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To Trustees  
By email only

Our Ref GP/OPC

Date 7 February 2020

Dear Trustee

### **Clarification on making a Debtor Contribution Order (DCO) and quashing a DCO**

This Dear Trustee letter contains important information about how and when a trustee can submit a DCO proposal to the Accountant in Bankruptcy (the Accountant) when they are unable to obtain the co-operation of the debtor, and to advise trustees of the need to ensure a DCO is quashed, or has expired, prior seeking their discharge as trustee.

I would be grateful if you could bring the content of this Dear Trustee letter to the attention of all your staff who are involved in the administration of bankruptcies.

The Recognised Professional Bodies (RPBs) have been consulted on the content of this Dear Trustee letter.

#### **Making a DCO following a creditor petition.**

In order to ensure a DCO is promptly made for all bankruptcies and to try and assist trustees in obtaining debtors' co-operation, the Accountant wishes to clarify the approach to be taken where the debtor has not provided information and evidence of income and expenditure. In certain circumstances the trustee may submit an assessed DCO proposal to the Accountant, without having confirmed income and expenditure figures with the debtor, or being in receipt of evidence that supports the amounts used in their DCO, Common Financial Tool (CFT), calculation.

It is important that trustees take reasonable steps within the six week period and beyond to secure the debtor's co-operation to obtain the necessary information to allow an accurate DCO to be calculated.

Trustees should inform debtors, in writing:

- of their obligations;
- of the consequences of not co-operating and providing their trustee with requested information and documents;

- that an assessed DCO may be made using information obtained by their trustee which may mean they are required to pay a higher amount than would have been calculated if they had co-operated with their trustee; and
- of the consequences of not paying the DCO contributions and not co-operating with their trustee.

If a trustee is not able to submit a DCO proposal within the statutory six week period, an application under Section 212 of The Bankruptcy (Scotland) Act 2016 (the Act), must be made to the Accountant to waive the six week period. The Accountant will allow the cost of a Section 212 application to be an expense of the debtor's estate, if the delay in submitting the DCO proposal was due to debtor non-cooperation. I refer also to our Dear Trustee letters dated [24 September 2015](#) and [2 December 2015](#) and [19 July 2016](#).

A trustee should consider submitting an assessed DCO proposal, if they believe it is in the best interest of creditors to do so.

Trustees can assess and record amounts for the debtor's income and expenditure that cannot be verified, by obtaining available information, accessing guidance and making reasonable assumptions.

Examples of information sources that may establish a debtor's income and expenditure are:

- employers and payslips;
- bank statements;
- information from creditors;
- information from credit reference agencies;
- information from reliable and reputable websites e.g. Council and energy company websites.

The trustee must:

- inform the Accountant if the DCO proposal has been assessed by completing and submitting the proposal form at Annex A,
- demonstrate they have considered and included in their proposal an amount for aliment for the debtor, if identified as being required, and sufficient amount to meet the debtor's known obligations. Section 89(4) of the Act refers, and

- provide a record of the supporting evidence, information and assumptions that support the income and expenditure amounts used in the CFT calculation.

As the debtor is required to co-operate fully with their trustee and provide all information requested, the Accountant will expect the debtor to comply accordingly, to allow an accurate DCO calculation to be completed, before consideration will be given to rejecting or amending a reasonable assessed DCO proposal. This will also apply if a DCO decision is reviewed.

The trustee must re-assess and vary the DCO amount, if the debtor later provides acceptable evidence and information to satisfy the trustee that any income and/or expenditure amount used in the assessed DCO, was not accurate.

### **Trustee discharge – quashing a DCO**

The Accountant requires trustees who have completed the administration of a bankruptcy and wish to obtain their discharge before the end of the DCO term, to quash the DCO before applying for their discharge.

It is expected that a DCO will only be quashed before it expires when it has been set at 'Nil', or very small contribution amount is being paid and it is the trustee's belief that the debtor's financial circumstances are unlikely to change during the remaining DCO term, in a way that may bring any financial benefit to the estate, e.g. there is no expectation an unemployed debtor will re-enter employment.

Section 95 of the Act states that a trustee can only quash a DCO following a change in the debtor's circumstances. Therefore, the trustee must record the change that justifies the quashing the DCO. The change can be, for example, an increase/decrease in a debtor's benefits or wages or, a change in expenditure, for example, their council tax or housekeeping costs have increased.

The trustee must complete a CFT DCO calculation prior to notifying all appropriate persons of their decision and reason for quashing the DCO and wait until after the 14-day review period has ended, before applying for their discharge.

If a review application is received, the trustee must wait until after the review process, and any subsequent appeal, has ended and the DCO is quashed, before seeking their discharge as trustee.

If you have any questions regarding the DCO procedures and requirements detailed in this Dear Trustee letter, or it is your wish to submit some Section 212 applications and/or DCOs proposals in bulk, please contact Fiona Coyle, Head of Adjudication and Supervision, at: [Fiona.coyle@aib.gov.uk](mailto:Fiona.coyle@aib.gov.uk), or on: 0300 200 2799.

Yours faithfully



Graeme Perry  
Head of Operational Policy and Compliance

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## Annex A

### Trustee proposal for the debtor's contribution Bankruptcy (Scotland) Act 2016 Section 90(2)

Proposal by:

[Trustee name] of [company name]

in the bankruptcy of:

[debtor's name], [AiB reference number]

Following an assessment of the above debtor's income and expenditure, I propose a Debtor Contribution Order is made by the Accountant in Bankruptcy to fix the amount at **£(amount)** per **(payment interval)** with a payment start date of **(dd/mm/yyyy)**.

In making these proposals, I confirm that:

- (i) not more than six weeks has passed since the granting of the bankruptcy award / my application for extending this timescale under section 212 of the Bankruptcy (Scotland) Act 2016 has been granted \*
- (ii) the Common Financial Tool has been used to determine the debtor's contribution amount, using evidence and supporting information provided by the debtor / based on information obtained and assessed by the trustee \*
- (iii) the debtor's relevant obligations have been taken into consideration.

Signature of trustee \_\_\_\_\_

Date \_\_\_\_\_

(\*delete as appropriate)