to collect the taxes which are owed.

The Commission on Local Tax Reform reported in December last year with the conclusion that the council tax as it currently stands must end. They recommended that a fairer, more progressive and locally empowering replacement be sought. However, the report did not take the next step and identify what the replacement should be, or look like, nor did they recommend any models that are used elsewhere that could be used as a basis to develop a new replacement, for the much hated, seemingly, but in comparison to other self-payment taxes, well-paid tax. Council tax is paid by 95%+ of the population.

THE COMMISSION ON LOCAL TAX REFORM

Changes ahead

The council tax freeze will end on 31 March 2017 and from 1 April 2017 local authorities will be able to increase council tax up to a maximum of 3%. This increase will only apply to the top 4 bands E-H. The additional funding raised from the increase is forecast to be £100m per annum and will be provided to head teachers to invest directly in schools and to improve education locally. So that's a boost to the education budget of £500m over the term of the current parliament. There's also an increase in the child allowance within the Council Tax Reduction Scheme by 25% which is forecast to benefit 77,000 households by an average of £173 per year.

Council Tax Changes

The average annual increase in council tax as a result of the band adjustments will be:

BAND E	**£105 with 3% £152**
BAND F	**£207 with 3% £267**
BAND G	**£335 with 3% £398**
BAND H	**£517 with 3% £600**

The largest properties currently pay three times more council tax than those in smallest properties despite their homes being worth on average 15 times more. The increases in the top bands will see this ratio increase slightly to 3.66.

Although 57% of properties are now in the wrong valuation band, there are no plans for a band revaluation, so property values will remain based on their 1991 value. There will be relief available for those E-H homeowners who are on low incomes including 18,000 pensioner households.

The increase will result in a growing variation in what each household in a local authority pays for essentially the same services. LAs can minimise local concerns about such variations by explaining the reasons for them and involving local people in the decision making process with regard to which services to provide, which to subsidise, which to charge for etc.

For council tax payers as a whole, there is little perceived relationship between what they pay and the services provided even though councils report their financial details with the bills. There is also no clear relationship between Council's arrears and their impact on service provision.

Following the changes and increase in council tax, Local Authorities should, if not already:

- identify all the taxpayers currently with arrears that this will further impact upon and forecast the increase in council tax arrears following the 3% rise.
- Identify reduction scheme claimants that will be affected by the increase.
- Develop a communication strategy which addresses the increase and how it will be used in the area, alongside other key messages of how the council uses the taxes it collects-beyond the standard pie chart approach currently in use.
- Project potential impacts on debt recovery from the increase and economic changes we are likely to experience over the next 12 months.

Revaluation – is it needed?

Is there really a need for a revaluation at present? Or is it time for a wholesale modernisation and not just a tinkering around the edges exercise that a revaluation would probably amount to? As a tax on domestic property, the council tax has been a resounding success however the reduction scheme perhaps should be reviewed. The outcome of the review in England has been inconclusive on most things, except that there is no easy way into Universal Credit for the reduction schemes.

What council tax modernisation strategies are available?

In terms of property bands the solutions could include an increase in the number of bands, or a complete change of relationship between the value band and the council tax paid. The bands could be regionalised to recognise the differences in property value in different local authority areas.

Another potential solution is to look at a variable tax rate model so that councils could be free to look at the rates that will meet the local area specific needs. There could be an annual revaluation using AVMs to ensure that property values are kept up to date with the market value.

Non-Domestic Rates

There are dramatic changes planned in England. A move towards full retention of business rate income by 2020 is preceded by pilot areas being introduced in preparation for the revaluation in 2017. The threshold for small business rate relief has risen from £6,000 to £15,000 and higher rate relief increasing from £18,000 to £51,000. It has been estimated that nearly 600,000 small businesses in England will make a saving of nearly £6,000 from April 2017. In Scotland, the Barclay review is ongoing with no signs from the Scottish Government that they will follow the lead taken down south.

Economic concerns

Over the next year, inflation is forecast, by some, to rise to 4%, interest rates are also forecast to rise to keep inflation in check, which will have the inevitable knock on effects on monthly mortgage payments. We are already starting to see early impacts of Brexit on the supermarket shelves with many essential groceries forecast to rise in prices as a result of the fall in value of sterling.

These two increase and the cost of the weekly shop rising will have a detrimental impact on some council tax payers ability to pay. It's highly likely that this will see bad debts accruing in all Council areas in Scotland. Jim advised those in the room to scenario plan for the each of the economic impacts and the inevitable multiplier effect which will inevitably kick-in. This will aid Councils in setting realistic collection targets, resource planning for collection and debt recovery, as well as increasing resources available to those who require help and advice with managing their debts.

Councils are also likely to see European funding begin to reduce over the next few years and whilst it may not fall to zero, it is likely that new funding sources will have to be found to maintain projects that have been funded by the EU. Again, another potential headache and shortfall for Council budgets.

Summary

In summary, Jim advised the delegates to define and be specific about the challenges they are facing at both a macro and micro level. He also encouraged them to be prepared to change and to look at the issues from other angles, for instance, those that have never paid their Council Tax on time, or have repeatedly failed to pay their full NDR. Are these people likely to change their behaviour next year? If the answer is 99% no, then may be a different approach is required at the outset.

Targeting the cases where a return is more likely, looking at propensity to pay statistics, sharing data on cases which span Council boundaries or where people move around from area to area to keep ahead of the 'taxman', are just a few of the areas which if currently off the table, should be put back on.

In My Opinion.... Jim McCafferty, Past President IRRV

Jim McCafferty, IRRV (Hons),
Immediate Past President of IRRV
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The issues involved in council tax collection are much wider than just the relatively minor changes that will be introduced as from 1 April 2017. This is a time of great change in local authority revenues. The council tax has been with us, relatively unchanged, since 1993. In fact its valuation base is determined on banded ranges of capital values as at 1 April 1991. A lot has changed in those 25 years including people being born and growing up to become council tax payers; little wonder that many younger tax payers are bemused that the valuation basis for council tax is older than they are.

In preparing for the Forum it struck me and, not for the first time that the world of Revenues is tangled up in numbers. Some of these numbers mean something to practitioners and inspectorates but mean little to the public. The public is not unduly concerned by our fascination with council tax in year collection figures which we represent as percentages for purposes of comparison both with one another and with our previous performance.

Politicians both local and national have also become fascinated performance measurement but somehow less concerned as to the impact of labelling a tax as "unfair" whilst still expecting it to be collected. Realistically though how much do we expect to be collected?

In 2015/16 the in-year collection rate for Scotland was 95.7%. By comparison the 2005/06 in-year collection was 93.3% although some 10 years later only 97.1% of the 2005/06 charges had been collected. So what does this mean? Is full collection an impossible dream? Well yes, it is my view that it is for a variety of reasons.

Do these reasons in the main fit into the time-honoured two broad categorisations of "can't pay" and "won't pay"? Again whilst accepting that is a massive generalisation, yes. We can definitely do something about one, the other has much wider social issues and possibly both may grow in the future. I will come back to that though. The good thing is that by far the majority of the tax is paid; no, it does not compare to the collection rates enjoyed by the former General Rates but then life has moved on considerably since those days.

I have become fascinated with seeking to influence payment in different ways. What is wrong with placing personal responsibilities closer to the front of our recovery process? We are able to extract data easily from systems to highlight non payers should we highlight that they are in the minority? Should we say (if it were the case) for instance that they are one of only three households in their street who have not paid? The UK Government has had some success with this type of approach. A strategy which seeks to point out that the majority do pay their taxes regardless of whether they are doomed as unfair or not.

The council tax freeze comes to an end on the 1 April 2017. This single act means that £72m of funding to local government will also end. To compensate for this, councils will be allowed to increase their council tax by up to 3%: a figure which coincidentally will generate approximately £72m. Now whether councils will in actual fact increase the council tax by this level prior to an election in May 2017 remains to be seen.

Can they shoulder the burden of the loss of funding related to the council tax freeze together with any other cuts that the Scottish government imposes upon local authorities? In addition as from 1 April 2017 the top four bands will have increased ratios applied to them. Although occupiers in these bands who are on low income and who qualify for the council tax reduction scheme will be protected from the increases will be.

In effect the current position where band H is three times greater than band A will see it becoming 3.66 times greater than band A. Bands E, F, and G also increase. Those who followed the debate in the Scottish Parliament will have noted that the feeling of much of the opposition was that the level of change was insufficient. This action is designed to raise up to £500m over the lifetime of this Parliament.

The additional funds will be used to pay for improvements to schools and will be given to school Heads. This raises a number of issues is a local tax being used to pay for a central responsibility. Who decides where the funding goes? I am expecting a wave of Freedom of Information requests hitting councils as those parents in band E to H properties try to find out how much of the additional council tax income is being allocated to the schools which their children attend.

The combination of the two sets of rises will mean where they both apply will see rises of £152 pa for band E rising to £600 pa for band H. More generally where a 3% increase is applied it will affect all council tax liable properties. People have got out of the habit of rises in their council tax they will want to know what is it all about?

We can now also expect further discussions and consultations on what the future for council tax is. Maybe another body formed to report on the choices to be made. On current form it is highly unlikely that any such body will actually include anybody with actual experience of collecting taxes. The previous consultation which reported prior to the Scottish parliamentary elections concluded that "there is no one ideal tax". If this continues to be the outlook of our politicians then the need for change whilst being recognized will never be actioned. I am left also with the question as to the impact on collection of taxes when politicians label them was being unfair.

There are many other challenges facing local authorities' revenues teams over the next few years. Business Rates revaluation and review, the ongoing impacts of Welfare Reform are the ones closest to our core activities.

However we cannot ignore the wider impacts that arise from the economic situation particularly post BREXIT and the new tax raising powers included in the Scotland Act. Where will this leave us? In many ways that will depend on local issues what is the make-up of a particular area's tax base. That is why those councils that are data rich and know the breakdown of their property base not just in bands and debt levels but in terms of tenure will be in a better position to plan for the impacts of mortgage rises should they occur. What will it do to owner occupiers or mortgage to let owners. We can only guess but those who are data rich will be more accurate. Again a lot of mortgagees are out of practice at dealing with increases in their repayments.

This brings me back to where I started with numbers the ones that matter to council tax payers are their incomes and outgoings. If there is a gap then they will prioritise their payments. The same has to be true of councils their income against the cost of their services. The fixation with percentages focussed as they are on in year collection may have to give way to a more cash centric view of collection across all years.

There is certainly a lot to think about........

LA Forum: Workshop Discussion


David Walker


Chris Bell


James Walker


Dorothy Lowe


Paul Cameron


Angela Lowe


Julie Swan

The workshop discussion session hosted by Walker Love team, David Walker, Dorothy Lowe, Chris Bell, James Walker, Paul Cameron, Angela Lowe and Julie Swan focused on:

What are the practical implications for Local Authorities arising from Council Tax Reform & the 3% increase?

Local Authority delegates views:

1. Higher band increases likely to impact elderly population on low incomes hardest.
2. More money to collect which will lead to more money available for the Council to invest in improving and expanding services.
3. 3% increase is likely to push borderline cases into debt and those already in debt will fall further behind.
4. Councils are already suffering from a lack of resources, if collection becomes harder and more time is to be spent in debt recovery then it is difficult to see how this will be managed by Councils.
5. There will be more non-payers.
6. Lack of time to develop a robust communication strategy to justify the 3% increase.
7. People are not used to increases – many things have stayed the same over past few years, e.g. mortgage interest rates.
8. The 3% increase will impact some Councils more than others. For instance, if the Council has a small number of E-H homes it will have little impact.
9. Non-resident landlords, multiple occupancy accommodation and student flats are likely to become even more problematic cases and may become more difficult to collect.
10. Improvements are required: financial profiling from money advisers and Councils.
11. Better signposting is required to money advisors – many people don't know what help is available.
12. For those borderline payers who may slip into debt, smarter approaches will be required to develop joint working strategies that tackle these cases.
13. Better engagement strategies will be required: profiling and customer service/communication, more customer visits and selecting fast track cases which go straight to Sheriff Officers are likely to lead to more positive outcomes.
14. The increase will affect everyone, especially those who have stretched their budget to buy a new build – the increase in council tax and likely increase in mortgage payments will be a double whammy that not everyone will be able to afford.

DAS Update:

Completions Up. Returns to Creditors Up. Further improvements in pipeline.

The Debt Arrangement Scheme (DAS) commenced in 2004 and since then there have been legislative changes to improve the effectiveness of the schemes operations and aims in 2007, 2011, 2013, 2014 and 2015. A new DASH case management system was also introduced in July 2011 which further enhanced the serviceability and transparency of the scheme.

Kelly Quigley
AiB Head of DAS and Trust Deeds

During the last 4 years, new DAS cases have averaged just over 4,000 per year, and during this period, nearly £130,000,000 has been repaid to creditors through DAS.

The average current DPP debt is around £12,000 and the average length of DPP has fallen from 9 years down to just below 8 years. This fall could be attributed to more sustainable cases being presented to DAS in the last 12-18 months or it may be related to the external economic factors over the same period having been more positive, either way it is a step in the right direction for DAS and one the AiB are keen to see continue.

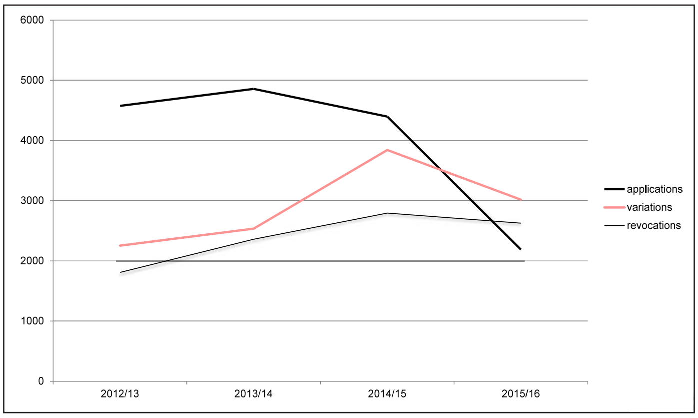
	2012/13	2013/14	2014/15	2015/16
Applications	4574	4856	4397	2186
Debt Value (£)	196.1m	241.7m	270.8m	249.7m
Repaid (£)	23.2m	30m	36.8m	37.8m
Completed	151	517	896	1297

The applications for DAS in 2015/16 were abnormally low at just over 2000, with the average for the previous three years being around 4,500.

The fall last year could be attributable to changes in the DAS legislation, changes to the sequestration and trust deed legislation (trust deed numbers have indeed risen in the same period), and anecdotally, we have been advised that there have been some difficulties for individuals looking to access public sector financial advice due to the resource and funding issues in this area. The prevailing socio-economic factors such as the tightening up of borrowing and credit criteria by lenders are also likely to have been a contributing factor.

The truth is there is plethora of factors that are likely to have impacted last year's applications, with the curtailment of pay-day lending being another contributing factor. The AIB anticipate the number of applications in 2016/17 to be similar to last year, but they hope to increase the number of applications to around the 4,000 per annum following the review of DAS and subsequent consultation.

The number of cases completed has also been steadily rising over the past four years. From only 3% in 2012/13, 20% in 2014/15, to just over 60% in the last full financial year.



The recent consultation on DAS closed a couple of months ago. The AIB have been encouraged by the responses to the consultation and the feedback they have received at the industry engagement events and from creditors, although they didn't receive as much input from Local Authorities as they had hoped for.

Although the consultation is now closed, Kelly invited the Local Authority delegates to send her an email with any thoughts on how the DAS scheme, or Protected Trust Deeds, can be improved and if there were any specific cases that required attention, or should be reviewed further, she encouraged those in the room to get in touch with her or one of the team.

The AIB are keen to receive feedback on the general operation, successes and current limitations of the scheme, so if you have any opinions or views to provide Kelly and her team, please do get in touch with them using the contact details below.

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ACCOUNTANT IN BANKRUPTCY