

response to interest (scotland) bill: consultation and draft bill

April 2008

About the Scottish Consumer Council

The Scottish Consumer Council (SCC) was set up by government in 1975. Our purpose is to promote the interests of consumers in Scotland, with particular regard to those people who experience disadvantage in society. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors' clients, public transport users, or simply shoppers in a supermarket.

Consumers benefit from efficient and effective services in the public and private sectors. Service-providers benefit from discriminating consumers. A balanced partnership between the two is essential and the SCC seeks to develop this partnership by:

- carrying out research into consumer issues and concerns;
- informing key policy and decision-makers about consumer concerns and issues;
- influencing key policy and decision-making processes;
- informing and raising awareness among consumers.

The SCC is part of the National Consumer Council (NCC) and is sponsored by the Department for Business Enterprise and Regulatory Reform. The SCC's Chair and Council members are appointed by the Secretary of State for Business, Enterprise and Regulatory Reform, in consultation with the First Minister. Martyn Evans, the SCC's Director, leads the staff team.

Please check our web site at www.scotconsumer.org.uk for news about our publications.

Scottish Consumer Council
Royal Exchange House
100 Queen Street
Glasgow G1 3DN

Telephone 0141 226 5261
Facsimile 0141 221 0731
www.scotconsumer.org.uk

The SCC assesses the consumer perspective in any situation by analysing the position of consumers against a set of consumer principles.

These are:

ACCESS

Can consumers actually get the goods or services they need or want?

CHOICE

Can consumers affect the way the goods and services are provided through their own choice?

INFORMATION

Do consumers have the information they need, presented in the way they want, to make informed choices?

REDRESS

If something goes wrong, can it be put right?

SAFETY

Are standards as high as they can reasonably be?

FAIRNESS

Are consumers subject to arbitrary discrimination for reasons unconnected with their characteristics as consumers?

REPRESENTATION

If consumers cannot affect what is provided through their own choices, are there other effective means for their views to be represented?

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Introduction

The Scottish Consumer Council welcomes the opportunity to respond to this consultation paper. The purpose of the Scottish Consumer Council is to make all consumers in Scotland matter. We do this by putting forward the consumer interest, particularly that of disadvantaged groups in society, and by working with those people who can make a difference to achieve beneficial change. We are therefore interested in how the proposals will affect consumers in Scotland.

We previously responded to the Scottish Law Commission's discussion paper on this issue, raising some particular areas of concern from a consumer perspective.¹ We were very pleased that the Commission recognised in its final report some of the concerns expressed by both Citizens' Advice Scotland and ourselves in relation to the potential impact of its proposals on individual debtors. We now welcome the recognition of these important issues by the Scottish Government, and will restrict our comments in this response to those areas which are of particular concern to us.

Responses to consultation questions

Question 1

Do you agree that utility debts should be exempt from the statutory interest regime? Please provide reasons for your answer.

Question 2

Do you agree that rent arrears due to public sector landlords should be exempt from the statutory interest regime? Please provide reasons for your answer.

We agree that both utility debts and rent arrears due to public sector landlords should be exempt from the statutory interest regime. We expressed concern in our earlier response to the Scottish Law Commission about the proposal to introduce statutory interest on rent arrears owed by tenants of social landlords. We were concerned that this could place those in rent arrears, who are already experiencing financial difficulties, in an even worse position. Many such people will already be in multiple debt: CAS research has found that four in every five debt clients coming to citizens' advice bureaux have multiple debts.² Applying interest to arrears, particularly if this were done on a compound basis, may result in more tenants being evicted from their homes. This would be inequitable, particularly when rent arrears often result from difficulties with the processing of housing benefit claims.

¹ *Response to Scottish Law Commission discussion paper on interest on debt and damages*, Scottish Consumer Council, April 2005

² *On the Cards: the Debt Crisis Facing Scottish CAB Clients*, Citizens Advice Scotland, 2004

As we pointed out in our earlier response, while some landlords may choose not to charge interest, they would be entitled to do so in the absence of an exemption, and some may exercise this right. Different social landlords have different approaches to dealing with rent arrears, and if they have the option of charging interest, there is little protection for the tenant should they decide to exercise this option.

We have similar concerns about those who have utility debts, who are also likely to be in financial difficulty and have other debts to pay. Gas and electricity are basic and essential everyday services, which everyone must be able to access. According to energywatch, Scottish consumers pay more for their gas and electricity, are more likely to be in fuel poverty and are 80% more likely to be in debt for their electricity than the British average.³ We are concerned that fuel poverty in Scotland has risen to unacceptable levels, partly due to the actions of utility companies, which tip people into a situation of fuel poverty through no fault of their own and then prevent them from getting out of it. Allowing these companies to charge interest on utility debts would only serve to exacerbate the very difficult situation in which many vulnerable people find themselves.

In relation to the proposed exemption of utility debts, there is a need for clarity about the status of water charges. Water is clearly a utility, but in Scotland water charges are collected through the payment of council tax. Council tax arrears themselves will of course be excepted from the regime under section 2 (b) of the draft Bill.

Question 3

Are there other categories of debt which should be excluded from the statutory interest regime? Please provide reasons for your answer.

We believe that the exclusion of public sector rent arrears, utility debts and council tax will be very important in protecting those who experience disadvantage. Other contracts which individuals are likely to be party to, such as consumer credit agreements and private tenancy agreements, will generally include provisions as to the interest rate to be paid. Otherwise the proposed statutory rate, which we consider to be calculated on a fair basis, will apply.

Question 8

a) Should the rate of statutory interest be simple interest? Please provide reasons for your answer.

b) Should the rate of statutory interest be compound interest? Please provide reasons for your answer.

³ Source: *Working for Scottish Consumers*, energywatch Scotland, 2007

We welcome the proposal to introduce a prescribed interest rate of 1.5% above the Bank of England base rate. We believe that linking the interest rate to the base rate is fairer than the current position. The current judicial rate of 8% has been on the high side in recent years, given low interest rate levels, and it is important that the prescribed rate realistically reflects the underlying interest rate.

We are firmly of the view that statutory interest should be applied on a simple interest basis, where private individuals are involved. While there may be valid arguments for introducing statutory compound interest where there is a contract between two businesses, we would be concerned if this method of calculation were applied to contracts involving private individuals. While we can see that applying compound interest might be to the advantage of an individual pursuing a consumer case or an employment related case against a business, we would be concerned about the effect which it would have on individual debtors.

While the exemption of rent arrears, council tax and utility debt is likely to leave few cases where statutory interest will apply to individuals, we would be concerned that applying compound interest in those cases would increase the sum owed by a debtor, and therefore the burden upon them. We were delighted that the Scottish Law Commission proposed in its report that interest should be calculated on a simple basis. It stated:

*'We remain of the opinion that compounded interest is the most accurate way to calculate the value of loss of use of money, but we acknowledge the strength of the concerns which have been expressed with regard to it use.'*⁴

We are therefore concerned that the Scottish Government is now asking again whether interest should be calculated on a simple or compound basis. While we note the reference in the consultation paper to a recent House of Lords judgment stating that interest should be calculated at a compound rate, it is clearly within the competence of the Scottish parliament to reverse such a ruling insofar as it relates to devolved issues. We would therefore urge the Scottish Government to follow the Commission's proposals in the interest of simplicity, as well as fairness to individual debtors.

At the very least, in order to avoid an adverse effect on consumer debtors, we would suggest that a compromise solution might be to follow a recommendation made by the Law Commission for England and Wales. The Commission recommended that there should be a presumption in favour of simple interest on debts below a certain level (£15,000), with a corresponding presumption that sums above that level would attract compound interest.⁵

⁴ *Report on Interest on Debt and Damages*, Scottish Law Commission, 2006 at paragraph 7.39

⁵ *Report on Pre-judgment Interest on Debts and Damages*, The Law Commission (Law Com no. 287), 2004 at paragraph 5.69

While allowing for judicial discretion may help, were compound interest to be favoured, this would lead to uncertainty for debtors. We already know, for example, that sheriffs are inconsistent in their approach to dealing with applications for time to pay under the Debtors (Scotland) Act.⁶

Question 9

a) Should the draft Bill contain provisions for complete judicial discretion in awarding interest? Please provide reasons for your answer.

b) Should the draft Bill contain provisions for limited judicial discretion in awarding interest? Please provide reasons for your answer.

We welcome the proposal in the draft Bill that there should be judicial discretion to decide, if it is in the interests of justice, either that statutory interest is not payable or that the amount to be paid may be reduced, having particular regard to the conduct of the person to whom interest would be payable. We believe that this is a fair approach, offering protection to the debtor where the creditor has acted unreasonably, or where the debtor would otherwise be unfairly penalised. We would suggest that judicial guidance on how such discretion might be applied would be valuable.

Question 12

Do you think the draft Bill will have a financial impact for individuals? Please provide reasons for your answer.

Given the proposals to exclude public sector rent arrears, council tax and utility debts from the regime, we would agree with the view expressed in the paper that the draft Bill is unlikely to have a great impact on the majority of individual debtors. As noted above in relation to question 3, other contracts such as consumer credit agreements and private tenancy agreements will almost always contain provisions setting out the interest rate to be paid. The impact on those individual debtors who are caught by the provisions would, however, be much greater if compound, rather than simple, interest were to be applied.

The proposals are likely to be of benefit to individuals who are pursuing a claim for debt or damages in relation to a consumer or employment matter, for example. That said, we recently expressed concerns in our response to the civil courts review consultation paper about the difficulties which such individual pursuers often have in enforcing their decree.⁷

⁶ *Evaluation of the Debtors (Scotland) Act 1987: Study of Facilitators*, Fleming, Scottish Office Central Research Unit, 1999

⁷ *Response to Civil Courts Review: a consultation paper*, Scottish Consumer Council, March 2008