

Improving Debt Recovery Working Group in Scotland

Debt on the Agenda *Manifesto*

March 2001

Introduction

SCOTLAND'S current debt collection regime takes no account of individual need and fails to address multi-indebtedness. There is an urgent need for reform.

This manifesto has been written by a wide-ranging group of community organisations/activists, legal experts and politicians, working together to explore ways to improve our debt recovery system. It is based on four main basic principles:

- The debt system should promote compassion in dealing with debt,
- It should focus on preventative measures and not punishment – it should not reintroduce imprisonment for failure to comply with sanctions,
- It should recognise that debt and poverty are interlinked – that it is mainly low income or disruption to income that is the main reason fall into arrears,
- It should not undermine access to the affordable credit facilities that poor people need - credit is an all too common feature of day-to-day living.

People in debt feel shame. They feel powerless to stop debts increasing no matter how hard they try to pay them off. They experience complex legal rules, restricted assistance with unpredictable costs, and variable availability and quality of help. They need better advice and information.

Of course people have to pay their debts. But where the system traps people in a cycle of poverty, it is the system at fault, not the human being.

The proposals this manifesto offers are fair to both the debtor and creditor. To distinguish between those who 'can pay, but won't pay', the manifesto proposes a new right of 'disclosure order' allow creditors to ask independent third parties – such as banks or the Inland Revenue - for bank details so wages can be arrested. This power would, of course, be heavily subject to checks and usable only when existing court and other procedures had been exhausted.

These, it should be stressed, are not easy or soft options for people living in poverty. But they are fairer. And they recognise that the main reasons for debt are not fecklessness but poverty and low income.

Improving Debt Recovery Working Group

Key Demands

Provide access to advice...

- Promote independent advice agencies to the forefront in tackling debt and poverty in Scotland, and fund their capacity to make a difference,
- Introduce 'triggers' at various stages in the debt-recovery process that would prompt debtors to seek early independent advice,
- Introduce independent in-court advisors in every court in Scotland,
- Compel loan firms and creditors to inform debtors of their rights before proceeding to 'diligence'.

Ensure adequate income for all...

- Determine an adequate level of minimum income in Scotland, measured against agreed standards,
- Increase income support for a family with two children by £11.42 a week,
- Axe the Social Fund and replace it with a new inclusive system of grants instead of loans,
- Promote credit unions effectively.

Protect the consumer from exploitation...

- Introduce statutory controls on extortionate interest rates and irresponsible lending,
- Compel creditors to provide 'best advice' before making a loan.

A fairer system of debt recovery...

- Replace Poindings and Warrant Sales with a new system of Disclosure Orders – (and ensure Poindings and Warrant Sales before December 2002 are used only as a diligence of last resort),
- Establish a new Debt Arrangement Scheme - presided over by an independent third-party adjudicator - to oversee debt repayment,
- Protect the first £63 in a debtor's savings account from arrestment by introducing the Bank Arrestment Scotland Bill,
- Abolish summary warrant procedures.
- Extend 'Time to Pay' orders to allow all individual debtors sufficient time to clear their debts.

Background to demands

Provide access to advice...

Independent advice provides balance in the relationship between creditor and debtor.

One in five people have arrears with household expenses. But the majority don't seek any advice at all, even when the debt proceeds to court. Research has revealed that:

- Six out of ten people with problem debts had sought no help or advice, even from family or friends;
- Only one in every five had made contact with their creditor(s).
- Only one in three had consulted a formal adviser, most often an independent advice agency or bank manager;

But those who did seek advice said it had made a significant difference - advisors could often negotiate an agreement where they had failed, and that a welcome barrier was placed between the creditor and themselves. Representation at court was also welcomed.

Other research has shown that:

- Rent arrears of those who didn't seek advice rose by over 100% compared to 25% for those who did;
- debt counsellors can help clients avoid eviction or repossession of their homes;
- the detailed picture of a client's finances drawn up by debt counsellors can also allow creditors to see the most cost-effective means of recovering a debt;
- Debtors receiving money advice did not appear to pay less than other defaulters, nor did they create additional administration costs for creditors;
- Independent advice can significantly improve a client's financial social and psychological wellbeing.

Ensure adequate income for all...

Scotland suffers some of the worst poverty in the industrialised world. The figures are shameful:

- 24% of Scots, 32% of children, and 29% of pensioners live below half average household income (the Government's own measure of poverty).
- In 1997, 674,000 Scots were living on income support.

Debt and poverty are strongly linked. Debt occurs from a sudden disruption of income or through persistent low income, which force people into arrears.

In 1980, 20% of those on the lowest incomes used credit. By 1990 that had risen to 69%.

The Family Budget Unit estimated in 1995 that income support only met 32% of an 'adequate to moderate' family budget for a couple with two children under 11, or 27% for a lone parent in the same circumstances.

Many income support claimants have direct deductions for arrears - up to 25% of benefits can be deducted for fuel, rent, water and mortgage interest without the permission of the claimant. Average deductions are £10.88 for gas, £10.78 for electricity, and £6.49 for water. Housing benefit, meanwhile, no longer covers the full rent for many private tenants.

Protect the consumer from exploitation...

Around three in ten households in the UK have no access to mainstream credit facilities, and in Scotland alone, 14% of households have no access to a bank account. Lack of access to affordable credit, and minimal protection from excessively high interest charges, ensures those who can least afford it pay more for credit.

Last year, Citizens Advice Bureaux in Scotland dealt with 140,000 debt cases, representing around £60m of debts. Almost one quarter of Scottish households are not managing financially, and one third are worrying about money quite often or almost all of the time.

Despite a clear need for greater transparency and information, financial institutions are under no legal obligation to offer best advice on loans, in line with the marketing of other financial products such as pensions and mortgages. Since the introduction of the Consumer Credit Act in 1974, only about 30 – 40 cases in relation to extortionate credit have reached court, despite Citizens

Advice Bureaux regularly reporting clients facing interest rates of 300% and upwards.

This leaves those on low incomes at the mercy of financial institutions whose only interest is to sell their own financial products, regardless of the client's ability to pay. Ruthless and aggressive marketing of loans and easy access to credit and debt consolidation push clients into unaffordable and never-ending debt.

Last year, a Select Committee on Scottish Affairs report, *Poverty in Scotland*, stated: "We deprecate the practice of banks, credit card companies and other financial institutions offering unsolicited credit facilities to vulnerable people, encouraging them to incur financial commitments which they cannot sustain. We are also concerned about the way some interest-free credit agreements are being operated."

It went on: "The downward spiral [of additional deprivation, anxiety and stress] is likely to continue if resort is made to licensed credit brokers or unscrupulous loan sharks who charge exorbitant interest rates... We consider that it may well now be time for the UK Government to take a serious look at the activities of licensed credit brokers."

In 1999, the UK Consumer White Paper noted: "Well informed consumers help markets work effectively. Consumers who can assert their needs clearly and make the best choices help business to become more competitive and raise productivity. Consumers benefit from this through lower prices, increased choice and more innovative products."

A fairer system of debt recovery...

Axing the Social Fund...

The Social Fund, supposedly the welfare fund of last resort, is deeply flawed. It is discretionary, cash-limited, offers mainly loans repaid from future benefits, and refusal rates are high - only one in five grant applications succeed.

362,000 applications for budgeting loans were turned down in 1999/2000, an extraordinary increase on previous years (4,865 in 1997/98 and 11,102 in 1996/97). Over 60% of claims were for basic items such as clothing, household goods, bedding, cookers and food.

The Social Fund should be replaced with a new system of grants, including:

- a grant for furniture and household equipment when a family is allocated a new house or movers home,
- a pregnancy grant paid to the mother to meet dietary requirements and maternity clothing,
- a household safety grant paid every six months to help with replacing electrical and gas equipment,
- child development grants paid when a child reaches the age of 1, 3 and 11 years old, and when they start or change schools.

These grants should be paid in addition to benefits, be easy to administer, and claimants should have right of appeal.

Poundings and Warrant Sales and Disclosure Orders...

The Scottish Parliament has decisively voted against the use of Poundings and Warrant Sales. A progressive and humane solution to the problem of debt recovery will never be found in a diligence against household goods.

A post-decree Disclosure Order procedure would give a creditor the right to obtain relevant information on a debtor's circumstances and proceed with an arrestment.

It overcomes the only major obstacle to debt enforcement - the ignorance of the creditor regarding the financial circumstances of the debtor. A limited system of 'disclosure' would allow creditors to use bank and earnings arrestment more effectively. It would provide a remedy against those who won't pay, while safeguarding those who can't pay.

A Debt Arrangement Scheme...

We must create a better system for dealing with debts and multiple debts (recognising that most debts are of a

multiple character), rather than the existing adversarial Sheriff Court proceedings.

A Debt Arrangement Scheme for debts under £25,000 would relieve pressure on the court system. Each Sheriff Court jurisdiction would appoint a number of Debt Adjudicators (legally qualified or with a background in social work or welfare rights).

The Debt Adjudicator would decide a 'time to pay' order and supervise repayment proposals to all creditors, rather than just the one who has pursued a court action. Hearings would take place at convenient times for working people.

Both debtor and creditor would benefit. Repayments would take into account the debtor's individual needs. Creditors would receive repayments in a more systematic way than at present, where those who shout loudest get the largest share.

Alex Neil's proposed Bank Arrestment Bill...

Creditors can arrest a debtor's entire bank account, leaving people with not even basic living income for them or their family.

Over 101,000 bank arrestments take place in Scotland every year - over 90% carried out by local authorities to recover council tax or community charge arrears.

£63 - currently the amount 'protected' with regard to earnings arrestments – should be protected in savings accounts as well. A new Sheriff Court procedure of 'arrestment orders' would quickly release exempt funds (particularly social security benefits) from arrestment.

Debtors should also be fully informed of their rights as part of the arrestment process - at present, no notice has to be given.

Abolish Summary Warrant procedures...

Summary Warrants are a fast track legal procedure that public bodies such as councils can use, typically to pursue council tax and community charge arrears. Debtors

currently have no 'time to pay' rights with respect to Summary Warrants.

75 per cent of all poindings proceed by way of summary warrant, mostly for council tax or community charge arrears against people on low or modest incomes.

Summary Warrants should be abolished in the long term, and in the interim 'time to pay' orders allowed.

IDRWG Membership

Membership of the **Improving Debt Recovery Working Group** (IDRWG) comprises of the following organisations and individuals:

- Alex Neil MSP (Scottish National Party)
- John McAllion MSP (Scottish Labour Party)
- Tommy Sheridan MSP (Scottish Socialist Party)
- Child Poverty Action Group in Scotland
- Citizens Advice Scotland
- Communities Against Poverty
- Easterhouse Citizens Advice Bureau
- Glasgow Anti-Poverty Project
- Govan Law Centre
- Lothian Anti-Poverty Alliance
- Scottish Association of Law Centres
- Scottish Churches Parliamentary Office
- Scottish Consumer Council
- Scottish Federation of Small Businesses
- Scottish Human Rights Centre
- Sheriff Court Users Group
- The Poverty Alliance

The first meeting of the IDRWG took place in Edinburgh on 3 May 2000.