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All Trustees and RPBs

By email only

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Date            24 September 2015

Dear Trustee

## **DEBTOR CONTRIBUTION ORDER (DCO) AND VARIATION OF AN INCOME PAYMENT AGREEMENT (IPA)**

The Accountant in Bankruptcy (The Accountant) has become aware of a number of issues relating to DCOs and IPA/IPOs. This letter details the Accountant's processes, procedures and policies on these issues.

### 1      Standing Order Mandates

It has come to our attention that debtors are being asked to complete standing order mandates, or bankers' orders, recording the amount of monthly contributions they are to pay and the first date of payment, prior to: award of bankruptcy; appointment of the trustee and before the Accountant has made a DCO and set the date of the first contribution payment.

It should be noted that a DCO is made either at the date of award of the bankruptcy, or following receipt of an Appendix O on the award of a creditor petition. The DCO cannot take effect until 14 days after it has been notified, to allow time for a review to be requested.

At the time of completing a standing order mandate, the Insolvency Practitioner (IP) is not appointed to collect the contributions and they cannot be certain that the Accountant will make a DCO for the amount of the contributions they have requested, nor that the DCO will start on the date specified on their standing order.

The Accountant has already identified three such standing orders where the DCO commencement date has been set after the date the IP has recorded on the standing order form. Therefore, there is a risk that the appointed trustee will start to collect contributions before they are authorised to do so.

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The Accountant requires trustees to ensure that, no contribution is collected from a debtor before the date the DCO commences and the amount collected is the same as the amount set by the DCO.

This may require the trustee to complete a revised standing order form to be sent to the debtor for signature and return, once the DCO has been made by the Accountant and the commencement date is known.

## 2 Setting the DCO following the award on a creditor petition

A proposal to set the DCO should be made using Appendix O to our “Notes for Guidance for Trustees –1 April 2015” and sent to our Adjudication and Supervision Team at: [aibtrusteecorrespondence@aib.gsi.gov.uk](mailto:aibtrusteecorrespondence@aib.gsi.gov.uk)

To allow a DCO proposal to be processed, the Accountant asks that a copy of the finalised Common Financial Tool (CFT) calculation, or any other paperwork used to calculate the contribution amount, is submitted with the Appendix O. If a CFT expenditure trigger figure has been breached, we require the trustee to provide the evidence, or an explanation, to support the expenditure.

A trustee should not submit their proposal for a DCO until all the requirements for assessing the debtor's income and expenditure have been completed in accordance with Regulation 4 of The Common Financial Tool etc. (Scotland) Regulations 2014. If a trustee cannot evidence that the proposed DCO amount has been calculated using the CFT, the Accountant cannot make a DCO.

The Accountant acknowledges that in some cases this will mean it will not be possible for a trustee to comply with the six week statutory period for submission of a DCO proposal, for example, if a debtor cannot be contacted, or is not co-operating.

If the six week period has passed, the trustee will be required to make an application under Section 63A of The Bankruptcy (Scotland) Act 1985, as amended (the Act), to the Accountant to waive the above stated time limit, prior to submission of a DCO proposal. The Accountant will be agreeable to grant such a waiver if the trustee can demonstrate that they were unable to present their DCO proposal within the six week period and that they have taken reasonable steps, to contact the debtor and to obtain the required income and expenditure information.

Please note that an Appendix O is only required when the award has been made following the presentation of a creditor petition. When the award is made following a debtor application, the DCO is made and issued by our Insolvency Registrations Team and the trustee is not required to submit a DCO proposal.

As the DCO has now replaced Income Payment Agreements, there is no requirement for the debtor to complete a Form 20 in addition to the DCO.

### 3 Variations to a DCO

If there has been a change in the debtor's circumstances the trustee may vary or quash a DCO, as stated in section 32F of the Act. The trustee must use the CFT to determine the new contribution amount. The CFT assessment should be completed using AiB's case information system (BASYS) and notification of the variation to the DCO is to be sent to AiB.

The trustee should :-

- Access the relevant case on BASYS
- Select **Update Debtor Contribution Order** from the bottom toolbar
- Enter the new assessed contribution
- Enter the proposed first payment date (please note this must be at least 14 days for the date the decision is made)
- Click Update Debtor Contribution
- Complete the template shown at Annex A
- Notify the parties in accordance with section 32F(5) and advise of their right for a review
- Upload a copy of the template and any other relevant information to the Document section of BASYS

Please note that a staff member will require to be given permission by the Trustee Super User within the organisation to perform this function on BASYS. Any queries regarding permissions should be referred to [BASYSenquiries@aib.gsi.gov.uk](mailto:BASYSenquiries@aib.gsi.gov.uk).

### 4 Change to Variations to Income Payment Agreements (IPA) and Applications for Income Payment Orders (IPO).

From 1 April 2015, when a trustee is considering a variation to an IPA the trustee now has a statutory duty to have regard to the Common Financial Tool (CFT). I refer to Section 6(3) of The Bankruptcy and Debt Advice (Scotland) Act 2014 (Commencement No 2, Savings and Transitionals) Order 2014.



The Accountant asks that when the copy of a variation is forwarded to us, in accordance with section 32(4K) of the Act, the relevant paperwork in relation to the Common Financial Tool, or any other paperwork used to calculate the contribution, is also submitted.

If a trustee is making an application for an IPO after 1 April 2015, it should be noted that a sheriff should also have regard to the CFT. Therefore, to assist the sheriff, it is recommended that any relevant paperwork relating to the CFT is also forwarded with the application.

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

If you have any questions relating to the content of this letter, please contact Gillian Boyd, Adjudication and Supervision Team Leader, on 0300 200 2843 or by email at [gillian.boyd@aib.gsi.gov.uk](mailto:gillian.boyd@aib.gsi.gov.uk).

These changes will be reflected in a future amendment to AiB's Notes for Guidance.

Yours faithfully

Gillian Boyd  
Adjudication and Supervision Team Leader



Annex A

**(AiB bankruptcy reference number)**

**Debtor Contribution Order  
Variation Form**

Bankruptcy (Scotland) Act 1985 (as amended)  
Section 32F(1)

The trustee, (insert trustee's name), in the bankruptcy of,

(Insert debtor's name)

(Insert debtor's address)

(Town)

(Postcode)

("the debtor")

having re-assessed the debtor's circumstances using the Common Financial Tool specified under section 5D of the Bankruptcy (Scotland) Act 1985 (as amended), varies the debtor's contribution and requires the debtor to pay the sum of £ (amount) per (payment interval) with a start date of (dd/mm/yy) and an end date of (dd/mm/yy) representing a period of (insert payment period) months which is the remainder of the payment period of the Debtor Contribution Order made under section 32A(1) of the Bankruptcy (Scotland) Act 1985 (as amended). This period may be subject to further variation under section 32F of that Act.

\*As agreed a third person will pay the trustee a specified proportion of money due to the debtor by way of income in accordance with section 32A(6) of the Bankruptcy (Scotland) Act 1985 (as amended). The details are as follows:

**\*(full details of arrangement)**

Issued by Trustee (trustee name and address)  
(dd/mm/yyyy)

\*delete as appropriate