

MONEY
ADVICE TRUST



Consultation Response:

HM Treasury Statutory Debt Repayment Plan consultation

Response by the Money Advice Trust

Date: August 2022

Contents

- **Page 2** Contents
- **Page 3** Introduction / about the Money Advice Trust
- **Page 4** Executive summary
- **Page 9** Responses to individual questions
- **Page 42** Contact details

Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2021, our National Debtline and Business Debtline advisers provided help to over 170,400 people by phone, webchat and our digital advice tool with 1.63 million visits to our advice websites. In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2021 we delivered this free training to more than 1,000 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at www.moneyadvicetrust.org.

Public disclosure

Please note that we consent to public disclosure of this response.

Executive summary

We strongly support the proposal to introduce a Statutory Debt Repayment Plan (SDRP), particularly the protections this will provide for clients who can afford to repay their debts. The ability to pay back debts, without the risk of creditor enforcement action undermining the agreement, allows people to move forward with their lives, confident that they have statutory protection to enable them to clear their debts in a way they can afford. We have long called for the introduction of statutory protection for people repaying their debts in this way and are keen to see the Treasury progress with the introduction of SDRPs as soon as practicable.

However, we do have significant concerns about the scheme as proposed in the consultation document. These need to be addressed in order for the scheme to work. Without this, we are concerned that the scheme will not be able to deliver the policy intent of protecting people repaying their debts through sustainable repayment plans, and may be difficult for debt advisers to administer.

We have therefore made a number of practical suggestions throughout our response – summarised here – for how the scheme could be improved. This is based on our experience as a large debt advice charity (we helped over 170,000 through our National Debtline and Business Debtline services in 2021); our experience delivering the breathing space scheme and our wider work with creditors and regulators.

We are also clear that, while important, SDRPs will only be an option for people who have enough disposable income to repay their debts. Unfortunately, the number of clients in this situation is decreasing – in the past year the proportion of National Debtline clients with deficit budgets has grown by 8 percentage points (from 37% to 45%) and, even among those with a positive budget, the average surplus has decreased by 20% (from £307 a month in 2021 to £244 a month in 2022). Alongside the development of the SDRP, it is vital that more is also done to support clients with no, or little, available income to repay debts.

1. Ensuring the scheme works well for people in debt

Flexibility

We think **greater flexibility needs to be built into a plan** – to reflect the reality of people's lives and financial circumstances (question 11). Without this, as good as the protections are, clients won't be able to benefit from these because the plans will not be sustainable. This would lead to poor outcomes for both clients and creditors. We therefore recommend the following changes.

- ✓ Allowing **longer payment breaks** where needed (there is precedent for this in the IVA protocol and DAS schemes).
- ✓ Removing the requirement for a client to give **14-days' notice** of needing a payment break.
- ✓ Creating the option for a payment break to be **retrospectively applied**.
- ✓ Setting out a **framework for recognising partial payments and overpayments**.
- ✓ Allowing **low payments for a temporary period**.
- ✓ **Increasing the percentage by which monthly payments can decrease** before a creditor can object to a variation (up from 10% to at least 25%).
- ✓ Protecting clients **awaiting a decision on a variation**.
- ✓ **Removing the limit** that clients can only have one SDRP in any 12-month period.

Qualifying debts

We strongly urge the government to reconsider the proposal to **remove Universal Credit advances and budgeting advances** (for people currently receiving Universal Credit) from the scope of an SDRP altogether. This essentially prioritises repayment of advances via Universal Credit deductions over 24 months in comparison with other government debts which will be paid back under the SDRP and means people with the same debts will be treated differently within the scheme purely based on whether they are currently receiving Universal Credit or not. We would also like to see **the exclusion for social fund loans** examined again, as well as **court fines**. We believe these should be included in the scheme, particularly as the plan is a full repayment solution.

Ending a plan

We recommend that changes are made to the revocation process. While we recognise there needs to be a mechanism to end a plan if someone is persistently not making payments into the plan, nor engaging with their debt adviser, the current proposals are unnecessarily harsh and could put people off entering into a plan. To re-balance this, we strongly recommend that:

- ✓ The timeframe for missed payments triggering a potential conditional notice is extended to three months, and adviser discretion is retained so that an adviser does not have to send a conditional notice at this point, if that is not in the client's best interests.
- ✓ Rules stipulating that advisers **must** proceed to final warning notices or immediately revoke a plan where certain conditional or final warning notice thresholds are met are removed.

Debt advice charities are giving advice to, and working on behalf of, their clients in debt who are often in **extremely vulnerable situations** and dealing with mental health and physical health conditions. Whilst cases may have to be closed where there is no response, it is not usual practice to take irrevocable action against a client's best interests without the use of discretion.

There should be **further discretion in such circumstances**, and an opportunity for review with the client before terminating the SDRP.

Building composition into the scheme

We note that under DAS, there is a **limited power of composition** included in the rules, which allows for applications to end a debt payment programme early where payments have been made for a certain time period and a certain proportion of debts have been paid back. We recommend the government explore **including such a provision** within the SDRP to ensure fairness for clients who have made substantial payments over an extended period.

2. Ensuring the scheme is simple and efficient to administer

In reviewing the proposals, and draft regulations, we have identified some areas of administration that need changing in order to ensure the scheme is efficient and effective – for both debt advisers and creditors. Without this, we are concerned some elements of the scheme may be very difficult to administer in practice. To address these areas, we recommend the government:

- ✓ **Extend the timescale for an adviser to submit a provisional plan** beyond seven calendar days, particularly as debt advisers are expected to confirm any amended or new debts with a client – a task that will often take longer than this. We are not convinced a timeframe is needed here, as advisers will be working to get their clients into a plan as soon as possible, however, if one is to be set, we would suggest 21 days, with the option of extension if needed.
- ✓ **Amend the proposal that a provisional plan is cancelled if the total debt value increases by more than 10%.** We believe this value is too low and does not represent a “significant change in debt value” given it is likely to be a common scenario for people setting up a plan. It risks wasting adviser and creditor time who would then have to re-complete the initial stages of the process over again. We would recommend the percentage rule is removed or set at a much higher level – for example 50%.
- ✓ **Amend the rules regarding additional credit.** Currently, the requirement for clients to inform their debt advice provider if they wish to take out credit over £500 places an unrealistic expectation on clients dealing with a household emergency to contact their debt advice provider in advance and is also a high administrative burden for debt advice agencies. In addition, we worry that the £2,000 limit on credit is well intentioned but could be overly restrictive where someone’s boiler has broken or vehicle needs replacing, as well as excluding many self-employed people, who rely on normal trade credit requirements to run their business, from entering an SDRP. This **ceiling might need to be varied** in certain circumstances and should be made more flexible.

- ✓ **Alter the start date for protections, so protections start from the notice of intention to initiate.** This would also remove the risk of there being a disincentive for creditors to provide prompt confirmation of debt values. Whilst some applicants may already be protected by breathing space before their application for an SDRP, this will not apply to everyone applying for an SDRP.

Expanded fair and reasonable test remit

We welcome the proposed fair and reasonable tests, conducted by the Insolvency Service, in adjudicating on creditor objections for new plans and plan variations. We think the overall administration of SDRPs could be significantly improved by **expanding the remit of fair and reasonable tests to cover debt adviser decisions which are currently proposed to be subject to creditor review**, and escalation to court – such as decisions around ending a plan or removing debts. The current proposals expose **debt advice providers** to a significant and **unacceptable level of risk**. Introducing independent adjudication into the process will allow debt advisers to continue to act in the best interests of their clients, without having to act as adjudicators for creditor challenges, and give debt adviser and creditors confidence in the process.

Creditor compliance

We are concerned that the proposals do not set out a process for ensuring creditor compliance. The consequences of creditors failing to stop enforcement action, or stop deductions being made by creditors from income or benefits once the plan is in place could be disastrous for the success of the plan. There needs to be a simple, clear and effective **mechanism to allow clients and advisers to raise creditor non-compliance** with the Insolvency Service as adjudicator. We also believe the Insolvency Service should have the **power to issue a penalty to creditors** who do not cooperate.

Electronic portal

The Insolvency Service portal is crucial to the success of SDRPs. This must build upon, and learn the lessons from, the breathing space portal. This portal was very limited in scope and did not provide a practical method of communication between creditors and debt advisers. Its functionality remains extremely limited.

This has made it extremely challenging for debt advice providers to deal with various extra creditor communications coming in via different methods, and for creditors to communicate efficiently. For SDRPs to work well, **an efficient and fit for purpose confidential electronic communication system is required**. It would be optimal for this to be integrated with the breathing space portal and to extend the functionality in the breathing space portal to include a communications suite. This should cover all forms of communications, including acknowledgements, creditor objections, various notices, terminations, and reviews.

3.Ensuring an appropriate and sustainable funding model for the scheme

We **welcome the split funding model**, whereby debt advice agencies can manage a plan without having to act as a payment distributor and that there is separate funding attached to each of these functions. We **strongly support the intention for the Insolvency Service to act as a payment distributor**, alongside debt advice agencies with relevant FCA permissions. This opens up the possibility for debt advice agencies who cannot act as payment distributor to be SDRP providers, which otherwise may not be possible.

In terms of levels of funding proposed, **we do have concerns about whether this will be sufficient to cover the costs of delivering the scheme**. If the Treasury proceed with the fee levels as planned, then **there needs to be a clear and transparent approach to reviewing these early on in the scheme's introduction, and a clear process for reviewing them regularly thereafter**.

With the introduction of commissioning into the debt advice sector, the funding basis for the provision of many elements of debt advice is likely to change. While we appreciate the intention is that commissioned funding will contribute to up-front advice costs and SDRP fees will cover the cost of the solution, the reality may not be as neat. We also do not yet know the full consequences of the move to commissioning. In addition, the exact costs of delivering SDRPs are not yet clear and won't be until the scheme is finalised and implemented. Whether the Insolvency Portal allows two-way communications, for example, will impact on the administrative burden (and therefore costs) for debt advice agencies. A clear review mechanism will therefore be crucial if the government sticks with the proposed funding model.

Responses to individual questions

Chapter 1

Question 1: How long do you think the implementation period should be?

We understand that the government is considering an 18-month implementation period from the date the regulations are laid. The SDRP will provide vital protections to people repaying their debts in full – if designed appropriately – so we are keen to see it come into force as soon as possible. However, we appreciate that needs to be balanced against, firstly, taking time to ensure the scheme is designed in a way that is going to be effective and, secondly, giving organisations time to implement the systems and processes needed to deliver it.

With that in mind, we think an 18-month implementation period is reasonable, as long as there is a swift development of scheme guidance and the Insolvency Service portal – which is crucial to the success of the SDRP – is delivered as early as possible within that implementation period, to allow organisations to develop systems that work with this.

Question 2: Do you have any other comments on the issues raised in this introduction?

We do not have any further comments at this point.

Chapter 2

Question 3: Do you agree with the approach to debtor eligibility?

Joint plans

We very much support the proposal for joint plans to be permitted within the SDRP scheme. We also welcome the proposed increase in flexibility to allow eligible people to share at least one debt in order to apply for a joint plan. However, we are a bit concerned as to how this would work in practice by calculating a joint income and expenditure plan. This would be hard to achieve in an example where the two applicants with a joint debt are in separate households. We believe that this proposal needs more thought to make it work in practice for separate households.

Time limits on re-applying

We are pleased to see that eligibility for a plan has not been restricted too harshly and that a new plan can be applied for if a previous plan is not within the last 12-month period. This is a positive step and is much better than the limitations on applications for other forms of debt solution such as a DRO where the client is limited to one application every six years (something we are calling on the Insolvency Service to change.)

However, we note that under the Debt Arrangement Scheme (DAS) in Scotland, the regulations¹ do not include any restriction on reapplication for applicants who have previously had a DAS. We are not aware of any difficulties in the DAS scheme as a result of this provision.

We would therefore suggest that the SDRP could instead mirror these provisions as DAS is the most equivalent example of an existing scheme in place.

Length of plans

We understand that a plan can last over seven years in “exceptional circumstances”. We will need clear guidance on what can be considered “exceptional circumstances” as it can be hard to administer cases at an operational level where there is a lot of discretion or uncertainty.

We have previously suggested that a plan could be put in place that initially lasts longer than the ten-year maximum if there is a predicted and certain change in circumstances that will result in a much shorter repayment period in a set timescale e.g. maternity leave ending and going back to work.

Question 4: Do you agree to the approach to qualifying debt?

We are pleased to see that the government has broadly taken the same approach to qualifying debt as under breathing space. This should ensure that the two regimes are compatible with each other and leaves less scope for confusion. To ensure that the scheme is clear and simple to administer, we would like to see a common list of excluded debts that enables debt advice providers to be clear that any type of debt not included in the list can be taken to qualify. This is based on our experience with breathing space, where uncertainty over excluded debts has been a time-consuming issue for debt advice agencies.

In addition, we have similar concerns about some of the types of debt that are exempt from inclusion in the scheme as we did under breathing space.

¹ The Debt Arrangement Scheme (Scotland) Regulations 2011 – Reg 21 [Debtors who may apply for approval](#)

Court fines

Exclusion of court fines for example, can serve to destabilise a financial situation further. Whilst the debt adviser is attempting to set up a sustainable arrangement for the client, this process could easily be derailed by continued enforcement action using enforcement agents or the threat of imprisonment to recover the fine. The high rate of deductions from benefits for the repayment of magistrates' court fines also cause clients significant problems. We believe this should be included as a priority debt in the scheme, particularly as the plan is a full repayment solution.

Universal Credit advances

We are very concerned that the government has proposed a further delay in the inclusion of Universal Credit (UC) advances and third-party deductions within breathing space until after the UC migration programme, and that the same will apply to the SDRP scheme. This further delay is very disappointing, especially as the UC migration programme is not due to end until after 2024 and this could easily be subject to further delay.

We cannot support the proposal to remove UC advances and budgeting advances from the scope of an SDRP altogether. This means that essentially the government has prioritised repayment of its own UC debts via UC deductions over 24 months in comparison with other government debts which will be paid back under the SDRP.

On a more technical point, if the UC advance is to be treated as an overpayment once someone is no longer eligible for UC, as suggested under 2.24 of the paper, there will need to be clarity on what happens to that debt if someone claims UC again in the future whilst the SDRP is still up and running? In addition, if someone is no longer eligible for UC, what mechanism will be put in place to ensure that the debt adviser is notified that the UC advance is now included in the SDRP? If UC Advances are to remain outside the scheme, the consultation response and final regulations will need to include clarity over these points.

In addition, we find it difficult to see the justification for giving the ongoing collection of a social fund loan precedence over other types of benefit debts or household bills where such creditors must abide within the scheme. We would like to see the exclusion for social fund loans examined again to see if it is justified. As they are excluded from the scheme, we presume social fund loans would continue to be paid or deducted from benefits as a priority payment above rent and mortgage debts and would question whether this is in line with the policy intent. The proposal to exclude social fund loans also departs from their treatment under DAS, where these are included.

Priority debts

We believe there may be a drafting amendment to the definition of priority debts in regulation 7.1. In this definition, hire purchase agreements are included under 7.1 (e) but conditional sale agreements are not included. This could create a discrepancy in the way in which an essential item such as a vehicle is treated if the debt is under a hire purchase agreement as opposed to a conditional sale agreement.

In addition, the definition of priority debts includes under 7.1(f) a debt *“in relation to an agreement with an internet service provider or mobile phone network”* but does not include a land line telephone service. This appears to be an omission that might affect those who are digitally excluded and vulnerable due to age and so on. We suggest both conditional sale agreements and landline telephone services are included here in both SDRP and the amended breathing space regulations.

Distinction between arrears on current and old essential services contracts

We support the inclusion of broadband and mobile contracts as priority debts, but as with the priority debts listed in the paper under 2.28, there is no distinction between current contracts and arrears for an old contract. This includes:

- ✓ rent or mortgage arrears on the client’s primary residence;
- ✓ debt owed to central or local government;
- ✓ debt in relation to the supply of gas or electricity;
- ✓ hire-purchase debt.

This is a crucial distinction in debt advice. For example, rent arrears or utility arrears for your current property are a priority debt, but for an old property, such a debt would be included with other credit debts. The same would apply for an old mobile phone contract, or where hire-purchase goods had been returned/repossessed. Ultimately, debts would be paid back under the plan according to the mechanism proposed in the paper, but other credit or secondary creditors might wonder why an old mobile phone debt takes greater priority over their credit agreement. We would therefore suggest that a distinction is made in the regulations between arrears on current essential services contracts (which would be treated as a priority debt in an SDRP) and arrears on previous contracts (which would not).

Discretionary non-eligible debt

We support the option under an SDRP to exclude specific types of debt such as housing debt or debts that are (or about to be) statute-barred under the Limitation Act as “discretionary non-eligible debts”. We are pleased to see the recognition of the potential problems where a plan could act as an acknowledgement of the debt in such cases.

We also agree with the potential for inclusion of future and contingent debts. We also support the ability to include debts which were omitted from a plan where the client may have forgotten about a debt or that the creditor has overlooked a debt, as long as they were incurred before the start of the plan.

Qualifying debts

It is not always clear whether a debt is a qualifying debt. For example, the Legal Aid Agency can sometimes recover legal aid by making a statutory charge on an individual’s home. The charge attracts interest and has to be repaid when the property is sold.

To establish whether any of the amount owed is a qualifying debt, you have to first determine whether it is a secured credit agreement and therefore a secured debt. If it is a secured debt, then only arrears can be a qualifying debt, and payment is not yet due there will be no qualifying debt. We understand that there is some case law that says that a statutory charge is a loan, it may therefore be 'credit', although no definition of 'credit' is provided in the regulations. However, to be a secured credit agreement, the credit must be of equal or lesser value than the assets against which it is secured.

Fraudulent debts

One issue in Breathing Space has been definition of 'fraudulent debts' and creditors (particularly non-mainstream ones) sending in evidence they say shows 'fraud'. Ideally rules would set out that debt is a "fraudulent debt" only if been prosecuted (i.e. we should not be having to make a judgement on whether fraud has occurred).

We are faced with significant difficulty if a creditor alleges that a debt does not qualify as it was incurred by fraud, unless a court has already established that fraud has been committed. The Insolvency Service Guidance for Money Advisers says *"The regulations do not limit this to where a client has been charged with fraud or convicted of fraud by a court..... If a creditor requests a review of a breathing space debt because of fraud or suspected fraud, you may wish to ask for evidence"*.

We are not trained in this area of the law and do not have the resources or legal knowledge to carry out in-depth investigations into these kinds of allegations. We are also unsure of how widely the words 'incurred by fraud' should be interpreted. For example, we were contacted by a client who had been subject to a confiscation order as they had benefitted very significantly from fraud carried out by their partner. The client wanted to include court costs from this action, and an income tax debt that had accrued because of the fraudulent income they had received, in breathing space. Despite referring to the leading bankruptcy case law, we were unable to find any guidance on whether debts that have been incurred indirectly because of fraudulent activity should be included in breathing space or not.

Question 5: Should debt already due to be repaid under a pre-existing payment arrangement or payment plan be treated as non-eligible debt?

We support the government's current intention not to *"treat payments due under any other form of payment arrangement or payment plan, whether statutory or voluntary in nature, as non-eligible debt"*.

We would therefore not agree with any proposal to allow debt already subject to a separate payment arrangement to be treated as non-eligible debt. We would be concerned this would be unworkable in practice and would prioritise debts where a creditor happens to have an existing payment plan in place, over those who do not, and disadvantage certain creditors. It would also make a sensible distribution of available income on a pro-rata basis extremely challenging.

However, there may be some cases where it would be sensible to prioritise a payment on a court judgment that is already in place rather than apply to vary the payment in court. This might depend upon the type of creditor, and an assessment of the reasonable chances of success by the debt adviser. Also, it could be costly in terms of court application fees for the client. It might be sensible to deviate from a strict pro-rata distribution of available income in such cases. This is **not** the same as excluding the debt from the scheme as non-eligible.

Question 6: Should it be possible for debtors to exclude very small debts from a plan?

The benefit of the SDRP is that it includes as broad a range of debts as possible and, overall, we support the principle of sharing available income amongst all creditors on a pro-rata basis.

However, we can see that a client might wish to exclude a very small debt from the plan, in consultation with their debt adviser. This minimises the administration burden on all parties. However, this should be very much at the discretion of the client and debt adviser, in the light of a plan for how this debt might be paid back from the client's budget without affecting essential expenditure or their payment proposals under the plan.

Question 7: If you think it should be possible to exclude very small debts, what amount of debt would you consider to be very small? Should excluding these debts be required, or optional? How should these debts be dealt with if they are excluded from a plan?

It is difficult to be definitive about the amount of debt that could be considered "very small" as even small debts can be insurmountable without the means to pay them back. However, if we had to make a suggestion, perhaps under £100 would be a reasonable amount to allow to be excluded if the client and debt adviser agree this is the best thing to do.

As we have said, it would then need a plan between the client and the debt adviser as to how this could be cleared without damaging the client's budget.

Question 8: Are there scenarios in which a debtor may occur incur additional debt during a plan without intending to (e.g. due to an administrative error by a creditor)? What might these scenarios be and how should debt incurred in these scenarios be treated?

We would agree that there are scenarios where someone might incur additional debts during the plan without intending to. This might depend upon what is meant by 'without intending to' in this case. For example, a client could get a parking penalty charge notice that they did not know about because they missed the relevant signage or misunderstood the parking rules or instructions. This scenario could also apply to a private parking ticket.

Another example would be where a client may be made aware of a benefit or tax credits overpayment during the plan. Whilst the overpayment may apply to a period from before the time the client went into an SDRP, the money would not be technically owed until the decision is made regarding the overpayment, and the client may have been completely unaware that they owed this.

Certainly, if a debt was discovered that was due to an administrative error by a creditor, or a pre-existing benefit or tax credits overpayment, then it should either be written off or included in the plan. Offers of payment under the plan are worked out using the available income from the budget. This means there is not extra money available to start to pay additional creditors separately. Such debts should either be included in the plan and payments redistributed or written off.

Question 9: Do you have any further comments on or concerns about debtor eligibility for the SDRP?

As we have said, we would like to see rules that allow for a plan to be put in place that initially lasts longer than the ten-year maximum. This could be possible in limited circumstances, such as where there is a predicted and certain change in circumstances that will result in a much shorter repayment period in a set timescale e.g. maternity leave ending and going back to work.

Chapter 3

Question 10: Do you agree with the proposed protections of the plan?

We agree with many of the proposed protections in the plan. We are particularly pleased to see that interest, default fees and charges will stop accruing. We also are very pleased to see that much recovery and enforcement action will be stopped and that pre-existing attachment of earnings orders will be suspended during the plan, unlike the situation in a breathing space.

This level of protection will bring significant benefits to people in debt, who frequently report the significant impact that debt collection and enforcement can have on them. Among National Debtline clients surveyed:

- ✓ 66% said the actions of their creditors led to them feeling anxious;
- ✓ 55% said they led to them feeling depressed and 54% reported losing sleep;
- ✓ Almost half (46%) said their creditor's actions made it difficult to think clearly, while 1 in 5 (22%) said it led to them struggling at work;
- ✓ Finally, 35% said their family life had suffered as a result of the impact of creditor's actions on them.

Timeframes for protections starting

In terms of when protections begin, we would suggest that protections should commence from the notice of intention to initiate. This would be both better for people in debt and administratively simpler too.

As the paper says:

“3.8 The government notes that there could be considerable complexity for all parties (including creditors) if interest, fees and charges continue to accrue between the notice of intention to initiate and the notification of a provisional plan. It also notes that any enforcement action started in this period would need to be halted without delay on notification of a provisional plan.”

Given this valid assessment of the complexity and difficulties in starting and stopping interest and charges and enforcement action during this period, we would suggest that it is a risk to rely on an “expectation” that creditors will *“voluntarily apply the protections during the development phase of the plan”*. We would be concerned that there is no guarantee that creditors would adopt this approach. In addition, if particular creditors failed to do so, there would be no ability for either the debt advice provider or the Insolvency Service to require them to do so. This would be an entirely unenforceable “expectation.”

This also creates complexities around confirming debt values – if a creditor confirms the value of a debt in the 21-day period but interest, fees and charges continue to accrue, will they then have to further update the debt value when the provisional plan is put forward to them?

We would think it much simpler and more straightforward for the protections to start from the date of the “notice of intention” of the plan. This would also remove the risk of there being a disincentive for creditors to provide prompt confirmation of debt values. Whilst some applicants may already be protected by breathing space before their application for an SDRP, this will not apply to everyone applying for an SDRP.

We recognise that there is a risk of people accessing these protections who don’t then go into a plan. If this is a concern, then creditors could be given the power to re-add interest, fees and charges if a notice of intention to initiate does not then translate into a provisional plan.

Regulatory clarifications required

The proposed protections from enforcement are similar to those provided by breathing space. As we have said above, we welcome these protections. However, based on our experience of delivering breathing space, we think there are a number of areas in the regulations – both for breathing space and replicated in the SDRP regulations –relating to protections that require clarity to ensure the schemes work effectively.

We are pleased to see the planned amendments to breathing space regulations which will provide greater protections given to individuals with secure tenancies and will also allow contingent and future debts to be included in the scheme.

However, we would still encourage the Treasury to make further clarifying changes, including on the following.

- ✓ Service charges on residential properties: it is unclear if a landowner can begin forfeiture proceedings during breathing space.

- ✓ Some debts appear to be qualifying debts and therefore have to be included despite the fact that this will not stop further action: For example, our understanding is that many fixed-penalty notices (FPNs) meet the definition of being a qualifying debt and therefore have to be included, but the client can still face prosecution if payment is not made within the timeframe set by the notice. Whilst it is understandable that breathing space should not provide protection against prosecution for criminal offences, that fact the FPNs still have to be included is likely to confuse less experienced advisers and clients.
- ✓ Where a court order is not required to repossess goods on a hire purchase, conditional sale or hire agreement, we are not sure whether the regulations prevent the owner of the goods from taking possession of them. Although hire purchase and conditional sale agreements are defined as secured debts within the regulations, the goods belong to the creditor and therefore are not security for the money owed. As such, we're not sure that they are covered by the prohibition on enforcing security. It may also be argued that repossession would be a step to collect the debt from a consumer, but again, we're not sure that a creditor taking possession of goods that belong to them and selling them to a third party involves any collection from the consumer. In most cases, the consumer's level of indebtedness will actually increase when the goods are repossessed.

For self-employed people, there can be a number of additional problems in breathing space which will be replicated under SDRPs, as the regulations currently stand.

- ✓ Commercial leases: It is not clear whether breathing space or an SDRP would prevent forfeiture.
- ✓ Commercial mortgage including buy-to-let mortgages: During breathing space, a creditor cannot 'enforce security held in respect of a moratorium debt', so this may stop them from taking possession of a property. It is not clear if this would prevent the appointment of a receiver under s109 of the Law of Property Act 1925.
- ✓ Commercial water supply: the regulations do not seem to prevent the disconnection of a commercial water supply.
- ✓ Commercial energy debts: we understand that the regulations may prevent the disconnection of a commercial energy supply, but have been unable to find any definitive guidance.

We hope the Treasury will consider updating these elements of the SDRP regulations and similarly amending the breathing space regulations.

Question 11: Do you agree with the proposed flexibilities provided for in payment breaks and plan variations?

In developing the proposals, we can see where the government has sought to introduce flexibilities into the scheme, and this is welcome. As the government have themselves stated, all involved in the SDRP want to ensure that plans are an attractive and sustainable solution and building in sufficient flexibility is crucial to this.

Unfortunately, we are not convinced that the current level of flexibility is sufficient to meet this objective. We think greater flexibility needs to be built into a plan and have a number of suggestions for how this could be achieved. Without this, as good as the protections are, clients won't be able to benefit because the plans will not be sustainable. This would lead to poor outcomes for both clients and creditors.

Based on our experience of our client's situations, we strongly recommend that the following changes are made to introduce greater flexibility into the SDRP.

- ✓ **Allowing longer payment breaks where needed** (particularly where a client has been in touch with their debt adviser and they are aware of circumstances that mean an SDRP remains the right solution, but a longer-term payment break is needed): For example, where someone is in hospital for a temporary period, where someone has experienced a bereavement and needs to cover funeral expenses, where someone has lost their job but is waiting to start a new one.
- ✓ **Removing the requirement for someone to give 14-days' notice of needing a payment break:** It is unrealistic to expect someone to be able to do so, as many people may not know until a few days before that they will miss a payment. While clients can be encouraged to give as much notice as possible, this should not be a regulatory requirement.
- ✓ **Creating the option for a payment break to be retrospectively applied:** For example, where someone misses their payment but then engages with their debt adviser, and had a genuine reason for missing the payment, this should be able to be retrospectively allocated as a payment break so it does not count as arrears for the purposes on the conditional notice process.
- ✓ **Setting out a framework for recognising partial payments and overpayments:** The nature of some people's circumstances will mean their income fluctuates – for example, self-employed people or people on zero-hours contracts. This may mean that some months they may pay slightly less than their agreed payment, and sometimes they may be able to pay more. To ensure the SDRP is a solution that fits with these circumstances, there needs to be some provision for allowing ad hoc partial payments and overpayments. We would be happy to discuss further how this might work - for example, a % limit (such as 50%) could be set for when a partial payment would be counted as a legitimate payment. Some limits could be set on this if needed, to distinguish from those who need a longer-term variation, as opposed to those who are under and over-paying as a means to manage their circumstances.
- ✓ **Allowing low payments for a temporary period:** It would be useful for there to be a mechanism to enable those who are in a position to make minimal payments for a temporary period, perhaps where they expect an imminent change in circumstances. We appreciate this may be possible through the variation process, although note this would be subject to creditor objections which could prevent it being possible.

- ✓ **Protecting clients awaiting a decision on a variation:** Where a client and their debt adviser have proposed a variation, but are awaiting confirmation of this (for example, it is within the 14-day period for creditor objections or the Insolvency Service is conducting a fair and reasonable assessment) there must be provision for the client to either pay the reduced rate, or access a payment break, without any negative consequences or penalisation.

There is precedent for greater flexibility within the scheme, and similarly precedent that creditors are willing to accept additional flexibility being built in where this makes solutions more sustainable. We would give the example of the Insolvency Service IVA protocol 2021 which has a more generous payment break scheme.² This allows for payment holidays or reduced payments where there is an emergency item of expenditure or unforeseen reduction in income.

- ✓ *“in total, over the period of your arrangement, no more than the equivalent of 9 months or 39 weeks payments can be agreed to be missed in this way, whether those payments are made monthly or on another schedule;*
- ✓ *the duration of your arrangement will be extended by no more than 12 additional months to recover the sums due, unless you have otherwise made good the shortfall.”*

There is a further example of the DAS scheme.³ This allows applications to vary a debt payment programme in various ways including a “short term financial crisis payment break” where no notice is required, and creditors are not required to give prior consent. As well as payment variations and crisis breaks, clients can also apply for a payment break variation which can be for up to six months where their disposable income has reduced by 50 per cent or more as a result of a variety of circumstances. There is no limit on the number of times a client can apply for a payment break variation whilst in the DAS scheme.

We think that a more generous scheme should be considered, particularly given the extended time period that an SDRP might be expected to last for.

Question 12: When a plan is varied, should there be a minimum value (above zero) to which payments can fall?

We would very much support variation of payments to be subject to the discretion of the debt advice provider in consultation with their client. It would very much depend upon the client's circumstances, whether these circumstances are likely to improve and how soon this is likely to happen.

It might be reasonable to vary a plan to a small token payment for a limited time period such as £1 a month or £5 a month. This should be at the discretion of the adviser.

² <https://www.gov.uk/government/publications/individual-voluntary-arrangement-iva-protocol/iva-protocol-2021-annex-1-standard-terms-and-conditions#part-3-transparency-and-cooperation-your-duties-and-obligations>

³ Debt Arrangement Scheme (Scotland) regulations as amended
<https://www.legislation.gov.uk/primary+secondary?title=debt%20arrangement%20scheme>

However, very low or token payments for an extended period would call into question the viability of the plan and whether an alternative debt option might be required instead. This will depend upon how much debt is outstanding and how long the plan will last if payments are reduced for a lengthy period.

Question 13: Given the government's proposal to use a private register, do you agree that debtors should be required to disclose the fact they are in a plan to potential creditors? Or should creditors' own due diligence and processes regarding credit affordability and risk be relied on?

We very much support the decision to use a private register to record SDRPs. We agree that given the proposed length of time that an SDRP will run for, people are very likely to need access to additional credit access whilst in plan.

However, we are not convinced that there should be a requirement for clients to inform potential creditors that they are in a plan already. This should depend upon creditors' own due diligence and processes as suggested. Consumer credit lenders will already have such processes in place. It would be disproportionate to expect any agency to be in a position to police disclosure by applicants in any case.

We do not agree that clients should be required to inform their debt advice provider if they wish to take out credit over £500. This places an unrealistic expectation on clients dealing with a household emergency to contact their advice provider. In addition, it places an unreasonable administrative burden on the debt advice provider. Potentially, debt advisers will be placed in an untenable position, making judgment calls on whether their client should have credit or not. This is not a welcome addition to the debt advice role or duties.

We think it is vital that these proposals are made more practical, so that the SDRP scheme continue to function as intended, whilst allowing for a client to borrow to replace an appliance during the plan.

We worry that the £2,000 limit on credit is well intentioned, but could be overly restrictive where someone's boiler has broken or vehicle needs replacing. This ceiling might need to be varied in certain circumstances and should be made more flexible.

We have additional concerns for the viability of the scheme for people who are self-employed or running a small business. It is possible that the normal trade credit requirements for running a small business might exclude the self-employed from benefiting from an SDRP. This includes rolling credit on trade accounts, for example for builders who buy materials etc on trade credit and then pay the account down as they receive funds from the customer as the job progresses. Some traders may be doing this for more than one job at a time and the amount of credit, while short-term, is likely to fluctuate. Alternatively, some self-employed clients may use a credit card or overdraft to cover ongoing business costs while they are waiting for funds into the business or to cover temporary cash flow issues/slumps in business. This could cover buying supplies, paying bills and even wages.

Question 14: Based on the draft regulations, how should SDRPs be reflected on a debtor's credit file?

Many people delay seeking debt advice due to the perceived effect on their credit rating. However, for most people, by the time they seek advice and enter into a debt option such as an SDRP, their credit rating will already be adversely affected. Whatever mechanism is used will have to be communicated to individuals clearly and effectively to avoid this deterrent effect.

We recognise that SDRPs are likely to be recorded on credit files by way of a flag or other mechanism. However, it is vital that the process is set out in a comprehensive set of rules or guidance to ensure consistency across creditors. It is not a good idea for lenders to adopt varying approaches across the various credit reference agencies as this will be confusing for all parties.

In addition, we would like to see the guidance give further consideration to the concept of rehabilitation. This was put forward in the Money Advice Service paper, Debt solutions in the UK in 2017.⁴ In practice, this might mean, for example, that credit reference files reflect a history of good payment via a debt repayment plan in order to rehabilitate the client following an extended period under an SDRP.

We would not like to see debts and defaults for individual creditors showing up for six years on a credit file, followed by the SDRP affecting credit files for a further six years from the date of the SDRP. This does not appear to be a proportionate outcome that treats consumers fairly within the SDRP or allows them to rehabilitate their credit rating in a reasonable time.

Question 15: Do you have any further comments on or concerns about the protections and flexibilities provided by the SDRP?

We do not have any further comments at this point.

Chapter 4

Starting a plan

Question 16: Do you agree with the approach to personal details, including the proposal not to require all previous addresses but only addresses likely to be linked to a plan debt?

Yes, we agree with the approach taken in the paper to the disclosure of relevant personal details.

⁴ <https://maps.org.uk/wp-content/uploads/2021/03/mas-debt-solutions-report.pdf>

We very much welcome the proposal to allow the same discretion as under breathing space to allow applicants to ask that their usual address is not disclosed to creditors if there is a threat of violence.

We do not feel it necessary to make this subject to an application for decision by the debt advice provider. This element of breathing space feels excessive and could promote discord between an advice agency and the applicant, therefore this provision should not be replicated under SDRPs. Any dispute in such cases should be resolved by the Insolvency Service.

Question 17 – For debt advice providers: What details do you consider necessary to be provided by creditors if they identify an additional debt to ensure that it can be appropriately identified and included in a plan?

In the experience of the Money Advice Trust breathing space team, additional debt notification is one of the biggest drains on our resources. The team reports that the requirement to check each new debt with the client and confirm that they agree the debt is theirs and that they have had the relevant advice in relation to this debt is time consuming. We cannot add a debt without the client's agreement. If they do not recognise the debt, the client or adviser has to contact that particular creditor to ask for more information. If the client agrees that this debt is valid, they then need to contact the breathing space team to confirm.

To help to deal with this issue, it would be useful to require creditors to provide the current name and last six years of addresses that the creditor holds for the client. This would help the client to identify the debt faster.

In some cases, this information might be held on a credit reference file, but many debt advice providers do not have direct access to credit reference data. Lots of debt types do not appear on credit files, and small business debts are unlikely to appear at all.

The basic information required to identify a debt would include:

- ✓ Creditor name;
- ✓ Debt collection agency details if applicable;
- ✓ Debt purchaser details if applicable;
- ✓ Address of creditor or debt purchaser or debt collection agency;
- ✓ Original creditor details if the debt is now with a debt collection agency;
- ✓ Balance owed;
- ✓ Whether liability for the debt is sole or in joint names. This should include the names of all those jointly liable;
- ✓ Details of any guarantor for the debt.

Desirable information to help identify where further advice is required

- ✓ Details of any court action, or enforcement action that has been taken, including whether a statutory demand has been issued.
- ✓ The date any debt or credit was taken out, when any default notice was issued (if applicable) to help identify potentially statute-barred debt or debt that is about to become statute-barred.

Question 18: Is the proposed mechanism for allocating payments to creditors on a pro-rata basis by debt value suitable? Do you foresee any problems with how this will work?

We are pleased that the government has moved away from the previous proposals for payment distribution and towards a pro-rata split amongst all debts which we agree is simpler and fairer. It also solves the problem of cases where there are more than 20 debts and ensures that debts receive proportionate payments determined by their relative size. This is the approach adopted throughout the debt advice sector for distributing available income.

We do not foresee any particular problems with how this will work given that it is proposed that the Insolvency Service's electronic system will calculate the appropriate amounts for each creditor automatically.

Question 19: Is 30% a suitable proportion to allocate to priority debts? Should this be higher/lower?

We think that the proposal for a 30% proportion of available income to be shared amongst priority creditors appears reasonable.

Question 20: Do you consider that debtors should be given greater flexibility in deciding the size of the payments they make into their plans? If so, how should this flexibility be provided?

This proposal is not set out in the paper, so it is difficult to know what the proposal would be. Any extra payments should be discussed with the client's debt adviser. We would not like to see the scenario where a client felt pressurised into offering more than they can afford to pay under their budget. Neither would we like to see clients cutting back on essential expenditure in order to increase payments.

However, a degree of flexibility within the budget would be welcome, so that clients can retain a proportion of their income to cover unexpected household expenses, and to create a savings buffer. This could emulate provisions in DAS where applicants can choose not to include all of their disposable income into a debt payment programme.

We note that there is no proposal to allow a percentage of available income to be retained for this purpose beyond the savings category of the SFS. This is something that could be considered, in order to help clients to manage the varied circumstances that might arise over the course of a multi-year plan. We understand that such a proposal is under consideration by the Scottish government as part of its reform of statutory debt solutions.

Question 21: Do you consider that debtors should be able to make additional payments into their plans outside of the regular payment frequency?

We would support the maximum amount of flexibility so that consumers should be able to make additional payments into their plans if they so wish.

This might be particularly important for clients with varying income (such as self-employed people on people on zero-hour contracts) who may need the ability to under and overpay depending on their income that month, as set out in our response to question 11.

However, there should be no requirement for people to make additional payments, and we would not support any requirement to report any windfall or unexpected bonus payment to the administrator of the plan with the expectation that that money should form part of the plan. We should bear in mind the importance of retaining or developing a small pot of savings for unexpected household emergencies.

We would only caution that payment distributors should state whether distributing an occasional extra payment or lump sum would be unduly costly or administratively burdensome.

Question 22: Do you consider that the information proposed to be provided to creditors is suitable and sufficient? If not, why?

We consider the range of information that it is proposed to be sent to creditors appears adequate and contains the key points about a proposal that will enable creditors to make an informed decision on the plan proposals.

We are pleased to see that in the spirit of the SFS scheme rules, only the summary budget will be supplied to creditors. We do not consider that creditors need any more than the summary SFS.

We have not identified any additional information that should be included at this point.

Question 23: Are the grounds for objection that have been proposed suitable and sufficient?

We are pleased to see that creditors will be deemed to have consented if they do not respond to a notice of a provision plan, as in DAS. While, overall, the grounds for objection appear to be reasonable, we would highlight that it is very important that the SDRP portal restricts the ability to object so that creditors cannot deviate from the grounds allowed under the regulations. Creditors should be required to select a particular ground and to provide substantial reasoning to justify the ground for objection being used. We are pleased to see that supporting evidence will have to be provided by creditors, too. Ensuring creditors cannot just “object” without reasons or supporting evidence is important in protecting both clients but also other creditors, too, who want the plan to proceed.

We would also raise that the “*plan unfairly prejudices their interests*” is a very broad criteria for objection. We recognise that this may be a legal requirement, to give grounds such as this. However, if this provision has to remain in the criteria, we would suggest strong guidance will be needed on when this would be considered to be the case (for example, in fair and reasonable assessments). This will help to avoid the risk of unnecessary or inappropriate objections, which would only serve to add additional administrative burden to the Insolvency Service, debt advisers and creditors.

We understand that the Insolvency Service conducts a “fair and reasonable test” of its own volition, but there will be interaction with the debt advice provider at this stage. We could imagine common scenarios where there might be clarification needed during a debate about whether a client’s *“income and expenditure departs, without good reason, from the spending guidelines set out in the SFS.”* There will again need to be clear guidance in place on how such scenarios are handled between the parties and the role of the advice provider.

10% limit for variations and objections

We would strongly recommend that the government amend the rules relating to creditor objections for variations. The current threshold that payments can only decrease by 10% before creditors are able to object is quite low. For example, among DMPs referred to StepChange from our National Debtline clients in 2021, the average monthly payment is around £270. Under the current 10% rule, creditors would be able to object if a payment dropped by £27, which is potentially not going to be an uncommon situation. Although the current cost of living rises with energy bills rises at an unusually high level, it is a reminder that yearly bill rises could easily combine to mean a payment may need to be changed by more than 10%.

If debt advice providers have to tell clients from the outset that creditors can object if, at any point in their plan, they have to vary their payments by more than 10% this could feel quite intimidating, as that figure is relatively low. This may put them off choosing an SDRP, even where this is the best solution for them. We also think that creditors, overall, will be more tolerant of greater variations if this means the solution continues to be sustainable. We therefore propose the amount a monthly payment can decrease through a variation before creditors can object, should be raised to at least 25%.

10% increase in debt value rule

One aspect of the proposals we are particularly concerned about is the intention that the provisional plan is cancelled if the total debt value increases by more than 10%. We do not agree that 10% is a “significant change in debt value” and would suggest this percentage is too low. Additional debts or increased debt amounts do not change the surplus income available; it just means this is now split across an additional debt or between debts of different amounts.

Instead of automatic cancellation, it would be much better for the provisional proposal to be adjusted to include the new balances, and for the plan proposal to proceed. This avoids an unnecessary and burdensome extra process and use of extra time and resources for the advice provider, as well as uncertainty and potential distress for the client. We therefore do not think a percentage is needed, however if one is to be included at all we would recommend this is set at a much higher level – for example 50%.

Question 24: Do you have any further comments on or concerns about the processes set out in this chapter for developing and initiating a plan?

Timeframe for protections to begin

As we have said in our response to question 10, we do not agree that protections for applicants should only start the day after creditors are sent the provisional plan. We believe that the protections should start from the point where creditors receive the “notice of an intention” to initiate a plan.

Timeframe for debt advice provider finalising a plan

We are concerned at the practicality of proposals to only allow seven calendar days for the debt advice provider to finalise and submit a provisional plan and would strongly suggest this timescale should be extended. The regulations state that a debt adviser is required to confirm any additional debt or amended debt values with a client, and, in many cases, this will take longer than seven days – particularly as the regulations list these as standard days, rather than business days. In these situations, you would have legitimate plans being cancelled simply because an adviser was not able to get full confirmation from a client in the space of a few days. This could lead to a significant number of re-applications, placing additional burdens on debt advisers and creditors, who would have to go through the debt confirmation process again. This would also be particularly difficult for smaller agencies with limited resources to have sufficient time to deal with all the potential issues and anomalies that might have arisen in a case with multiple creditors.

We are not convinced of the need for any timeframe here, as debt advisers will be working hard to get their clients into an SDRP as soon as possible. However, if a timeframe is to be given, we would suggest 21 days to match the length of time creditors are being given, but with the option for the debt adviser to extend this if needed.

Incentivising early creditor confirmation of debt values

One final area we think could be improved when it comes to devising a plan is ensuring creditors promptly confirm debt values and identify additional debts. At the moment, there is little incentive for them to do so, as they can confirm either in the 21-day period, the 14-day objection period of the first 120 days of a plan. Given the current proposal that a plan is automatically cancelled if an additional debt increases the total debt value by 10%, we would suggest there is also a risk that less scrupulous creditors may wait to notify a debt adviser of an additional debt as a route to getting a plan cancelled.

To avoid this risk and to ensure as smooth a process as possible in setting up a plan, we suggest that:

- ✓ The 10% debt value rule is removed, or percentage increased substantially (as set out in response to question 23);

- ✓ Any creditor who does not confirm debt values or additional debts within the 21-day period loses the right to object on the grounds of inaccurate information (i.e. “the information relied upon in development of the plan was inaccurate”).

Creditor indicating priority debts

The regulations currently state that, at initiation stage, a creditor must indicate via the portal if “in the creditor’s opinion” a debt should be treated as a priority debt, and therefore prioritised for payment in a plan. We are not clear on why this is necessary or what purpose this is intended to serve, given there is a clear list of what counts as a priority debt and debt advisers have to indicate this on the application. We could see there might need to be a mechanism for a creditor to indicate if they thought a debt had wrongly been attributed as a priority or non-priority debt. However, we would suggest the regulations as they stand risk creating confusion but suggesting the definition of a priority debt is for creditors to take a view on.

Chapter 5

During a plan

Question 25: Do you consider that the proposed mechanism for implementing payment breaks is appropriate?

We consider the proposed mechanism for implementing payment breaks is suitable, as long as the Insolvency Service will put in place an easy-to-use electronic mechanism for the adviser to initiate and extend the payment break.

We also think it is sensible that creditors should not be given the opportunity to object to payment breaks given the time constraints in the payment break process, and the fact that the need for a payment break is likely to be urgent.

As we set out in answer to question 11, we think the proposal to require 14 days’ notice of a payment break should be removed.

Question 26: Is the creditor review mechanism a sufficient route for creditors to challenge plans they deem to be unfair, unsuitable or inaccurate?

We are concerned that the creditor review mechanism as proposed provides too many routes for a creditor to formally request a review of a plan or of a debt included in the plan.

If it is possible for creditors to initiate the review **at any point** in the plan, (subject to the suggestion that a creditor can only request this review once in any 12-month period) it allows a great deal of leeway for creditor under the plan. It also increases the uncertainty for a client, especially for grounds such as “*the plan unfairly prejudices the interests of the creditor*” or “*the creditor has reason to believe that the debtor is not eligible for a plan*”.

There needs to be an extremely tight set of circumstances set out under the regulations for creditors to use to demonstrate why their interests are “unfairly prejudiced” for example. Without this, we are concerned that some creditors may just object for the sake of it, as we have seen under breathing space. This damages the interests of the client but also other creditors who support the plan and increases the burden on debt advisers. We would encourage the government to reconsider the criteria for creditor objections so that this would better balance the needs of both creditors and clients.

As we have set out in our response to the following question (27), we do not agree the debt advice providers should be made responsible for conducting such reviews. It increases the burden of responsibility upon advisers unnecessarily. We believe objections should instead be considered by the Insolvency Service as part of their responsibilities under the “fair and reasonable” test.

Notification of write-off

We would have thought there could be a simple mechanism built into the portal for the creditor to inform the debt advice provider that they have written off a debt. It does not require a formal review of the plan, as payments could be automatically adjusted under the portal.

Question 27: Do you consider that the additional creditor and debtor review processes are appropriate and sufficient? If not, in what ways do you think they could be amended?

10% increase in debt value rule

As set out in our response to question 24, we have significant concerns about the proposal to allow creditors to object to a provisional plan if the debt value changes by more than 10%. We consider this to be much too low a percentage figure, which will increase bureaucracy, increase use of scarce resources and add delay and complexity to the process.

The ability of creditors to object to a plan variation once the plan is in place that increases the total debt value by more than 10% is similarly unnecessary and we do not support its inclusion. We cannot see there is a need for creditor objection here. In conducting the plan variation, and adding the debt, the debt adviser will already have concluded the plan remains the appropriate option for the individual. If the debt has increased by that amount due to a debt being not known about, and so forth, then there is little sense in objecting to that reality. It would also seem unfair on clients, given that this situation will most often arise when a creditor notifies of a debt a client wasn't aware of, such as a benefit overpayment.

Client reviews of debt adviser decisions

It is reasonable that clients should have the ability to request reviews of debt advice provider decisions. However, as we have set out below, we believe these – and all creditor reviews – should be done through the “fair and reasonable” process conducted by the Insolvency Service.

Creditor reviews

We understand that it is proposed that creditors will be able to request reviews if the debt advice provider has refused a request to remove a debt from the plan or for the plan to be revoked. In addition, they can ask for a review of a refusal to issue a notice of intention to revoke a plan or a final warning notice. As it stands, such reviews must be conducted by debt advice providers in the first instance and if the creditor or client is dissatisfied with the outcome, they can apply to the county court. This places a significant administrative burden on debt advice providers, and the risk of escalation to court exposes debt advice providers to a significant and unacceptable level of risk.

Under breathing space, it is not uncommon for us to have to spend over an hour assessing one, individual creditor review and in complex cases this can stretch to several hours. We often receive significant documentation that we have to go through. As an example, in a recent case, we received a three-page letter covering nine different arguments for cancelling the review, with four supporting documents totalling 17 pages. Despite the arguments not being valid and many not supported by any evidence, we still had to go through all the documentation and assess the arguments. Given the court risk, we have to document our approach and final decision should we then be challenged on this, as well as contacting the client (often more than once) to ensure our response to the review is considered and appropriate. All of this takes significant, vital resource that debt advice agencies don't have.

We think it is important to learn from this experience for SDRPs and create a more structured, independent process for dealing with creditor reviews through the fair and reasonable assessment model. It is welcome that debt advice providers are being given discretion to do what is best for their client. However, in order for debt advice providers to do so comfortably, there needs to be an independent adjudicator when those decisions are challenged by creditors or clients.

The Insolvency Service is already conducting reviews under the “fair and reasonable” process and so it would make sense for them to adjudicate these points of dispute, too. These extra types of review should be conducted by the Insolvency Service and not go to county court.

This would also build upon learning from the breathing space scheme, where a creditor can apply to court for a review of the advice agency decision. Recent opinion from HM Treasury has confirmed that this could result in debt advice agencies being brought into proceedings and made liable for costs. While the risk of this may be small in any individual case, it will accumulate as more cases are dealt with. Should a case make its way to the higher courts, there is the potential that an advice agency could find themselves liable for costs that run to many thousands of pounds.

Debt advice charities are having to make decisions on breathing space cases where no clear-cut answer is available, without access to legal advice that allows us to appreciate how strong or weak the arguments for or against review might be.

Ultimately, we believe that the role of debt advisers as the adjudicators for creditor challenges to breathing space cases is problematic. Regulations should be amended to allow for the adjudication role for breathing space to be held by the Insolvency Service in the event of a creditor review.

We do not think it advisable to create a similar review system within the SDRP where there is a threat of court costs for both the client and the debt advice provider. The possibility of court costs could have a chilling effect on advice providers making decisions on creditor objections in high-value and unusual cases.

Question 28: Do you agree with the proposal to have a private register?

We very much support the proposal for the SDRP register to be a private register, which is accessible only to debt advice providers, creditors and clients themselves. This should help to make the idea of a plan more attractive to consumers who may be put off by the idea of appearing on a public register. It very sensibly mirrors the private register that is in place under the breathing space debt respite scheme.

We very much hope that this is of assistance in deterring exploitative lead generator activity, as suggested in the consultation paper.

Question 29: Do you have any further comments on or concerns about the processes that have been proposed to operate during a plan?

One area not covered in the proposals is the issue of creditor compliance. There needs to be a simple, clear and effective mechanism to allow clients and advisers to raise creditor non-compliance with the Insolvency Service as adjudicator.

The consequences of creditors failing to stop enforcement action, or stop deductions being made by creditors from income or benefits once the plan is in place could be disastrous for the success of the plan. It also disadvantages creditors who are following the rules. This means there needs to be the ability for the adjudicator to take swift action where necessary. This should form part of the regulations in the scheme, otherwise creditors or trade bodies may choose to ignore the intervention.

From our experience of breathing space, we do not think it is enough to assume creditors will comply. As an example, we have seen a trade body for private landlords fail to respond to the Insolvency Service regarding concerns over information on the breathing space scheme, that they were providing to their members. This can have serious consequences for individual cases that may end up being under dispute or even court action based on erroneous advice or information.

We believe the Insolvency Service should have the power to issue a penalty to creditors who do not cooperate. This could include the power to stop repayments to that creditor under the plan and to issue sanctions such as a requirement for debts to be written off or made unenforceable if there is clear evidence of creditor misconduct.

Chapter 6

Ending a plan

Question 30: Do you agree with the proposed grounds for both mandatory and discretionary revocations? Are there any grounds for revocation that you consider have not been captured?

We would agree that some of the mandatory grounds are reasonable grounds for revocation such as when the client dies or goes into bankruptcy or a DRO.

We agree that it is very important that the client can ask for their plan to be revoked in various circumstances as this allows a measure of autonomy for the applicant. We agree it is important to ensure that there is further advice provided before the revocation application is approved to avoid circumstances where someone is persuaded to apply for a revocation when this might not be in their best interests.

Discretionary revocations

In contrast, we have concerns about some of the proposals regarding discretionary revocations.

We recognise that, if someone is persistently not making payments into the plan, there needs to be a mechanism to end that plan. However, given what we know about how tight people's finances can be, the proposal that a discretionary revocation process could begin after just two missed payments is unnecessarily harsh. In particular, if the client was making weekly payments, it appears that their plan could be revoked after two weeks. We strongly recommend that this provision is changed to provide a longer timescale. We recommend the following changes.

- ✓ The timeframe for missed payments triggering a potential conditional notice is extended to three months (and this timeframe should apply regardless of how frequently payments are made so people making more frequent payments are not disadvantaged).
- ✓ Adviser discretion is retained so that an adviser does not have to send a conditional notice at this point. We note this is covered in the regulations but should be made explicit to all parties involved in the SDRP so it is clear that an adviser can continue to do what is best for the client based on their circumstances, even where payments have been missed.

It is worth noting that, during the period of a client missing a payment, they are unlikely to be doing nothing. In most cases, the debt advice agency will be in contact with them to understand the reason for the missed payment and support they need to get their plan back on track. Having a slightly longer timeframe before a conditional notice needs to be sent gives the client and debt adviser time to work together to find a solution.

As set out in question 11, we also need clarity on what would happen where a client is making partial payments under the plan.

Finally, we would like to see the removal of the current proposals that mean:

- ✓ An adviser has to do a mandatory revocation if a client has already received two final notices during the course of the plan and there is reason to issue a third.
- ✓ An adviser has to proceed straight to issuing a final warning notice if a client has already received and subsequently complied with a conditional notice or final warning notice at any point in the previous 12 months.

We do not agree that these provisions are needed – situations like this are likely to be a reflection of the reality of people’s circumstances and the fact that life can be challenging and unpredictable, rather than any intentional or coordinated non-compliance. Their inclusion in the scheme also fundamentally challenges the role and spirit of the charitable debt advice sector, which is to be an adviser and advocate – acting in the best interests of their client.

While we recognise that the Treasury has tried to build in discretion into the ending of plans, and this is welcome, the balance is currently uneven and shifts the adviser role too much towards policing, supervising and enforcement. This is an uncomfortable position to ask debt advice agencies to take and may limit organisations prepared to undertake such a role. Implementing the changes suggested above would shift this balance back towards giving advisers the power and discretion to act in their clients’ best interests, while still ensuring that plans which are no longer suitable for the individual’s circumstances, or where they are missing payments and not engaging over a prolonged period, are ended in an appropriate manner.

There is also no definition of when a plan would be considered to be “*no longer an appropriate solution*” here, and it appears that the debt advice provider is given complete discretion to come to this conclusion. There should be a requirement to consult the client wherever possible before coming to this decision to avoid any possibility of poor behaviour by any agency.

Question 31: Do you agree with the proposed approach to discretionary revocations in scenarios where conditions cannot be applied?

We do not agree with the proposed approach to discretionary revocations in scenarios where conditions cannot be applied. It is not reasonable to expect debt advisers to revoke plans immediately without the ability to review the case, and use discretion to keep a plan going depending upon individual circumstances. Instead, it is reasonable and in the interest of both the client and the creditor to give time to see if the plan can be kept on track.

Debt advice charities are giving advice to, and working on behalf of, their client in debt who are often in extremely vulnerable situations and dealing with mental health and physical health conditions. Whilst cases may have to be closed where there is no response, it is not usual practice to take irrevocable action against a client’s best interests without the use of discretion.

There should be further discretion in such circumstances, and an opportunity for review with the client before terminating the SDRP.

Question 32: Do you consider that the proposed methods for limiting abuse of the revocation process are sufficient and appropriate?

We do not agree that the proposals to limit “abuse” of the revocation process are either necessary or appropriate. We do not recognise the depiction of our clients in the consultation response as entering into the plan with the intention of alternating between a state of compliance and non-compliance during the plan.

This implies that clients may try to manipulate the system if there are not methods to limit abuse, but this does not chime with our experience, where people who engage with debt advice do so with the intention and desire to find a solution to their debt problems.

Whilst we accept that in some cases, clients will not be following the plan as proposed, we would expect that most of the time, failure to make payments as agreed is a symptom of other things going on in a complex personal situation. This could be a change in circumstances resulting in a drop in income, mental health issues or other forms of vulnerable circumstances, fluctuating income, emergency bills to pay or a broken washing machine. These proposals do not give sufficient adviser discretion to respond to and assist the client in the many and various situations that could occur over a seven-year payment period.

Question 33: Do you consider that the proposed limitations to reapplication for plans are suitable?

We are pleased to see the proposal for a reapplication for a plan has been set at 12 months. This is much better than the limitations on applications for other forms of debt solution such as a DRO, where the client is limited to one application every six years (something we have been calling on the Insolvency Service to change and will be raising in the Insolvency Service insolvency options call for evidence.)

However, we note that under the Debt Arrangement Scheme (DAS) in Scotland, the regulations⁵ do not include any restriction on reapplication for applicants who have previously had a DAS. We are not aware of any difficulties in the DAS scheme as a result of this provision.

We would therefore suggest that the SDRP mirrors these provisions as DAS is the most equivalent example of an existing scheme in place.

⁵ The Debt Arrangement Scheme (Scotland) Regulations 2011 – Reg 21 [Debtors who may apply for approval](#)

Question 34: Do you have any further comments on or concerns about the ways that plans are ended?

We have raised before the issue of ending the plan early under the proposed scheme.

We note that under DAS, there is a limited power of composition included in the rules. This allows for applications to end a debt payment programme early where payments have been made for 12 years and a total of 70% of debts have been paid back. We also note that the Scottish Government is carrying out a review of the provisions of the DAS scheme and that this period of composition could become shorter in the future.

We would recommend an equivalent provision within the debt repayment plan provisions to ensure fairness for clients who have made substantial payments over an extended period.

In addition, we note under 5.32 of the consultation paper, the scheme does not preclude creditors from agreeing to voluntarily write off debts. We would welcome a more structured approach to this idea, so that advisers can make a formal proposal for debt write off to all creditors where client circumstances would merit this, with rules on how this will be considered by creditors. Otherwise, there will be variable responses from individual creditors, and variable outcomes for consumers. Having to negotiate debt write off with individual creditors greatly increases the administrative burden for advice agencies.

Chapter 7

Question 35: Do you agree with the proposed approach to funding?

We welcome the split funding model, whereby debt advice agencies can manage a plan without having to act as a payment distributor and whereby there is separate funding attached to each of these functions. We also support the proposed mechanism for collecting and distributing funding – i.e. that the payment distributor deducts the fee before distributing to creditors, and is then responsible for distributing this to the debt advice agency managing the plan and the Insolvency Service. While we recognise this means creditors will need to treat a part payment as a full payment on their systems, we think this funding mechanism is the simplest option and one that ensures swift and efficient payment of fees to organisations delivering the scheme.

However, in terms of levels of funding proposed, we do have concerns about whether this will be sufficient to cover the costs of delivering the scheme. We expect current DMP providers to have a clearer view on costs of SDRPs compared to DMPs.

If the Treasury proceed with the fee levels as planned, then there needs to be a clear and transparent approach to reviewing these early in the scheme's introduction. With the introduction of commissioning into the debt advice sector, the funding basis for the provision of many elements of debt advice is likely to change.

While we appreciate the intention is that commissioned funding will contribute to up-front advice costs and SDRP fees will cover the cost of the solution, the reality may not be as neat, and we do not yet know the full consequences of the move to commissioning. In addition, the exact costs of delivering SDRPs are not yet clear, and won't be until the scheme is finalised and implemented, for example whether the Insolvency Portal allows two-way communications will impact on the administrative burden (and therefore costs) for debt advice agencies. A clear review mechanism will therefore be crucial if the government stick with the proposed funding model. This should include a clear process and timeframe for reviews and which criteria / considerations will be looked at.

Question 36: Do you have any views on how the electronic system, register, or fair and reasonable assessments should work?

Electronic system

It is vital that the electronic portal that is created for the SDRP builds upon and learns the lessons from the breathing space portal. This portal was very limited in scope and did not provide a practical method of communication between creditors and debt advisers. Its functionality remains extremely limited.

It is extremely challenging for debt advice providers to deal with various extra creditor communications coming in via different methods. For SDRPs to work well, an efficient and fit for purpose confidential electronic communication system is required. It would be optimal for this to be integrated with the breathing space portal and extend the functionality in the breathing space portal to include a communications suite. This should cover all forms of communications, including acknowledgements, creditor objections, various notices, terminations, and reviews.

Fair and reasonable assessments

We support the inclusion of fair and reasonable assessments within the SDRP scheme. As we set out in our response to question 27, we strongly recommend that fair and reasonable assessments are expanded to cover the situations under which creditors can currently request a review of debt adviser decisions – such as a decision not to remove a debt from the plan or decisions relating to the revocation of a plan.

We welcome the intention to replicate best practice – such as from the Financial Ombudsman Service – by giving the Insolvency Service discretion in decision making, recognising the many, varied circumstances that can be experienced by people in problem debt and the need to recognise these individual circumstances and situations. Having said this, we agree that publishing an overall framework that the Insolvency Service will use as guidance when making decisions will be very useful. This should make clear to clients, debt advisers and creditors what to expect and also – we hope – reduce the risk of unnecessary or inappropriate creditor objections.

Register

We do not have any further comments on the register – as set out in our response to question 28, we strongly support the proposal for a private register.

Question 37: Do you agree with the proposed approach to payment distribution, and the oversight of payment distribution?

We strongly support the intention for the Insolvency Service to act as a payment distributor, alongside debt advice agencies with relevant FCA permissions. This opens up the possibility for debt advice agencies who cannot act as payment distributor – such as the Money Advice Trust – to be SDRP providers, which otherwise may not be possible.

We also endorse the proposal for the Insolvency Service to require payment distributors services to sign up to standard terms and conditions, and that the government will expect payment distribution services to adhere to a set of high standards using existing FCA rules and additional measures to support the SDRP scheme. We anticipate the proposed mix of both standard terms and conditions, with clear reporting requirements, alongside the option for agencies and payment distributors to enter into their own, individualised agreements will be useful for ensuring good oversight of payment distribution under the scheme.

Question 38: How and when do you think payment details of creditors should be provided to or obtained by payment distributors?

We support the current proposal that payment distributors would be required to obtain the payment details of any creditors in a plan. This is the most efficient way of doing so, and we do not envisage that a debt advice provider managing a plan would need to be involved in this process. We would leave as a question for payment distributors and creditors in terms of the most appropriate timing and method for doing so – however, it will be important for this to take place in a seamless fashion so that there is no delay in setting up the plan.

Question 39: Do you have any further comments on or concerns about the funding and administration of the SDRP?

Regulations – requirement on debt advisers to update portal

We note that there are quite a few instances in the regulations where there is a requirement on the creditor to notify the debt adviser of something, and then a requirement for the debt advice agency to update the portal. This includes: notification of an agent's details (Reg 19(6)), creditors by assignment (Reg 20(6)) and details of the new creditor where a debt is sold on (Reg 71(2) and (4)).

This seems to be overly complicated and burdensome on debt advice agencies – creating an unnecessary extra step where creditors could update the portal themselves, with a notification then being sent to the debt adviser. While we appreciate this might seem like a minor point, dealing with creditor notifications in breathing space has taken up significant resource. It is vital to the success of SDRPs that processes are as efficient as possible and does not put additional burdens on debt advice providers.

Chapter 8 breathing space

Question 40: Are you supportive of the proposed changes to the 2020 regulations?

We are supportive of the proposed changes to the breathing space regulations. We have set out some of our thoughts below.

- ✓ We are pleased to see the regulation changes that clarify that future and contingent debts can be included in breathing space. It's important that as many debts as possible are included. This is a particular problem for self-employed Business Debtline clients that have given personal guarantees for limited company debts. Currently under the breathing space rules, clients either have to wait for these types of debts to be called in or take the risk of going into breathing space now and hoping nothing else is called in before they have found a debt solution.
- ✓ We are not convinced of the benefit to the client of adding internet and mobile phone provision to ongoing liabilities under breathing space. At the moment, we would advise clients to pay their ongoing phone and internet bills if affordable anyway. However, if they cannot pay, then there is no risk of their breathing space being cancelled because of not paying an ongoing liability. This proposed change means there may now be a risk to the client being able to stay in breathing space if their phone or internet bills are not paid.
- ✓ It sounds reasonable to us that payment arrangements under an IPA or an IPO in bankruptcy should not be counted as eligible debts.

Question 41: Are there any other changes to the 2020 regulations that would result in (a) greater eligibility and/or applications for the scheme (b) better debtor outcomes?

We have set out some of the other changes to the breathing space regulations that we would like to see below.

- ✓ The High Court case *Lees v Kaye* [2022] EWHC 1151 (QB) has clarified that for a debt that has a charging order attached; an order for sale should not take place during breathing space. For the sake of clarity, we would like to see the regulations amended to reflect this court ruling.

- ✓ We would like to see further clarification on disputed debts and whether these debts can be included. Clients may be currently put off applying for breathing space if it has the effect of accepting and acknowledging the existence of a debt that may count against them in the future.
- ✓ We have an increasing number of clients who build up fuel arrears and have payments for their energy taken via a pre-payment meter. At the moment, energy suppliers can take payments for arrears under breathing space if “consent” was given by the client to install the meter. We would like to see clarification of what “consent” means in this context. We wonder if there is scope for changing the regulations so that payments cannot be taken from a pre-payment meter for arrears in any circumstances. This will help clients to continue to manage payment of their ongoing energy bills whilst in breathing space, especially in the current climate.
- ✓ We would like to see the regulations amended to say that including a debt in breathing space is not an acknowledgement of the debt for the purposes of the Limitation Act 1980. It is currently unclear whether including a debt in breathing space counts as an acknowledgement. We think it is unfair that some clients cannot benefit from breathing space protections because of this risk. Limitation periods are extended by eight weeks if a debt is included in breathing space under Reg.8, so making this change would not disadvantage creditors.
- ✓ We would like to see the breathing space regulations allow for an increased access to credit to more than £500, especially for the self-employed who may need business finance during breathing space. This could match the £2,000 limit with debt adviser permission proposed in the SDRP.
- ✓ If we decide not to cancel the breathing space, the creditor can apply to the court for a review. Recent opinion from HM Treasury has confirmed that this could result in debt advice agencies being brought into proceedings and made liable for costs. While the risk of this may be small in any individual case, it will accumulate as more cases are dealt with. Should a case make its way to the higher courts, there is the potential that an advice agency could find themselves liable for costs that run to many thousands of pounds. Debt advice charities are having to make decisions on cases where no clear-cut answer is available, without access to legal advice that allows us to even appreciate how strong or weak the arguments for or against review might be. We would like to see the removal of the threat of court costs for both the client and the debt advice provider. The possibility of court costs could have a chilling effect on advice providers making decisions on creditor objections in high-value and unusual cases.

Question 42: Are there any other changes to the 2020 regulations that you believe, and can evidence, would significantly lower the administrative resource required to make or deal with applications for breathing space, for debt advice providers and/or creditors?

We believe that the Insolvency Service should be required to look again at how the breathing space portal works. This would have the potential to significantly lower the administrative resource required to make applications for breathing space.

- ✓ The breathing space portal should speak to the DRO online application and should also work with the new SDRP application portal. There is much adviser time lost in imputing the same budget details and creditor details into different online applications.
- ✓ The Insolvency Service should investigate new technological solutions such as the development of the MaPs online Standard financial Statement budget using APIs. This could allow clients and their advisers to complete their budget once, to be used/updated across a range of online portals. This would prevent the requirement to replicate data across portals.
- ✓ Clients should be allowed access to the breathing space portal to add in their own creditor and debt details, subject to a final review by the debt advice agency. This would both speed up the application process, and allow advisers to check data rather than input data, and encourage client participation in the process.
- ✓ Currently there is an imputing lag for imputing creditor details which is time consuming for advisers. This process should be streamlined and speeded up.

We believe the government should consider the following changes to the regulations, which would significantly lower the administrative resources required during the breathing space process.

Some of these suggestions might be beyond the scope of the current review and need to be considered as part of a wider review of the scheme as a whole.

- ✓ We would challenge the merit of the requirement to pay ongoing liabilities as part of the scheme. Given that the client normally won't have completed a budget when they enter breathing space, and the advice provider must complete their midterm review by day 35, in many cases there is little or no window to actually assess that the client can afford their ongoing liabilities but is not paying them. We note that the guidance has been updated to say that a creditor cannot request a review because an ongoing liability hasn't been paid. However, we still receive a lot of creditor contact about this issue. Given the length of breathing space, in practice, it is not helpful to require a check on payment of ongoing liabilities.
- ✓ We would like to see the need for a midway review process reviewed. In our experience, this is a time-consuming administrative task for our breathing space team to carry out. It also occurs too early in the process where clients and creditors may not have had time to make sufficient progress in information sharing or reporting from creditors. It results in few failed midway reviews in practice. However, the process requires a large amount of resources to carry out the reviews. We wonder if the shortcomings of the midway review process outweigh the benefits given the short period that a breathing space will be in place for overall.

- ✓ We would suggest that the midway review is shifted to a comprehensive review at the end of the breathing space period. The debt advice provider then ends the breathing space, but is given the discretionary ability to extend breathing space where a client is in the process of entering a debt solution. This could be subject to a requirement to demonstrate client engagement, and that they have met all their obligations and moved towards a debt solution. This process could also be made subject to creditor review.

The concept of creditors being “unduly prejudiced”⁶ by breathing space is a reason for many review requests. More guidance on what does and does not constitute undue prejudice would be welcome. Some clarification in the regulations or specific guidance for landlords and their trade bodies about when a review might not be suitable would save landlords and the advice provider a lot of time, as small landlords account for a significant proportion of the creditor review requests that we receive. In many cases, the landlord’s primary argument is that our client has failed to pay their rent and therefore missed an ongoing liability, despite the fact that this is not one of the grounds given for requesting a review.

Some creditor reviews can be very time consuming, with creditors sending large bundles of evidence with their requests for review (we have received bundles of 50-100 pages in some cases).

- ✓ We would suggest that the guidance should be amended to dissuade creditors from sending in irrelevant information and/or unfounded allegations about clients. This should clarify that advice providers are unable to comment on information that is sent by creditors when it is outside the scope of the regulations and does not impact on the client’s eligibility for breathing space. This would save debt advice agencies administration time and expert adviser time seeking second tier support.
- ✓ One additional potential reform could be to stipulate that a creditor should be required to assess their objections to ensure that they would make the same objections to both the advice agency and the court. In the one case that went to court, the court application omitted many of the accusations that the landlord had made against the client to us as an advice agency, presumably because no legal basis was found for these to be included.
- ✓ We think that the regulations should be tightened up to be clear about what qualifies as a fraudulent debt in breathing space. Cases of alleged fraud are particularly difficult. Regulation 5(4)(C) says that “*any debt which a debtor incurred by means of any fraud or fraudulent breach of trust by the debtor*” is not a qualifying debt in breathing space. Unless a client has been convicted of fraud in a criminal court or found by a civil court to have behaved fraudulently, it is very difficult for us to decide that a debt is fraudulent. We are not trained to do this, and in most cases, we would have to spend a lot of time investigating this. We believe we have a duty to give professional and confidential debt advice, based on trust between the service and our client. The expectation is that we will believe what we are told by our client unless there are demonstrable reasons to the contrary. We do not consider it should be the role of our staff to make

⁶ 17 (1) (a) “*the moratorium unfairly prejudices the interests of the creditor*”

decisions on points of fact relating to allegations of fraudulent behaviour on the part of our breathing space clients.

- ✓ We would like to see an early review of the breathing space scheme to assess whether there is scope for a temporary extension in the breathing space period as a response to the cost-of-living crisis and rise in inflation and energy bills in particular. We wonder if an extension to six months breathing space might be a prudent response at this time. We would ask government to consider this as a separate measure as part of its response to the cost-of-living crisis.

Question 43: Do you have any further comments on or concerns about the breathing space regulations and the amendments being proposed?

We have shared our suggested amendments to the breathing space regulations with government previously.

We are pleased to see that some of our suggestions have been taken up in the proposed amendments to the regulations. We would welcome further consideration of the following points.

Reg.7 Effect of a moratorium	Clarify wording in reg.7(7)(c), 'enforce security held in respect of a moratorium debt' or add an extra line.	Change reg so that it is clear this also applies to repossessing goods subject to a hire purchase or conditional sale agreement (i.e. that this is also prevented by breathing space). Although HP/conditional sale are defined as secured debt in the regs., this term is not used in reg.7 and the goods subject to these types of agreements are the property of the creditor rather than security held in respect of the debt.
Reg.7 Effect of a moratorium	Add additional reg.	Unclear if reg.7(5) stops forfeiture of commercial premises, would be better to specify this.
Reg.7 Effect of a moratorium	Add additional reg.	Unclear if a moratorium prevents the appointment of a receiver under the Law of Property Act 1925. Ideally, we would like the regs. to say that it does.
Reg.7 Effect of a moratorium	Edit regs. to provide protections to business utility supplies.	We have found it impossible to clearly ascertain whether breathing space prevents the disconnection of commercial energy supplies, and Ofgem could not confirm this for definite. It currently also does not prevent the disconnection of a commercial water supply.
Reg.11 Contact between creditor or agent and debtor during a moratorium	Could specify that creditors and their agents still need to comply with requests for information made under the Data Protection Acts.	We have had cases where creditors have claimed that they are not allowed to comply with requests for information during breathing space.

Reg.12 Agent appointed by creditor	Add regulation requiring agents to notify creditors if they have been told that a debt has been included in breathing space.	Currently regulations only require creditors to inform agents, not vice versa. In practice, we may only have the agents contact details in some cases.
Reg.12 Agent appointed by creditor	Improve wording in reg.12(4)(d) replace 'took possession' with 'had already removed the goods from the debtor's premises so that they could be sold'.	Wording currently unclear, IS say this means that goods can only be sold if they have already been removed for sale. But with the current wording, it may be arguable that they can be sold if the bailiff has already only taken control of goods (an earlier stage). Clarity would help here to avoid the risk of poor practice or mis-interpretation.
Reg.12 Agent appointed by creditor	Replace 'goods seized' with 'goods that had been taken into control and removed from the debtor's premises' in 12(4)(e)	Would make meaning clearer, goods are not 'seized' by bailiff in current legislation so unclear exactly what this means.
Reg.17 Creditor's request for Review of a moratorium	<p>Amend regulation so that it requires creditor to include information that will identify the debtor and the account to which the request relates.</p> <p>Also, should require creditor to provide email or physical address to which the response should be sent.</p>	<p>17(6) sets out the information that must be included by a creditor when they request a review. It doesn't say that the creditor needs to include any information that identifies the debt they want reviewed.</p> <p>We've had an issue with a nationwide creditor who have been sending request for review that do not identify the debt.</p> <p>We are also receiving requests for review that say 'do not respond to this email', which make it very difficult to correspond about our response to / outcome of the review.</p>

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