ECONOMY, ENERGY AND FAIR WORK COMMITTEE

SUBMISSION FROM: Association of British Credit Unions Ltd

Protected Trust Deeds

What is your experience of Protected Trust Deeds (PTDs)?
What downside is there to PTDs?

Over the past few years, there has been a notable increase in the number of PTDs credit unions experience. Though this has clearly had an impact on the sector's ability to lend – the sector has seen a steady increase in bad debt in recent years – we are particularly concerned about the nature and the selling of some of these PTDs. We would like to note our concerns about:

- The number of cases where it would appear that a PTD is clearly an inappropriate solution for an individual, given the sum they would be required to repay despite already demonstrating they were not able to live within their means.
- The number of low value PTDs (£5000-8000) where repayments are being almost entirely soaked up by professional fees, which average around £5000 irrespective of the value of the debt.
- The extremely high failure rate of PTDs – around a third for some firms - and the impact this has on the individuals within a failed PTD.
- The inappropriate marketing of PTDs by some volume firms.
- The wilful or accidental disregard for the law by some firms, with credit unions regularly failing to receive paperwork, and often find it to be incomplete or inaccurate.

As well as being detrimental to consumers, these factors have a disproportionate impact on credit unions, due to our mission of inclusion and the provision of affordable credit to the vulnerable and underserved. Credit unions have long been recognised as extending credit on fair terms to groups that mainstream financial services would normally restrict credit to. We are concerned that this trend is a threat to our ability to do so. We note, with disappointment, the IPA's recent letter to Jamie Hepburn about these concerns, which appears to suggest that credit unions should increase their APR to resolve this. Given some of the evidences we have outlined below, we feel that the solution should not lie in more people paying more for access to credit, but rather better oversight of those offering debt solutions.

Are there issues with the way PTDs are marketed and promoted to debtors?

We are concerned that the marketing being carried out by a small number of firms, which generate the majority of PTDs, is misleading, and is 'selling' people outcomes that will either never be achievable, nor are appropriate for them. We believe this is contributing to the extremely high failure rate.

For example, the attached advert, being promoted via Facebook, suggests a Scottish Government scheme to write of 85% of all debts. There is no mention of the fact that this is an insolvency product, and that it may not be accepted. The AiB's own statistics show that, for a PTD with £6000-£7000 of debt, the average administration fee would be £4800. So if, in the scenario the advert puts forward, a Scottish parent entered a PTD with around £6000 of debts, with 85% of that being written off, they would find themselves paying £5700 over the course of the PTD. £900 would go to repaying their debts, and the rest would be paid to an insolvency practitioner. It is hard to see how this can be advertised as 85% debt write off.

This advert also demonstrates that, though the BADAS Act sets out a very clear requirement that all statutory debt solutions in Scotland are calculated according to a Common Financial Tool, 85% debt write off now considered standard. The legislation states that any IP or money adviser must carry out a full assessment of income and expenditure, and seek evidence of having done so. Despite the multitude of incomes, debt levels and circumstances of the population, it is remarkable to us that the volume firms in Scotland can not only advertise 85% debt write off as a ‘Government scheme’, but also ensure that most of the PTDs they administer fits within this (10-20% is the average return to creditors). This suggests that PTDs are largely designed to fit the model firms know to be acceptable to creditor voting agents (which the credit union sector does not use) rather than according to the individual’s circumstances (and the indeed the law). As long as the expenditure does not breach the CFT trigger figures then IPs do not need to provide evidence of it to either the AiB or creditors.

Are there incentives for providers to offer PTDs – and, if so, are these appropriate?

Since the introduction of the BADAS Act in 2015, which restricted the trustee fixed fee in PTDs, it has become clear to us that IPs have sought to maintain their income through other means, mainly in the form of ‘expenses’ applied to cases to reflect actual costs associated with the case, but seemingly with no relationship to what it actually costs to provide these services. The following outlays were applied to a case involving one of our members, and a single parent with a very low part time income. The PTD she had entered would see her repay £7200 over 5 years:

Anti money laundering check fee £72; case management fee £150; case management monthly fee £285; courier charges £114; credit search fee £114; ‘Echosign’ £96; £ID verification; packaged bank account review fee £90; permanent trustee fee £1440; PPI search fee £360; advertising £35; bond £20; storage costs £300.

In addition to the above, there was a trustee fixed administration fee of £2500 which, with the addition of AiB costs, meant that, of the £7200 this individual will repay, £6160 is soaked up in costs. Just over 10% of her debts will be repaid, and she will be trapped in this situation for the next 5 years. In the likely the event that she cannot make these repayments and the PTD fails, she is fully liable for all her original debts, and any of the fees she already paid the IP (which are taken as a priority before any creditor repayments).

Despite the credit union voting against this case, it gained protected status. In our view, this demonstrates why PTDs are lucrative for many insolvency firms, and why there has been such a notable increase in PTDs as a product relative to alternatives.

Please provide any further comments you wish to provide on PTDs.

Since the Accountant in Bankruptcy first consulted on reforms to Protected Trust Deeds, the credit union sector has been supportive of all measures put forward to address concerns raised. This includes:

- A revised minimum debt level.
- A requirement that the PTDs cannot be protected if payable in 60 months.
- Changes to the fee structure.
- Changes to the voting process.
- The introduction of a general power to refuse protection.

In addition to this, we have also noted our own suggestions, and shown willingness to support those put forward by others, including.

- A ban on ‘front loading’ fixed and professional fees.
- A legislative requirement that all money advice has to offer all debt solutions.
- AiB approval for advisers offering PTDs.

We fully recognise that it there is no easy, one-step solution, and also that it is right that we fully understand the full consequences of any reform. However, despite a general recognition that there are substantial problems in relation to PTDs, the apparent need for full consensus has resulted in no action being taken for some years. The credit union sector remains open to reform, and keen to work with colleagues from all sectors to achieve that. However, we would urge the Government to ultimately seek to do the right thing, rather than refuse to act until consensus is achieved.