



Trustee and Money Adviser Guidance

Sensitivity Obligation – Public Registers

1. Introduction

1.1 The Accountant in Bankruptcy (AiB) has a statutory role to maintain a public register called the Register of Insolvencies (RoI) which records details of all the Bankruptcies, Protected Trust Deeds, Bankruptcy Restriction Orders, and Corporate Insolvencies in Scotland. The RoI also records moratorium applications submitted from April 2015. All Debt Arrangement Scheme debt payment programmes (DAS DPPs) are detailed on the DAS Register. Both the RoI and DAS Register are free to search using an individual's personal details.

1.2 The Registers are used by creditors who wish to identify a customer who has become insolvent or has made an application for a debt relief product. Creditors should check the registers before lending money to an applicant as part of their credit check process. Money advisers also check the registers when approached for money advice to confirm if their client is already, or has been previously, in a statutory debt product.

1.3 Creditors and money advisers need as much information as possible to allow an accurate identification. This will help inform creditors when they are taking lending decisions, or make sure they know when they should no longer pursue debts, and to whom they should submit a claim in a sequestration or trust deed, or record their interest in a DAS DPP.

1.4 There may be some exceptional instances where it is appropriate to withhold certain personal details of an individual for their own protection. This must be balanced with the purpose of the Registers, maintaining the integrity of the Registers to allow individual debtors to be readily identifiable.

2. Legislation

2.1 Section 200(8) of the Bankruptcy (Scotland) Act 2016 states that "Regulations under subsection (1)(c) may in particular prescribe circumstances where information need not be included in the register of insolvencies, if in the opinion of the Accountant in Bankruptcy, inclusion of the information would be likely to jeopardise the safety or welfare of any person."

2.2 Section 19(4) of the Debt Arrangement Scheme (Scotland) Regulations 2011, as amended, states that "Information need not be included on the DAS Register where the DAS Administrator is of the opinion that inclusion of the information would be likely to put any person at risk of violence or otherwise jeopardise the safety or welfare of any person."

3. Guidance

3.1 This note sets out how the Accountant will use this discretion and, explains the process the Accountant will follow in reaching decisions on requests for information to be withheld.

3.2 This guidance cannot cover every situation. Many different scenarios have been presented to AiB with requests to withhold an individual's details. Therefore, the principles contained within this guidance are those which will be applied to any

circumstances presented, allowing AiB to consider each case independently and base the decision on the information received.

4. Information that may be withheld

4.1 The intention behind this section of the legislation was that an individual's address could be withheld from the public register if making their whereabouts public would expose them to real and specific threat.

4.2 It is the Accountant's view that an individual's name should always be entered on to the Registers, but that in certain circumstances, address details could be withheld. This would apply where disclosure of an individual's current address or whereabouts might reasonably be expected to lead to violence or harm against that individual or against a person who normally resides with them as a family member.

5. Reasons to withhold information

5.1 The Accountant would consider withholding an individual's address in the following circumstances:

- When the individual has witnessed a crime and withholding the address would prevent the prospect of reprisals, therefore protecting the individual and their family.
- When an individual may have been subject to abuse and having moved, is afraid, their new address details could be accessed by the abuser.

5.2 As the family home address can easily be traced through other sources, the following factors will be taken into account when deciding if it should be withheld:

- Has the individual changed address to escape the situation, or are they still residing in the same address?
- Have they left the family home and wish to conceal their new address for their protection?
- Does the person feel that their life or their family would be at risk if their current address became public?

5.3 The Accountant may consider withholding the family home address under some exceptional circumstances. However, in general it is once an individual has left the family home, particularly under abusive circumstances, that he would consider withholding the new address details.

5.4 It is important to acknowledge that the request may not be in relation to the specific individual's circumstances. For example, a case was identified where a child was abused by a relative. Police reports were provided as evidence and the decision was made to withhold the individual's address for the purpose of protecting their child.

5.5 AiB will make the decision on whether to withhold an individual's address, based on the evidence provided. The decision will not be open to review.

5.6 If the decision is to withhold an individual's information in bankruptcies, the Register will show the current address where the individual has been declared

bankrupt, as c/o The Accountant in Bankruptcy, 1 Pennyburn Road, Kilwinning, KA13 6SA; or in a trustee case, the name, and address of that trustee. The Register will show the individual's previous addresses. Where a provider has been appointed to administer the case for AiB, we will forward any documents received post-award to the provider.

In a Protected Trust Deed, the individual's address will be c/o their respective trustee.

In the Debt Arrangement Scheme, if the case is administered by a Continuing Money Adviser (CMA) (i.e. usually a private IP firm) then the address will be c/o the CMA. If there is no CMA in the case, the address will read as c/o 1 Pennyburn Road, Kilwinning, KA13 6SA (which is the Accountant's address).

6. Process

6.1 Bankruptcy

6.1.1 Debtor Applications - the debtor application form on BASYS includes a sensitivity box that the individual or the money adviser can use to indicate that they wish their information to be withheld because of a risk to their or a third party's safety. To assess the risk, the Accountant will consider the evidence submitted with the application.

6.1.2 Creditor Petitions – If the individual has indicated that they wish their address to be withheld, the trustee should submit the request to the Accountant via the [Adjudication and Supervision Team mailbox](#), along with supporting evidence.

6.2 Protected Trust Deeds (PTD)

If an individual has indicated that they wish their address to be withheld, the trustee should submit the request to the Accountant via the [PTD Team mailbox](#), along with supporting evidence, **before** advertising the Trust Deed.

6.3 Debt Arrangement Scheme (DAS)

The DAS application form includes a section on sensitivity. If the adviser ticks the box for case sensitivity, the adviser must include a note with details, and upload any documentary evidence. The DAS Administrator consider this as the case is checked, so it is vital for a note to be added to the case. If the DAS Administrator agrees to withhold the address, he will manually update eDEN with the correct correspondence address.

7. Evidence

7.1 A statement by an individual or the money adviser without supporting evidence is unlikely to be sufficient except in the most exceptional of circumstances. The Accountant would normally expect to see supporting evidence from a relevant third party. This could, for example, be in the form of a court document such as a restraining order or a letter or statement provided by:

- The police,
- A solicitor, or
- A health professional

7.2 A letter from EVA (Ending Violence and Abuse) which is sponsored by Lanarkshire NHS, Shelter, Women's Aid or similar referral or support agency would also be accepted.

8. Vulnerable Person Policy

8.1 The Accountant in Bankruptcy (AiB) has published a [Vulnerable Person Policy](#) on the AiB website. This policy sets out how AiB will identify and support debtors whose circumstances mean they should be recognized as vulnerable and in need of support.