

**Protected Trust Deed  
Review  
2009**

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## 1. Executive Summary

The Bankruptcy and Diligence etc. (Scotland) Act 2007 introduced modification of provisions relating to Protected Trust Deeds (PTDs) and extended the supervisory functions of the Accountant in Bankruptcy (AiB) to include trustees under PTDs.

Concerns about the impact of PTDs on Credit Unions were raised during the Parliamentary progress of the Act and, in response to these concerns, a supplementary public consultation exercise was held from 2 April 2007 to 26 June 2007 to establish whether PTDs should give special protection to Credit Unions.

Responses to the consultation indicated that the extension of the AiB supervisory powers was sufficient to address the issues raised at that time and regulations to support the modification of PTD provisions and the Accountant in Bankruptcy's extended supervisory functions came into force on 1 April 2008.

A commitment was made that the AiB would carry out an overall review of PTDs following the changes and that information on debts within PTDs would be collated as part of this review. The scope of the review has been extended to examine the impact of PTDs on Credit Unions.

This report examines a representative sample of 1,262 of the 3,825 PTDs registered between 1 April 2008 and 30 September 2008. The report further compares the findings from the sample with estimated outcomes for the year ended 2008/09 and reported outcomes for the year ended 2007/08. Data collected includes information on debts, debtor profiles, proposed dividends and anticipated trustee fees and outlays.

The report finds that:

- the changes introduced appear to have had no effect on the number of PTDs registered
- more male than female debtors entered PTDs during the review period
- the average total debt included in individual PTDs amounts to £32,652
- the average estimated dividend proposed to creditors in individual PTDs is 17 pence in the pound
- the average anticipated trustee fees and outlays amount to £4,937
- total debt in all PTDs due to Credit Unions accounts for less than 0.2% of total debt
- total debt estimated to be written off for PTDs registered in the year 2008/09 is £205m

This report concludes that PTDs can be an effective debt relief mechanism for some people, that AiB is able to effectively supervise PTDs and that greater creditor involvement may improve returns. Credit Union debt represents only a small proportion of PTD debt.

The report makes no recommendations to introduce specific protections for Credit Unions. The potential for a simplified procedure for PTDs should be evaluated as a longer term measure to improve cost effectiveness and greater creditor engagement should be encouraged.

## **2. Introduction**

### **2.1 Protected Trust Deeds**

Trust Deeds are voluntary agreements between debtors and creditors. They convey the debtor's right to their assets to a trustee and provide, through realisation of assets or contributions from the debtor's income, for the repayment of part of what is owed over the course of the trust deed. Trust deeds generally run for a period of 3 years.

A trust deed can become 'protected' if a sufficient number of creditors agree or are deemed to agree. Once protected, the trust deed is binding on all creditors who can usually take no further action to pursue the debt owed providing the debtor complies with the terms of the trust deed. Upon completion of the trust deed the remaining unpaid debt is written off although secured lenders can still rely on their security.

### **2.2 PTD Regulations and AiB Supervisory Powers**

Prior to 1 April 2008 the AiB had no statutory supervisory powers in respect of PTDs. The AiB was required to record certain information in the Register of Insolvencies and carried out audits only when asked to do so.

The Bankruptcy and Diligence etc. (Scotland) Act 2007 introduced powers for the AiB to supervise trustees in PTDs and to carry out additional audits. The Act also provided regulation making powers to improve the administration of PTDs and formalise the discharge of debtors.

The Protected Trust Deed (Scotland) Regulations 2008 were brought into force on 1 April 2008. The regulations did not introduce any radical change to the conditions for protection of trust deeds.

### **2.3 Information Provided by Trustees in PTDs**

Prior to 1 April 2008 no specific information was available in respect of debts included in PTDs, of expected realisations, of proposed dividends to creditors or of fees charged by trustees.

The 2008 Regulations require trustees to provide additional information, not previously supplied, in respect of trust deeds. They are now required to provide a Statement of the Debtor's Affairs and to complete Form 3, a Statement of Anticipated Realisations from a Protected Trust Deed. Form 3 details the anticipated contributions from the debtor, expected realisations from assets, the estimated cost of administering the PTD and proposed dividend to ordinary creditors.

Collection of this additional information has allowed the collation and analysis of statistical data which will assist in informing decisions on the future requirements for PTDs.

## **2.4 Credit Union Debt in PTDs**

There are more than 130 Credit Unions in Scotland and they have a role to play in tackling financial inclusion and aim to make affordable loans available to their members.

Concerns about the impact of PTDs on Credit Unions were raised during the Parliamentary progress of the 2007 Act. In particular, it was suggested that the effect of debts cancelled in PTDs could have adverse effect on Credit Unions and threaten their viability. It was further suggested that Credit Unions should be afforded special protection.

In response to the concerns raised, a supplementary public consultation exercise was held from 2 April 2007 to 26 June 2007. Responses to the consultation indicated that the extension of the AiB supervisory powers would be sufficient to address the issues raised at that time.

## **2.5 PTD Review**

A commitment was made to undertake a review of PTDs following the modifications introduced in April 2008 and the extension of the Accountant in Bankruptcy's supervisory role. As part of that review and as a result of the concerns raised regarding Credit Union debt in PTDs, AiB has ingathered information on debts within PTDs (including debt due to Credit Unions) registered between 1 April 2008 and 30 September 2008.

### **3. Methodology**

A representative sample of 1,262 out of the 3,825 PTDs registered between 1 April 2008 and 30 September 2008 was examined to:

- produce a profile of the debts, debtors and creditors within PTDs, and
- examine the value and number of debts due to credit unions.

The sample represents approximately one sixth of the total PTDs registered in the business year commencing 1 April 2008.

Additionally all Credit Unions in Scotland were invited, by letter, to submit any further information which they would wish to be taken into account during the review.

## 4. Findings

The data available on PTDs has been collated to reflect the number of findings including volume, debt, realisations and dividends. A profile of representative debtors has been included at **Annex B**.

### 4.1 Number of Protected Trust Deeds

The changes introduced appear to have had no effect on the number of PTDs registered.

The number of PTDs registered during the review period was 3,825 compared to 3,874 registered in the corresponding period in the previous year. This represents a decrease of 1.3%.

There were 7,633 PTDs registered between 1 April 2008 and 31 March 2009 – an increase of 124 on the previous year, representing a percentage rise of 1.7%.

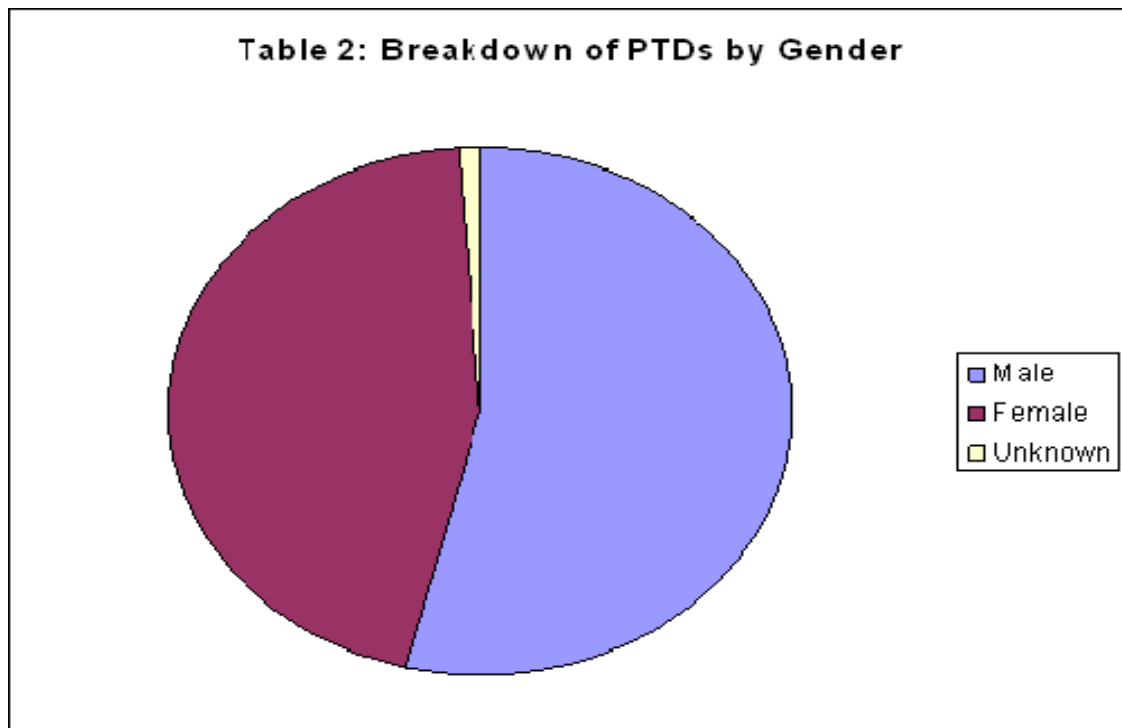
Table 1 compares the number of PTDs by financial year from 2004/05 to 2008/09.

**Table 1 – Protected Trust Deeds by financial year**

Year	2004/05	2005/06	2006/07	2007/08	2008/09
<b>First Half Year Total</b>	<b>2,825</b>	<b>3,655</b>	<b>4,310</b>	<b>3,874</b>	<b>3,825</b>
<b>Second Half Year Total</b>	<b>3,316</b>	<b>3,544</b>	<b>3,988</b>	<b>3,635</b>	<b>3,808</b>
<b>No of PTDs</b>	<b>6,141</b>	<b>7,199</b>	<b>8,298</b>	<b>7,509</b>	<b>7,633</b>

## 4.2 Gender

A gender-specific descriptor is not provided within PTDs however it has been possible to ascertain that male debtors accounted for 54% of the sample and female debtors represented 45%. Information for the remaining 1% is unknown. Table 2 illustrates the proportion of males to females entering PTDs.



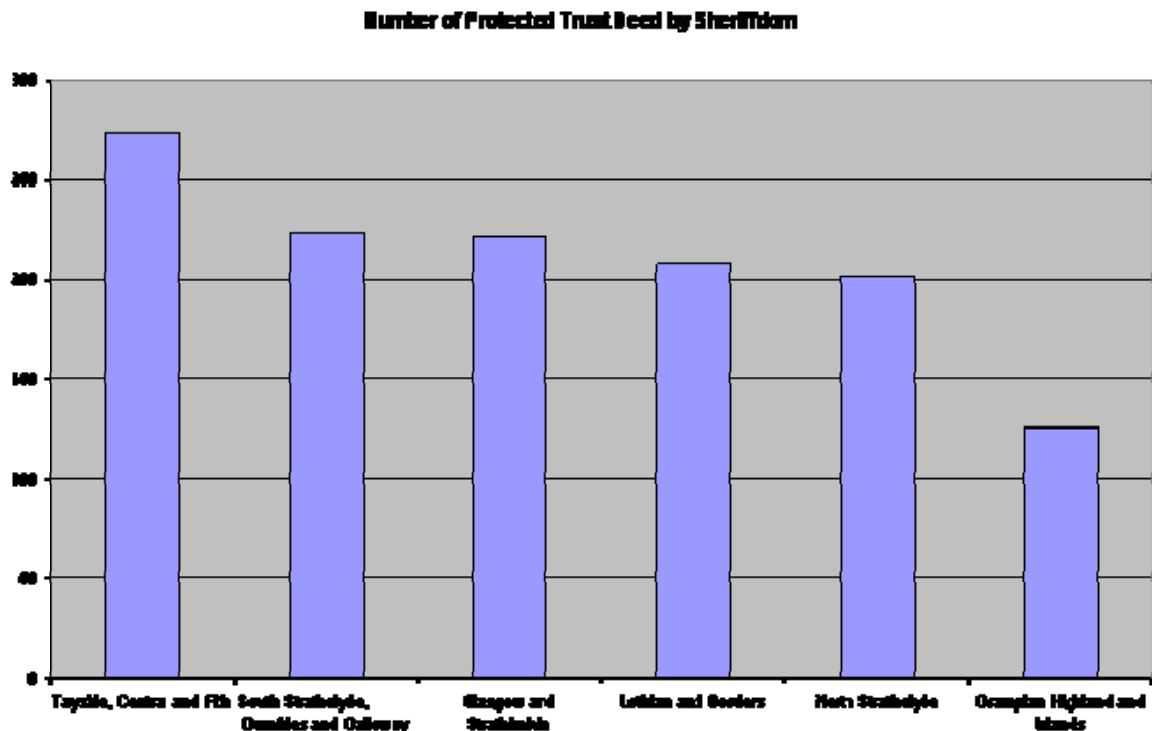
## 4.3 Age/Employment Status

It was not possible to profile the age range or employment status of the debtors as trustees are not required to provide this information to AiB, although some trustees do record this information.

#### 4.4 Geographic Distribution of PTDs

Geographical distribution of PTDs has not been previously reported on although the Accountant in Bankruptcy includes information in her Annual Report on bankruptcies by sheriffdom. To provide consistency and allow comparison between PTDs and bankruptcies, this report also collates PTD information by sheriffdom. Table 3 details the geographic spread of PTDs included in the sample by sheriffdom.

Table 3 - PTDs by Sheriffdom



#### 4.5 Debt

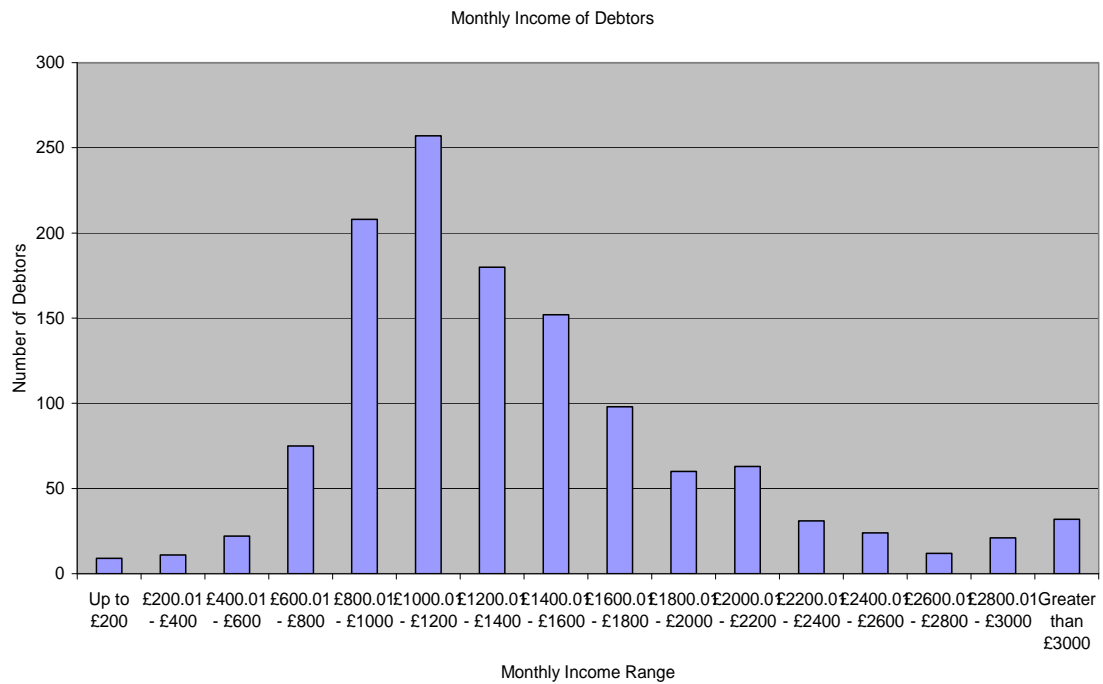
The total number of debts owed to all creditors in the sample is 9,680. The total value of debt included in the sample amounted to £40,837,950. The average total debt by individual PTD was £32,652. The highest total debt owed in an individual PTD was £456,361 and the lowest was £3,542.

## 4.6 Income levels

The net income received by debtors' ranges from £200 per month to £4,600 per month. Table 4 shows the range of debtors' monthly income with 50% of debtors receiving between £800 and £1,400 per month.

25% of the sample receive less than £1,000 per month whereas 2.5% receive more than £3,000.

**Table 4 - Income level of debtors**

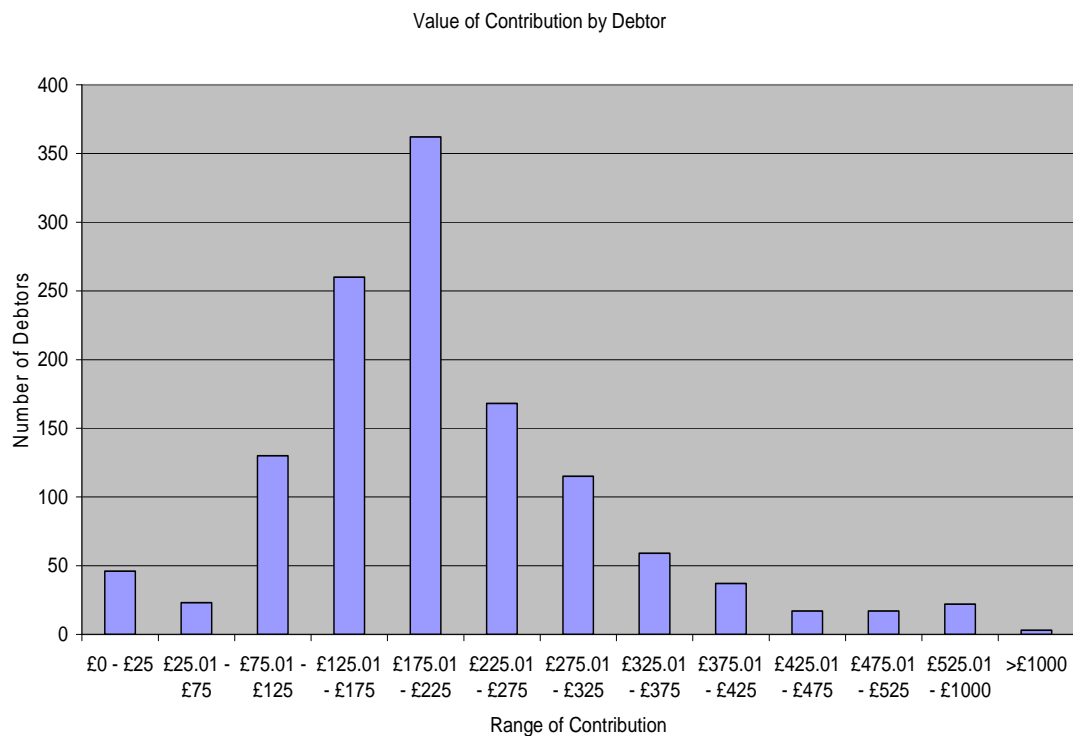


## 4.7 Contributions

60% of the PTDs in the sample were proposed by debtors with no realisable assets. These PTDs were based on a contribution from the debtors income only. A small number of PTDs are based only on realisation of assets with no contribution from income. The remainder of the PTDs were based on realisation of assets and a contribution from the debtors income.

Table 5 demonstrates the range of contributions expected from debtors. The contributions range from £20 to £3,500 per month. A large number of debtors, 29% are expected to contribute between £175.01 and £225 per month.

**Table 5 – Average monthly contributions**

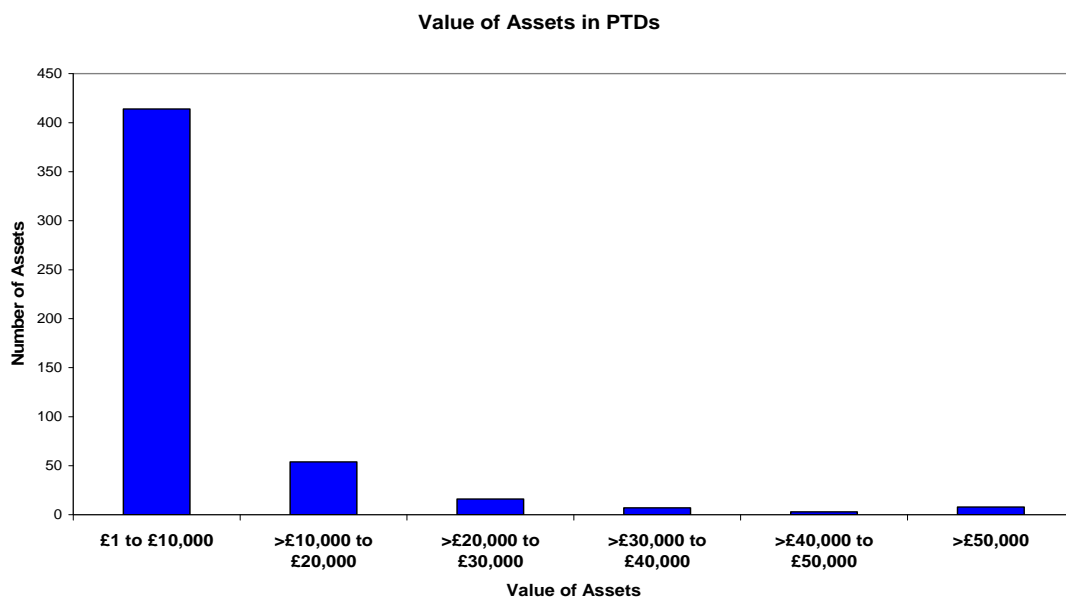


## 4.8 Assets

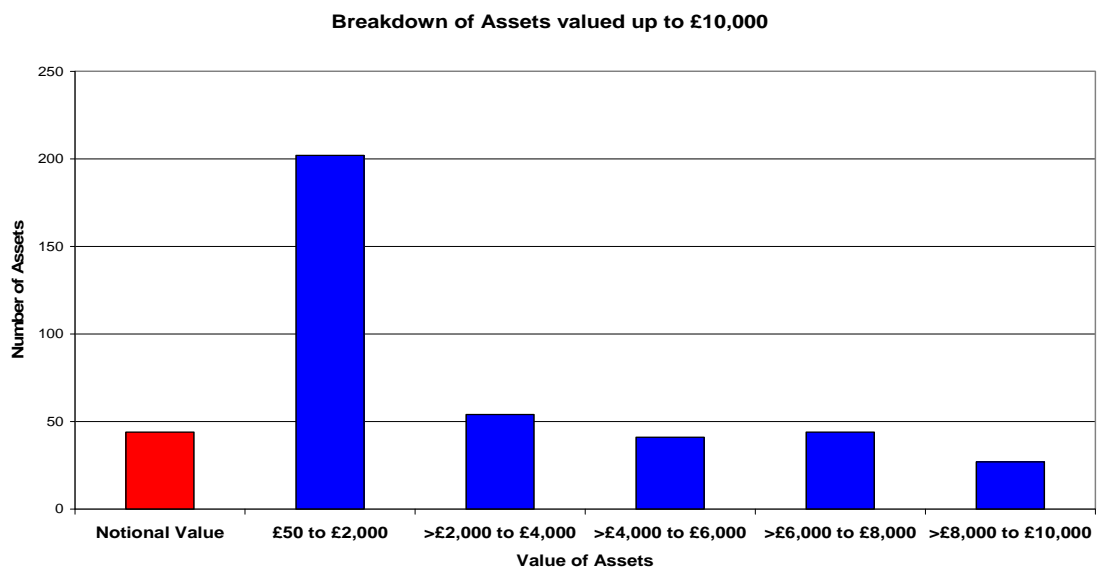
In 40% of cases debtors included a realisable asset in their trust deed. From the information available it has been possible to ascertain the nature of assets included in PTDs. The majority of assets were heritable property and motor vehicles. However, cash, ISAs, insurance policies, endowment policies, shares, premium bonds, equipment, stock, pensions, superannuation and holiday ownership were also included as assets.

The value of assets ranged from £50 to £150,000 although the majority were valued at less than £10,000. Table 6 demonstrates the range of asset value, whilst Table 7 further breaks down the largest grouping. There were some notional asset amounts included and these are contained in the lowest data set, shown in Table 7.

**Table 6 - Value of Assets in PTDs (cases with assets)**



**Table 7 - Breakdown of Assets Valued up to £10,000**



## 4.9 Heritage

From the PTDs in the sample, 288 included heritable property as an asset. The estimated value of the properties ranged from between £34,416 and £450,000.

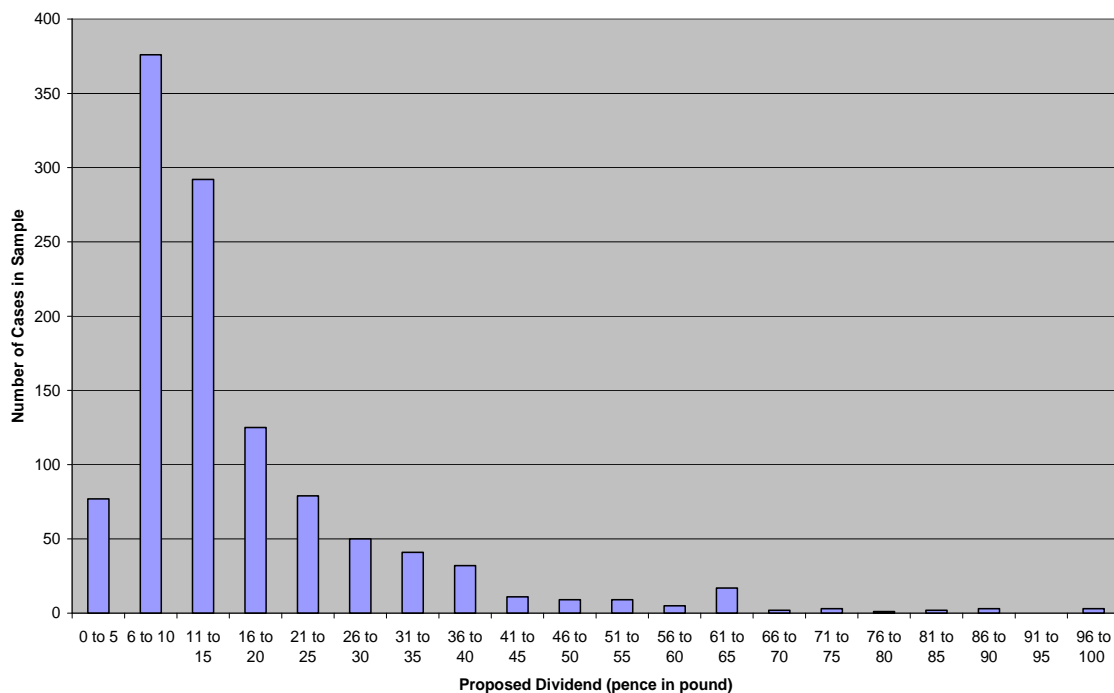
Of the 288 properties, 77 of them had no or negative equity and some debtors had to pay between £150 and £500 to discharge the trustees interest in the property. In the remaining 211 properties the debtor's share of the estimated equity ranged from between £100 to £150,000 with the average amount of equity being £11,205.

In order to realise the debtor's share of equity in the property the trustee may consider an offer from a third party or give the debtor the opportunity to re-finance at the end of the trust deed. If the debtor is unable to re-finance the trustee may continue collecting contributions from the debtor or may consider selling the property.

## 4.10 Proposed dividends

Table 8 shows proposed dividends to creditors, subject to assets being realised for their estimated value and contributions being paid by debtors. 24% of PTDs project a dividend of 10 pence in the pound ( $\pm\frac{1}{2}p$ ). 13% project a dividend lower than 10 pence. Only 18% project a dividend of 25 pence or more. The remaining 45% project a dividend between 11 pence and 24 pence. The average proposed dividend was 17 pence.

**Table 8 - Amount of Proposed Dividend**



The total projected dividend to all creditors based on the total debt included in the sample equates to £6,942,452, which will effectively produce a debt write off of £33,895,498.

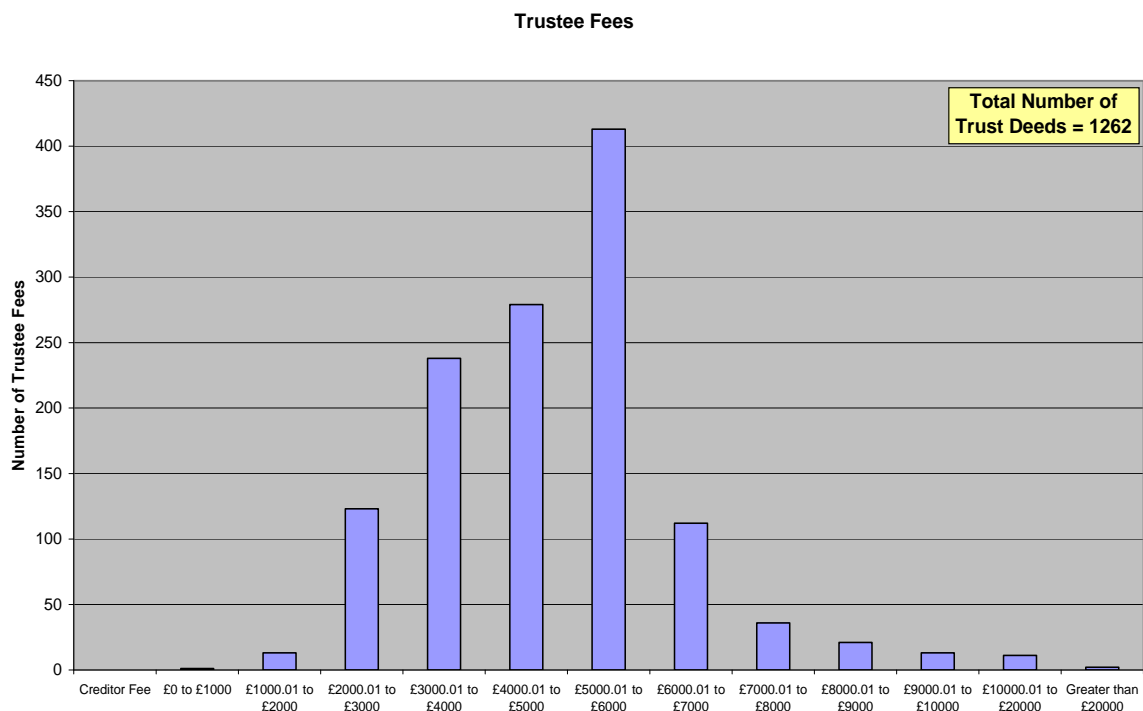
#### 4.11 Proposed Trustee Fees and Outlays

61 trustees were responsible for administering the 1,262 PTDs included in the sample. The highest number of cases which one trustee was responsible for was 121. Of the 1,262 PTDs included in the sample, 62% (785 cases) were being administered by ten trustees. Trustees are required to provide details of the fees and outlays anticipated for each PTD. The costs may change if the trust deed does not proceed as anticipated, and in some cases, the trustee may not recover his fee.

Trustees anticipated fees and outlays ranged from £1,000 to £32,227, per case, with an average of £4,937. A large number of PTDs (33%) anticipated fees and outlays between £3,000 and £6,000. In cases based on contributions only, a monthly contribution of £137.14 over a three year period would be required in order to pay the average fee and outlays before any dividend to creditors is calculated. The total projected trustee fees and outlays for the sample based on the average fee and outlays per case equates to £6,230,494. Assuming the PTDs examined produce the projected realisations, approximately 47% of funds ingathered will go to trustee fees and outlays.

Based on the information gathered in the study there was no correlation between trustee's fees and asset value. Table 9 illustrates the breakdown of trustee fees and outlays.

**Table 9 - Trustee's Fees and Outlays**



#### 4.12 Creditors by Value of Debt

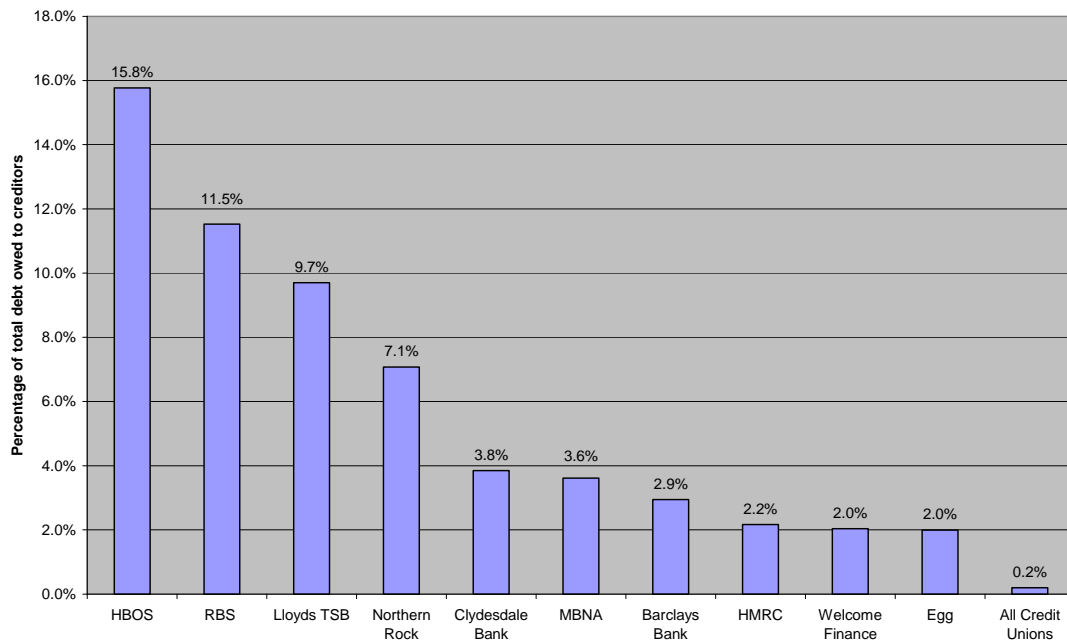
Some creditors featured in more than one PTD, whereas others only appeared once. The 9,680 debts included in the sample were owed to 1,072 different creditors. 42% of the debts due, by number, were owed to the top ten creditors identified in Table 10 below. Most creditors in this table are large financial institutions and this is consistent with the top creditors in bankruptcy cases. The majority of the remaining debts were personal debts such as high street stores and smaller financial institutions.

Of the total debt included in the sample, 61% amounting to £24,756,295, was owed to only ten creditors. This ranged from between £6,438,030 owed to the top creditor and £811,833 owed to the tenth top creditor. The amount owed to the remaining creditors ranged from between £9.00 and £660,248.

The lowest unsecured individual debt owed to a creditor was £9.00 and the highest was £32,488.

Credit Union debt has also been included in the chart in order to show a comparison of the value of debt owed to Credit Unions against the top ten creditors. Credit Union debt accounts for less than 0.2% of total debts owed in all PTDs in the sample. Further information on Credit Union debt is included in section 5.

**Table 10 – Top Ten Creditors by Percentage of all Debt Owed to all Creditors**



#### **4.13 Creditor Engagement**

To enable a trust deed to become protected, the trustee must write to all creditors whose debts are included in the proposal. At least half the creditors in number (or a third in relation to the total amount of debt) must agree to the trust deed becoming protected. If a creditor does not reply to the correspondence they receive, they are treated as if they had agreed.

There are some companies, for example the Insolvency Exchange (TIX), who have been set up as businesses to represent corporate creditors in formal and informal debt management programmes including trust deeds. These organisations will consider proposals to protect trust deeds on behalf of one or more creditors and consider whether the proposal is acceptable.

There is anecdotal evidence to suggest that many creditors do not, as individual creditors, respond to proposals of protected trust deeds. On the other hand, there is further anecdotal evidence that suggests creditor response is increased where companies such as TIX act on behalf of creditors.

Anecdotally, companies such as TIX favour the use of adequate, standardised information and format by trustees when writing to creditors to enable correct identification of the debtor. Also favoured is the use of the Common Financial Statement (CFS) by trustees to provide consistency in the financial information obtained from debtors.

Companies representing creditors may also feel that fixed or standardised trustee fees and payment of dividends during the life of the trust deed rather than at the end would provide better returns for creditors and, in turn, encourage creditor engagement.

#### **4.14 Summary of Findings**

The following information provides a summary of the findings of the trust deed review and estimated outcomes for PTDs registered in the year 2008/09. Actual outcomes as report in the AiB Annual Report 2007/08 are also included for comparison.

**Table 11**

	Estimated Outcome for PTDs included in the sample	Average Estimated Outcome for PTDs included in the sample	Estimated Outcome for PTDs registered in the year 2008/09	Reported Outcomes for 2007/08
Total Number of PTDs	<b>1,262</b>	<b>1,262</b>	<b>7,633</b>	<b>6,250</b>
	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
Total Debt included in PTD	<b>40.8m</b>	<b>32,652</b>	<b>249.2m</b>	
Receipts	<b>13.2m</b>	<b>10,437</b>	<b>79.7m</b>	<b>64.0m</b>
Trustees Fees and Outlays	<b>6.2m</b>	<b>4,937</b>	<b>37.7m</b>	<b>33.2m</b>
Dividend payable to creditors	<b>17 pence</b>	<b>17 pence</b>	<b>17 pence</b>	<b>26 pence*</b>
Amount of Dividend Paid	<b>7.0m</b>	<b>5,500</b>	<b>42.0m</b>	<b>30.8m</b>
Debt Written Off	<b>33.8m</b>	<b>27,715</b>	<b>205.0m</b>	

\*average dividend based on the 4,119 PTDs which paid a dividend

The information in the table has been extrapolated from the data collected for the 1,262 cases included in the sample. An average of these figures was calculated and the average was used to calculate the estimated outcome for PTDs registered in the year 2008/09. It should be emphasised that these figures are based on estimates provided by trustees, the final figures will not be known until the PTDs are completed.

The data for the reported outcomes for 2007/08 has been extracted from the AiB Annual Report 2007/08. During this period 6,250 PTDs were closed. Of the 6,250 PTDs closed, 2,131 paid no dividend to creditors. The remaining 4,119 PTDs paid an average dividend of 26 pence to creditors. Total debt and debt written off for the period 2007/08 is not known as this information was not previously collated by AiB.

## 5. Credit Unions

### 5.1 Credit Union Debts in PTDs

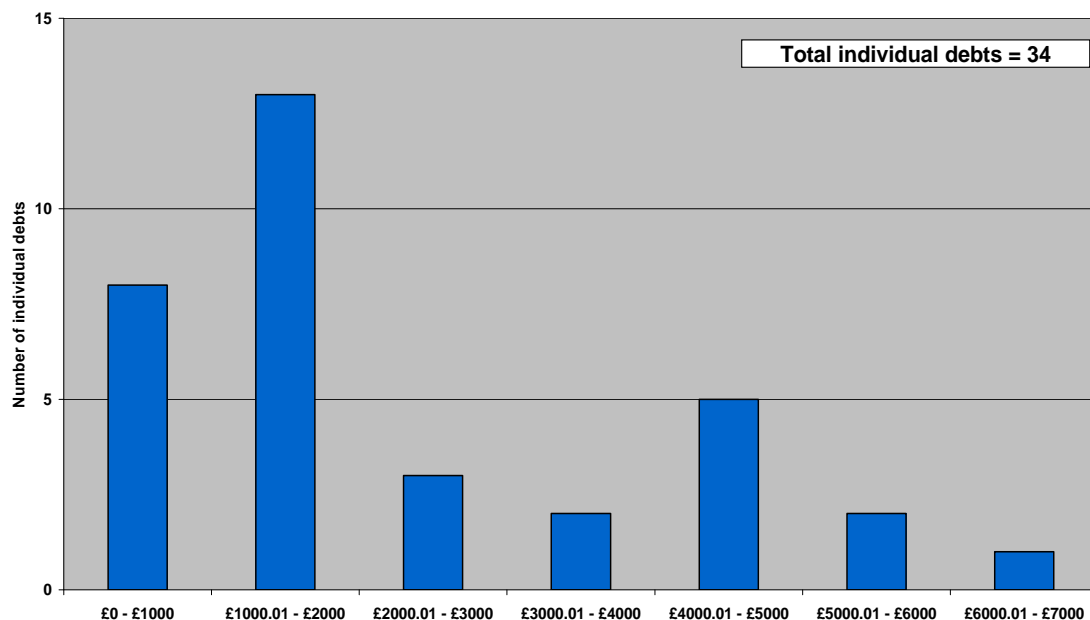
As part of the review Credit Union debts were specifically examined. Of a total of 9,680 individual debts included in the sample, only 34 were owed to Credit Unions. For 29 of these it was possible to establish which Credit Union was owed the debt, however in five cases no detailed information had been supplied. From the information available the maximum number of cases per Credit Union amounts to five and the highest total debt due to any particular Credit Union was £14,462 (five cases).

The total value of all debts owed to Credit Unions is £80,500. The largest individual Credit Union debt is £7,000 and the smallest individual debt is £450.

Credit Union debts account for less than 0.2% of total value of debts owed in all PTDs in the sample.

The average amount of each Credit Union debt is £2,368 compared to an average of £4,225 for all other debts.

**Table 12: Number and Value of Individual Debts Owed to Credit Unions**



## **5.2 Credit Union Feedback**

All Credit Unions in Scotland were invited to submit information which they thought should be taken into account in this study. Only three Credit Unions responded and all three expressed their concern at the level of fees charged by some trustees. They also highlighted the fact that they were non-profit making organisations and would endeavour to assist any debtor who contacted them to say they had financial difficulties. They considered that they could not sustain further increases in debt write off.

One Credit Union indicated that they would like to see a cap on trustee fees in Credit Union cases.

## **6. Conclusions**

- PTDs can be an effective debt relief mechanism for some people.
- The number of individuals entering a PTD has been fairly consistent over recent years.
- Greater creditor involvement could lead to greater scrutiny of PTDs to rationalise trustee fees and outlays and improve payment of dividends.
- 47% of expected realisations is absorbed by trustee fees and outlays.
- Only 53% of money ingathered goes to payment of dividends.
- The amount of debt which is estimated to be written off for the period 2008/09 is £205m.
- Credit union debt represents only a small proportion of debt included in PTDs.
- The additional information trustees are now required to provide to AiB for Protected Trust Deeds is sufficient to allow PTDs to be effectively monitored.

## **7. Recommendations**

- Further work should be undertaken to develop a simplified procedure to make PTDs more cost effective.
- Engage with trustees to discuss measures to make administration of trust deeds more cost effective
- Further work should be undertaken to improve creditor engagement.
- No specific measures for Credit Unions should be introduced.
- There are no recommendations to provide special protection for Credit Unions in PTDs.

## **The Protected Trust Deed Process**

Having decided that a trust deed is an appropriate way to deal with their debt, a debtor will meet with an insolvency practitioner (the trustee) who will draw up a trust deed.

The trust deed is an agreement between the debtor and the trustee which will detail the person's assets and liabilities and also show how much they can pay as a contribution.

Once the trustee has collected this information he will write to the creditors to propose payment of some of what is owed – a dividend. The debt that cannot be paid is written off.

An ordinary trust deed is not binding on creditors and they can still decide to pursue their debt. To make a trust deed binding and to ensure creditors can take no further action the trust deed may become 'protected'.

To protect a trust deed, the trustee must place a notice in the Edinburgh Gazette and write to creditors inviting them to agree to the trust deed becoming protected. The proposal must detail the likely returns for creditors and the anticipated costs, i.e. the trustee fees and outlays. Creditors have five weeks from the date of the Edinburgh Gazette notice in which to agree or object to the trust deed becoming protected. At least half in number of creditors or one third in relation to the value of the debt must agree to the PTD proposal. Those creditors who do not respond are deemed to have agreed to protection of the trust deed.

After five weeks have elapsed from the date of the Edinburgh Gazette notice the trustee sends required documentation to AiB who record the trust deed in the Register of Insolvencies.

Once the trust deed is recorded, it becomes protected and is binding on creditors, the debtor and the trustee. Creditors can take no further action to pursue the debt owed to them.

The trustee will realise assets which have been included in the PTD and ingather contributions from the debtor. The trustee must prepare a statement of his accounts and send a copy to the debtor, each creditor and the AiB. Once the trustee fees and outlays have been paid from the money ingathered, the trustee will pay a dividend to creditors, usually at the end of the trust deed.

When the administration of the trust deed is complete, the trustee may seek his discharge and will issue a certificate of discharge to the debtor.

### Financial Profiles of Debtors in PTDs

Examination of the information gathered has enabled a financial profile of some of the individuals to be recorded. As the PTDs are still ongoing the asset value and contribution from income are projected amounts. The dividend and trustee fees are also anticipated amounts. These amounts may change during the duration of the PTD. Table 13 provides an overview of the profiles of a sample of debtors in a PTD.

**Table 13: Debtors' Financial Profiles**

Home Owner	Employed	Proposed Monthly Contribution	Value of Assets in PTD	Total Value of Debts	No of Creditors	Proposed Total Funds ingathered	Trustee Proposed Fees	Proposed Dividend
No	Yes	£200	Nil	£10,991	5	£7,114	£4,806	£0.21
No	Yes	£150	Nil	£13,845	2	£5,339	£4,509	£0.06
No	Yes	£90	Nil	£14,050	5	£3,239	£2,700	£0.04
No	No	£108.33	Nil	£18,971	10	£3,887	£3,641	£0.01
Yes	Yes	£100	£70,500	£20,500	8	£25,919	£5,395	£1.00
Yes	Yes	Nil	£35,000	£87,052	8	£34,734	£8,619	£0.30
No	Yes	£600	£25,747	£173,402	17	£46,661	£6,778	£0.23

## **Acknowledgements**

The Accountant in Bankruptcy

Money Advice Scotland

Citizens Advice Scotland

Institute of Chartered Accountants Scotland

Institute of Revenues Rating and Valuation

UK Court Service

HM Revenue & Customs

Scottish Government Social Inclusion Division

The Insolvency Exchange (TIX)

Credit Unions throughout Scotland who responded to the questionnaire