PTDs rise again

Personal insolvencies in Scotland have remained largely stable for the second quarter of the year, according to the latest figures from Accountant in Bankruptcy (AiB).

Total personal insolvencies, which include both bankruptcies and protected trust deeds, totalled 2,424 for the second quarter of 2016-17 up to 30 September 2016, a small 0.8 per cent increase on the previous quarter.

The number of protected trust deeds recorded increased to 1,311 from 1,261, a 3.3 per cent rise from the same quarter a year ago and 4 per cent up on the previous quarter.

Legislative changes in bankruptcy introduced from 1 April 2015 increased the bankruptcy debtor contribution period to 48 months. Prior to this, those agreeing to a PTD were typically paying contributions for an additional year as compared with those in bankruptcy. Following these legislative changes, which aligned bankruptcy and PTD contribution periods, there have been more PTDs registered than bankruptcies awarded.

A debtor in a protected trust deed is normally discharged after 48 months, if the debtor makes the agreed payments, and co-operates with their trustee. After the debtor has been discharged, the trustee may remain in office as long as necessary to conclude the administration of the trust deed.

The second quarter of 2016-17 saw 1,308 debtors discharged and 1,219 trustees.

Commenting on the latest figures, Business Minister Paul Wheelhouse said: “While it is never acceptable to have people struggling to make ends meet, it does appear we are seeing a more regular pattern emerge in personal insolvencies.

“Numbers were at historic lows during 2015-16 as the industry readjusted to the new legislation. A more accurate comparison is with the same period in 2013-14 and 2014-15, where we are 35.3 per cent and 32.7 per cent lower today respectively.”
New process for trustee discharge from pre-April 2008 PTDs

Case details for PTDs granted prior to 1 April 2008 have now been migrated to ASTRA and trustee discharges for these PTDs can now be registered on the ASTRA system.

The good news is that if trustees and their staff are completing the Form 11 for trustee discharge on ASTRA, you don’t have to send a paper copy to AiB anymore. This also means AiB won’t issue letters acknowledging the registration of the Form 11 as the details will all be on ASTRA.

Details of how to process the Form 11 can be found in the ASTRA User Guide, but any further questions you may have can be answered by a member of the Trust Deeds team.

Form 2A template

As you may have spotted following the publication of a Dear Trustee letter on 14 September 2015, AiB has uploaded a new Form 2A template to the Agency website.

The new template includes additional fields to capture details of the number of people in the household, dependants and vehicles. The inclusion of these details provides a more accurate picture of the debtor’s circumstances for creditors and AiB.

Trustees are encouraged to use this template and also advise, when submitting a Form 3, whether the income and expenditure is based on an adult dependant, such as in the situation where the debtor pays all household bills due to their partner not working. This information will prevent delays when checking the Form 3 proposals.

The template is included in the Protected Trust Deeds (Forms) (Scotland) Regulations 2016, which come into force on 30 November 2016, so it may be worthwhile starting to use this layout now.

CFS allowances for dependant(s) and/or vehicles used in the calculation to assess an individual’s income and expenditure should not be replicated in any other income and expenditure assessment carried out in respect of a trust deed for any other individual.

New CFS trigger figures

The latest Common Financial Statement trigger figures were published on 1 October 2016 and licence holders can access these on the CFS website.
Form 4 round-up

Row S – Other/miscellaneous

As you may be aware, amendments were made to the Form 4 under the Common Financial Tool etc. (Scotland) Amendment Regulations 2015 to include Row S for any miscellaneous funds ingathered, such as PPI, gratuitous alienation, unfair preference, etc. Row S should be included, when submitting a Form 4, for all trust deeds granted on or after 1 April 2015.

Keep it exact

Some trustees may have been rounding figures on their Form 4 table for realisations and costs of administration. However, ASTRA calculates the total realised to date, which means the total realised to date column will be incorrect if a true account of the income and expenditure is not used. Therefore, please make sure the exact amounts shown on the receipts and payments are reflected on the Form 4 table.

Don’t delay

Remember to make sure all Form 4s are up to date prior to submitting a Form 5 (debtor’s discharge) or Form 7 (trustee’s discharge) to prevent any delay in recording the debtor or trustee discharge. There’s a helpful reminder of any due or overdue Form 4s on the ASTRA dashboard, which you can see by clicking the relevant queue on the ‘search to perform’ menu.

[Image of a dashboard]

Get the balance right

Just as a gentle reminder, only enter the debt due to creditors in the ‘Actual in Year’ column on the Form 4 on ASTRA if an interim dividend has been paid.

If no interim dividend has been paid, you should enter ‘0.00’ in these fields.

Interim payments to creditors should be entered in Row R – Dividend to Ordinary Creditors. The amount paid to creditors should be shown in column 2 – Actual in Year.

<table>
<thead>
<tr>
<th>(1) Form 3</th>
<th>(2) Actual In Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>M. Debt due to preferred creditors (£)</td>
<td>£0.00</td>
</tr>
<tr>
<td>N. Debt due to ordinary creditors (£)</td>
<td>£20,000.00</td>
</tr>
<tr>
<td>O. Debt due to postponed creditors (£)</td>
<td>£0.00</td>
</tr>
<tr>
<td>P. Total debts due (£)</td>
<td>£20,000.00</td>
</tr>
<tr>
<td>Q. Dividend paid to preferred creditors (£)</td>
<td>0.00</td>
</tr>
<tr>
<td>R. Dividend paid to ordinary creditors (£)</td>
<td>15.15</td>
</tr>
</tbody>
</table>

£0.00
£0.00
£0.00
£0.00
0
0

The total amount due to ordinary creditors should be shown in column 4 – Final expected.
It’s a date

The **Form 1B** is a formal, statutory record of the agreement in respect of heritable property and it’s important the date agreed for full payment is recorded in full – which means the day, month and year all need to be included.

When filling in a Form 1B, you should remember to include the amount to be realised in respect of the heritable property, the date agreed for full payment, the dates and amounts of any contributions to be paid, details of any lump sum(s) and who will pay the contributions or lump sum(s).

The Form 1B should be signed by both the trustee and the debtor and these signatures should be witnessed.

Trust deed and sequestration claims at HMRC

**HMRC has provided contact details for the team responsible for lodging claims for trust deeds and sequestrations, as well as considering trust deed protection proposals.**

The contact details for this team are:

HM Revenue and Customs

Enforcement and Insolvency
Bankruptcy Claims Team
Elgin House
20 Haymarket Yards
Edinburgh
EH12 5WT

Telephone 03000 520738

Equity and how to treat it

The **Dear Trustee** letter published by AiB in July this year has outlined how trustees should deal with equity in PTDs.

If heritable property is not being excluded from a trust deed and the trustee and debtor reach an agreement to ingather additional funds to release the trustee’s interest in a property, a clear explanation should be included in the notes box on the Form 3. This is the space for trustees to record any non-standard arrangements and reasons for the non-realisation of any assets. A Form 1B should also be completed and sent to creditors and submitted to AiB.

It is worth noting that a lack of such an explanation may result in AiB taking the decision to refuse to protect the trust deed proposals, for the benefit of creditors.
PTD audits and reviews

The trust deeds team has been undertaking reviews on a selection of PTD cases to ensure compliance with the relevant PTD regulations and has noted some examples of best practice:

**Bank reconciliation:** Some PTD case files have been submitted with no evidence of bank reconciliation being carried out. Financial transactions on each case must be evidenced and bank statements and the relevant invoices are required to be provided. Without this evidence, fees claimed by the trustee may be cut or the matter may be referred to AiB’s operational policy and compliance team.

**PPI investigations:** Instances where trustees have waited until a PTD is near conclusion before investigating PPI, rather than at the outset of the trust deed, have been noted. This means delays in the PTD being concluded and for the debtor and trustee discharge. It would therefore be best practice to commence PPI investigations as early as possible.

**Couples in PTDs:** When a couple in the same household both grant a trust deed, it would be helpful if information relevant to both PTDs, such as joint bank statements, could be copied and filed in each case file. This will prevent any delays caused by having to request this information should AiB wish to carry out a review on one of the PTDs.

**Annual circulars:** Regulation 21(1) of the Protected Trust Deeds (Scotland) Regulations 2013 stipulates that Form 4s must be sent to creditors, the debtor and AiB at intervals of not more than 12 months (the first such interval beginning with the date on which the trust deed was granted) and by no later than six weeks after the end of the anniversary year.

Regulation 17(1) of the Protected Trust Deeds (Scotland) Regulations 2008 does not specify a timescale for issuing the annual accounts and Form 4s. However, section 5.11 of the PTD Notes for Guidance advises that all annual accounts should be sent to AiB within six weeks of the end of the accounting period. Therefore, annual accounts and Form 4s for all PTDs should be issued promptly at the end of each 12 month period to prevent delays caused by having to request that this is done when carrying out a PTD audit or review.

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Nice to meet you

Amy Law, Ellen Paterson and Diane Lambie from the trust deeds team have visited a number of trustee offices in recent months and found these meetings very useful.

If you would be interested in meeting the team and discussing PTD reviews, audits and any other PTD matters, please let us know by contacting the Trust Deeds team.
Proposed increases to contributions

If a debtor proposes to increase their contribution during the term of their trust deed, such as when a hire purchase agreement ends, please record this as an ASTRA note to make sure it is clear that this is what has been proposed. This will reduce the number of Form 3s rejected for clarification.

Rejected PTD forms

If a PTD form has been rejected on ASTRA or returned, the reason can be found on the ASTRA case. Therefore, you should check the previous events log and the documents section for any case notes or letters in respect of the returned forms prior to resubmitting the case.

Names and addresses on Form 1

When completing the Form 1 on ASTRA, you should make sure all the debtor’s names and addresses have been advertised correctly and all addresses advertised are presented on the trust deed.

There have been occasions where the debtor’s previous addresses have been given on the trust deed but not advertised on the ROI and, vice versa where the debtor’s previous addresses have been advertised on the ROI but have not been included on the trust deed.

The debtor’s details recorded on the Form 1 and advertised on the ROI should match those recorded on the trust deed. If these details do not match, AiB is unable to protect the trust deed and it will have to be re-advertised and re-circularised to creditors - or you may have to draft a new trust deed if the addresses have been omitted in error.

Check the ROI

A number of trust deeds recently have been signed by debtors who already have a live trust deed or have been sequestrated. Debtors cannot sign a trust deed if their assets already vest in another trustee, so please check the Register of Insolvencies prior to setting up trust deeds. The Register can be found on the AiB website homepage.

Completion dates when PTDs are extended

If a trust deed is being extended to gather additional contributions in respect of equity, remember the completion date on the Form 3 takes these months into consideration. The completion date should reflect the date in which you expect the trust deed to come to an end.
More handy tips

Keep debtor’s equity and assets and liabilities consistent

Some recent trust deed proposals have shown the Form 3 and accompanying assets and liabilities statements containing conflicting information.

The debtor’s share of equity as shown on the Form 3 should be the same as the share of equity presented on the assets and liabilities.

Form 2A ‘other’ entries

Increasingly, submissions have included ‘other’ entries on the statutory Form 2A. Examples include:

- Figures being entered in fields entitled ‘Other Travel’ with no explanation about what this is or why it may be required
- Figures being entered in the total field, in the ‘Other Income’ section of the Form 2A, with no explanation as to the source of this other income

When completing ‘other’ entries on a Form 2A, please include a description to reduce the amount of forms rejected for clarification.

Don’t jump the gun on Form 7

There have been occasions in the past when trustees have submitted the Form 7 before creditors have had the full 14 days to accede or object to the trustee being granted their discharge.

Once the Form 6 has been issued to creditors, they must be given this 14 day period before the trustee submits the Form 7 to AiB.

We hope you have found this issue of the PTD bulletin useful. If you have any thoughts, suggestions or questions regarding this edition of the PTD bulletin or have ideas for our next issue, please contact the Trust Deeds team. This mailbox can also be used for any other trust deed matters.