

To Trustees

Our Ref KY/OPC

By e-mail only

Date 4 August 2015

Dear Trustee

### Protected Trust Deeds (PTDs)

There have been a number of changes in recent months, therefore, I would like to take this opportunity to highlight some of the modifications to the PTD process and make you aware of certain practices which prevent AiB from protecting trust deeds.

### Common Financial Tool etc. (Scotland) Regulations 2014

The Common Financial Tool etc. (Scotland) Regulations 2014 and the Common Financial Tool etc. (Scotland) Amendment Regulations 2015 came into force on 1 April 2015. These Regulations introduced changes for trust deeds granted on or after 1 April 2015.

The changes include:

- **Form 2A**

Form 2A is a new statutory form. A statement of the debtor's income and expenditure must be presented on this form for all trust deeds granted on or after 1 April 2015. The debtor and trustee must sign the form to certify that this is a full disclosure of their income and expenditure.

It includes the required trustee statements, confirming that the debtor's expenditure has been assessed in accordance with the Common Financial Tool and that the Common Financial Statement trigger figures have been used. It will also provide an explanation if the trigger figures have been exceeded.

Form 2A allows a trustee to present a joint or household income and expenditure, however, regulation 10(1)(d)(ii) of the Protected Trust Deed (Scotland) Regulations 2013 requires a statement of the debtor's income and expenditure to be prepared. We ask that if a joint or household income and expenditure is presented on Form 2A, a statement of the debtor's income and

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expenditure is also presented on Form 2A for the creditors and AiB, when submitting a case for protection. In instances where only the debtor's income and expenditure has been presented on the Form 2A, the trustee is only required to send this single document to creditors and AiB.

- **Contingency Allowance**

The CFT regulations also make provision for a contingency allowance. The amount of income the debtor may decide to retain towards contingencies is up to 10% of the monthly contributions, subject to a maximum amount of £20 per month.

- **Amendments to the Statutory Forms 3, 4, 6 and 7.**

The statutory forms have been amended to reflect the ASTRA layout and now include rows relating to debts and dividends due to preferred and postponed creditors.

- **Single Valuation of a Specified Heritable Property**

Regulation 23(1)(c) has been amended to state that trustees will be entitled to claim remuneration for a single valuation of a specified heritable property.

The Accountant has noted that despite these requirements being introduced on 1 April 2015, they have not yet been fully implemented into the process by some Insolvency Practitioner firms. To avoid unnecessary delays in trust deeds being granted protected status, it would be helpful if you would consider the following guidance:

If you are submitting a trust deed, signed after 01/04/2015, for which the proposal has been circulated to creditors but not yet submitted to AiB and no Form 2A has been sent to creditors, you should complete Form 2A. This should be submitted to AiB with a copy of the statement of the debtor's income and expenditure that has already been signed by the debtor and sent to creditors.

If the trust deed is granted on or after the date of this letter, I have to inform you that we will not be able to accept an unsigned Form 2A. It is a requirement that the Form 2A be circulated to creditors, as per the amended regulations and submitted to AiB when the trust deed proposals are submitted for protection.

## **Verification of Income and Expenditure**

Regulation 11(2)(c) states that the Accountant must register a trust deed unless he is not satisfied that any expenditure which appears to be excessive or any contribution from income is appropriate, having regard to any explanation provided by the trustee.

The Accountant may ask for evidence to verify items of expenditure listed on the debtor's income and expenditure before they can consider the trust deed for protection. When calculating the contribution, the debtor's income and expenditure should be verified as instructed in SIP 3.3 and this information should be available at the Accountant's request.

One issue that is encountered frequently is when a debtor has a pre-paid meter and is unable to provide evidence of their expenditure. Utility providers issue statements showing annual usage, which can be used to verify expenditure, and providers can issue copies on request. If this is not available, we may consider an estimated figure based on at least 3 weeks of recent receipts.

## **Rejected Form 3 Proposals**

When considering Form 3 Proposals, the Accountant may request clarification of the information provided or additional supporting evidence. In some instances, a required document may not have been provided or may be unsigned. The Form 3 proposal will be rejected on the ASTRA system and a case note will be created, detailing the further request. This note will also confirm the time allowed within which this information must be provided, which is normally 21 days.

In several cases, the given time limits are not being adhered to and AiB are required to follow up outstanding requests. Whilst I appreciate that there may be a simple explanation for this, such cases cannot remain open indefinitely. Therefore, the decision has been taken that AiB will no longer follow up outstanding requests for information. This will mean that, if the requested information is not provided within the given time, the Accountant will be unable to protect these trust deeds in terms of regulation 11(2) of the Protected Trust Deeds (Scotland) Regulations 2013.

### **Form 3 – Trust Deed Protection Proposals**

We note that many Insolvency Practitioner firms continue to use Form 3 templates that they have created themselves, rather than taking advantage of the functionality on ASTRA to input the Form 3 information to the system and export the information to a pdf template of the Form 3. It has been noted that the calculations used on the Form 3 templates created by the Insolvency Practitioner firms are not always accurate and as a result, the information on the Form 3s that are circulated to creditors does not always reflect the Form 3 that is submitted on ASTRA.

If you continue to use your own Form 3 templates, we respectfully ask that you review these templates to ensure that they present the same information as is contained within the statutory Form 3 and that the calculations used are correct.

I hope that you find this helpful and would be grateful if you could bring the contents of this letter to the attention of all members of your staff who are involved in the administration of your PTDs.

Yours faithfully

Kenny Yorke  
Senior Compliance Manager