

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

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

**Your details**

Name

**Insolvency Committee**

Job title (if applicable)

Organisation (if applicable)

**Law Society of Scotland**

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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) \_\_\_\_\_

**Please see response on behalf of the Committee.**

**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

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

**CONSULTATION QUESTIONNAIRE (Page Two)**  
**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

2b If yes, what other creditors are affected?

\_\_\_\_\_

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

\_\_\_\_\_

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?

\_\_\_\_\_

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

Option 1 (Do Nothing) –The intended reform of Protected Trust Deeds will be sufficient to protect the interests of all creditors, including Credit Unions.

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?

\_\_\_\_\_

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

\_\_\_\_\_



**Comments**

**by**

**The Law Society of Scotland**

**in response to**

**Consultation on Credit Union Debts in Protected Trust Deeds**

The Law Society of Scotland (“LSS”) welcomes the opportunity to respond to this consultation.

LSS does not have any empirical evidence to enable it to comment on whether or not cancelling debt in a protected trust deed (“PTD”) has a particularly harsh impact on Credit Unions or any other category of creditor (Questions 1a, 2a). On balance, however, LSS does not consider that Credit Unions or any other category of creditor should be given special protection in a PTD or otherwise (Questions 1c, 2c) for a number of reasons.

Firstly, giving special protection to Credit Unions or any other category of creditor would create a differential approach in relation to such creditors in Scotland and the rest of the UK. This seems to go against one of the main rationales underlying the recent reforms i.e. the need to create a level playing field following reform in England and Wales.

Secondly, as noted in the consultation paper, the recent trend has been to reduce the categories of creditors who receive special protection on a debtor’s insolvency and LSS does not consider that a sufficiently strong case has been made out for reversing this trend (which is not confined to the UK) by introducing special protection for Credit Unions (or any other category of creditor) even allowing for the special nature of Credit Unions. The recent reforms have removed special protection in the form of preferential status for other “public” creditors, and although special protection in the form of being made non-dischargeable in sequestration has been extended in the case of student loans, LSS does not consider that Credit Union debts are truly on a par with student loans or indeed any of the other categories of debt which are non-dischargeable.

Thirdly, as acknowledged in the consultation paper, giving special protection to Credit Unions or any other category of creditor would further limit the debtor’s fresh start. Again, this seems to go against one of the main rationales underlying the recent reforms and LSS does not believe that a sufficiently strong case has been made out to justify this.

Fourthly, if the forthcoming reforms to PTDs (whatever they may ultimately be) have the effect intended by the Scottish Executive, LSS believes that the case for giving any

category of creditor special protection in a PTD would be further weakened as there would be even less justification for differential treatment.

LSS does not consider that giving special protection to Credit Unions (or another type of creditor) would necessarily unduly harm the interests of the other creditors in a PTD (Question 3a) *if* that protection is in the form of making the debt undischARGEABLE since, unlike special protection in the form of making a debt preferential (which LSS notes has been rejected as an option) this would have no effect on the amount other creditors would receive in the PTD. Indeed, depending on how the provisions were framed, other creditors might in fact benefit e.g. if the protected creditors were precluded from participating in any dividend paid under the PTD. Notwithstanding this, however, for all of the other reasons given above, LSS believes that the most appropriate option at the present time would be to do nothing (Question 4a, b).

LSS would also comment (Question 4c) that although the position in sequestration is discussed in the consultation paper, the options on which views are sought relate only to PTDs. Giving special protection to Credit Unions or any other category of creditor in PTDs only would create a differential approach between PTDs and sequestration in that the rights of the protected categories of creditors would differ depending on whether there was a PTD or a sequestration. LSS accepts that the rights of particular categories of creditor may differ depending on the type of insolvency procedure and this might be justified if the procedures are trying to do different things, but PTDs and sequestration are in essence doing the same thing. In addition, although at present creditors may be treated differently in a PTD from the way they would be treated in a sequestration depending on the terms of the PTD, where this occurs it is by the agreement, or at least lack of objection, of (the majority of) the creditors and not as a matter of law. Furthermore, the existence of such a differential between PTDs and sequestration might skew debtor decision-making where a debtor has a choice of procedure (e.g. by making a debtor more likely to choose sequestration than a PTD in order to avoid the more extensive limitations on the “fresh start” that would result from certain debts being dischargeable in sequestration but not in a PTD even if a PTD would, on the whole, be a better option). It would, of course, be possible to meet this objection by introducing the same provisions for special protection of specified categories of creditor in sequestration and PTDs but, for the reasons given above, LSS does not consider that Credit Unions or any other category of creditor should be given special protection in either procedure.