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Economy, Energy and Fair Work Committee
The Scottish Parliament
Edinburgh
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Dear Gordon

COMMON FINANCIAL TOOL (SCOTLAND) REGULATIONS 2018

Thank you for your letter of 10 January. I have also now seen the Committee's full report sent to me on 29 January.

In response to the Committee's views, I will not now reintroduce regulations seeking to implement the Standard Financial Statement (SFS) from 1 April 2019. The Accountant in Bankruptcy has also reached agreement with the Money Advice Trust (MAT), so that the Common Financial Statement (CFS) will be kept active for 2019-2020, and updated trigger figures will be produced. The cost of this work is £20,490. I am grateful to MAT for agreeing to this given their strong preference for the transition to the SFS to be completed as soon as possible. They have made clear that their willingness to do so is for the strictly limited period covered by the agreement that has been reached – as they have themselves already moved to the SFS for both the National Debtline and Business Debtline services they run.

We will tell the sector of this decision immediately after you receive this letter, and will liaise with MAT to ensure that new trigger figures are made available to licence holders as soon as possible – we are already within the three months' notice we would normally seek to provide. Given the time pressure, we have not sought to influence MAT into changing the underlying methodology behind the CFS trigger figures at this point – this is after all, their tool, not ours. We have, however, previously promised the Committee the detailed technical notes on the two tools, which are now enclosed. From these, you will see that the CFS calculations also disregard those on very low incomes (below £120 a week), which has broadly the same effect as the SFS disregards the Committee suggested should be introduced. Once those new CFS trigger figures are available, we will re-run comparative data between SFS2019 and CFS2019 and share results with Committee.

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I would hope that I will be able to satisfy all of the points raised in the report in good time to allow us to return to this issue early in the new financial year – not least because MAT has indicated they are not currently willing to extend the life of the CFS beyond March 2020 – and I will provide a detailed response to the report as soon as I can. But I thought you might welcome some initial thoughts on its key points.

First, the concern about whether either tool leaves debtors with a basic standard of living. I have committed to a wider review of the means by which contributions in statutory debt solutions are determined and this will explore alternative methods including those based around minimum income standards. It is worth emphasising that in over 80% of Scottish bankruptcies awarded in the last year no contributions will be paid. The existing bankruptcy system does also pay due regard to minimum income as it is very clear that no contribution towards debt can be taken from state benefit income.

Second, the need for a more fundamental re-examination of the way in which debtor contributions are calculated beyond the simple question of which mechanism we should use for the Common Financial Tool currently built into legislation. The Committee suggests we could conduct such a review within what is in effect the first half of the new financial year with the hope that this could lead to consideration of a different approach to be introduced from 1 April 2020. We have already committed ourselves to undertaking such a review as part of the wider review of the 2015 legislation due to start shortly, and likely to take most of the summer. But I would not want to mislead the Committee over the likely time necessary to implement any fundamental change of approach coming from that review. This would be highly likely to require primary legislation – and there is no prospect of further primary legislation in this area that would be effective from April 2020.

You recommend that when such a review is conducted, we make every effort to ensure direct consultation with debtors with lived experience of the system. AiB are in the process of procuring independent researchers to look at the debtor experience of Minimal Asset Process Bankruptcies and has recently had an independent company (Ashbrook Research and Consulting) conduct a customer satisfaction survey to which 498 debtors replied – and the results of which will be available on AiB's website. We will also work with our third sector partners to see if we can establish debtor experience panels to look across people's experience of the wider sector. I should also make the Committee aware that the Single Financial Guidance Body (previously Money Advice Service) has commissioned the Lending Standards Board to undertake an independent review of the SFS and I have requested that officials keep me updated on any published results of this exercise. I shall, of course, share this published information with the Committee.

Third, and perhaps most importantly, the Committee stresses the critical necessity to ensure that stakeholders are fully involved in the preparation of the guidance, and that this fully embodies all I and the Committee have said about the need for flexibility and avoiding unnecessary administrative burden. You will have heard and seen the Accountant in Bankruptcy giving public commitments to doing so. Good progress has been made with the guidance, and I will return to the Committee when it has been finalised with the agreement of the working group.

Progress already made has set out specific changes AiB will make to their approach in all the key areas where stakeholders had raised concerns with the Committee:

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- AiB not seeking evidence for utility spend unless this is significantly beyond the average – the current figure under consideration is £120 a month; and
- Where written evidence is not available, AiB will accept statements from advisers in appropriate circumstances in recognition of the difficulty that can sometimes be faced in securing such evidence from certain clients.

I can confirm that these changes have already been introduced to the current guidance and will be applied during the period that the CFS continues to operate.

The Committee will no doubt be aware that the emergence of open banking technologies which provides the potential to reduce the burden on both debtors and advisers in assessing income and expenditure. The first commercial application of this technology has now been introduced – and inevitably, it is designed to work with the SFS with its potential wider reach as a single tool for the UK market. The development of this functionality will be kept under review and taken into account in considering future legislation and the supporting guidance.

In addition to the CFT guidance and the methodology of both the CFS and SFS, the Committee had requested a breakdown of the advice organisations that operate only in Scotland as compared to those with a UK-wide client base. AiB has produced the enclosed breakdown of the organisations (Scotland only and UK wide) that submitted bankruptcy applications leading to awards in the year 2017-2018.

In conclusion, I can confirm that the CFS will continue as the statutory Common Financial Tool until 31 March 2020. It is clear also that there will be great difficulties in maintaining CFS beyond this point and my intention is to ensure that the further work undertaken this year will lead to a satisfactory and sustainable solution being put in place for the longer term. The views and input of your committee as part of that process will of course be very welcome.



JAMIE HEPBURN

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