Improving Debt Recovery Working Group

Response to

Striking the Balance:

A new approach to debt management

October 2001

Introduction

The Improving Debt Recovery Working Group welcomes the opportunity to respond to the report *Striking the balance: A new approach to debt management*.

Following the successful steering of the *Abolition of Poinding and Warrant Sales Bill* through the parliament on 27 April 2000 it became clear that the will of Parliament and Scottish society as a whole was to consign this method of enforcement to the scrap heap.

Equally it became clear that there was an urgent need to examine how debt recovery in Scotland could be improved. Consequently an inclusive an open forum was established by campaigning and community organisations, legal experts and politicians. The first meeting of the IDRWG was therefore held on 3 May 2000.

Membership of the Group comprises the Following organisations and individuals: John McCallion MSP, Alex Neil MSP, Tommy Sheridan MSP; Child Poverty Action Group in Scotland; Citizens Advice Scotland; Communities Against Poverty; Easterhouse CAB, 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, and the Sheriff Court Users Group[1].

IDRWG Seminar

On 10 September the Improving Debt Recovery Working Group invited a wide cross-section of people with experience of money advice and debt recovery to a seminar to discuss *Striking The Balance*. Over sixty people heard from members of the Working Group which produced *Striking The Balance*, from IDRWG members, and other MSPs.

In the group discussion, the following questions were considered and the broad answers below were confirmed in a plenary session as broadly representing the views of participants.

1. Do you think there should be a final sanction against moveable goods?

There was near, though not total, unanimity in rejecting the need for such a "final sanction" as inappropriate in the vast majority of cases, and disappointment that no alternative had been found. Those few who answered in a qualified affirmative felt that inadequate safeguards were proposed particularly under summary warrant procedure (where there

[1] Views expressed in this response are not necessarily the views of all the individual members of the IDRWG or of the organisations which they represent.

appears to be no measure to stop courts continuing to deal with cases in batches).

There was a strong feeling that insufficient attention had been paid in the report to the strong links between poverty and debt, and the case for such a sanction as compulsory sale orders had been based either on mythology or on an unrepresentative minority of cases.

a) If yes, should this apply only to luxury goods (valuable non-essential items) and how would you define them?

There was a concern that the difficulties of definition (eg around items like wedding rings) might make this nearly unworkable, and that it was open to abuse whatever the definition set down in statute.

b) If no, what should happen to debtors who have so called luxury goods - should they be allowed to keep them?

The main response was the conviction that extreme cases (such as are offered in STB as justification for this) make bad law. There was also a recognition that such goods would be sold towards repayment of debts in the event of sequestration.

2. What are the differences between the new proposals and the old system of poindings and warrant sales?

a) What are the benefits and disadvantages of the new proposals?

Benefits were seen as (a) court involvement triggering advice provision (b) training for sheriffs regarding debt problems (c) statutory debt arrangement scheme as a diligence stopper (d) money advice "with teeth" and with proper funding. It was pointed out that these could be implemented without compulsory sale orders, and many felt they were "not worth the price" if they were tied to the replacement sanction.

Disadvantages were seen as (a) intrusion into homes (b) the proposed one-step system for compulsory sale orders loses a current safeguard (c) a possible route to sequestration might be lost (currently poindings are a possible trigger)

b) What are your key objections to the existing poindings and warrant sales procedure?

The fundamental objection remains the issue of access to homes, but there were also concerns that (a) the threat of poinding etc often upsets a negotiation process (especially because of debtors' lack of knowledge of their rights, so their belief may be worse than the reality) (b) the process predominantly targets those least able to pay (c) the actions of sheriff officers often aggravate the situation.

3. ***Are there alternatives to the new proposals that would allow debts to be collected while protecting debtors?***

a) *If yes, what are they?*

1. Debt Arrangement Schemes, so long as these were not merely an extension of current "time to pay" procedures
2. Proactive strategies of local authorities using advice and early intervention
3. Recovery through the benefits system
4. More effective access to advice, including use of credit reference agencies as an advice trigger

There was also a feeling that the wider diligence review might have come up with real alternatives but has been pre-empted by these proposals.

4. ***Will the new advice provisions proposed have the effect of filtering out the "can't pays" from the "won't pays"?***

Those who answered "yes" felt that success would depend on adequate resourcing of advice provision, effective working of the debt arrangement scheme and "meat" to force creditors to participate in such schemes. More people felt that even if these were in place, the filtering would not be effective.

a) *If not, why not?*

1. Threats of compulsory sale would still be used to induce prioritising of one debt over others
2. The advice provisions will make no difference to the "won't pays", who avoid the courts

5. ***What do you think are the main factors that contribute to debt?***

The two factors which were clearly seen as most important were poverty (mainly reflecting benefit levels and the reality that for credit and for services "the poor pay more") and irresponsible lending (mainly through inappropriate marketing and lack of information); other factors included lack of real consumer rights, change of circumstances (redundancy, relationship breakdown, etc), and lack of adequate preventive measures.

a) *Prioritise 3 specific areas that can be reformed.*

1. Local authority debt collection
2. Education
3. Acceptance of student debt

Response to *Striking the Balance*

It is with concerns of debtor protection paramount that we respond to the consultation, but we believe that the views expressed here and in our initial report will be of benefit to creditors as well as debtors.

There many recommendations contained in the report to that we greatly welcome. The recognition of the importance of money advice, the emphasis on reaching negotiated repayment arrangements and in particular the proposal for a debt arrangement scheme are ideas that we fully support.

We outline below our agreement with many of the ideas outlined, and make our own practical suggestions for how these ideas could work in practice. The IDRWG as a whole, and our individual members, would be willing to assist in developing schemes for enhanced debtor protection.

However, the IDRWG believes that there could be serious problems in replacement of poinding and warrant sales with another diligence that can be carried out against moveable property in a debtor's home. It is appreciated that the report envisages this being a last resort action in the context of a new system of diligence. We believe that creditors would use the threat of a compulsory sale order in the same manner as poindings and warrant sale as a 'spur to payment' (or intimidation into payment).

'While 'filtering-out' legal mechanisms do make a significant difference, the Scottish Executive will be aware of the considerable empirical evidence which confirms that a large proportion of debtors fail to respond to official letters, contact approaches and the legal process generally. This is not simple fecklessness. Many debtors fail to respond because of 'life-events' which take priority in their lives - such as relationship breakdown, serious illness (including clinical depression), and the loss of employment. This trend was extensively researched by the Scottish Office[2].

The *Striking the Balance* report makes no reference to this trend, or indeed to the empirical Scottish Office evidence. This apparent failure is worrying, because it is evident that while investment in advice provision, generally, will assist any 'filtering-out' process, it does nothing to address this recognised difficulty. The fact that *Striking the Balance* takes no cognisance of empirical evidence on this problem may well be perceived as a fundamental flaw in the Working Group's proposals.

The 2-step feature of poindings and warrant sales, has meant that those who fail to engage in the legal process, have had a further opportunity to do so when threatened with a poinding, or exposed to a physical poinding. However, the *Striking the Balance* report proposes a system which would see 'non-

[2] (see *Evaluation of Debtors (Scotland) Act 1987: Study of Debtors* (no.12), David Whyte, published by the Scottish Office CRU, 1999).

responders' being effectively exposed to an immediate warrant sale (re-named as a Compulsory Sale Order).

While we appreciate that this would not be the intention of the Working Group, the IDRWG is concerned that instead of 23,000 poindings taking place in Scotland, with 514 warrant sales, the proposed new system could see thousands of CSO taking place against many 'can't pays' that do not engage in the legal process. This 'loop-hole' is a systemic flaw in the STB report'.

We are particularly concerned that this would be the case during the period of implementing the system of debt arrangement schemes and new judicially supervised applications of means enquiry and compulsory sale order.

The Majority of the IDRWG believes that a new system of diligence can work effectively for the benefit of creditors as well as debtors without this last resort action. We elaborate on our reasons for this below.

Before answering the questions we would state that we are disappointed at the tone of many of the questions, which are very leading. The report itself has clearly taken a great deal of time and effort, encompassing most of the major issues in a reasonably balanced manner. Many of the questions themselves do not do justice to this.

2. Do you agree with the guiding principles set out by the working group in their report - the need for responsible behaviour by both creditors and debtors, the principle of least coercion and the need to avoid loopholes in the law? (Part IV, paragraphs 72 - 85)

We would welcome tight controls on irresponsible lending and would hope that the DTI Overindebtedness Task Force makes practical steps to implement this. The IDRWG would like to see be a ceiling on interest rates and a realistic and enforceable definition of extortionate credit.

Information produced by creditors should clearly spell out the rights and responsibilities of both parties and the consequences of default.

Local authorities should produce a corporate debt strategy to tackle the problem. The provision of money advice should be a statutory obligation on local authorities.

The IDRWG agrees that responsible debtor behaviour should also be a guiding principle. We believe that the overwhelming majority of debtors behave responsibly and seek to make repayments from a sense of obligation rather than a fear of sanctions that will be incurred.

The reality is that most debtors are unable rather than unwilling to repay their debts. All of the evidence given in favour of the abolition of poinding and warrant sales was based on this reality. The many case studies put forward to the Scottish Parliamentary Committees, some of which was from members of the IDRWG, were typical and familiar.

The Example given in paragraph 78 of the report is typical only of the hypothetical arguments put forward by those who wished to keep poinding and warrant sales. We are therefore disappointed to see what we consider to be a reactionary and spurious example put forward in the report.

The key example put forward in the *Striking the balance* report to justify retention of a diligence akin to warrant sales is the case of the wealthy businessman who never pays his debts until his sports car is threatened with a poinding. This sole example is disingenuous, because the Working Group should be aware that such a debtor could be dealt with by threatened sequestration. Under sequestration, the Accountant in Bankruptcy would be empowered to poind the car (where the debt was at least £1,500). The Report does not highlight that the powerful remedy of sequestration is currently available in Scotland.

The only way to guarantee the principle of least coercion is adhered to is to ensure that creditors do not have the threat of a diligence against moveable property to use as a scare tactic.

Under the proposals in the report it seems likely that creditors would still be quick to use the threat of compulsory sale order in the same manner as they used poinding and warrant sale.

We think that the new proposals would have little impact on the way the wealthy 'won't pays' operate. These are the people who always managed to avoid poinding and warrant sale, and they would be able to avoid a compulsory sale order.

If the practical price to be paid for a loophole in the law is in ensuring that thousands of debtors who would have been subjected to a stressful and traumatic diligence (or more likely threat of the diligence) are instead able to negotiate reasonable repayments then that seems to the IDRWG like a price worth paying.

3. The working group argue that it is not possible to view poinding and warrant sale in isolation from its wider context, and identify a number of factors which they think need to be taken into account. Do you agree with their analysis: if not, what are the relevant factors to be borne in mind? (Part II, paragraphs 22 - 36)

The starting point in the debate over abolition of poinding and warrant sale is that it was an inequitable, inhumane and unproductive form of debt recovery. That conclusion can be reached in isolation from any other considerations of the diligence system.

This does not mean that we think that the abolition does not have an impact on the diligence system as a whole. Indeed that is precisely why the IDRWG

was formed and produced a report containing recommendations for improving the system.

We are please to see that the diligence review is now pending, but are disappointed that the review will be taking place with the prospect of a replacement diligence against movable property under consideration. This should not be the focal point of discussions on the diligence review, community legal services or other debt initiatives.

4. The working group describe a number of key issues and pressing problems surrounding the operation of the existing system affecting both debtors and creditors, as well as the wider interests of society as a whole. Do you agree with their commentary? Are there any other issues that the group should also have considered? (Part III, paragraphs 37- 69)

We agree with the major issues and problems identified in part III of the report.

5. Do you agree with the working group that the law must be able to oblige people to meet obligations which they should honour voluntarily? (Part IV, paragraphs 75 - 78)

The focus of the question is obviously in relation to a diligence against moveable property. As we have already stated we do not support this method of enforcement. Sequestration, arrestment of earnings, and bank account arrestments already provide sufficient sanctions for the law to oblige people to meet their obligations.

6. The working group's research did not identify any other country that did not have some form of final enforcement. Do you agree with their view that some form of sanction is necessary in order to address the minority of people who can but refuse to pay their debts? (Part IV, paragraphs 70 - 84)

It is overly simplistic to look at the fact that other countries have a form of enforcement against moveable goods and draw the conclusion that Scotland must follow suit.

The statistics on poverty, the benefits system, the regulation of the credit industry and the civil court procedures in other countries are likely to vary considerably and it is only in comparing all the factors under these categories that one can reach a realistic comparison.

7. If so, do you agree with the working group that, excluding the possibility of civil imprisonment, the only alternative is to provide for some means of enforcement against valuable but non-essential property? (Part VI, paragraphs 122 — 126 & 134 — 136)

We consider that it is an entirely false premise to put forward that the choice of enforcement is between civil imprisonment and diligence against property. The possibility of imprisonment has never been part of any serious debate. Therefore to even mention it in the report is unnecessary.

8. Do you agree with the working group that commercial and domestic cases should be treated differently? (Part V, paragraphs 86 - 92)

The IDRWG would not have strong objections to a different method of enforcement being used with regard to business premises. Business premises could be entered into as part of the process, as long as this did not involve entrance into a debtor's home.

9. Do you agree with the working group that improved advice and information for debtors at an early stage is the key to achieving better outcomes in resolving debt cases? (Part VI, paragraphs 93 - 96)

Yes. The SOCRU research into the Debtors (Scotland) Act also proved that access to money advice and assistance helped gain a satisfactory outcome for debtors in reaching a negotiated settlement.

Secure core funding is needed for existing advice projects and a significant spending commitment from the Scottish Executive for new money advice posts and projects to ensure that adequate levels of help are available to debtors at all stages of a debt problem.

10. To what extent do you think that access to information about debtor's circumstances has a role to play in securing better outcomes in debt cases? (Part III, paragraphs 61 — 63 and Part VI, paragraph 97)

Access to information giving a clear picture of a debtors financial circumstances is important provided that it has results in creditors taking appropriate recovery action and a positive outcome for the debtor. Advice agencies currently prepare detailed financial statements for their clients and send these to creditors.

However this does not always result in creditors taking the most realistic recovery methods. When presented with a full financial picture local authorities have still frequently passed debts for several years council tax over to different firms of sheriff officers in the full knowledge that debtors do not have the ability to pay.

Likewise consumer creditors can raise a court action to obtain a decree even though they have a financial statement outlining that they cannot realistically expect more money from the debtor than they may already be receiving in pro rata repayments.

Therefore mechanisms must be put in place to stop this process and ensure that under any new system of debt arrangement or other court hearings the disclosure of full financial details results in the debtor's circumstances being taken into account before further (possibly inappropriate) recovery action by creditors is permitted.

11. To what extent do you think that allowing greater access to such information, were it to be achievable, would be acceptable to individuals and the business community? What issues do you think would have to be considered? (Part III paragraphs 61 — 63 and Part VI, paragraph 97)

The IDRWG has already set out a clear proposal for a disclosure remedy in our report. This was also presented to the working group on replacement for poinding and warrant sale:

The main features of IDRWG proposed system of compulsory disclosure are outlined in our report.[3]

12. The group recommends a new judicially supervised enforcement procedure which would also provide greater protection for the debtor and more opportunities to achieve negotiated settlement. To what extent do you think that such a procedure is necessary and appropriate? Please state your reasons. (Part VI, paragraphs 101 - 121)

In principle the IDRWG welcomes all procedures designed to offer maximum debtor protection. However, handling of debt cases by the courts at present does not instil us with confidence for the effective operation of future procedures.

Paragraph 106 states that a new court procedure would be "subject to a very tight supervision by a court". Heritage cases are currently supposed to be governed by tight supervision also, but routinely decrees for eviction are granted routinely in courts across the country each week. Likewise time to pay applications are regularly dismissed by sheriff is the repayment period is over one year.

With the same sheriffs deciding on the merits of means enquiries and what items were valuable non-essential goods it is likely that extensive training would be needed in order to avoid a replication of the current situation.

We therefore welcome proposals for training to ensure consistency and best practice. We would propose that sheriffs be given the opportunity to specialise in order to make it easier for them to gain an thorough understanding of both the legislation and the issues affecting debtors.

[3] *Improving Debt Recovery in Scotland. Report of the Improving Debt Recovery Working Group,* December 2000 Chapter 9 Written by Mike Dailly

13. Do you think that such a procedure should take place in the sheriff court?

No. We think that holding hearings outwith the overly formal and intimidating atmosphere of the sheriff courts would encourage greater participation in the process by debtors.

The SOCRU research confirms that the fear of the court was a factor in many debtors unwillingness to attend proceedings under the Debtors (Scotland) Act.

To encourage involvement it would therefore be advantageous to hold any hearings, including a means enquiry, or a time to pay/ debt arrangement scheme hearing at a community centre, church hall or seminar room at a convenient location.

14. Would the provision of additional information and advice alone, without any possibility of enforcement action, be a satisfactory approach for enabling debts to be recovered? (Part VI, paragraphs 130 - 136)

Yes, the IDRWG believes that the provision of advice and information alone, without the possibility of a diligence against moveable property would be a satisfactory approach. This would not leave creditors without the possibility of any enforcement action.

Other forms of diligence would still be available to creditors, and statistics prove that debts were never recovered in full by use of poinding and warrant sale, therefore bank and earnings arrestments, alongside the introduction of a debt arrangement scheme should ensure adequate means of debt repayment.

The concerns outlined in paragraph 130 over an increase in sequestration would be solved if participation in a debt arrangement scheme prevented any further diligence taking place as long as payments were maintained.

The IDRWG does not think there is substantial evidence that availability of consumer credit may be affected if creditors did not have an opportunity to carry out diligence against moveable property, as is stated in paragraph 132.

Commercial creditors rarely used poinding and warrant sale to enforce debts and it is therefore difficult to understand the logic of an argument that implies that not having recourse to a similar procedure would significantly affect their approach.

Paragraph 133 makes an assumption that most debtors will cheat and avoid payment if given any opportunity. We do not accept that this is true, and the evidence quoted earlier from the SOCRU research backs this up.

15. To what extent do you agree that establishing a statutory debt arrangement scheme should be a central element of a new approach for

the longer term? (Part III paragraphs 46 - 52 and Part VI, paragraphs 99 - 100)

We strongly agree that the establishment of a statutory debt arrangement scheme should be the cornerstone of the debt enforcement system in the 21st century.

One of the major problems of the current provisions of the Debtors (Scotland) Act is that it takes no account of the multiple debt problems.

We would hope that the proposed system for debt arrangement outlined in the IDRWG report[4] could assist in the development of this scheme. Among the main features outlined in the report were:

- The Debt Adjudicator will oversee all time to pay applications made under the Debtors (Scotland) Act and arrange payments to all creditors in a multiple debt situation where a Debt Arrangement Scheme has been applied for by the debtor.

- Each sheriff court jurisdiction shall appoint a number of Debt Adjudicators (dependent on size of local area/ demand on service). Only one adjudicator would sit at each hearing. These individuals could be legally qualified or from a social work/welfare rights background.

- Every action for payment summons issued by the sheriff court (excluding eviction and reparation) served on an individual debtor for a sum up to £25,000 will, in addition to the current time to pay application, state that any other debts can be included in a debt arrangement scheme application.

- There should be no limit to the total debt dealt with under the procedure, but no individual debt shall be over £25,000.[5]

- If the liability or the amount of the debt is in dispute the debtor will return the summons to the court indicating intention to lodge a defence and the case will call before a sheriff. If the sheriff finds in favour of the creditor at this hearing the debtor shall subsequently have recourse to the debt adjudicator to apply for time to pay on this and any other debts they may have.

- Debt arrangement hearings may take place in a room at the sheriff court, or in another venue in that jurisdiction e.g. church hall, conference facilities. Proceedings will be conducted in an informal manner that will be

[4] Improving Debt Recovery In Scotland, IDRWG report, December 2000, Chapter 8, written by Neil McLeod and Sarah O'Neill

[5] in line with the limits set for time to pay applications in the Debtors (Scotland) Act Amendment Regulations 2000.

clearly established by published guidelines. Hearings will take place via an appointment system, possibly including evenings and weekends.

16. The working group makes a series of broad recommendations for action on a wide front. To what extent do you agree with these recommendations?

a. The need for plain English and user-friendly format for information aimed at debtors (Part III, paragraph 45)

This is essential and should include the court summons and other court documents. Currently court forms and guidance are full of legal jargon and do not spell out clearly the rights available to debtors to secure time to pay.

b. A review of policy on recovery of unpaid council tax and the use by local authorities of summary warrant procedure (Part IV, paragraphs 74 & 118)

We strongly agree that there should be a review of the recovery of unpaid council tax.

Some local authorities pass on different years council tax to different firms of sheriff officers who then simultaneously attempt to recover the arrears. This approach simply ensures that some debtors are trapped in a vicious circle where they contribute so much to arrears that they cannot afford to pay their current council tax.

This situation could be alleviated if an amnesty on poll tax debt was to be enacted (the situation currently enjoyed by poll tax debtors in England).

We would also welcome a review of the summary warrant procedure, but would rather simply see this system scrapped altogether. It is against justice for a procedure to deny a debtor the right to have their case heard in court. There are also implications of a the access to a fair hearing under article 6 of the Convention on Human Rights

c. Increased debtor protections under summary warrants (Part III, paragraph 67 and Part IV, paragraph 74)

If the summary warrant procedure is retained we would strongly welcome the introduction of the ability to formally apply for time to pay on debts owed under a summary warrant. Indeed it would be essential that these debts are included in a debt arrangement scheme for such a scheme to work successfully.

d. Rolling out the in-court adviser service more widely across Scotland (Part III, paragraph 42 and Part VI, paragraph 102)

The IDRWG greatly welcomes the growth in availability of information and advice services to the public using the sheriff courts. We agree that the plans to implement a more uniform system of national ‘in-court advice’ projects

should be developed via the discussions on implementing a community legal service.

Research has proven that the Edinburgh project has been a great success and we would like to see similar advantages gained by the public using all the major sheriff courts in Scotland. In addition to the Edinburgh project recognition must also be given to the heritable court projects being run in Paisley and Glasgow sheriff courts. The benefits of all current projects must me examined before deciding on a blueprint for the future.

e. A thoroughgoing review of the role of enforcement officers (Part III, paragraphs 55 — 57 and Part VI, paragraphs 120 - 121)

We strongly agree that this is necessary. The evidence of debtors is that sheriff officers all too frequently add to the distress of debtors when executing diligence on behalf of creditors.

We are aware that few formal complaints are lodged against sheriff officers, but feel that this is likely to be because of a lack of awareness of any complaints procedure available.

Companies of sheriff officers should not be allowed to trade as debt collectors, as this causes confusion among debtors.

An effective regulatory body should be established.

A nationalised system of enforcement officers should ultimately be introduced.

f. Additional judicial training on debt issues (Part VI, paragraph 113)

This is another necessary step. As has been well documented one of the many reasons for the lack of success of the current provisions for time to pay under the Debtors (Scotland) Act is the wide variation in sheriffs interpretation of what is an acceptable offer of repayment.

Training on debt and welfare issues will certainly assist sheriffs in gaining knowledge and understanding of the issues facing those debtors and see a uniform approach based on best practice develop.

g. Consideration of the value of fitness tests applied to providers of debt and money advice (Part VI, paragraph 96)

It would seem acceptable that this be adopted with the implementation of community legal services as part of a system of increased funding for advice agencies.

h. Action with the UK Government to review the fitness tests required for those who extend credit (Part IV, paragraph 73)

This is essential to address some of the root causes of indebtedness.

i. Follow-up of findings from DTI Over-Indebtedness Taskforce on responsible lending and borrowing, marketing and transparency of financial products and credit payments (Part III, paragraph 33 and Part IV, paragraph 73)

We strongly support sanctions on irresponsible lending. Practical recommendations on ensuring greater transparency of financial products and defining extortionate credit are long overdue.

17. Which of the wider recommendations for reform mentioned in question 16, in your view, have the most significant contribution to make?

We believe that the introduction of a statutory debt arrangement scheme should make the most significant contribution to make in providing debtor protection. However, in order for the scheme to succeed it must me accompanied by a massive investment in the advice sector.

Promotion of these new rights is also essential to ensure that they are properly accessed. The protections to debtors already granted under the Debtors (Scotland) Act have largely lain dormant. Without an increased ability to access advice and an education in the new procedures there is a danger that they will suffer the same fate.

We would also emphasise the fullest impact for the reforms would be achieved for them all to be implemented as part of a whole package of reform, rather than in a piecemeal fashion based on some order of ‘significance’.

18. If the working group’s proposals were implemented, what impact do you think they would have

a. on debtors?

As we have stated above the reforms can have a positive impact on debtors ability to protect themselves from the diligence system, provided that the financial backing is given to the advice sector, the court system is made more accessible, and education and publicity on the new procedures are made available to debtors.

b. on creditors?

The introduction of a more equitable system should also have a positive impact for most creditors. A debt arrangement scheme for example should ensure that all creditors get paid their dues, rather than those who take action the fastest getting the larger share.

The current system of poinding and sale has resulted in a situation where this diligence is used as a threat to ensure repayment. Hopefully the new legislation will discourage creditors from acting in this manner. Reforms to the summary warrant procedure are essential to ensure that local authorities act in a more responsible manner in this regard.

c. on tax collection and recovery arrangements?

If local authorities recovery processes are regulated by the reforms outlined above, and the inclusion of council tax debt in time to pay regulations we would see this as having a positive effect on the overall recovery rate.

Counterproductive measures are currently employed by local authorities in recovering previous years council tax through sheriff officers, at the expense of the debtors ability to pay their current years bill. A system of debt arrangement that took an account of a debtor's ability to pay should ensure more regular payment to arrears of council tax, and their current years liability.

d. on the courts?

The debt arrangement scheme hearings should have the potential to filter more cases out of the formal sheriff court setting. As we have previously outlined we believe that the rulings of the scheme should have the authority of the court, but without the need for a sheriff. This should ease the burden on the courts as well as provide a more informal setting for the conclusion of debt cases.

The civil court system is already overburdened and any new procedures designed to encourage greater debtor participation may cause a greater gridlock of the system and judicial resources.

Therefore the consideration of radical reform as outlined in our debt arrangement scheme proposals may save difficulties in court time tabling, staff resources and training for sheriffs.

19. Please feel free to comment further on any other aspect of the report and recommendations not mentioned above.