# Protected Trust Deeds Protocol Agreement

**July 2021**

# Purpose of the protocol

The protocol sets out non-statutory changes to operational processes promoting good practice, improving transparency in the PTD process and providing further clarity in support of the AiB PTD Notes for Guidance (which have also been revised) thus better enabling trustees to manage debtor and creditor expectations in a PTD.

This agreement is not prescriptive in terms of the internal processes an IP might chose to adopt in order to implement the goals it sets out . By definition, a PTD is a voluntary agreement between a debtor and their creditors, managed by a trustee. It is therefore important the protocol promotes good practice while recognising the flexibility of the process without being prescriptive. As it is, in essence, operational good practice and cannot alter existing legislative requirements, the protocol can be introduced quickly without the need for lengthy formal consultation.

It is important to note there is no legislative or regulatory requirement for trustees to follow this protocol so its provisions are based on consent. AiB hopes that trustees will find the changes helpful in demonstrating good practice in the areas covered therein and actively agree to implement them.

In turn, this will allow AiB to assess the effectiveness of these changes and report feedback and outcomes to Ministers and the Scottish Parliament. This will allow us to conduct our supervisory role in terms of those who have agreed to the terms of the protocol, and those who have not. The extent to which trustees adhere to the terms of the protocol will determine how accurately AiB will be able to assess its impact and outcomes, which will then assist discussions on the need for legislative reform in these areas.

Trustees should note this protocol supersedes the guidance for the specific processes as detailed in the AiB [PTD Notes For Guidance](https://www.aib.gov.uk/ptd-notes-guidance-trustees-effect-30-november-2016-amended-december-2020). AiB has updated the PTD Notes for Guidance to include references to this document for trustees who choose to sign up to the protocol.

# Changes introduced by the protocol

## Interim dividend process for trustees

Current legislation ([Section 176 of B(S)A 2016](https://www.legislation.gov.uk/asp/2016/21/section/176)) states a trustee must pay a dividend to creditors **no later** than 24 months from the date the Trust Deed is granted and every six months thereafter. This is where the trustee has sufficient funds to do so and does not preclude a trustee from paying a dividend to creditors at an earlier stage.

Good practice under this protocol is that, wherever practicable, a dividend should be paid to creditors after month 12 and quarterly thereafter.

## Process for a trustee refusing debtor discharge

There are two processes for discharge in a PTD. Where the trustee wishes to seek their own discharge and the debtor’s where they aver the debtor has met their statutory obligations [(Section 184)](https://www.legislation.gov.uk/asp/2016/21/section/184/enacted), and where the debtor has failed to meet their statutory obligations, which discharges the trustee from the PTD but the debtor is still liable for the debt, plus any interest [(Section 186)](https://www.legislation.gov.uk/asp/2016/21/section/186/enacted).

Where a trustee is at the stage of issuing a debtor notification under [Section 184(8)](https://www.legislation.gov.uk/asp/2016/21/section/184/enacted), **before issuing the notice,** the trustee must first submit to AiB the “*Refusal of Debtor Discharge*” document, copied below. This document will become a requirement in advance of any Form 6 applications to AiB, irrespective of the legislation in effect at the date on which the Trust Deed was granted.

[Application to refuse debtors discharge in Protected Trust Deed](https://www.aib.gov.uk/refusal-debtor-discharge-protected-trust-deed)

Before deciding to withhold the debtor’s discharge PTD, the trustee takes several factors into consideration, as the implications on the debtor are significant. The trustee is therefore being asked to articulate the reasons for their decision in an agreed format for AiB to consider.

Should AiB disagree with the trustee’s decision, the trustee will be contacted in the first instance to discuss matters. Where the trustee and AiB do not agree, the AiB will seek to issue a direction to the trustee which can then be challenged. Hereafter, in terms of Section 184(8) the trustee will send written notification to the debtor.

The protocol preserves the debtor’s right to seek a direction from a sheriff if they do not agree with the intention to withhold their discharge.

## Trustees to only accept referrals from FCA approved generators

It is acknowledged that regulatory best practice covering the period leading up to the appointment of a trustee is set out in accordance with RPB guidance. Any advice which results in a personal appointment of an IP then becomes the responsibility of the IP, however, the initial contact with a debtor is a significant part of the process.

In acknowledgement of concerns expressed over the practices of some commercial arrangements some trustees have with so-called lead generating organisations, this document endorses the Code of Ethics set out by the [UK Insolvency service](https://www.gov.uk/government/publications/insolvency-practitioner-code-of-ethics) (section C), whereby the trustee must consider the professional or regulatory status of any introductory firm. This is in line with the [ICAS](https://www.icas.com/professional-resources/insolvency/latest-developments/new-code-of-ethics-for-insolvency-practitioners-published), [ICAEW](https://www.icaew.com/-/media/corporate/files/technical/ethics/insolvency-code-of-ethics.ashx?la=en) and [IPA](https://www.insolvency-practitioners.org.uk/regulation-and-guidance/ethics-code) code of ethics (IPA ref 330.5 A3).

For the purposes of the PTD protocol, a non-commercial organisation such as Citizens Advice Bureaux or local authority money advice unit is not considered a lead generator.

#  Review

The elements of this protocol will be subject to discussion and regular review. Before any amendments are introduced, the Protected Trust Deed Standing Committee and Recognised Professional Bodies will be consulted.