

ECONOMY, ENERGY AND FAIR WORK COMMITTEE

PROTECTED TRUST DEEDS INQUIRY

SUBMISSION FROM **R3, ASSOCIATION OF BUSINESS RECOVERY PROFESSIONALS**

In most cases we will publish your written submission on the Scottish Parliament's website. What you send us may also be quoted in the Committee's report or in its Committee meetings. These are public meetings that are broadcast online.

If you wish to request that your submission be published without your name, please contact the Clerks at the following email address: economyenergyandfairwork@parliament.scot

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Dear Sirs

Protected Trust Deeds ('PTDs')

About R3

R3 is the trade association for the UK's insolvency, restructuring, advisory, and turnaround professionals. We represent licensed insolvency practitioners ('IPs'), lawyers, turnaround and restructuring experts, students, and others in the profession.

Our members work across the spectrum of the profession, from global legal and accountancy firms through to smaller, local practices. Our members have direct experience of insolvencies and their impact on individuals and businesses across the UK.

The insolvency, restructuring and turnaround profession is a vital part of the UK economy. The profession promotes economic regeneration, resolves financial distress for businesses and individuals, saves jobs, and creates the confidence and public trust which underpin trading, lending and investment.

Response to questions

1. What is your experience of Protected Trust Deeds (PTDs)?

R3's Scottish Technical Committee ('STC') deals with issues of general importance and significance to the profession in Scotland, keeping under review all UK and EU legislation, prospective and other matters relating to insolvency law and practice in Scotland specifically. The Committee is multi-disciplinary and has a good spread of representation, both geographically and in terms of size of practice, including practising insolvency practitioners, lawyers, solicitors, academics and others working within the insolvency profession.

With regard to PTDs specifically, some committee members have a great deal of experience of dealing with them. In more recent years until the contribution was equalised between PTDs and sequestration in 2015, PTDs were less popular with debtors due to the extended contribution timescale. Now they are becoming more popular again due to the benefits or perceived benefits, which prima facie may be promoted for commercial reasons.

2. What are the benefits of PTDs?

There are many benefits of PTDs, including flexibility, limited barriers to entry and speed of access to debt relief. PTDs are generally regarded as an appropriate debt relief solution for individuals who are insolvent, and they are perceived to carry less of a stigma than attached with sequestration. Some of our committee members have found that individuals struggling with debt problems are often afraid to seek appropriate advice for fear what might happen. Therefore, a benefit of PTDs is (rightly or wrongly) is they appear less daunting than sequestration and individuals feel more inclined to take advice about them.

It is often the case that PTDs offer better returns than sequestration and these returns are also likely to be paid at a faster rate.

An individual cannot be a company director of a limited company unless the terms of the PTD allow it, which illustrates that PTDs are flexible and less restrictive.

3. What downside is there to PTDs?

Whilst PTDs have benefits, there are a number of downsides to them, including a general lack of consistency and issues with reporting i.e. *what constitutes a failed trust deed?*

Some committee members have experienced situations whereby lenders have different criteria for the approval of a PTD, and in some cases fees can be restricted to the extent that they are not viable to administer. This restricts the choice available to consumers.

A huge concern for our committee members is the level of unregulated advisers using the internet for advertising purposes, which has reputational effects on the insolvency and restructuring profession. From experience, it is often found that unregulated advisers are not appropriately experienced and qualified, and they only offer PTDs rather than the full spectrum of possible solutions including the debt arrangement scheme. The recent intervention/complaint from StepChange to Google did seem to offer hope that Google would begin to clamp down on unregulated advisers advertising on Google. Google stated that the following -

'Google allows ads promoting debt services as long as the advertiser and provider of these services is appropriately authorised, i.e., is either (1) a licensed insolvency practitioner or (2) authorised by the Financial Conduct Authority to carry on debt adjusting and debt counselling and to hold client money. Advertisers must also be certified with Google.'

However, the impact of the above may be minimal as the market for advertising has moved and more lead generating advertising is appearing more on social platforms e.g. Facebook, Instagram.

In respect of unethical practices, there is a perceived failure of the regulatory professional bodies in dealing with these types of practices.

4. Are there issues with the way PTDs are marketed and promoted to debtors? What are they?

Despite the ethical code addressing the quality of advertising required by insolvency practitioners, there still remains issues with the way PTDs are marketed by a small number in the profession. Our members have seen adverts advertising 90% debt write off, which is technically incorrect, and the practice of these advertisements should be tackled. Another example seen is a firm is advertising a raffle and the prize is to have all debts paid off. Any breaches in the ethical code should be reported and are a regulatory issue.

Whilst there are clear issues with regard to advertising, there is a fundamental misconception that simply advertising a legitimate and legal product/solution is in some way creating a problem. Advertising a solution may not increase the number of people who are insolvent and in need of help. Those individuals' financial position is already such that they desperately need help and advice. The earlier they take advice the better it is for them and indeed for creditors – the earlier they take advice then the more likely it is that insolvency can be avoided altogether.

5. Are there incentives for providers to offer PTDs – and, if so, are these appropriate?

This question is unclear. From an IPs perspective the PTD is a tool in the tool kit to put forward as an option when advising of the debt relief/debt management options available to someone in financial difficulties. There is a legitimate commercial interest on the part of the IP to the extent that administering PTDs is part of the IPs business and one of the services offered.

As regards 'providers' there can be significant financial benefits in the form of payments made for information packs at the outset of the case. This was not permitted in Scotland historically, but it was considered unfair that such payment were allowed in individual voluntary arrangements, therefore legislation now permits such payments.

The level of fees earned by an IP in administering a PTD does not impact the debtor as it is the creditors who pay.

6. Please provide any further comments you wish to provide on PTDs.

The view of some committee members is that wholesale revision of the law governing PTDs is required. It is a process which relies on Trust Law, Insolvency Law and a myriad of secondary legislation. It is not properly understood by many in the industry, never mind consumers and should be rationalised.

We wish it to be noted that IPs are already heavily regulated and if there are concerns over individual cases where inappropriate advice has been given, then legal remedies are already in existence.

Another area that requires greater scrutiny is the inconsistency in the level of outlays (not fees) charged by different IP Firms. For example, some of our members have seen high software costs charged on cases that do not necessarily reflect the size of the PTD, which is ultimately to the detriment of creditors.

Finally, we note that the Association of British Credit Unions described them as '*one of the biggest issues facing our sector over the past few years*'. However, it does not detail what the issues are. Is it because that Credit Unions believe they should be exempt from trust deeds writing off their debt? We appreciate that Credit Unions, who lend to higher risk individuals and are therefore at high risk of default are unable to charge the appropriate risk adjusted level of interest on their loans. However, this is different from the allegation that PTDs are being mis-sold or are not an appropriate solution.