SPICe The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition PE2192: Prevent domestic abusers from using bankruptcy to escape debt, lodged by Kevin McGillivray

Brief overview of issues raised by the petition

The petitioner gives an example of a survivor of domestic abuse who was awarded £290,000 by the courts as a settlement at the end of her relationship with the abuser. The abuser was made bankrupt, which prevented their assets from being used to pay the award.

In the petitioner's view, this is an unfair result, which allowed the abuser to escape their responsibilities. The petitioner also stated that the outcome is in breach of the UN Convention on the Elimination of All Forms of Discrimination against Women and Article 6 of the European Convention on Human Rights. However, it is not clear why this would be the case.

Bankruptcy

- Sequestration is the term used in Scots law for entering personal bankruptcy.

- When someone becomes bankrupt, a trustee (usually Scottish Government official the Accountant in Bankruptcy) is appointed to manage their assets on behalf of creditors. All non-essential assets – including a family home – are sold to raise money to pay the person's debts. If the debtor has income above an assessed threshold, they will also be required to make contributions from their income towards paying their debts.

- The purpose of bankruptcy is to provide an orderly process for managing the interests of creditors when someone does not have sufficient income or assets to pay their debts in full. It ensures that creditors are treated fairly (in accordance with the systems and order established in legislation). It also means that creditors cannot get an unfair advantage over each other by racing to seize the debtor's assets through court processes.

- Each class of creditors is treated equally in the bankruptcy process. Preferred debts (including things like employee pay and certain taxes, where relevant) are paid first. Any money left over is paid to ordinary creditors next. Payments are made on a "pro rata" basis, so that all the creditors in a class are paid in proportion to the amount they are owed. If there is enough money to pay 10% of what is owed, a creditor owed £10 would be paid £1 and a creditor owed £100 would be paid £10.

- Once a debtor has gone through the bankruptcy process, any remaining debt will usually be written off. This allows them to make a fresh financial start. A small number of debts are not written off by the bankruptcy process, including court fines, debts incurred through fraud and student loans.

- A trustee can apply to the courts to get control of assets (e.g. for the power to sell a house) if the debtor does not co-operate with them. There are also sanctions for people who abuse the bankruptcy process (e.g. by lying about the assets they own). Bankruptcy Restrictions Orders can be used to continue bankruptcy restrictions (e.g. not being able to borrow above £2,000 without telling the lender you are bankrupt) for up to 15 years. There are also a range of criminal offences relating to, for example, making false statements or concealing assets.

The situation described by the petitioner

- In all civil court action, it is up to the winner to get any payment ordered by the court from the loser. The winner can instruct court officers to undertake a range of court-sanctioned debt enforcement options (such as seizing money in a bank account) where the loser does not pay. However, if the loser has no (or insufficient) assets, it may not be possible to get full payment. This is one of the risks of litigation.

- It is not uncommon for people to become bankrupt because they cannot pay a court order. So, it may well be that the bankruptcy process is working as it should in the situation described by the petitioner. The abuser's non-essential assets and income will be used by the trustee to repay creditors.

- The abuser's ex-partner will be able to make a claim in the bankruptcy and will be entitled to be repaid at the same rate as other ordinary creditors. However, it is common for repayment rates to be low, and it may be that no money is available for repayment.

- It is possible that the abuser is trying to abuse the bankruptcy process. If they are not genuinely unable to pay their debts, it is possible for anyone with an interest (including the ex-partner) to apply to the court to have the award of sequestration recalled. This restores the debtor to their pre-bankruptcy situation.

- If it is thought that the abuser is hiding income or assets, concerns can be reported to the trustee. The trustee is able to investigate a debtor's financial situation and can get court orders to require assets and income to be handed directly to them. The debtor can be reported to the police if it is suspected they have committed a criminal offence.

Abigail Bremner
Senior Researcher
4 November 2025

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP