Social Justice and Social Security Committee

16th Meeting, 2022 (Session 6), Thursday 19 May 2022

Inquiry into low income and debt problems – Issues paper

Purpose of this briefing

The purpose of this briefing is to highlight issues to discuss with witnesses as part of the Committee's consideration of debt and low income. The Committee will hear from the following witnesses, with expertise in rent, council tax and school meals debt as well as social security.

- **Shelter Scotland**
- **Edinburgh Tenants' Association**
- **The Improvement Service**
- **Institute of Revenues, Rating and Valuation**
- **Child Poverty Action Group**
- **Aberlour children's charity**

The Committee will hear from the Accountant in Bankruptcy next week on reforms to the legal framework, and from the Cabinet Secretary in June.

The Committee is also working with a panel of people with lived experience of debt and low income to develop the outcomes of this inquiry.

Background

Debt and poverty discussion

Background to these sessions is outlined in the paper for last week's meeting. This includes detail on the Committee's informal meeting in November 2021 and key issues arising from the call for views: Issues paper, 12 May 2022

Scottish Government work

The Accountant in Bankruptcy (AiB) is the Scottish Government agency responsible for supervising statutory debt solutions (bankruptcy, Protected Trust Deeds and the Debt Arrangement Scheme). It is currently working with stakeholders to undertake a debt review.

Work at Stage 2 of the review has involved working groups looking at interim improvements for statutory debt solutions. The reports from the working groups were published on Friday.

Stage 3 of the review will involve a more fundamental consideration of the appropriateness of the legal framework for dealing with debt.

The AiB is also reviewing the framework for "diligence" (that is, court sanctions debt enforcement used by creditors – such as seizing money in bank accounts). It expects to consult on reform proposals soon.

Legal framework

There are three statutory debt solutions in Scotland:

- **Bankruptcy** – where an individual's assets are managed (usually sold) by a trustee for the benefit of creditors. Once someone has completed the process, almost all remaining debts are written off. Minimal Asset Process bankruptcy is simpler and quicker and can be used by people with low income and few assets. Full Administration Bankruptcy covers all other circumstances.

- **Protected Trust Deed** – a more flexible form of bankruptcy where the trustee is an insolvency practitioner in private practice. To enter a Protected Trust Deed, someone must have sufficient assets or income to pay the trustee's fees and offer some level of payment to creditors.

- **Debt Arrangement Scheme** – allows people to pay their debts in full over a longer period of time. There is very limited provision for debt write off in the Debt Arrangement Scheme, so people must have sufficient surplus income to pay their debts in the longer term.

Note though that most people in debt do not enter a statutory debt solution. Instead, they make reduced payments to debts through informal agreements with creditors.

Bankruptcy will be the main option for people on low incomes as they will lack any surplus income to pay fees or repay debts in full. However, there can be circumstances where a Protected Trust Deed or the Debt Arrangement Scheme could be used.

Key issues

Public debt

Aberlour is working with Heriot-Watt University to carry out research into experiences of what they term “public debt” in Scotland. This is debt to public bodies such as Council Tax, social security benefits, rent arrears to social landlords and money owed to councils for school meals.

Aberlour has published the first stage of this research – a Public Debt Literature Review (2022). This concludes that there has been a shift in the types of debt held by low income families from more traditional consumer debts to debts to public bodies and suppliers of essential services.

A particular issue with this is the inflexible way in which public bodies often deal with debt – including using harsh formal debt enforcement options. It is argued that public bodies have fallen significantly behind consumer creditors in their debt collection practices. Consumer creditors must now have systems in place to treat customers fairly, including identifying vulnerabilities and responding to individual circumstances.

One option to address this issue would be to develop debt management guidance for the public sector. This could target public bodies across Scotland, or focus on specific areas, like local or national government. The UK Government consulted on fairness in government debt management in 2020. Stakeholders are calling for a UK Parliament debt management bill to create a new legislative framework.

Some form of debt write-off for public debts would also assist people on low incomes with debt problems. Proposals could be limited. Aberlour has suggested writing off school meal debts when a child moves from primary to secondary school. The Child Poverty Action Group (CPAG) has called for social security-related debts to be written off after two years.

Proposals could also be more far-reaching. The Welsh Parliament’s Equality and Social Justice Committee recently recommended (Debt and the pandemic, 2021) further exploration of council tax write off as a way to reduce impact of the pandemic on those with the lowest incomes.

This is an area fraught with tensions. Public bodies are often collecting debts which form part of the revenue stream for vital public services. Any reduction in income is likely to have an effect on service delivery. In addition, there are likely to be concerns that debt write-off could bolster poor attitudes to paying public sector debts and reward those who haven’t paid over those who have.

Rent arrears

Scale of arrears

The most recent information available from the Scottish Government’s Twelfth Report on the Coronavirus Acts shows that rent arrears in the social housing sector increased from £150million in April 2020 (at the beginning of the pandemic) to £174 million at the end of December 2021. This represents a 16% increase.

There are no definitive sources of information for the level of rent arrears in the private sector. However, research from November 2021 (The pandemic arrears crisis – private landlords perceptions of the temporary legislation impacting the Private Rented Sector) noted the following points:

- almost half of private rented sector tenants saw their income reduce in the first few months of the pandemic
- 31% of private rented sector tenants had no savings, with 21% having savings of less than £1,000
- their research suggested around 25% of private rented sector tenants had arrears, implying arrears of around £126million across Scotland.

Legal protections

There are processes which landlords must follow before they can evict tenants for rent arrears. There is no way to legally force tenants to move out without going to court. However, tenants may leave their homes without engaging in the legal process.

Pre-action requirements are steps landlords must take before being able to raise court action. They are intended to allow issues to be resolved without the need for eviction where possible. Steps include support or signposting for income maximisation and debt advice and taking steps to agree a repayment plan.

Social landlords have been subject to pre-action requirements since 2012. Emergency coronavirus legislation introduced pre-action requirements for private landlords as a temporary measure. However, these would be made permanent by the Coronavirus (Recovery and Reform) (Scotland) Bill.

Emergency legislation also made private rented sector rent arrears a discretionary ground for eviction. This means that the First Tier Tribunal (Housing and Property Chamber) ("the housing tribunal") must consider whether it is "reasonable" to evict. This change would also be made permanent by the Coronavirus Recovery Bill.

Further protections – including extended notice periods and a ban on evictions – were included in emergency legislation but have since lapsed.

Issues from the call for views

Many respondents to the call for views welcomed the more regulated processes for rent arrears. This was considered to be broadly successful in encouraging early engagement from social sector landlords. There were examples of good practice, but also suggestions that more could be done, particularly to engage with vulnerable tenants (e.g. with mental health problems or language and literacy barriers).

Shelter Scotland noted that its legal team had high rates of success when defending eviction actions in the social sector – suggesting room for improvement. It also highlighted research estimating that the average cost to the public sector of eviction for a single person from social housing was £24,000. This raises questions about cost-effectiveness.

Shelter Scotland also referred to its homelessness prevention pilot in Dundee. Dundee City Council has previously found that only 11% of tenants were engaging with support. Under the project, the figure is 56%. Shelter Scotland suggested that providing support which was independent of the council was key to this.

Concerns were raised about poor practice in the private rented sector. It was noted that the only way to enforce pre-action requirements was to take action in the housing tribunal. This only happened in a small minority of cases.

Money advice organisations also highlighted examples of private sector landlords pressurising people to make unsustainable, additional payments to rent arrears. When someone is in a statutory debt solution, it is against the law to treat one creditor more favourably than the others in this way.

CPAG noted that the housing element of Universal Credit was only payable from the date a tenant moved in. Where there was an overlap in tenancies, or a delay in moving in, a tenant would start off with rent arrears.

Reform suggestions include:

- clearer requirements on access to advice in the pre-action requirements – e.g. requirement to actually make a referral, or a requirement to refer to independent advice services
- better support for vulnerable tenants – e.g. requirements to communicate through a range of mediums, not just in writing
- efforts to increase awareness of – and compliance with – legal obligations among private landlords

There were also calls for structural reforms to the housing market to provide more affordable housing and greater security of tenure.

Council Tax arrears

Scale of arrears

Council Tax collection statistics show that, for the financial year 2020/21, £140million was outstanding at the end of March 2021. This represents 5.2% of the total amount billed for that financial year.

The collection rate is slightly lower than in previous years. The Scottish Government blames this on the pandemic – noting that councils offered payment holidays of up to six months as well as suspending court action.

Figures from Citizens Advice Scotland show that for those seeking advice on Council Tax debt in 2020/21, the average debt was £3,102. This is almost three times higher than the average council tax bill.

Collection processes

Local authorities' powers in relation to the collection of council tax are set out in a fair amount of detail in legislation.

The Council Tax (Administration and Enforcement) (Scotland) Regulations 1992 set out various notification requirements in relation to council tax. For example:

- Regulation 17 requires that demand notices are sent out at the beginning of the financial year (where possible) setting out the amount of council tax due. Regulation 18 states that no payment need be made until a demand notice is sent.

- It is usually possible for council tax to be paid in 10 monthly instalments over the course of a year (see Part 1 of Schedule 1 to the 1992 Regulations). However, where more than two payments are missed, or missed payments are not made up within seven days of a reminder notice, this right is lost.

- It is also possible for the council to agree an alternative payment schedule with the liable person (Regulation 21).

- Where an instalment is missed, the council is required to issue a reminder notice highlighting the amount that must be paid and the effects of not paying within seven days of the notice. If the instalment is the second instalment to be missed, the reminder notice must also highlight that, if another payment is missed, the whole year's liability will automatically become due (Regulation 22).

Where someone continues to build up council tax arrears, local authorities can move to formal enforcement action. This is usually done via summary warrant. This is a fast-track court procedure that can be used by public bodies in some circumstances. It avoids the need to go to court and prove the existence of the debt in every individual case.

The summary warrant application will contain details of a number of people in debt. Councils provide various details (e.g. that the person has not paid, that 14 days has passed since the full year's liability became due and the amount owed).

The sheriff will grant the summary warrant without any further investigation into the affairs of individual people in debt. Granting the summary warrant also has the effect of adding a 10% surcharge on any sums due and unpaid.

Once a summary warrant has been issued, sheriff officers[1] can take enforcement action to get payment of the debt from the person in arrears. Only certain types of debt enforcement options are authorised under summary warrant. These are:

- **attachment**, such as an exceptional attachment order used to attach non-essential goods in someone's home;
- **money attachment** (which can only be used on commercial premises)
- **arrestment**, such as a bank arrestment used to freeze money in a bank account; and
- **earnings arrestment**, where a set proportion of wages are seized in the hands of an employer.

It is also open to the local authority to pursue the debtor using the normal court processes for private creditors. In this case, other debt enforcement options, such as bankruptcy, will be available to the creditor.

The policy argument for the existence of summary warrant procedure is that to expect a local authority to deal with each debtor individually would hugely increase enforcement costs. Increased enforcement costs would ultimately have to be met by other council tax payers, in higher bills or through cuts to services.

The 10% surcharge is likely to exist to compensate the local authority for the additional costs of chasing the unpaid bill. This would include preparing information for the court, paying sheriff officers and interest.

There are other protections in law – for example the person in debt must be served with a "charge for payment" (formal court notification that the money is due) and a Debt Advice and Information Package (information about debt enforcement and sources of advice).

A debtor can apply to the court for "time to pay" – where the court can agree reasonable payments in instalments or in a future lump sum. However, where it will take a long time to repay, the court is unlikely to prevent the creditor from having access to other debt enforcement options. So, applying for time to pay may not be a realistic option for low income debtors.

Issues from the call for views

Council tax was one of the biggest areas of concern for respondents. For Citizens Advice Scotland, it was the most common debt they dealt with. And StepChange had seen the number of clients with council tax debts increase significantly.

[1] Sheriff Officers are officers of the sheriff courts under the authority of the Sheriff Principal for the area. They (and the "Messengers at Arms" of the Court of Session) are the only people in Scotland authorised to take enforcement action against debtors who have not paid.

It was noted that enforcement action could happen quickly and have harsh consequences. The requirements for early engagement and reasonable treatment that existed in relation to rent arrears, did not for council tax.

Some of the problems highlighted were:

- There was low awareness of Council Tax Reduction (for people on low incomes or means tested benefits) and other Council Tax rebates. This meant that people could build up unnecessary arrears. Council Tax Reduction could only be backdated for six months. So, people who qualified for full support could still end up with arrears.

- People receiving full Council Tax Reduction still have to pay water and sewerage charges. Many people are not aware of this. These charges can be enforced just like council tax arrears.

- Councils do not have to issue written decision notices in relation to Council Tax Reduction, although a note of entitlement would usually appear on their annual bill. CPAG noted that, when circumstances or entitlement changed during the year, it could be incredibility difficult even for trained advisers to work out what had happened and what the actual level of entitled was.

- Both council tax arrears and the current year's liability could be the subject of direct deductions from social security benefits. This might make it difficult for people to meet other essential expenditure.

- Where people had a direct deduction in place for arrears, they may not be able to afford to pay their current liability. This kept people trapped in a cycle of their council tax being enforced via summary warrant with a 10% surcharge. Money advisers spent significant amounts of time trying to negotiate to enable clients to prioritise the current year's bill.

- As noted above, it is possible for councils to agree a different rate of repayment for council tax. However, practices varied. It was often difficult to negotiate directly with the council. Instead, people would have to wait until the debt was with sheriff officers (with a 10% surcharge). Sheriff officers could also be inflexible.

- Local authorities have no discretion to reduce arrears or write off debts[2], even where someone cannot pay. This contrasts to the position in England, where Section 13A of the Local Government Finance Act 1992 enables councils to accept reduced payments or write off arrears.

- Councils are more likely than most creditors to take enforcement action. Most bank arrestments – with the related harm they caused – were for council tax debts. Statistics from the Accountant in Bankruptcy show that councils

[2] Councils can write off unrecoverable council tax debt as part of their financial management processes – but not in individual cases.

executed 175,460 “non-earnings arrestments” (predominately bank arrestments) in 2019/20 and 82,505 in 2020/21/

The Improvement Service has worked with various organisations in the advice sector to create good practice guidance – the Collaborative Council Tax Collection guide. This encourages trusting relationships and good communication between advisers and council tax staff.

The role of the social security system in debt

A number of respondents to the call for views highlighted how aspects of the social security system exacerbated people’s experiences of low income and debt.

Increasing income

The issues for people with low income and debt problems have been characterised as more about income than debt. Essentially, if people do not have enough money to meet their basic needs, then debt is inevitable. The solution is argued to lie in increasing income.

Some respondents to the call for views suggested that the low levels of support provided by the social security system are a key factor in this. Suggestions to deal with this include increasing the Scottish Child Payment and data sharing between public bodies so that more types of support can be provided automatically.

The five week wait for Universal Credit

There is a five week wait between claiming Universal Credit and receiving the first payment. This means people often have to borrow from friends, family or commercial sources to tide them over. People can also apply for a Universal Credit advance, which is repaid from future benefit entitlement.

In any of these situations, people must then use some of their ongoing benefit entitlement to repay what they have borrowed, putting additional strain on their budget. Research from the Trussell Trust (Debt to Government, Deductions and Destitution, 2022) described this as setting people up to fail.

Figures from CPAG give a flavour of the extent of deductions from Universal Credit (from advances and overpayments/direct deductions (discussed below)). Data from August 2020 show that, across the UK:

- 41% (1.85 million) claimants had some form of deduction
- 1.17 million claimants were repaying an advance only
- 230,000 claimants were repaying some other form of deduction
- 450,000 claimants were repaying both an advance and some other form of deduction.

Overpayments of Universal Credit

The Department for Work and Pensions (DWP) can also make deductions where someone has been overpaid Universal Credit. Given that entitlement changes from month to month depending on the claimant's financial circumstances, overpayments are not uncommon. The DWP can also recover historic overpayments (e.g. from a previous tax credits claim).

CPAG noted that the DWP can recover overpayments regardless of whether the mistake was the claimant's or the Department's. With previous benefits, overpayment recovery only possible where it was the claimant who had made an error.

The DWP can choose not to recover overpayments caused by its own mistakes. However, CPAG noted that it only exercised its discretion not to recover in 10 cases across the whole of the UK in 2020/21.

Direct deductions

It is possible for payments towards certain debts and services to be deducted at source from social security benefits. These are called "direct deductions".

Direct deductions are possible for things like rent, Council Tax, water and sewerage charges and energy costs. As discussed above in relation to Council Tax, it is possible for someone to have a direct deduction to repay arrears and also to have a separate direct deduction to manage ongoing liability.

Direct deductions were intended to provide a way for people receiving social security benefits to make repayments to their debts at a level that was manageable for their income. As a general rule, creditors would stop any other enforcement action once a direct deduction was in place.

However, a number of respondents to the call for views highlighted that direct deductions were resulting in clients not having enough money to meet essential expenditure. Up to 25% of a person's Universal Credit standard allowance can be taken in deductions and repayments. This threshold can be exceeded in emergency cases (e.g. where a direct deduction will prevent someone from being evicted).

School meals debts

Aberlour has recently sent Freedom of Information requests to Scotland's local authorities in relation to the extent of school meal debt they have and their policies for collecting payment. Their Report on the FOIs for school meal debt summarises the results.

Key issues are:

- A conservative estimate of the level of school meals debt in Scotland is around £1 million.

- People on the lowest incomes should receive free school meals. The figures for school meal debt therefore highlight how those on incomes just above benefits levels may be struggling to afford to feed their children.

- There is inconsistency in the way local authorities deal with school meal debt. In some councils, there is little evidence of an approach which attempts to understand families' individual circumstances.

- Some councils allow discretion to write off outstanding amounts – e.g. when someone makes a late application for free school meals, or at the end of each school year. However, others may escalate unpaid debts to formal debt enforcement.

- Many local authorities use cashless payment systems for school meals. Parents must pay for school meals in advance online, or top up payment cards for older children. This approach works well for local authorities as they get better data, and for parents with online access who can pay in advance.

- However, it also allows debts to accrue. Where a child has not paid for a school meal, they may be given one, with the cost added to their parents' online account.

- Secondary school children usually use a cashless payment card. Where this is not topped up, there is a real concern that children are going hungry. Systems for supporting children in this situation can be stigmatising by requiring them to use a voucher.

Questions

Suggested issues to raise:

<u>Theme 1: public debt</u>

- **Is the public sector behind the private sector in its approach to dealing with debt?**

- **Would a public sector debt management strategy help address this issue – and what would be your priorities for what it should cover?**

- **Do you think some public sector debts should be written off altogether? If so, how could this be done in a proportionate way?**

<u>Theme 2: rent arrears</u>

- **There are currently pre-action requirements to protect both social and private tenants from eviction. Is this effective in ensuring that eviction action is avoided where ever possible?**

- **Should requirements to support tenants with advice be made clearer - or require referral to independent advice agencies?**

- **What other improvements could be made to processes and procedures around rent arrears collection?**

Theme 3: Council Tax arrears

- **We have heard that local authorities can be inflexible when dealing with Council Tax debt, and move to enforcement action quickly. What are witnesses experiences of this area?**

- **Should we look at developing requirements for earlier intervention and better support for council tax – like the pre-action requirements for rent arrears? If so, what should be covered?**

- **Should councils be required to issue decision notices for Council Tax Reduction so that entitlement is clearer? Are there other changes which could be made to the social security system to better support people with paying council tax?**

- **The Committee has heard that the Local Government Finance Act 1992 gives local authorities in England the discretion to accept reduced payments or write off debts. Is this something that should be replicated in Scotland?**

Theme 4: the role of the social security system in debt

- **Are there ways in which the social security system exacerbates debt problems for people with low income?**

- **Are there steps the Scottish Government can take to alleviate any of these structural issues with the social security system? And what should the Committee be asking of the UK Government?**

- **Stakeholders have told the Committee that solutions for people with low income and debt problems may lie in increasing incomes more than in reforming debt processes. What would your priorities be for increasing incomes via the social security system?**

Theme 5: school meals debts

- **What does Aberlour's research into school meals debt tell us about the financial circumstances of low income families?**

- **How can processes for dealing with school meals debts be improved?**

Abigail Bremner, SPICe Research,

12 May 2022

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