

AIB MEETING WITH INSOLVENCY PRACTITIONERS – GLASGOW 20/1/06

If you went to hear what Gillian Thomson had to say you would have been disappointed. She was there for four minutes. She said (1) the consultation document on trust deeds was out and (2) they were getting close to the end of the road on their never-ending cycle of relocation. She then left to go to Edinburgh to “await the arrival of something important”.

Marion McCormack – the Depute AiB – took over. They have stripped out the “corporate” side of their business and have now set up 5 generic teams. The number can be expanded. By the end of March 90% of the work will be transferred to Kilwinning. By the end of June there will effectively be no technical support role in Edinburgh, but there will still be people there – including a “high risk” team. They will still have to have a presence to deal with the Bill, the Agency Review, and various other things.

David Wallace introduced himself. He is the head of corporate services – meaning IT, finance and corporate strategy. He said the relocation was going well, and “Ayrshire is where the future lies”.

Marion McCormack then talked about the Agency Review procurement exercise, although I am not sure she actually said anything. “People will be communicating with you – involving you – and taking it forward”, she said. Maureen McGeown is heading up the team; so experienced people are managing it. Out of it will come a Quality Control Framework. They will put formal systems in place to make sure they are meeting published deadlines. “You are a valued network in terms of the work that you do for us. We want you to feel that you can ‘phone up the staff in Irvine and ask them questions. The staff are now moving on to more complex cases. We have now taken on one case where the debtor was trading. We are also transferring 350 “difficult” cases from Edinburgh, so it would be appreciated if we could continue to have support from you.”

Cameron Russell asked if there was going to be a level playing field – between the work done by agents and the in-house teams. The reply was that they were going to be consulting on the procurement process. Cameron reminded everyone that George Kerr’s idea of costs was to ignore overheads, but said that “if it aint broke, don’t fix it.” Marion McCormack’s response was “We are not doing this exercise because we want to. We have been told by the Scottish Executive that we have no option. We are doing the best we can to get it up and running. We would rather not be doing it now”.

David Wallace said “best value” was another phrase being imposed on them. Robin Macgregor was a bit more direct with his questions. “Will you follow the same route as you did with legal services – and the rest of us are put out to grass? You and you are in and the rest of you are out. Is it in the interests of the AiB to get into a bidding war and cut down the number of agents?”

“We have no intention to do that but I cannot say that throughout the procurement process that certain people will not meet the criteria, said Marion McCormack. “We are not out here to cut down the number of agents. But I do not know who will meet the criteria and who will not. But if you get the criteria for the original scooping document wrong, then that could be the result. That is why Maureen... and the experienced people are involved...”

Brian Johnston pointed out the experience that IPs had in hands on administration of cases, and said this was different from the legal services. Cameron Russell suggested the AiB speak to ICAS even before the consultation document goes out.

Nick Robinson said that ICAS would approach this from a public interest perspective, rather than on behalf of their members. He had already asked Anne Bryce if ICAS would tender on behalf of IPs and the answer was no. Cameron Russell had spoken about the same thing, and assured the meeting that ICAS had a role to play. Nick Robinson said the scooping document had to take into account that you win some you lose some – you get compensated for work on complex cases by the simpler ones.

Sharon Bell is the head of Case Operations Branch at the AiB and has 64 staff in Irvine. She said they were on a huge learning curve, and the changes could not have come at a worse time for them. The number of sequestrations is up 58%, and they have put out 2,623 cases to agents, which is “ affair crack at the cherry”. She pointed out that they had more work to do because of the increasing number of creditors petitions that get dismissed – now running at 4,000pa – with HMRC petitions having doubled and those by Councils having quadrupled. She talked about the transfer of work to Irvine, and said they were doing a 2-year ongoing recruitment exercise – with those in place having had 70% of their training. They still have a lot to learn. They lost 6,000 years of experience in Edinburgh.

Graeme Perry was next to speak. He is the head of the Operational Policy Unit at the AiB, with a team of 5. The AiB has been feeding statistics to the Justice Department, and saying how changes would affect the AiB. They now through it would be late 2006 before the bill received Royal Assent, and it would not come into force until late 2007. That would give the AiB time to get another new IT system, and recruit the additional 25 staff they need.

In line with the rest of the UK, we are getting Bankruptcy Restriction Orders (BRO’s) and Bankruptcy Restriction Undertakings (BRUs). So the AiB will need to set up a team to deal with them. There have been less than 100 orders in England, but this is a new area and they have to target specific staff.

The AiB will be administering debtors’ petitions, so Graeme Perry said they would need a team for that too. Online petitions were a possibility. Cases could go straight to Permanent Trustee without having an Interim Trustee. Income Payment Orders could be legally enforced, so that is more work for us, he said. There will be increased supervision of Protected Trust Deeds, but we have still to discuss what that means. There is a possible 30p minimum dividend level in PTDs. Student Loans are not being written off. Trustees will no longer need to reside in Scotland.

The new Land Attachment diligence is expected to generate work, with a high take up of the diligence expected.

On PTD consultation, they were still waiting for Justice Department to tell them what they are going to do with “limbo” cases – where the debtor cannot get into formal insolvency.

Ian Stevenson said that whatever the platitudes, the agency scheme was going to be scrapped. “We are here to find out what is going on and we are not getting answers.” Graeme Perry said there were more bankruptcies. DPPs were not achieving what was expected. But it was a matter for our Justice Department colleagues. The AiB was just there to put into operation what they (Justice Department) say in policy making.

Robin Macgregor suggested that Bruce Cartwright had been correct in St Andrews when he had suggested that “we hear what you say” but we can’t influence. We have talked over and over again to Andy Crawley but he constantly misses it. How many times do we need to say it. Platitudes are not what we want. So where do we go, he asked.

Graeme Perry said the bill was now with Ministers and they want to be told what are the concerns. We (the AiB) have a bit of influence because we have to implement, but you have to feed back to your MSP. There will be “round tables” and what is said is not being filtered through Justice Department. Debtors have been invited to go to the round tables. So if there is space, go. If not, send in written submissions.

Robin Macgregor said this was new ground. We had through, he said, that we had delivered our part. Nick Robinson asked if we could be told what the AiB was saying to the committee. Where did the PTD 30p come from? Every money advisor has a stack of cases – are we talking self-certification through a money advisor? Brian Johnston asked what was the cost per DAS case.

Sharon Bell said the total debt for DAS cases so far was about £750,000. There were 72 – 80 DPPs and the cost to set it up was £2 - £3m [General laughter].

Brian Johnston said PTDs cost nothing to the public purse. Are you saying that [to the Scottish Executive]? Sharon Bell said we are only one voice. You are multiple voices.

Marion McCormack said they were looking at the result of the policy and shouting loudly about various aspects of it. Someone asked if IPs should be giving evidence direct, and not through the AiB. Marion McCormack said the AiB had to give evidence because of the statutory structure. But the Finance Committee decided whom they wanted to attend. Anyway the Enterprise Committee has said they would welcome submissions.

Nick Robinson said that at St Andrews it was said that the DAS scheme was going to be made to work, but it will only work if there is debt relief. In the past, that has always required supervision by an IP. There is a possibility, then, of debt relief in a DAS but it would be worrying if a debtor could get that by going to a money advisor.

Marion McCormack commented that she knew that ICAS had said that and that Andy Crawley was present “so he heard that”. But, she said, you can say that to Justice Dept. “With the greatest of respect” said Nick Robinson “that lowers the bar greatly in respect of the skill level.”

Marion McCormack commented that Anne Bryce had said that IPs would be interested in whatever DAS looks like when it comes out the other side. It is logical that DAS is part of an IPs tool kit, but IPs don’t have a way into DAS even if it is the right thing.

An IP suggested that The AiB had to go back to Ministers and tell them how much the whole thing had cost. Graeme Perry said that they have, and Ministers to ask for costs. Marion McCormack said there had been parliamentary questions and the answers were on the website. The same IP suggested the intention was to take what would have been trust deeds and turn them into DAS cases.

Marion McCormack said it had become evident today that IPs want to influence policy through the AiB and it is not the case that you can do that. You have to do that directly through the Enterprise Committee, she said.

So we don’t go through you, said Robin Macgregor, if we want to “do the dentists” on you. Why should we be bothered to help you with your training? Have you costed out if ICAS said “Consider the possibility of not taking part at all”? Marion McCormack said at this point in time we are going to have to go through the procurement route. If ICAS/IPs don’t participate [at the end of the process] we would have to go back to Justice to see where we wanted to go now.

“Just remember the queue when an NHS dentist comes to town” said Robin Macgregor. “There comes a point when we say “*Why bother?*” We feel a bit like Bruce Cartwright. We will be told. We can’t influence.”

Cameron Russell was more placatory. When he came he said he though it was you and us. Now we are thinking how to ventilate our feelings. He went on to say that he had prepared a talk for ICAS and had been aghast at what he had found out about DAS. The cost of DAS is £2m *every year* [for the money advisor network]. If you were a Minister and you had committed £2m next year, are you not going to get through more DAS numbers next year?

LEGAL UPDATE

Roddy McLeod spoke about Sheriff Pressley in Haddington. The 60 days in case where the AiB is interim trustee runs from the date of the warrant to cite. We have to accept that now. There are styles of Notes being sent out to use to extend the period. Other Courts are starting to follow, but the AiB agrees it is correct law and following this has to be automatic now.

If the Interim Trustee is not the AiB then the 60 days runs from the date of award. They went back to the original debates, took Counsel’s Opinion, and have had to accept what the Sheriff says.

Ian Anderson spoke about prescription. There was a case the AiB dealt with in-house. There was no equity in the property in 1992. By 2002 there was, but a Sheriff held the claims had prescribed after 5 years. There were no creditors meetings, or submitting / resubmitting the claims would have interrupted prescription. 5 years is a short time, so it is surprising that creditors have to “make the pace”. You have to raise a court action for the debt not to prescribe.

The same arose in a liquidation, where no claims had been submitted and the liquidator had to give money to the contributories.

James Lloyd spoke about matrimonial homes. What amazed him was the number of people who did not know their spouses had been sequestered. Surprisingly, most cases [for possession] were not defended and there would be more problems if they were because sheriffs tend to side with spouses.

There was also a debtor who won the lottery, and when they did not cooperate a Sheriff ordered Camelot to hand over their file. The bank account was traced and frozen until the debtor agreed to hand part of the funds over.

Interestingly, there is an argument that is the ticket is bought from the debtor’s post sequestration wages then the lottery win is not acquirenda.

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20 January 2006