



**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 | <input type="checkbox"/> | Legal Body | <input type="checkbox"/> |
| Business | <input checked="" type="checkbox"/> | Professional Body | <input type="checkbox"/> |
| Individual | <input type="checkbox"/> | Statutory Body | <input type="checkbox"/> |
| Insolvency Practitioner | <input type="checkbox"/> | Other (Please Specify) _____ | <input type="checkbox"/> |

Questions for Consultation

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

Yes

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

Many credit union members turn to their credit union when they are in financial difficulty and are being hounded by their other creditors for payment. They look for help in clearing rent and rates arrears, provident payments and wherever possible their credit union will look at their application sympathetically and agree to help them as much as they can. The credit union has now inherited other creditor's debts and within a few months the debtor starts receiving demands from all of their creditors and seeks advice. This advice, almost without exception, results in them signing a Protected Trust Deed. When a Protected Trust Deed is successfully objected to the member is then advised to seek sequestration. Either route provides the Insolvency Practitioner with a fee income.

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

Yes

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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?

No Depending on how it is cancelled it may benefit other creditors if the credit union debt is "frozen" until after the Protected Trust Deed period has ended.

- 2b If yes, what other creditors are affected?

Not applicable

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

No – others are able to adjust their prices or lending rates to recover the cost of losses.

- 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?

No as referred to in my answer to question 2a, I can see this being of benefit to them.

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

N/A

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

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?

This option will allow us to recover at least part of the debt as and when the borrower is able to pay it. Credit unions are ethical lenders, whose interest is in pursuing those who won't pay, not those who can't. We are willing to be flexible in rescheduling payments where appropriate and would never put undue pressure on a borrower in genuine difficulty. This option is therefore also in the interests of the borrower who wishes to avoid sequestration but to have a longer period in which to pay off the debt than is afforded by the Protected Trust Deed. If credit unions continue to suffer the continuing losses of Protected Trust Deeds they may also be forced to pursue those who can't pay in order to keep the credit union solvent. If credit union members were aware that not all of their savings are covered by a compensation scheme there would be a mass exodus of members withdrawing their money to stay within the limits of the compensation scheme. This would be the end of many credit unions as they would have insufficient funds to service their loans and one Protected Trust Deed could be enough to finish the credit union.

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

Our trade association, ABCUL, has in the past lobbied for the Debt Arrangement Scheme to be a mandatory precursor to both Trust Deeds and Sequestration. We agree that this is an essential measure to protect both creditors and debtors. Many people are being encouraged to go down the route of Protected Trust Deeds through aggressive advertising by insolvency practitioners, without realising the impact this could have on their current and future assets. As long as Protected Trust Deeds generate by far the greatest level of income for insolvency practitioners, compared with other disposals, debtors can only be sure of receiving best advice if the DAS is the first step. This would also promote responsible borrowing by consumers, as there would be no apparently easy escape route from excessive debt. Instead they would have access to a not for profit money advisor and be required to pay a reasonable amount until the debt is extinguished. If DAS were the first step, larger lenders, who often find it easier to petition for an individual's bankruptcy than to incur the inconvenience of pursuing the debt, would not be able to force a debtor down this route, until all other options had been explored. This benefits both the debtor and smaller creditors. We therefore strongly urge the Executive to reconsider its position on this matter.

*Part of our lending policy is to credit check and verify all information provided by our members when they apply for a loan. This involves seeing wage slips from Insolvency Practitioners, income from a second employment, spouses wage slips from Insolvency Practitioners, proof of tax credits, child benefit, child maintenance and any other benefits listed as income. When we receive an income and expenditure breakdown from an Insolvency Practitioner it almost without exception it bears no resemblance to the information we hold on file with regard to both income and expenditure. It is obvious that neither have been verified by the INSOLVENCY PRACTITIONER. Most of our members pay by payroll deduction and it is the net pay figure after our deduction and deductions for rates etc. A large number of people are paid 4 weekly giving them 13 wage payments in a year and the INSOLVENCY PRACTITIONER is either unaware of this, does not care or considers it insignificant having £1000 * 3 spare income during the life of the PROTECTED TRUST DEED. When all of this information is given to them they respond by saying that it is too late at present and they will review it again in 6 months which rarely happens.*

When it has been established that a debtor has been lying, such as having 2 homes, significant savings, additional income etc. and the Insolvency Practitioner is informed of this, with proof to substantiate this, legal action is never taken despite the seriousness of this. We have had members who have had £18,500.00 of savings which the Insolvency Practitioner was unaware of, one who had purchased a £450,000.00 house for cash and was refusing to pay his trustee another who kept £7,500.00 in order to help her move house.

**RESPONDENT INFORMATION FORM:
Credit Union Debts in Protected Trust Deeds**

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name: Rod Ashley

Postal Address: 13 Elmbank Street, Glasgow, G2

1. Are you responding: (please tick one box)
(b) **on behalf of a group/organisation** X go to Q3 and then Q4

INDIVIDUALS

- 2a. Do you agree to your response being made available to the public (in Scottish Executive library and/or on the Scottish Executive website)?

Yes (go to 2b below)
No, not at all
(We will treat your response as confidential)

- 2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available
Yes, make my response available, but not my name or address
Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

- 3 The name and address of your organisation **will be** made available to the public (in the Scottish Executive library and/or on the Scottish Executive website). Are you also content for your **response** to be made available?

Yes

SHARING RESPONSES/FUTURE ENGAGEMENT

- 4 We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes