

**CONSULTATION QUESTIONNAIRE (Page One)**  
**Credit Union Debts in Protected Trust Deeds**

The deadline for responses is **25 June 2007**

**Your details**

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For the purpose of analysing responses, it would be helpful if you would also indicate the capacity in which you are completing this questionnaire, please tick as appropriate.

Advice Sector

Legal Body

Business

Professional Body

Individual

Statutory Body

Insolvency Practitioner

Other (Please Specify) \_\_\_\_\_

**Questions for Consultation**

1a Do you think that cancelling debt in a Protected Trust Deed has a particularly harsh impact on Credit Unions?

Yes  No

The cancellation of debt in a Trust Deed will, of course, impact on the Credit Union. The addition of the word "particularly" however is not merited. The effect on a Credit Union, which operates properly and responsibly for all of its members, should be no greater than the impact that such a cancellation of debt has on any other licensed lending establishment.

The cancellation of debt in a Protected Trust deed does **not** have a particularly harsh impact of Credit Unions if the Credit Union adopts the natural protection of risk assessment, credit checking and insurance cover. Credit Unions should not be prioritised over other lenders and protection should **not** be granted.

1b If yes, what evidence do you have to support your comments?

1c Do you think that Protected Trust Deeds should give special protection to Credit Unions?

Yes  No

Our own statistics suggest that very few Protected Trust deeds have Credit Unions as creditors. Invocas has always operated minimum case acceptance criteria in terms of disposable income levels and dividend expectations, which are now being adopted by the wider creditor community following the involvement of The Insolvency Exchange ("TIX") who accept or reject Trust Deed proposals on behalf of a significant number of creditors. The consultation suggests that many Trust Deeds which include Credit Unions as creditors do not pay a dividend. These Trust Deeds will no longer be accepted by creditors. We suspect that, in future, individuals who have borrowed from a Credit Union are unlikely to have sufficient disposable income to propose a Trust Deed which will be accepted by creditors. As such this whole consultation exercise is likely to be a "non sequiter".

On normal commercial grounds, there can be no grounds for treating Credit Unions differently from any other creditor. The granting of protection would simply serve to concentrate increased losses among the remaining body of creditors contained in the Deed. The Credit Union is essentially a licensed lender. As such, it has a responsibility to look after the interest of all of its members. Some may argue even more so than a bank or building society given the nature of the union. It naturally follows that risk assessment and insurance protection must be fundamental to a Credit Union. Credit must not be granted to someone who cannot verify their capacity to repay. The impact is not only negative on the Credit Union and its other members; it is also a long term negative effect on the individual receiving the funds. Society must support the ethos of living within one's means.

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**Credit Union Debts in Protected Trust Deeds**

2a Do you think that cancelling debt in a Protected Trust Deed has a particularly harsh impact on any other creditor?

Yes  No

The cancellation of debt in a Protected Trust deed does **not** have a particularly harsh impact on any other creditor. Indeed the opposite would be true. Creditors must endorse responsible lending practises and promote protection such as risk assessment, credit checking and insurance cover. Protection should **not** be extended to cover additional creditors.

2b If yes, what other creditors are affected?

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2c Do you think that Protected Trust Deeds should give special protection to any other type of creditor and which ones?

No – the basic premise of a Trust Deed is that all creditors are treated equally. This premise was reinforced by the removal of “preferential creditor” status for many Crown debts by the Enterprise Act. Any change to this policy would be a retrograde step. Indeed, where would you “draw the line”? You could end up with many different creditors arguing for special treatment, which would be totally unwarranted and go against the workings of the market, where a degree of risk is implicit in any normal trading relationship

3a Do you think that introducing special protection for credit unions (or another type of creditor) would unduly harm the interests of the rest of the creditors?

Yes  No

3b If yes, what evidence do you have to support your comments?

The introduction of protection would clearly impact on dividends available to the main body of creditors and, as such, would not be in the best interests of those creditors. It would also go against the intentions of The Enterprise Act which removed the concept of special treatment for (most) classes of creditor.

4a Which of the following options do you think would be the most appropriate?

- Option 1 (Do Nothing) –The market reforms currently being introduced by TIX on behalf of the creditor community negate the need for any further action on Trust Deed reform. The creditors, as was always their right, are now starting to take an active interest in the dividend levels being proposed in Trust Deeds and are rejecting those proposals which do not meet their criteria

- Option 2 (Debts not Cancelled) - Debts due to Credit Unions should not be cancelled by Protected Trust Deeds.

4b Why do you think this option is most appropriate?

Protected Trust Deeds, if operated properly, are already fair and balanced. As above, there is already an adequate mechanism for creditors to be involved in the Trust Deed proposal – they are now using this to protect their interests.

4c Do you have any other comments on these options that we should consider?

Our main concern is a lack of awareness and knowledge by The Executive of current market trends led by the involvement of TIX. Given current market conditions there are likely to be almost no Trust Deed proposals accepted by creditors where a Credit Union is present as a creditor. Consequently this entire consultation process is a non sequiter.

The removal of protection from Inland Revenue for tax debts, HM Customs and Excise for VAT and customs debts and the Contributions Agency for Social Security contributions was clearly a positive decision for the “main body” of creditors involved in a Trust Deed. However, it should be noted that these debts were only present in less than 1% of Trust Deeds where business debt was involved. In the majority of consumer debt cases “preferential creditors” were not present. The granting of such protection to a Credit Union, or other creditor, would appear to be an obvious regressive and negative step to take. Such a decision would disassociate the Executive from its declared intent to establish a fair share of funds for all creditors.

The creation and existence of Credit Unions are positive and deserve to be endorsed. They aid a great many people who may otherwise struggle to save or obtain affordable credit. The Credit Unions, like any other responsible lender, must accept that not everyone can afford credit. Simply being aware, however minimally, of who the member is, does not remove the element of risk. Any licensed lender has a duty to lend responsibly and therefore consideration of a member’s ability to repay and effective credit checks are essential.

The financial support provided by the Executive to Credit Unions is to be applauded, however, with such awards comes responsibility. Assistance made available **must** be clearly accounted for. The Executive must not be viewed as a bottomless pit of financial support. Credit Unions must build a robust structure to deal with credit risks and insurance protection in order to minimise the risk to the public purse. Amending legislation to prioritise debts due to a Credit Union sends out the wrong message. Self sufficiency of a Credit Union must be created by the Union itself and can be achieved by simply adopting established processes which have been proven to work within other areas of their marketplace.

It should not be overlooked that other providers of debt have also contributed towards the Executive’s financial inclusion policies. Apart from indirect funding for example, banks and building societies promote access to savings accounts for everyone. There are clearly occasions when such instances result in