



Reviews for ‘Scottish Debt Recovery: A Practical Guide’

ICM’s ‘Credit Management’ Review

‘... for anybody involved in the Scottish Debt Recovery process Stephen’s book is indispensable’.

The following was written by David Ancliffe for ‘Credit Management’ (the Institute of Credit Management’s monthly publication).

Since Tommy Sheridan threw his hand grenade into POUNDINGS and WARRANT SALES there has been a plethora of new legislation and processes such as debt arrangements, the Bankruptcy and Diligence Act and a number of new Attachment processes. What we needed was the drawing together of all these in one publication, clearly and practically outlining the rigours and processes of debt recovery in Scotland, enabling those of us less gifted in the law and indeed less aware of Scottish diligence if you operated outside Scotland to find guidance, advice and answers quickly. Stephen Cowan’s book achieves all this and more.

The book is excellently structured throughout from the brief introduction taking the reader through the litigation process and discussing the potential effect of conflicting laws in Scotland, UK and of course EU law. It then outlines the remedies open to both creditors and debtors and covers pre and post decree. Given the aforesaid changes over the last few years the chapters allocated to various forms of attachment including the recent money attachment will be of particular interest to those not familiar with the Scottish system, as will the chapters on the Debt Arrangement Scheme and the Corporate Insolvency Regime.

Stephen has put together a concise guide to debt recovery dealing with all the key issues relating to debt recovery in Scotland. There are a few texts which demand their place on any credit managers book shelf to guide, advise and inform, and for anybody involved in the Scottish Debt Recovery process Stephen’s book is indispensable. He is to be congratulated for his commitment and dedication in putting together this practical overview for the benefit of us lesser mortals.

‘Scots Law Times’ Review

‘... it very quickly became clear to me that there is something in this book for all those with an interest in debt recovery litigation, whatever their experience.’

The following appeared in 'Scots Law Times' and was written by Brian Cameron of MacDonalDs Solicitors.

I have to admit that my initial reading of this publication left me a little perplexed. I could not quite work out in my mind who the target audience was. Was it aimed at post graduate university students, paralegals, trainees, newly qualified solicitors or those, like myself, slightly longer in the tooth and more experienced in debt recovery litigation?

On reflection, however, it very quickly became clear to me that there is something in this book for all those with an interest in debt recovery litigation, whatever their experience. That, I think, is the appeal of what very much is, as it says on the cover, a practical guide to Scottish debt recovery.

The text covers pretty much all that is required to know about debt recovery (and a little bit more). It is written using straightforward easy to understand language and takes the reader from the basics of establishing jurisdiction through framing proceedings to the remedies available once decree is obtained. The chapters dealing with jurisdiction and conflict of laws and the recognition and enforcement of foreign judgments will be particularly helpful, perhaps to the more experienced practitioner in providing a useful starting point in situations which may require, in due course, a more detailed analysis of potentially difficult and complex areas.

I have no doubt that this publication will become an essential and valuable tool in the toolbox of many debt recovery litigation departments throughout Scotland.

Journal of the Law Society of Scotland Review

by *Kathryn J Wilson*, Melrose & Porteous, Duns

'While reviewing it I have been singing its praises, and impressed colleagues with the knowledge gleaned from it'.

From a general practitioner's point of view, this book has been long awaited. Given the significant changes in the law relating to debt, bankruptcy and diligence over the last few years, it has been very hard to keep up to date. The author has however managed to cover this expanding field in a practical and concise way.

The book contains helpful chapters covering inhibition, arrestment, earnings arrestment, charges, and attachment. The Debt Arrangement Scheme, a mystery to most practitioners, is explained in a clear way. The new diligence of land attachment is dealt with in some detail. The chapters relating to insolvency provide all the information necessary for general practitioners to advise clients, including on the certificate route to bankruptcy. Enforcement of decree covers UK and abroad, encompassing European small debt procedure. Finally, there is practical advice about what to do in a "pre-sue" situation.

The law is up to date and there are handy tips in the chapters, and helpful advice on expenses. "New remedies" are covered in an informative way.

It is fair to say this book is a necessity for the general practitioner. While reviewing it I have been singing its praises, and impressed colleagues with the knowledge gleaned from it.

‘Credit Control Journal’ Review

‘It is more than a worthy contender for the credit professional’s book shelf. It is also essential reading for CEOs, CFOs, insolvency practitioners and solicitors’.

The following appeared in Credit Control Journal (incorporating Asset & Risk Review) and was written by the Editor, Carol Baker.

For those looking for a fascinating insight into the world of Scottish debt recovery need look no further than Stephen Cowan’s latest book *Scottish Debt Recovery: A Practical Guide*. A regular author to **CREDIT CONTROL JOURNAL (incorporating Asset & Risk Review)**, readers will be familiar with Stephen’s depth of knowledge on the subject of Scottish law. So it comes as no surprise then to find his latest book to be rather intensive for a ‘practical guide’.

Scotland has its own legal system and its own Courts and their procedures differ from those in England and Wales. As such, the debt recovery process is governed by different laws. However in the event you find yourself with a slow or non-payer in Scotland, then this book will show you how to use various techniques to achieve a court’s judgement – a ‘decree’ – which establishes the creditor’s right to payment. Mechanisms, known as ‘diligence’, exist to secure the decree against the debtor’s moveable property. In addition, Scotland has some unique pre-decree remedies which can be effective in achieving early settlement for creditors.

Taking into account of the amendments to the Debtors (Scotland) Act 1987 made by the Bankruptcy and Diligence etc (Scotland) Act 2007, this book is the most up-to-date guide on the subject.

In Chapter 2, we are introduced to the subject of Jurisdiction and the Conflict of Laws. It seems that the whole subject to Jurisdiction introduces a whole range of pitfalls including, “in the event of an action being raised in a sheriff court not having jurisdiction, the action could be dismissed with expenses being awarded against the pursuer” – not the best position that a creditor would wish to find himself in.

Readers are encouraged to look at the legislative background addressing the issue of jurisdiction. But you do not need a separate book for this, the author has provided access to relevant cases and legislative issues via footnotes and case judgments.

The issue of Litigation through the Courts for both undefended and defended commercial and consumer procedures are covered in detail in Chapter 3. This Chapter highlights the recent financial crisis, its implication on the court system and the work of sheriff courts. For example, the author tells us that “in relation to a typical action to recover arrears under an agreement regulated by the Consumer Credit Act 1974, certain sheriffs are now requiring to see copies of the agreements, proof of agreement termination and arrears notices served prior to an action being warranted or

before allowing a pursuer to minute for decree.” This is certainly a step which the courts in England and Wales, as well as credit professionals would do well to imitate.

It is the little things that make a difference. So when suing a limited company the author advocates including the company registration number as this avoids the decree becoming worthless should you not have the exact company name. “Confusion arises where a limited company, as defender, has changed its name. Just because there is a name change and the previous company name is sued, does not mean the wrong entity has been sued. This is because the company registration number will be sufficient to identify the entity.

Chapter 3 also includes a step-by-step procedure in dealing with different types of court action. The debt recovery process in Scotland typically falls within one of the following categories: ordinary action (for actions £5,000 and over), summary cause (for actions between £3,000 to £5,000) and small claims (for actions up to £3,000). It also discusses the practical issues on why a debt recovery action should be raised in the sheriff court as opposed to the Court of Session. Overall, this Chapter is highly practical, giving a step-by-step procedure for each process of court action.

In Chapter 5, we are introduced to the subject of pre-decree remedies such as Arrestment and Inhibition on the Dependence, Interim Attachments, and European Order for the preservation of assets for the freezing and disclosure of a debtor’s assets in cross-border cases.

The powers of the sheriff officer is covered in Chapter 6, which also discusses enforcing judgments and sheriff officer remuneration, and in Chapter 15 we are introduced to the subject of recognition and enforcement of judgements within foreign jurisdictions.

As expected, this book also covers the whole subject of Arrestment and Earnings Arrestment. In Earnings Arrestment it is important to note the employer’s location so that it is subject to the jurisdiction of the Scottish courts. It also covers how to operate an earnings arrestment, when it terminates, and perhaps most importantly for the creditor, for it to understand its obligation to provide information to the debtor’s employer on whether the amount recovered by the earnings arrestment is repaid in full, or is otherwise inoperable, “failure to do this will permit a claim by the debtor against the creditor, as opposed to the employers”, warns the author.

Attachment and items of Exceptional Attachment are both cover in detail in Chapter 9. Likewise, the attachment of Land, Money and other Residual Attachment (such as intellectual property rights, short leases and timeshare rights), are cover in detail in Chapters 10, 11 and 12. Whilst, the Arrestment in Execution following decree and Inhibition in Execution following decree are both explained in great detail in Chapters 13 and 14.

In Chapter 16, we are introduced the process of the debtor’s sequestration and the implications on debt collection. Whilst the law of bankruptcy (or sequestration as it is know in Scotland) is complex, the author gives the reader a great deal of information, processes to following, and indications of the pitfall facing the unwary, before going on to talk about trust deeds and debt arrangement schemes.

The latter quarter of the book is devoted to the corporate insolvency regime in Scotland and how to use it as a debt recovery tool. This is a very in-depth chapter covering every aspect of insolvency law in Scotland, including the use of Winding-up Petitions, and Retention of Title clauses.

Heavily cited with case law references throughout, this book not only provides a guide on the practicalities of Scots law relating to debt and its recovery, but it also explains how debts arise out of common transactions, covers defences such as payment and compensation, and describes securities, diligence, insolvency and the documents of debt.

It is more than a worthy contender for the credit professional's book shelf. It is also essential reading for CEOs, CFOs, insolvency practitioners and solicitors.
