**Scottish Parliamentary Committee consultation response on the Moveable Transactions (Scotland) Bill** (5 September 2022)

Questions

Please answer any of the questions that are of interest to you. You don’t need to answer all the questions.

Please note that we can only accept submissions via the online platform. If you require assistance to share your views via the platform for accessibility reasons, please contact the clerks.

1. **Do you agree that the law covered by the Moveable Transactions Bill (raising finance on moveable property like cars, machinery or intellectual property) should be reformed?**

Not to the extent as outlined in the bill as it currently stands. Govan Law Centre has considerable concerns that parts of the bill could be detrimental to consumers and believe the bill could inadvertently introduce legislation that erodes consumer protections that have been hard won and potentially reintroduce debt enforcement that is reminiscent of warrant sales which would remove dignity from the debt recovery process in Scotland.

By consumer we mean "an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession" (section 2(3), Consumer Rights Act 2015. Section 15E(1) of the Civil Jurisdiction and Judgments Act 1982 defines "consumer" in similar terms: "in relation to a consumer contract, means a person who concludes the contract for a purpose which can be regarded as being outside the person's trade or profession".

The creation of Statutory Pledges in Scotland would create an alignment with other parts of the UK in terms of the types of security that can be created to obtain credit. We believe from a consumer perspective that in general the consumer credit market in Scotland is not adversely affected by not having this type of security currently available and have not been able to establish any evidence that suggests that by creating this new type of security that it would provide substantial increased benefits for consumers.

Statutory Pledges used elsewhere in the UK, from the perspective of consumer credit, tend to focus on motor vehicles and this market is currently adequately served by hire purchase and conditional sale agreements in Scotland along with the associated recovery and diligence processes for recovery for non-compliance with the agreements. We do not believe the positive cases that are made for the creation of this type of security for business can be extended to consumers.

1. **Have difficulties raising finance on moveable property in Scotland affected you or your business? If so, what impact has this had for you?**

N/A

1. **Do you have any concerns about the proposed dual system for assignation of claims (for example, to repayment of a debt). This means it will be possible to assign claims either by intimation to the debtor (as at present) or by registration in the new Register of Assignations? This will provide flexibility, but will mean that the new Register will not be comprehensive.**

A number of clients that we assist with financial difficulties will often have a number of debts that have been sold by the original lender to a debt purchasing company. We have concerns that by operating a dual system, there is a possibility that borrowers could be in a situation where debt(s) owed by them are assigned and they would have no knowledge of this; if the creditor only opts to intimate the assignation via the new register.

This could lead to confusion for a borrower as to who the debt is owed to and who should receive payment. For debt purchasing companies it may be substantially administratively easier for them to send multiple notices of assignation to the new register rather than notifying each individual borrower by correspondence.

We believe borrowers should always receive notification about their debt and if it is assigned and by removing this obligation creates the potential to impact on consumers losing track of who they owe money which in turn could be detrimental to their ability to manage their finances.

The Bill creates an anomaly in that assigned debts subject to regulated credit agreements have to be intimated to a borrower in terms of Financial Conduct Authority (FCA) rules, that are underpinned by Part IXA of the Financial Services and Markets Act 2000: see rule 6.5.2:

https://www.handbook.fca.org.uk/handbook/CONC/6/5.html

The Bill's assignation provisions would create a two-tier system for consumers. If creditors do use the new register to provide details of assignation, we believe it should be accompanied by confirmation that the borrower has also been notified.

1. **Do you have any concerns about the interaction between the new security over moveable property – which will be created by registration in the Register of Statutory Pledges – and traditional pledge, which involves delivering moveable property to the creditor? Are there any circumstances in which businesses or individuals might wish to continue to use existing methods of raising finance over moveable property?**

We envisage that individuals will still utilise pawn broking services. These will likely still to be lower value items for values substantially lower than those outlined in the bill; although there is a theoretical risk that an item could be offered up in security for a statutory pledge and also taken to a pawn brokers for further borrowing by for those who find themselves in the most dire of financial circumstances. Our concerns for consumers lie in that the creation of statutory pledges will create a virtual pawn broking but will see consumers targeted by high cost lenders who will have extended rights to enter the consumers home to remove goods if the pledge is not honoured.

Where this type of security for consumers is provided elsewhere in the UK it is a lending market dominated by sub prime lenders who would look to quickly enforce any default of payment by having a sheriff officer collect the goods from the borrower’s home.

The most common asset secured by this type of security elsewhere in the consumer market is a motor vehicle and the credit provided by way of the creation of this security is often referred to as logbook loans. The loss of a motor vehicle for non-payment could have a substantial knock on effect for the individuals work and family circumstances.

1. **The Bill contains detailed provisions on how the registers will be set up and searched. Do you have any suggestions for improving the approach set out in the Bill?**

N/A

1. **The proposals in the Bill would apply to consumers as well as businesses. Do you think there are enough protections in place for consumers?**

As outlined elsewhere in the response to this consultation we do not believe that the bill in relation to the creation of statutory pledges should be applicable for consumer finance. We would strongly urge that statutory pledges specifically exclude consumer borrowing and that they should only be made available to businesses (in whichever structure they operate)

The bill offers no significant protection to borrowers meaning that any goods over the value of £1,000 can be used as security and is therefore at risk. This could lead to borrowers losing assets of significant sentimental value or items of importance that are essential to health and wellbeing. It would also mean items which are currently exempt from attachment diligence would now be at risk if a pledge has been made over those items.

The means of enforcing non-payment is a retrograde step in terms of debt recovery dignity in Scotland and would be reminiscent of the days of poindings and warrant sales. Although exceptional attachment orders exist in the current diligence framework that allows the removal of certain household items, they are only granted in exceptional circumstances and are seldom used by creditors. A pledge over a specific asset(s) will be substantially easier to enforce and the consumer therefore has less protection.

In the event that the parliament continues with the bill as drafted in relation to statutory pledges we believe that substantial additional protections would require to be put in place to protect consumers although it is our position that consumers should be specifically excluded from being the provisions relating to statutory pledges.

**7. Do you have any other comments on the Bill or this area of policy?**

There has been an assumption that the creation of statutory pledges will increase affordable lending to the Scottish consumer market. There is scant evidence that the creation of this type of security will increase consumer access to affordable borrowing. Evidence from elsewhere in the UK where this type of security already exists for consumers indicates that it will in fact be a market dominated by sub-prime lenders.

The UK wide Money Advice & Pension Service within its consumer guidance on logbook loans (the very type of security this bill looks to introduce) states in its section **How Much Does a logbook loan cost?** that the “typical Annual Percentage Rates (APRs) are 400% or higher, so this is an expensive form of credit. For example, if you borrowed £1,500 and paid £55 a week for 78 weeks, you would repay over £4,250 in total. This means you would have paid over £2,750 in interest in order to borrow £1,500.”

They also state “logbook loans are expensive and risky and it’s best to avoid them if you can”. We believe borrowers who are prepared to agree to interest rates at such a level have clearly exhausted more sustainable forms of credit and will likely turn to these types of lenders in times of desperation.

The typical APR also acts an indicator that these lenders themselves anticipate that those who are seeking this type of credit are more likely to have a poor credit history and at a greater risk of default. It is inconsistent to believe that the market providers of loans secured by Statutory Pledge for consumers would be any different from those that operate elsewhere in the UK.

Even outside of the current cost of living crisis, we believe that if this security is made available to consumers, they will likely find themselves at the mercy of creditors who will be happy to quickly follow through with the enforcement of the pledge if repayment is defaulted on.

Those with financial difficulties that we assist often have concerns about people coming into their homes to remove goods when they are having financial difficulties, usually having their fears elevated by television shows that show bailiffs entering properties for non-payment of debts; which is fairly common place in England. There is a visible reassurance when their rights are explained to them that this only happens in exceptional circumstances in Scotland by way of an exceptional attachment order and a substantive number of household items are exempt from attachment but a statutory pledge would greatly strip back these existing protections.

We believe the introduction of this type of security for consumers would lead to significant unintended consequences and it is highly likely to cause financial harm to many individual consumers who would make use of them in order to obtain credit. We would urge that the bill is amended to prohibit the creation of statutory pledges for consumer debts over the personal property of individuals.