

7th November 2018

FAO: Energy, Economy and Fair Work Committee.
Scottish Parliament
Edinburgh

Dear Sir or Madam

Re: Common Financial Tool (Scotland) Regulations 2018

Further to the evidence I submitted on Tuesday, 6th November 2018 to the Committee on the above draft regulations, I am writing in a personal capacity to make the additional submission requested by the Committee.

I intend to keep this submission brief, as requested by the Committee.

Inverclyde Council, my employer, does not have a position on any alternatives to the Common Financial Statement or the Standard Financial Statement, so I am making this submission in a personal capacity.

A Review of the Common Financial Tool

I believe whatever Common Financial Tool is used it should be subject to a three question test.

This test is:

1. The Common Financial Tool should meet the legal requirements expected of it under section 89 of the Bankruptcy (Scotland) Act 2016, which I would argue requires the debtor to be allowed an appropriate level of expenditure that allows them to live a reasonable standard of living and meet their legal obligations;
2. The tool must also meet the standards we would expect of any rule of law, in that debtor's must be able to seek a review of the application of the tool in their case and ultimately the right to appeal any decision made under it to the courts, should they feel the need to; and

3. Finally any decisions made in using the tool, should be accompanied by a reason for that decision and the reasons for the decision should be provided to the consumer in writing and reference should be made to any trigger figures and guidance used to make the decision; with arguably an explanation as to the methodology used to determine the trigger figures. This, I believe, requires the guidance and trigger figures to be made publicly available.

I would argue the current application of the Common Financial Statement fails question three and by implication question two, in that without a transparent reason for any decision in writing, the ability of the consumer to seek a review is impaired.

I would also argue that in many cases it will also fail question one, as the basis for determining what the triggers figures should be is not based on the debtor being allowed an appropriate level of expenditure to live a reasonable standard of living and meet their legal obligations; and, therefore, in many cases, this will not be the outcome of the application of the tool.

What tool should be used?

I would, therefore, argue that the first question that needs to be asked in determining what tool should be used is to ask what constitutes a reasonable standard of living.

- Does this mean the right to be able to live in a warm and watertight home?
- Does it mean the right to have a balanced and nutritious diet?
- Does it mean the right to have appropriate clothing for different weather conditions?
- Does it mean the right to have one holiday a year in the UK?
- Does it mean the right to have access to the internet?
- Does it mean the right to be able to enjoy a reasonable social life?

I believe only when these questions are asked can we take the necessary steps towards designing or adopting an appropriate tool.

We can then ask what format that tool should take, whether it should set minimum standard of living expenditure; whether it should set trigger figures that act as a rebuttable presumption that any expenditure exceeding them is excessive; or whether we should seek to set the amount the debtor pays by applying a percentage over a protected income amount, similar to what is done in earning arrestment tables.

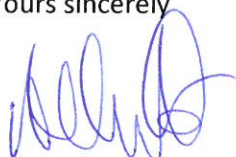
I believe there is a number of models that the Parliament could look at and reference has been made to these already in the evidence that has been given: from the Canadian Model, to the Irish Model to the Joseph Rowntree Foundation Minimum Income Standards.

However, I believe the starting point for any review should be to ask the fundamental questions first, as to whether the current Common Financial Tool meets the standards we expect of it.

Privacy

I am happy for this submission to be printed on the Scottish Parliament's website, providing my address is redacted.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Alan McIntosh', with a large, stylized flourish at the end.

Alan McIntosh (LLB) Hons

