**Wider Review of Scotland’s Statutory Debt Solutions**

**Stage 2 Working Group 1 – Moratorium and Common Financial Tool - Recommendations**

**March 2022**

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# 1. Introduction

1.1 This group was set up to focus on moratorium against diligence and the Common Financial Tool (“the CFT”).

1.2 Wide ranging bankruptcy reforms were introduced through the Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”), which came into force in April 2015. These reforms included the moratorium against diligence which provides individuals with a period of protection from their creditors, and the CFT which is used to calculate a debtor’s contribution in Scotland’s statutory debt solutions.

# 2. Moratorium

2.1 Moratorium against diligence was introduced by the 2014 Act which amended the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”) and has since been consolidated into Part 15 of the Bankruptcy (Scotland) Act 2016 (“the 2016 Act”).

2.2 A statutory moratorium on diligence provides a six-week period of protection during which creditors cannot take any formal recovery action (diligence) against a debtor for debts owed. Moratorium protection can be requested by debtors who are seeking to access an appropriate statutory debt solution but who require more time to seek advice and consider their options. During this time, creditors are prevented from:

* Serving charges for payment on the debtor
* Commencing or executing any diligence to enforce payment
* Founding on any debt owed by the person in presenting or concurring in the presentation of a petition for sequestration
* Receiving funds where an arrestment against the debtor has been granted.

2.3 In May 2021, the UK Government introduced the Debt Respite Scheme in England and Wales – aimed at providing breathing space for those seeking debt resolution. Two types of breathing space were introduced – a standard breathing space and a mental health crisis breathing space. The differences of the standard breathing space to the moratorium in Scotland include:

* a money adviser must apply for the scheme on behalf of their client
* it lasts for up to 60 days
* interest and charges accrued during the moratorium period are not required to be paid - i.e. frozen
* a midpoint review is required
* the scheme can be cancelled if ongoing liabilities are not paid during the period.

2.4 The mental health crisis breathing space provides similar protections to the standard breathing space but lasts for the length of the mental health crisis treatment plus a further 30 days.

2.5 The group considered the time period for the Scottish moratorium and whether additional protections/provisions were required to improve moratorium in Scotland – such as those in breathing space.

## Freezing of Interest and Charges

### Background

2.6 The group considered whether interest and charges on qualifying debts incurred prior to the moratorium should be frozen during that period. To assist with the group’s discussions on this topic, representatives from the UK Insolvency Service as well as money advisers and creditors[[1]](#footnote-1) who have interacted with breathing space attended some of the group’s meetings. They were able to provide their perspective on how the breathing space processes have worked to date.

### Discussion

2.7 At the initial stages of the group’s discussion the general consensus was that freezing interest and charges would be a positive amendment to the current moratorium in Scotland as it would ease some of the stress being experienced by those in debt.

2.8 Although most creditors may already freeze interest and charges where clients are experiencing difficulty, this is not always the case. For example, those in financial services have a regulatory obligation to consider waiving interest and fees when granting forbearance whilst other creditors such as HMRC and Local Authorities are not under such an obligation. Therefore, the introduction of a statutory requirement to freeze interest and charges would be welcomed.

2.9 Representatives who joined the group to discuss early experience of breathing space were positive about this aspect of the scheme. However, they also highlighted the challenges faced on a practical level. Among the most challenging was matching the debt and creditor to the debtor. In the main, this appears to be caused by a lack of accuracy with the data entered into the IT system underpinning the scheme.

2.10 Given this information, the group stressed that a highly effective and efficient IT system would be fundamental if this were to be adopted in Scotland. The group acknowledged that Accountant in Bankruptcy (“AiB”) operates efficient systems which provide the necessary communication between the adviser and creditors for statutory debt solutions. These IT systems work well for bankruptcy, Debt Arrangement Scheme (“DAS”) and Protected Trust Deeds (“PTD”) – BASYS, eDEN and ASTRA respectively. The group believe if a similar system is established for the moratorium process this may reduce some, if not all, of the challenges experienced with breathing space.

2.11 Adopting an IT system in this way would also allow for the moratorium register to be private rather than public - as it is currently. The group believe this would also be a positive change.

2.12 The group acknowledged that not all creditors may be registered on such an IT system – particularly smaller creditors or creditors who are individuals rather than business operations. This would result in those creditors requiring a postal notification as they may not be able to receive an electronic notification through the IT system. The group believe AiB would be best positioned to send postal notifications as they currently have a similar role in the other systems.

2.13 During the group’s discussions they recognised that only the interest and charges of qualifying debts are frozen in breathing space. For example, the interest on mortgage arrears is frozen, however, the interest on the mortgage itself is not. Therefore, clarity on the type of debts for which interest and charges should be frozen would be required before such a provision is adopted in Scotland. The group also recognised the potential impact on the formulation of claims in any subsequent formal insolvency solution and this would require consideration if the freezing of interest and charges was applied.

2.14 The group also discussed whether further protections should be considered beyond the freezing of interest and charges such as the prevention of repossessions as well as creditors contacting individuals about a debt included in the moratorium. While the group considered these as positive steps there were concerns raised about any unintended consequences resulting from a potentially prolonged moratorium period.

2.15 During the group’s discussions it was highlighted that the current Scottish moratorium system may not protect the individual from being pursued for all debts, such as a Direct Earnings Attachment. This can impact on the individual trying to seek a debt solution.

2.16 In light of these points, the group believe it would be beneficial for a review to be undertaken on the types of debt included in the moratorium and what interest/charges would be frozen. They accept that such an undertaking may form part of stage 3 of the wider review.

### Recommendation

* **Recommendation 1** - The group recommends introducing the freezing of interest and charges on debts in Scotland’s moratorium. They acknowledge that introducing this provision would fundamentally change the current moratorium process in Scotland. Currently the onus is on the creditor to check the public register prior to undertaking any form of diligence. This would no longer be feasible if creditors were expected to freeze their interest and charges - this would require notification in order that the freeze is enacted as soon as possible.
* **Recommendation 2** - The group recognise that by changing the process in this way a money adviser would be required to apply for the moratorium on their client’s behalf. The group believe using IT systems already developed for Scotland’s statutory debt solutions would ensure the efficiency of the application and notification process. Automatic electronic notifications could be sent to creditors. Where creditors are not on the system and required to be notified by post, the group recommends that AiB undertakes that function.
* **Recommendation 3** - The group would also recommend a further review is undertaken into additional protections such as repossession prevention and creditor contact – as well as the types of debts included in the moratorium. They believe this research and consideration may be best undertaken during stage 3 of the wider review.

## Period of Moratorium

### Background

2.17 When moratorium against diligence was introduced in Scotland the protection period was six weeks from the date of registration in the Register of Insolvencies. An individual could only apply for one period of protection within an annual timeframe.

2.18 In March 2020, the Coronavirus (Scotland) Act 2020 (“the first Coronavirus Act”) temporarily extended the period of moratorium against diligence to six months. This period for moratorium has been extended to March 2022 with the option for further extension to September 2022, subject to Parliamentary approval. As with other temporary Coronavirus provisions, regular reports on their operation are submitted to the Scottish Parliament and the ongoing need is kept under constant review.

2.19 The group considered whether the original statutory timescale of six weeks for a moratorium period was sufficient or whether an alternative timescale was more appropriate and if so how long that period should be.

### Discussion

2.20 As part of the group’s discussions on the moratorium time period, they considered both the results from the earlier consultation on the 2014 Act reforms and the timescale which is currently applied in the standard breathing space in England and Wales – 60 days. The majority of respondents to the 2014 Act consultation did not believe six weeks was sufficient for the moratorium period. Of the alternatives highlighted, 12 weeks received the strongest support in the consultation. However, when considering the total number of respondents to the question on the appropriate moratorium period 34% suggested 12 weeks with the remaining 66% preferring a period of less than 12 weeks – broken down into six weeks, 60 days, 10 weeks and another amount. The group acknowledged that this particular consultation was in 2019 and circumstances have since changed. They also recognised that the Scottish Government had recently concluded a consultation on the Coronavirus (Recovery and Reform) (Scotland) Bill (“the Bill”) which included a question on the moratorium period – although the question was not as open as the 2014 Act consultation. At the time of the group’s discussion the results from the Bill consultation were not available.

2.21 The group were made aware that from a creditor’s perspective it may be better to align the time period in Scotland with the standard breathing space in the rest of the UK. However, it was also highlighted in the group that 60 days would not always be sufficient for advisers to meet their requirements - such as gathering information needed to offer appropriate advice on benefits and budgeting as well as helping with benefit/grant applications.

2.22 During the group’s discussions it was highlighted that although in most cases an adviser can complete the process with a client within 60 days, there are some cases where this is simply not possible. Other factors outwith the client’s or adviser’s control can create delays to the process of providing advice - such as delays in the determination of state benefit applications (including Personal Independence Payments (“PIP”). It was also highlighted that delays in providing advice can be due to the client’s mental health issues. These issues may not necessarily reach the level of requiring mental health crisis treatment but would still impact on the time taken to find a solution for the individual. Consequently, a 60 day moratorium period alone may not be an appropriate timescale to allow for these circumstances.

2.23 An alternative approach suggested was to allow an adviser the ability to apply for an extension to the moratorium period. This would only be in specific circumstances. The circumstances considered by the group were where an issue was outwith the adviser or their client’s control. The group understood this may require examples listed in legislation to ensure consistency for advisers whilst also providing confidence in the process to creditors. However, they also recognised that this list should not be exhaustive or prescriptive but primarily to provide guidance. The group believed the legislation on this provision should be balanced as an adviser would not want to unnecessarily prolong the moratorium period and prefer the matter be resolved as quickly as possible.

2.24 While it was believed that the majority of moratoria would not require an extension, it was stated that it would be greatly beneficial to have such an option available in those limited necessary cases. Aware of creditor concerns, the group considered whether the set period for a moratorium should be 60 days to align with the rest of the UK. They considered the length of the extension should be no longer than 90 days in cases with that set of narrow criteria.

2.25 When considering the possible additional provisions such as freezing interest and charges – a potential 90 day moratorium became more problematic from a creditor perspective. The extended period coupled with additional restrictions potentially imposed on creditors – such as preventing repossession - raised questions of the proportionality of the proposed moratorium.

2.26 The group believe that neither the six week period - introduced by the 2014 Act in 2015 - nor the six month period – introduced by the first Coronavirus Act – are appropriate periods for a moratorium in Scotland, on a permanent basis. However, the group could not agree on an alternative moratorium period.

### Recommendation

* **Recommendation 4** - The majority of members of the group preferred adopting an approach which would allow an adviser to apply for an extension to the moratorium under certain circumstances which were outwith the individual and the adviser’s control. They did not believe it would be necessary or beneficial for the criteria to be prescriptive. It would be for the adviser to explain the reasons for requiring an extension and for AiB to agree or reject that extension. In that scenario they believe the most appropriate timescales would be a standard period of 60 days, to align with the rest of the UK, with the allowance of a 30 day extension.
* **Recommendation 5** - Other members were resistant to that approach due to the potential for a moratorium lasting 90 days, albeit in limited circumstances, and they are not convinced it is necessary for such a period. They specifically had concerns about any possible unintended consequences resulting from a moratorium lasting 90 days with additional protections such as freezing interest/charges and preventing repossessions. Therefore, they believe the moratorium period should be fixed at 60 days which is in line with the Financial Conduct Authority regulations and would, therefore, ensure consistency across the UK.

## Mental Health Crisis Provision

### Background

2.27 In England and Wales, the Debt Respite Scheme introduced the mental health crisis breathing space for someone who is receiving mental health crisis treatment. The period of protection lasts for the length of the person's mental health crisis treatment, plus 30 days (regardless of the crisis treatment timescale).

2.28 Where an approved Mental Health Professional certifies that a person is receiving mental health crisis treatment, the approved Mental Health Professional’s evidence can be used by a debt adviser to commence a mental health crisis breathing space.

2.29 In addition to the debtor, the following people can apply to a debt adviser on behalf of a debtor for a mental health crisis breathing space:

* the debtor’s carer
* approved Mental Health Professional
* care co-ordinators appointed for the debtor
* mental health nurses
* social workers
* independent mental health advocates or mental capacity advocates appointed for the debtor
* a debtor’s representative

2.30 The group considered whether this type of mental health crisis moratorium, or a similar approach, should be adopted in Scotland.

### Discussion

2.31 The group reached consensus in recognising the benefits of introducing a mental health crisis moratorium. Members of the group had experience of dealing with clients who had mental health issues and were very well aware of the additional stress unsustainable debts can have. They recognised that the mental health crisis breathing space in England and Wales only applies to people in crisis care. Some members of the group highlighted potential limitations with that approach as they were aware of individuals who would benefit from that support but were not necessarily in care. Therefore, the group believed a more holistic approach should be taken if such a provision was adopted in Scotland. It would be vital for mental health professionals to be involved with the development of the provision.

2.32 In considering how a mental health crisis moratorium could be adopted in Scotland, the group reviewed similar provisions under breathing space. Some members of the group raised concerns about the application process applied in this scheme. One of the main issues is the restricted list of mental health professionals required to support the application. Some members of the group believe this list should be more open if a mental health crisis moratorium is to be introduced in Scotland. However, other members of the group did not favour that list being too open. They believe the criteria set out in England and Wales aims to ensure the appropriate people are accessing this protection.

2.33 A further concern is the requirement for the money adviser to obtain and update the information on a debtor’s mental health crisis treatment. This could potentially prove onerous on the money adviser and this raised questions over the adoption of this aspect of breathing space. However, it was also highlighted that in breathing space the requirement for this updated information is to confirm the individual remains eligible for the protections afforded such as not being required to pay interest and fees for their qualifying debt throughout the moratorium period.

2.34 The group heard from various representatives who have experience of the mental health crisis breathing space. It was noted at the time of them speaking with the group that the uptake of this particular provision in England and Wales was low. It was acknowledged that it was still early in the introduction of breathing space. Consequently, the statistical data available on the effectiveness of the mental health crisis breathing space was limited at the time. Although it was not clear why the uptake was low, there was a recognition that the number of applications may have been affected by the design or delivery planning of the provision. The group, therefore, again recognised the importance of involving the mental health profession should a similar provision be developed in Scotland. The UK Insolvency Service will update colleagues in Scotland when more detail on the uptake becomes available.

2.35 While the general principles underpinning the mental health crisis protections were strongly supported by the group, it would be important to learn for the challenges faced in implementing the provisions in England and Wales prior to considering similar measures in Scotland.

### Recommendation

* **Recommendation** **6** - The group recommends a mental health crisis moratorium is considered in Scotland. Development in this area would need to take into account the challenges in practical application of the mental health crisis breathing space and a majority of group members do not believe Scotland’s approach should mirror England and Wales exactly. In particular, some members of the group believe the list of medical professionals considered as an approved Mental Health Professional is too narrow and question whether including other professions may deliver a less restricted process. The list of approved Mental Health Professional’s should mirror that of the existing Community Health Teams in Scotland which consist of NHS and local authority staff including, psychiatrists, psychologists, community psychiatric health nurses, mental health officers and social workers. However, views were divided on this and other members urged caution in setting criteria that are too open.
* **Recommendation 7** - The group considers that this particular provision will require deeper investigation and discussion with Scotland’s mental health profession, relevant community groups, and the appropriate policy areas within Scottish Government before it can progress. Although the group would recommend introducing a mental health crisis moratorium in Scotland they believe the practical application of such a provision will require further consultation, possibly as part of stage 3 of the wider review, which should also align with the Scottish mental health law review currently being undertaken.

# 3. Common Financial Tool

3.1 The CFT was introduced by the 2014 Act and The Common Financial Tool etc. (Scotland) Regulations 2014 (“the 2014 Regulations”). Following consolidation of bankruptcy legislation, the provisions are now contained in the 2016 Act and the Bankruptcy (Scotland) Regulations 2016 (“the 2016 Regulations”).

3.2 The CFT is used to calculate a debtor’s contribution in each of Scotland’s statutory debt solutions. The statutory tool prescribed is currently the Common Financial Statement (“CFS”) which is operated by the Money Advice Trust and available for use under license. The Money Advice Trust commissions work to set and uprate certain expenditure guidelines (or trigger figures) that relate categories of expenditure based on household composition.

3.3 In Scotland, the full surplus income calculated using the CFT requires to be paid as a contribution in both bankruptcy and PTDs. Although the CFT is also utilised in DAS, greater flexibility is afforded in fixing the contributions payable.

## Methodology

3.4 The group considered the two main methodologies that could be adopted for the CFT - an income and expenditure model such as the current tool used in Scotland and an income based model which is used by some other countries around the world.

3.5 Aligned to the methodologies, the group also identified two elements to consider. They were:

* the policy intention of the CFT; and
* the operational policy associated with the CFT.

3.6 The group discussed the priority policy objectives of the Scottish Government in requiring the CFT to be used with all Scottish statutory debt solutions. The two main objectives identified by the group were:

* to promote consistency by providing the same outcome regardless of the individual using the tool; and
* to allow for flexibility – providing nuance and the ability to consider household circumstances when assessing a potential contribution.

3.7 On the operational issues, the group considered the practical application of the CFT. This included the guidance and requirements when using the CFT rather than the specific mechanics of each tool.

3.8 This led the group to create a set of criteria considered to be the most important elements of a fair contribution assessment tool. The list was used to assess the strengths and weaknesses of each of the two methodologies highlighted.

3.9 The list of criteria was as follows:

* The level of evidence required
* Whether the tool was judgemental on a debtor’s expenditure
* The impact on a debtor’s dependants/other household members
* Applicability of Non-employment income
* Whether the tool was reflective of post debt solution financial position and not a pre-debt solution
* Whether the tool adequately reflected additional disability/health needs
* Whether the tool provided for a reasonable living standard
* The consistency level of the assessment and outcome
* The extent to which the tool provided future financial resilience
* The flexibility of the tool for someone with variable/seasonal income and expenditure
* Whether the tool catered for varying expenditure levels in different locations (such as urban and rural)

3.10 The group assessed both methodologies against each of these criteria using a scoring system (unweighted) to determine which methodology was preferred. From this scoring system and further discussion, the group was able to present its findings on the most appropriate tool according to those criteria.

## Income and Expenditure Model

### Background

3.11 An income and expenditure model requires the collection of information on an individual’s income and expenditure – in addition to information relating to household composition and circumstances (such as a single person, a couple, with or without dependents etc.).

3.12 The two income and expenditure tools currently utilised in the UK are the CFS and the Standard Financial Statement (“SFS”). Each of these tools groups an individual’s expenditure (such as groceries, school meals) into categories. Each of these categories have an associated ‘spending guideline’ also known as a ‘trigger figure.’ The SFS spending guidelines are statistically derived measures of real life expenditure. The figures are used to understand how a customer's expenditure compares to the typical expenditure of their peers recognising that what is ‘reasonable’ will be unique to each customer’s circumstances. Where the expenditure is lower than the guideline it should be automatically accepted and where they are higher than the spending guidelines this should prompt advisers to include notes (and where feasible evidence) on the customer’s circumstances and why this is suitable in their specific circumstances. The CFS ‘trigger figures’ are pre-agreed levels for certain areas of discretionary household expenditure which help identify levels of monthly expenditure deemed reasonable.

3.13 The current system adopted in Scotland utilising the CFT requires evidence to support an individual’s expenditure in excess of a ‘trigger figure’ level – where that evidence is provided the expenditure will generally be accepted. If no evidence or explanation is available, the expenditure will generally be capped at the ‘trigger figure’. If the expenditure is lower than the ‘trigger figure’, it will be accepted with no supporting evidence.

3.14 In addition to the categories where spending policies are in place, both the CFS and SFS include expenditure items which do not have any measures of what is reasonable or typical, as these items are considered essential. These include rent/mortgage payments, council tax liability and utility costs. The main difference between the CFS and SFS in this respect is that the CFS has a ‘trigger figure’ for travel costs where the SFS does not. The current approach in Scotland requires the expenditure in these non-triggered categories to be supported by evidence.

### Discussion

3.15 The group considers that an income and expenditure tool provides the most detailed picture of the debtor’s circumstances and is flexible enough to take account of people living in various locations and under different circumstances – e.g. urban and rural, vulnerabilities or complex family arrangements. The group also believe it provides a level of (but not absolute) consistency where all parties using the tool are required to follow the appropriate guidance.

3.16 However, the group highlighted that by breaking down the expenditure amounts and obtaining a significant level of information about individual circumstances, it is difficult to avoid judgements being placed on the debtor’s lifestyle and how they spend their money. There are differing views on the evidence requirement associated with income and expenditure tools. Some stakeholders believe the requirements for evidence to support the income and expenditure assessment are overly burdensome, although the group recognised that rather than being the requirement of the specific tool, the evidence requirement is more closely associated to the operational policy adopted in Scotland. Others noted that it is essential to gain an accurate picture of the circumstances and offer the most complete and appropriate advice.

3.17 There was consensus amongst the group that the current Scottish approach does not provide sufficient financial resilience due to the full surplus income being taken as a contribution. The restrictive approach on surplus income also impacts on the incentives for an individual to work overtime or seek opportunities for increased earnings.

3.18 The group considered an alternative approach to the full surplus being taken as a contribution. They identified two possible options:

* a percentage of the surplus income is taken as a contribution (e.g. 50%); or
* a set figure is automatically excluded from the surplus and the remaining amount is taken as a contribution (e.g. the first £75 excluded).

3.19 The group was aware of the positives and negatives to both approaches. Having a set figure excluded provides a clear and consistent approach, however, it would not incentivise someone to work overtime as the additional income gained beyond that initial excluded amount would be paid as a contribution. With the percentage contribution option, the individual would be allowed to retain more of the income they gained from additional hours worked. It is recognised that this option may not allow the consistency offered by the fixed amount excluded option.

3.20 While the CFS and the SFS have a similar structure, there are differences in approach and maintenance of the tools. It was highlighted that the CFS is now a legacy tool which is maintained with the primary purposes of uprating the spending guidelines for use in Scotland. In contrast, the SFS is regularly monitored and analysed for improvements by the Money and Pensions Service. This raised concerns among the group as they recognised economic circumstances change and, as a result, people’s lifestyles and spending habits may alter. An example given was the use of electric cars which could impact on the expenditure categories – moving from travel to utilities as an individual will increase use of their domestic electricity to charge the car rather than paying for fuel. Such developments may not be considered in such depth for the CFS and this could see the SFS better placed to align with economic change.

3.21 While recognising the issue with current evidence requirements for the CFT, the group also highlighted the need to ensure there would not be greater evidence requirements should the SFS be adopted. In particular, the travel category no longer having a spending guideline should not mean that all customers have to evidence and explain all travel expenditure as this would be incredibly burdensome to clients and advisers.

## Income Based Model

### Background

3.22 An income based model requires solely the ingathering of information on the debtor’s income and their household circumstances (e.g. single person, couple, with/without dependents etc.). There is no requirement to assimilate detailed information on the individual’s expenditure.

3.23 This methodology is underpinned by the fixing of a minimum income for an individual - dependent upon their household situation. Any income the individual receives above that set amount would be considered as surplus income.

3.24 There are currently several other countries who have adopted this methodology. The group considered the tools used in Australia, Canada and the Republic of Ireland.

3.25 Looking at the Australian model, if the individual earns over the income set amount they'll be required to make compulsory payments (also called income contributions). The amount they may need to pay depends on their income and how many dependants they have.

3.26 Compulsory payments are fixed at 50% of the amount earned above the income threshold – in accordance with the number of dependents.

3.27 The Canadian and Irish models adopt a similar approach, albeit with variable dependent criteria and fixed income levels. The Irish model requires payment of the full surplus as a contribution whereas the Canadian approach mirrors the 50% surplus contribution adopted in Australia.

### Discussion

3.28 The majority of the group believe there is administrative efficiency in this process through not having to obtain supporting evidence for individual items of expenditure. In addition, there is no judgement on the person’s lifestyle as they are not required to provide full details of their expenses.

3.29 The group recognise the opportunity for increased consistency associated with this methodology as it is solely based on the person’s income and would be a banded system. However, there would be less flexibility to take account of individual’s specific circumstances where exceptional costs might be incurred beyond those envisaged in common parameters.

3.30 Of the tools considered which currently apply this methodology most do not require payment of the entire surplus income that applies in each banded income range. The percentage of income to be paid as a contribution varies from country to country. The group considered statistics collated on bankruptcy cases in Scotland (from 2018 – present) with the application of each of the models to determine the impact on contributions. Table 1 (below) provides data on the percentage of cases where a contribution would be assessed using the various income based models.

3.31 Although there are benefits of clarity and consistency with this type of methodology, the group also recognise the strengths associated with a more bespoke tool. The weakness in this income-based methodology relates to its rigid structure – this means that the agility of the income and expenditure based model to take account of unique circumstances may be diminished. An income only based model does not afford the flexibility needed to provide a clear and specific picture of the individual’s circumstances. Consequently, an individual with a higher income and justifiably higher expenditure would be assessed in the same way as someone with the same income but a lower expenditure. However, it was recognised that this may be the exceptional case which could be resolved with an evidence requirement.

 3.32 The rigid structure of the model makes taking account of certain non-earned incomes which the group believe should be exempt from a potential contribution - such as child maintenance and a disability allowance – more prominent. The recommendation is that if such a model were to be adopted in Scotland it would require income to be defined in such a way as to take account of such income streams.

3.33 The group discussed the methodology to produce the income levels for the banded system – in particular the focus group approach. Research for the Minimum Income Standards is undertaken with selected members of the public who specify the appropriate level of expenditure according to their situation. This information determines the income required for the budget levels within the Minimum Income Standards. The group had concerns that this approach might not be fully representative of the circumstances faced by those individuals seeking debt advice and could potentially lead to an overly punitive outcome.

3.34 The group considered statistics collated from data on bankruptcy cases in Scotland (from 2018 – 2021) according to the individual’s banded income and the estimated contribution level they were assessed to pay. Table 3 (below) provides a breakdown of this information.

3.35 The working group recognises that there may not be a ‘perfect’ tool which will meet all requirements in all circumstances. It has considered what is believed to be the most important aspects of the CFT and how best to achieve a balance between the interests of all those involved.

### Recommendation

* **Recommendation 8** - If the policy intention of the CFT is solely to achieve consistency, the group assesses the income based model as best able to achieve that objective. However, if the policy intention is to allow for flexibility and nuance in application to individual circumstances, the income and expenditure tool is considered more suitable.

On the operational policy of the tool, there were two main areas of concern identified by the group:

* the full surplus income being taken as a contribution; and
* the requirement for evidence being provided in each instance of a ‘trigger figure’ breach.

* **Recommendation 9** - There was a consensus within the group that the full surplus should not be required to be taken in all cases as a contribution as this does not provide financial resilience for the individual and leads to a disincentive from securing higher earnings (e.g. through working additional hours). The group could not reach a conclusion on the best alternative approach to be taken and suggest that this requires further consideration.
* **Recommendation 10** - The group believe there should be more flexibility in the evidence requirements where a spending guideline has been breached. As money advisers and insolvency practitioners are both regulated professions, the group agreed that they should be afforded greater autonomy over the supporting evidence required for expenditure – such as a viable explanation without the requirement for specific documentation. A random check undertaken by AiB - similar to the approach taken by other regulators – was considered as one option to address these concerns.

On the most appropriate methodology, the group could not reach a consensus. The merits of each approach have been set out in the discussions above. If an income and expenditure model was to be retained, the group have shown a preference in the SFS being used as it will provide a level of consistency across the UK and it is clear that it with be more readily adapted for future economic changes. In addition, the guidance around the operational practices identified by the group should be taken into account if such a move were to occur. While the group recognise the current operational issues with the CFT which need to be resolved, they believe there would be resistance from the money advice community should the evidential requirements not be addressed alongside any introduction of the SFS as this greatly impacts on their time and ability to provide advice to their clients.

**Table 1: Management Information: Comparison of alternative contribution (income-based) assessment tools**

| **Financial year of the awarded date** | **2018-19** | **2019-20** | **2020-21** | **Overall** | **Percentage of overall figure** |
| --- | --- | --- | --- | --- | --- |
| **Number of debtor applications of bankruptcy** | **3,867** | **3,825** | **2,163** | **9,855** | **100%** |
| of which tool - DCO/CFT: Set to pay a contribution (see Table 2) | 602 | 618 | 212 | 1,432 | 15% |
| of which tool - Canada: Assessed to pay a contribution | 651 | 736 | 439 | 1,826 | 19% |
| of which tool - Australia: Assessed to pay a contribution | 74 | 81 | 40 | 195 | 2% |
| of which tool - Republic of Ireland: Assessed to pay a contribution [note 1] | 2,172  | 2,269  | 1,279  | 5,720  | 58%  |
| of which tool - DCO/CFT: Set to not pay any contribution (see Table 2) | 3,265  | 3,207  | 1,951  | 8,423  | 85%  |
| of which tool - Canada: Assessed to not pay any contribution | 3,216 | 3,089  | 1,724  | 8,029  | 81%  |
| of which tool - Australia: Assessed to not pay any contribution | 3,793  | 3,744  | 2,123  | 9,660  | 98%  |
| of which tool - Republic of Ireland: Assessed to not pay any contribution [note 1] | 1,503  | 1,370  | 765  | 3,638  | 37%  |
| of which tool - Republic of Ireland: Unable to assess [note 1] | 192  | 186  | 119  | 497  | 5%  |

Full notes for the above table can be found on the AiB website at the following link: [Ad-hoc statistical release ID 11](https://www.aib.gov.uk/aib-ad-hoc-statistical-release-id-11-final).

**Table 2: Number of debtor contribution order (DCO) for debtor applications by financial year of the awarded date**

| **Financial year of the awarded date** | **2018-19** | **2019-20** | **2020-21** | **Overall** | **Percentage of overall figure** |
| --- | --- | --- | --- | --- | --- |
| Number of debtor applications of bankruptcy | 3,867 | 3,825 | 2,163 | 9,855 | 100% |
| of which: Balancing item to match the published statistics | 0 | 0 | 0 | 0 |   |
| of which type: MAP with either a DCO set at £0 or no DCO was set | 2,173  | 2,020  | 1,512  | 5,705  | 58%  |
| of which type: FA with either a DCO set at £0 or no DCO was set | 1,092  | 1,187  | 439  | 2,718  | 28%  |
| of which type: FA with DCO set at more than £0 | 602 | 618 | 212 | 1,432 | 15% |

Full notes for the above table can be found on the AiB website at the following link: [Ad-hoc statistical release ID 11](https://www.aib.gov.uk/aib-ad-hoc-statistical-release-id-11-final).

**Table 3: Number of debtor contribution order (DCO) for debtor applications by income and contribution level between 2018-19 and 2020-21**

| **Financial year of the awarded date** | **£0 or no DCO set** | **Between £0 and less than £100** | **Between £100 and less than £200** | **Between £200 and less than £300** | **At least £300** | **Total - with DCO more than £0** | **Total** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Number of debtor applications | 8,423  | 437  | 650  | 175  | 170  | 1,432  | 9,855  |
| of which annual income: £0 | 216  | 0  | 0  | 0  | 0  | 0  | 216  |
| of which annual income: Less than £15,000 | 4,682  | 114  | 71  | 9  | 0  | 194  | 4,876  |
| of which annual income: Between £15,000 and less than £20,000 | 1,764  | 142   | 198  | 43  | 19  | 402  | 2,166  |
| of which annual income: Between £20,000 and less than £25,000 | 942  | 79  | 159  | 38  | 35  | 311  | 1,253  |
| of which annual income: Between £25,000 and less than £30,000 | 466   | 40  | 92  | 32  | 25  | 189  | 655  |
| of which annual income: Between £30,000 and less than £35,000 | 226  | 32  | 56  | 17  | 19  | 124  | 350  |
| of which annual income: £35,000 or more | 127  | 30  | 74  | 36  | 72  | 212  | 339  |

Full notes for the above table can be found on the AiB website at the following link: [Ad-hoc statistical release ID 11 supplementary](https://www.aib.gov.uk/aib-ad-hoc-statistical-release-id-11-further-tables).

# 4. Group Membership

4.1 With thanks to the members of the group who provided their valuable time and expertise and led this work.

* Angela Kazmierczak, Aberdeen City Council
* Daniel Kelly, Money and Pensions Service
* David Hilferty, MAS (left group on 5 July)
* Abbey Fleming, MAS (joined group on 5 July)
* David Menzies, ICAS
* David Ogston, CAB
* Dermot O’Neill, Scottish League of Credit Unions
* Gareth McNab, Christians Against Poverty
* Ian Fiddeman, UK Finance
* Joseph McMonagle, Money Matters Advice Service
* Matt Hartley, Money Advice Trust
* Sarah-Jayne Dunn, CAS
* Sharon Bell, StepChange
* Tommy Gallacher, Azets
1. [1] StepChange UK; and Tesco Bank [↑](#footnote-ref-1)