

# Response to the Scottish Affairs Committee Inquiry into Poverty in Scotland

## Response from Govan Law Centre

### Introduction

Govan Law Centre (GLC) is a community controlled law centre with charitable status (SCO 30193). GLC was founded in 1995 and is based in Glasgow. We employ six solicitors and undertake a large volume of defended eviction and mortgage repossession casework, employee representation before the Employment Tribunal, education appeals for pupils with special educational needs, and social welfare casework generally. Clients contact us directly, or through referrals from social work, money advice, CABx, Shelter, and other agencies. Our service is free, and at any one time we manage around 1,700 client files.

We disseminate free Scottish housing and debt law advice online at [www.govanlc.com](http://www.govanlc.com) and [www.bankcharges.info](http://www.bankcharges.info) GLC undertakes prevention of homelessness casework across Glasgow, but mostly within the South West where we manage a Prevention of Homelessness Project in partnership with Glasgow City Council's social work department. East Dunbartonshire and East Renfrewshire Councils fund GLC to defend mortgage repossession actions within their local government areas. We also operate a Parliamentary Unit which campaigns on various social policy issues and provides parliamentary drafting to enable MPs, MSPs, trade unions and charities to promote policies which can tackle poverty and disadvantage.

The Scottish Affairs Committee report "*Poverty in Scotland*" published in July 2000, revealed that 1 in 4 adults, 2 in 3 lone parents, 29% of pensioners, and 1 in 3 children, all lived in poverty in Scotland.<sup>1</sup> Since then some progress has been made in Scotland<sup>2</sup>, but poverty remains a major fact of life for many adults and children in Scotland, and the highest concentrations of poverty remain within Glasgow City.

### Factors which can cause or exacerbate poverty & social exclusion

We would like to focus on four topical and issue based problem areas, drawing upon our casework experience, and describing in summary how these factors can push citizens into poverty or exacerbate their social and financial exclusion in Scotland.

#### (1) Default or penalty charges

It is common practice for banks and businesses to impose disproportionate and unfair charges for the most minor of contractual defaults. Such charges are 'penalty charges' which are unenforceable at common law and in terms of the Unfair Terms in Consumer Contract Regulations (UTCCR, SI 1999/2083), yet they are applied as a matter of course in the UK.

<sup>1</sup> Scottish Affairs Committee Report "*Poverty in Scotland*" (2000).

<sup>2</sup> Poverty indicators for Scotland are available at: <http://www.poverty.org.uk/S01/index.shtml>

A typical example is where a worker's salary is late by a day and they find that three direct debits are unpaid. Many banks will impose a charge of £117 (£39 per unpaid direct debit), together with a monthly charge of £28 and unauthorised overdraft interest at 30% APR. For someone on minimum wage of £5.05 per hour, just one set of these charges can represent almost a week's pay.

That worker still has to pay their direct debits, but their hard earned salary will be taken to meet the bank's charges. Often they cannot catch up and next month will be subject to another set of charges, and so on and so forth until their family has very little to live on and are trapped in a cycle of debt and poverty. Unfortunately, for thousands of families in Scotland this cycle of 'debt' is a regular occurrence.

It is not only banks who impose these charges, many other businesses exploit their customers by levying £15 to £25 'administrative charges' for simple reminder letters. Besides pushing people into a cycle of poverty, it should be noted that most mortgage lenders also impose penalty charges of £40 to £60 per month, simply where a debtor gets into three months of arrears. GLC has seen mortgage repossession cases where more than one third of 'mortgage arrears' is made up of penalty charges. GLC has been campaigning on these issues since March 2005, and launched the first UK website to provide *pro forma* letters to enable citizens to pursue refunds for free: [www.bankcharges.info](http://www.bankcharges.info) Our website attracts half a million visitors *per* annum, so there is no doubt this issue affects a great deal of people in Scotland and the UK.

We believe that the UK Parliament should consider legislation to regulate the level and imposition of administrative charges in any consumer contract. Citizens can pursue a refund of unlawful penalty charges, going back 5 years in Scotland. GLC would note that in Scotland a consumer can only sue under the small claims system for a sum no more than £750, whereas in England and Wales the limit is £5,000. We believe that there is a case for extending the small claims limit across the UK - for administrative charges cases only - to £10,000. If citizens can reclaim these charges it can put them on a sound financial footing, and remove them from a cycle of debt and despair.

## **(2) Property management**

Around 34% of all households in Scotland live in either a tenement, 4-in a block, multi-storey flat, or converted flat.<sup>3</sup> Such occupiers will rely on factors or property managers.<sup>4</sup> In Glasgow property management is a significant cause of poverty for two principal reasons.

Firstly, factors are by and large unregulated in Scotland.<sup>5</sup> Many homeowners can find it difficult to replace their factor - as the company may attempt to tie them in contractually and many title deeds require a factor to be appointed. In our experience some private firms of factors overcharge their clients, and exploit their clients by way of sending repeated reminder letters at a cost of £15 each to the client. Property managers are quick to sue their customers in the sheriff court for debts, and we believe this is because the operation of some factors seems to be geared

---

<sup>3</sup> See Table 3, Scottish House Condition Survey -

<http://www.shcs.gov.uk/pdfs/SHCS%20Key%20Findings%202003-04a.pdf>

<sup>4</sup> Property managers (traditionally known as 'factors') manage a range of properties in Scotland: from traditional tenements, modern flats, office blocks, industrial units to shopping centres. This proposal is concerned with residential property only.

<sup>5</sup> GLC is assisting Gordon Jackson MSP (Glasgow Govan) with a proposed bill in the Scottish Parliament to regulate property managers in Scotland.

towards exploiting customers, generating a lucrative revenue by applying unfair charges and high interest rates, as opposed to looking after the fabric of the customers' building.

Secondly, in Glasgow around 26,000 owner-occupied homes are managed by the Glasgow Housing Association's (GHA) subsidiary company GHA Management Ltd. The GHA has been carrying out structural renewal work which includes re-roofing and cladding. Grant assistance may be available subject to means testing but many elderly and low paid workers are being presented with bills of several thousands pounds from the GHA after the application of grant assistance. While homeowners have to pay their *pro rata* share a problem has arisen because the GHA has adopted a policy of only accepting repayment of debts over 12 months.

If a homeowner is unable to repay their factors bill within 12 months the GHA will automatically take them to court.<sup>6</sup> This will often result in an ordinary cause action whereby the debtor will then be liable for several hundred pounds in legal expenses and judicial interest running at 8%. The GHA cites 'charity law' to justify why debts must be repaid within a year, however, there is no such charity law rule, and unless this policy is relaxed many vulnerable homeowners in Glasgow will be pushed into further debt and poverty.

### **(3) Rent arrears and housing benefit**

The latest statistics show that local authorities and housing associations raised almost 25,000 eviction actions in Scotland in 2005.<sup>7</sup> Around 96% of cases were for non-payment of rent. Around one third of actions resulted in decree; and out of that number one third of households were physically ejected or abandoned their tenancy – some 3,000 households in total. There are no centrally held statistics on evictions in the private sector – however the data available confirms that actual evictions rates in the private rented sector are significantly higher *pro rata* than in the social rented sector.<sup>8</sup>

When tenants make a claim for social security benefit they will be given a housing benefit form as part of their pack.<sup>9</sup> However, the housing benefit form has to be completed and returned to the local authority. Many people do not appreciate the need to return this form quickly to the local authority. Failure to do so results in rent arrears, which in turn can result in an eviction action being raised. It would be helpful if claimants could complete their housing benefit form and return it the Jobcentre along with their other forms, and the Jobcentre could then pass all housing benefit forms to the local authority. We believe this small administrative change could prevent rent arrears and associated problems.

Central Government gives local authorities funding to make 'discretionary housing payments'. The Department of Works and Pensions has issued guidance to local authorities on the administration of these payments, but our concern is that this fund is not widely publicised, and many tenants are unaware of the ability to seek top up payments; which in turn can prevent eviction and homelessness.<sup>10</sup>

---

<sup>6</sup> See for example:

[http://www.eveningtimes.co.uk/news/display.var.1201897.0.nurse\\_wins\\_more\\_time\\_to\\_pay\\_gha\\_bill.php](http://www.eveningtimes.co.uk/news/display.var.1201897.0.nurse_wins_more_time_to_pay_gha_bill.php); and [http://www.eveningtimes.co.uk/news/display.var.1186555.0.gha\\_takes\\_owners\\_to\\_court\\_to\\_pay\\_housing\\_repair\\_bills.php](http://www.eveningtimes.co.uk/news/display.var.1186555.0.gha_takes_owners_to_court_to_pay_housing_repair_bills.php)

<sup>7</sup> See <http://www.scotland.gov.uk/Resource/Doc/1033/0039931.doc> (Scottish Executive Homelessness Monitoring Group Discussion Paper: *Preventing Homelessness – addressing rent arrears*, September 2006).

<sup>8</sup> *Ibid*, para 7.

<sup>9</sup> See <http://www.jobcentreplus.gov.uk/JCP/Customers/WorkingAgeBenefits/Howtoclaim/index.html>

<sup>10</sup> Guidance is available online here: <http://www.dwp.gov.uk/housingbenefit/manuals/dhpguide.pdf>

Finally, we note that when tenants are taken to court for eviction some local authorities do not impose legal expenses if the tenant has entered into a reasonable repayment plan.<sup>11</sup> However, most housing associations, including the GHA Ltd in Glasgow, recover full judicial expenses which can typically be £300 to £400 including VAT. Housing associations receive public funding and in the case of the GHA have an in-house legal team. Having to pay an extra £400 is not easy for a tenant living on income support or JSA(IB) of £57.45 per week.

#### **(4) Credit and social security law**

GLC notes that many citizens in Scotland are pushed into poverty because they are unable to access affordable credit. The poorest people end up paying for the most expensive credit. The UK Parliament has made progress within this area by enacting the Consumer Credit Act 2006, however, we believe more work needs to be done to enable low income households to access affordable credit. Credit unions have an important role to play here, and we would suggest that social landlords should work more closely with them or indeed resource their own credit unions in order to help debtors repay their priority debts over a reasonable period and at a reasonable cost.

Many citizens may have no bank account and have a poor or zero credit rating. Accordingly, in times of emergency they turn to the social fund. The flaws and inadequacies of the social fund are well documented and require urgent reform.<sup>12</sup>

Employment can be a powerful route out of poverty, but in our clients' experience there is generally a difficulty between commencing work and losing entitlement to various social security benefits. We believe there needs to be a more generous transitional period to assist debtors and their families.

**Mike Dailly  
Principal Solicitor  
Govan Law Centre  
47 Burleigh Street  
Glasgow  
G51 3LB**

(t) 0141 440 2503  
(f) 0141 445 3934  
(minicom) 0141 445 1955

(e) [m@govanlc.com](mailto:m@govanlc.com)

(w) [www.govanlc.com](http://www.govanlc.com)  
[www.bankcharges.info](http://www.bankcharges.info)  
[www.edlaw.org.uk](http://www.edlaw.org.uk)

---

<sup>11</sup> For example, Fife Council.

<sup>12</sup> See Chapter 6, *Inadequacy of the Social Security System*, by Danny Phillips, Improving Debt Recovery in Scotland report, December 2000, available online at: <http://www.govanlc.com/idrwgreport.pdf>