Citizens Advice Response to HM Treasury Consultation 'Statutory Debt Repayment Plan'

Introduction

At Citizens Advice, we offer free, independent, and confidential advice and information to anyone who needs it. In the first six months of 2022, we helped 174,983 people with issues related to debt on a one-to-one basis. The most common debt issues we helped with in this period were fuel debt and council tax, experienced by 39,820 clients (23%) and 35,074 clients (20%) respectively. Among other common debt issues we helped 18,914 people with credit card debt (11%) and 17,587 people with water arrears (10%). We advised 13,573 people about debt relief orders (8%), making it the most common debt solution we advised on. In addition to one-to-one advice, there were more than 2 million visits to our debt and money online advice pages in the first half of 2022. Between the launch of Breathing Space on 4 May 2021 and 31 May 2022 advisers across our network submitted 10,410 Standard Breathing Space applications and 75 Mental Health Breathing Space cases.

Summary of response

We welcome the introduction of Statutory Debt Repayment Plans as part of the government's debt respite scheme. At present, people experiencing debt problems can only secure guaranteed protections from creditor action by entering a form of insolvency, which may not be suitable or desirable for all. SDRP has the potential to fill this significant gap in debt solutions, which is especially important due to the growth in recent years of priority debts such as council tax arrears, energy arrears and rent arrears.

The proportion of Citizens Advice clients that are eligible for an SDRP is likely to be low, due to the requirement to be able to repay debts within a reasonable period of time. Currently 46% of debt clients with whom we complete an income and expenditure assessment are unable to afford essential living costs, so have no ability to repay debts at all.[1] This does not of course negate the need for a statutory repayment solution such as SDRP, but does highlight the importance of broader government action being taken to address problem debt alongside the SDRP, notably debt advice commissioning and the review of the personal insolvency framework.

Turning to the specific features of SDRP, we welcome the comprehensive approach to qualifying debts, including the decision to include most forms of debt owed to government. In recent years we have drawn attention to the growing proportion of clients seeking our help with government debt and the need to improve public sector debt collection.[2] We are pleased that protections will mirror those of Breathing Space. The adoption of the Standard Financial Statement for assessment purposes and use of FCA-authorised debt advice as a gateway for access to SDRP are also welcome and will provide clarity and consistency for consumers.

While we support the policy intent behind SDRP and welcome the features outlined above, there are some key challenges in the current proposals which we think will make it difficult for SDRP to achieve its aims. The three main areas we want to highlight are:

- The decision to exclude **Universal Credit advances** and delay inclusion of **third-party deductions** from Universal Credit undermines the intention that SDRP should provide comprehensive debt protection and will limit the effectiveness of SDRP for a significant group of people.
- **Scheme design.** We welcome the intention to build in flexibilities and limit administrative requirements, but the current proposals do not strike the right balance. The specific functions assigned to debt advice agencies introduce unhelpful tensions into adviser-client relationships. We are also

[1] Citizens Advice, In the Red Index, May 2022
[2] Citizens Advice, Fairness in government debt management: Citizens Advice response to the Cabinet Office

concerned that the proposals do not address the risk of creditor non-compliance.

- Proposed **Breathing Space** changes are welcome but do not address key issues such as the length of the moratorium or evidence requirements for entry to the mental health moratorium.

We discuss each of these in more detail below, before setting out a short list of recommendations.

Universal Credit

Excluding UC advances and delaying the inclusion of UC deductions undermines the integrity of SDRP and will limit its effectiveness for a significant group of people. The proposed treatment of UC undermines the clear policy intent that SDRP should be as comprehensive as possible in its coverage of debts. It prioritises repayment of a particular form of government debt over others and introduces differential treatment of individuals based on their receipt of specific benefits, which cannot be justified based on principles of debt management or debt advice.

Scheme design

SDRP will provide too little flexibility to clients who experience a short or medium-term change in their financial position. Flexibilities will be crucial to the success of SDRP. As a long-term regular payment plan, SDRP needs to be able to anticipate and accommodate short and medium-term income shocks and changes in individuals' personal circumstances. Based on the current proposals, SDRP will offer significantly less flexibility than a voluntary Debt Management Plan, informal repayment arrangement or a protocol-compliant Individual Voluntary Arrangement. The potential impact of this lack of flexibility is that a high proportion of plans will fail part-way through, before debts are fully repaid. A high failure rate risks damaging perceptions of the scheme, discouraging debt advice agencies from administering plans and undermining engagement with debt advice.

While we are pleased to see payment breaks included in the proposals, the requirement for individuals to give advance notice will seriously limit their efficacy. Situations that call for a payment break will often be ones that an individual cannot reasonably be expected to anticipate in advance, e.g. incurring unexpected expenses or losing income due to sickness or fluctuations in availability of work. The requirement for advisers to approve payment breaks and extensions introduces unhelpful friction for clients and extra administrative work for debt advice agencies, while also further delaying the point at which payment breaks come into effect. To address these issues, we propose that the standard length of payment breaks should be two months rather than one month, removing the need for a discretionary extension, and that retrospective payment break applications should be allowed where required.

The changes suggested above would give SDRPs more resilience to withstand short-term income shocks, while variations can be used to accommodate more permanent changes in ability to pay. Between these two, however, there is a gap in suitable flexibilities to accommodate income shocks or life events that are potentially recoverable but likely to require longer than a two-month payment break. Examples of these would include the loss of a job, relationship breakdown or period of ill health. Without additional flexibility, such scenarios are highly likely to result in the plan being revoked and the individual being disqualified from having an SDRP for 12 months. This is both harsh and counterproductive. While we recognise the need for safeguards, it is in no-one's interests for people who are actively engaged with debt advice to be removed from an SDRP and excluded from reapplying for 12 months where there is a reasonable prospect of rescuing their payment plan. To support people in situations such as these, advisers should be empowered to vary SDRPs to very low levels on a temporary basis for up to six months. To enable this, the normal rules limiting the maximum duration of a plan should be waived for this type of variation, but creditors would retain their right to object.

Finally on flexibilities, there are some areas where it would be proportionate and appropriate to give advisers greater discretion instead of relying on prescriptive rules. For example, advisers should have the flexibility to propose an SDRP lasting longer than 7 years or a second plan within 12 months of a previous plan being revoked where they deem it to be in the best interests of the client and consider SDRP to be a suitable solution. These are primarily questions of advice, client interests and the suitability of debt solutions, on which FCA-authorised debt advisers can be expected to make a considered decision.

SDRP will be resource intensive for plan administrators and the wider advice sector. SDRPs will require substantial administrative effort due to features such as creditor objections and reviews, compliance notices and revocations. The exact costs of administering SDRP are difficult to predict as they will depend on the detail of the final regulations and the behaviour of creditors and clients following launch. Anticipating likely costs is particularly difficult for advice agencies that do not provide DMPs and have no comparable historic data to draw on - which includes Citizens Advice and most community-based advice providers. Since it is also unclear how and when the funding mechanism will be assessed, advice agencies that choose to administer SDRPs will be taking on a significant degree of risk.

SDRP has implications for adviser-client relationships and for engagement with debt advice. We are pleased to see that SDRP will be accessible only through FCA authorised debt advice providers, which is an important safeguard for consumers and will help to ensure good outcomes. However, some of the functions advisers will be asked to carry out are outside the normal remit of debt advice and hard to reconcile with the normal role of a debt adviser. Requiring advisers to agree (or not object) to applications for credit, issue warnings to those that miss payments and revoke plans could damage the open and trusted relationship between an adviser and client that is needed to prevent disengagement and ensure any risks are expressed and addressed. The Insolvency Service would be much better fitted to carry out an adjudication function of this kind and could draw on its experience in running the DRO Unit. Conversely, as we note above, issues where adviser discretion could appropriately be applied, such as the length of plans and reapplications following revocation, will instead be covered by prescriptive rules.

Mechanisms to ensure creditor compliance are absent from the proposals. Given the wide range of creditors that can be bound by SDRP, many of them in unregulated sectors and with varying levels of size and sophistication, there is a real risk of creditor non-compliance. This could take the form of deliberate obstruction, e.g. continuing to use enforcement measures or add interest and charges, or inadvertent non-compliance due to lack of familiarity with SDRP processes, e.g. failing to treat SDRP payments as full payments and reflect that in credit reporting. Any non-compliance that occurs will expose consumers to detriment and risk undermining confidence in the scheme and its protections. Non-compliance will also create additional work debt advice agencies in the form of additional advice and support for affected clients. A compliance mechanism is crucial to the success of SDRP and could be provided in a simple way by enabling the Insolvency Service to suspend payment distribution to non-compliant creditors.

Breathing Space

The technical changes to Breathing Space contained in the proposals are welcome in themselves. However, **further changes to the Breathing Space policy should be considered in order to maximise the impact of the policy and help to alleviate cost of living pressures.** Breathing Space is much more broadly applicable than SDRP, since it does not depend on the ability to repay debts in full in a reasonable timeframe. Among Citizens Advice clients advised on Breathing Space, a notably high proportion have council tax arrears (45%) or fuel debts (34%), underlining the usefulness of Breathing Space for dealing with enforcement action by priority creditors. If, as is widely expected, forthcoming increases in energy prices and other cost of living pressures lead to significant increases in financial difficulty, Breathing Space will be a critical tool for the advice sector and creditors alike. However the 60-day moratorium period is often too short to resolve complex issues involving income inadequacy or priority debts, and as a result relatively few clients are able to move onto a solution in time. To maximise the usefulness of Breathing Space in the context of a cost of living crisis, the standard moratorium period should be extended to at least 90 days.

Regarding the mental health crisis route, the requirement for evidence to be signed by an Approved Mental Health Practitioner causes serious practical challenges and greatly limits the number of people able to qualify through this route. To remedy this, the pool of people able to supply evidence for the mental health moratorium should be widened to include appropriate mental health professionals who are likely to have direct contact with people receiving crisis treatment.

Recommendations

- Reverse the decision to exclude **Universal Credit advances** as a qualifying debt and to delay bringing **third-party deductions from UC** into the scheme. HMT and DWP should work together to resolve any technical challenges required to bring this forward.
- Introduce **2 month payment breaks as standard** (in place of one-month payment breaks subject to a discretionary extension) and **allow payment breaks to be retrospectively applied**.
- Make provision for **temporary reduced payment plans following significant income shocks or life events.** Debt advice agencies should be enabled to temporarily vary plans to very low levels for a period of up to six months, waiving the normal rules on the maximum duration of a plan, giving people a realistic period of time to stabilise their situation and reinstate SDRP payments.
- Remove the bar on **reapplications within 12 months of a plan being revoked**, allowing debt advice agencies to propose plans in such circumstances where they consider it appropriate and suitable.
- Permit debt advice agencies to propose **plans more than 7 years in duration** where an adviser deems an SDRP to be a suitable option and in the best interests of the client.
- Task the **Insolvency Service with adjudicating on credit applications and plan revocations** instead of debt advice agencies, and revise the language and approach to revocation to take account of best practice in debt communications.
- Introduce a **simple and effective creditor non-compliance sanction** by enabling the Insolvency Service to suspend distribution of payments to non-compliant creditors.

- Use the opportunity presented by the regulations to introduce **maximise the impact of Breathing Space**, extending the moratorium period to 90 days and widening the pool of qualified mental health professionals able to supply evidence for the mental health crisis route.

The remainder of our response sets out our thinking on these issues more fully and addresses other aspects of the proposals and draft regulations in greater detail.

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

Based on our experience of Breathing Space, SDRP will require an implementation period of at least 18 months. Insolvency Service systems and creditor/adviser guidance will both need to be finalised before the implementation period begins. If not, a longer period will be required.

Insolvency Service systems. The systems used to administer SDRPs have the potential to be much more complicated than the Breathing Space portal. Advice providers will need considerable time to build APIs linking internal systems with Insolvency Service ones. Likewise, the ability to plan and deliver adviser training is dependent on the Insolvency Service systems that advisers will need to use being already in place. Delays in delivering the Breathing Space portal had a significant impact on the technology and training aspects of our Breathing Space implementation plan.

Guidance for advisers and creditors. This is another critical element that needs to be in place ahead of implementation to make an 18-month lead-in time feasible. Releasing guidance in stages and close to the implementation date as occurred with Breathing Space is unhelpful and creates unnecessary burdens on debt advice providers, who are then required to cascade guidance and training in a short window of time.

Advice providers and creditors should be given equal time to prepare systems as is given to the Insolvency Service. The Insolvency Service is already working on its potential system and has been since the beginning of 2022, so they will have had around 30 months to prepare their system before SDRP potentially launches in summer 2024.

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

No.

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

We broadly agree with the proposed approach to eligibility. We particularly welcome confirmation that SDRPs will be accessible only via FCA-regulated debt advice and that the Standard Financial Statement will be mandatory for assessing income and expenditure. These elements of the scheme will help to safeguard consumers and provide consistency. The more recent proposal to allow for joint plans where two eligible people share at least one debt is also welcome.

We are opposed to the proposal that people will not be eligible for 12 months following revocation of a previous SDRP. This is highly likely to penalise people who experience an income shock or life event which prevents SDRP being a viable option in the short-term, but whose situation then improves. It is not difficult to imagine the sort of scenarios where a person might fall out of an SDRP through no fault of their own, for example through loss of employment, acute physical or mental health problems, relationship breakdown or other family problems. If these problems cannot be overcome within two months - the maximum payment break allowed for in the current proposals - a person will be disbarred from an SDRP for a full year, even though they may have made and continue to make their best efforts to repay their debts. This could in turn result in people opting for an insolvency option which they would not otherwise consider, ceasing to pay creditors, or disengaging from debt advice - all poor outcomes for all concerned.

Building on the above, we propose that FCA-authorised debt advisers should have the discretion to approve applications from clients who have had an SDRP revoked in the previous 12 months. Working to the normal principles of money advice and with reference to FCA rules, advisers would make an assessment in the usual way as to whether an SDRP is a suitable option for the client, in view of the client’s individual situation. Given the initial setup costs and the way that funding is structured in the SDRP funding mechanism, we think there is little commercial incentive for advice providers to put forward an SDRP that they do not believe to be appropriate or viable in the long-term. As an additional safeguard if required, creditors will have the usual option to object to a plan and the Insolvency Service will be equipped to perform a fair and reasonable assessment if required.

We agree that SDRPs that extend over 7 years are unlikely to be a suitable option and likely to be rare in practice. However, introducing specific guidance on ‘exceptional circumstances’ is unnecessary and unhelpful. It is an intrinsic part of debt advice to assess and advise on appropriate options, taking account of the client’s individual circumstances and having regard to their best interests. This is reflected in FCA rules pertaining to debt advice. There is also an issue of client choice involved here. If a client would prefer an SDRP over 10 years to bankruptcy, that is part of their 'best interests' and adding an unnecessary 'exceptional' test, removes client choice and agency. We also note that the regulations themselves do not mention ‘exceptional’, so this proposal appears to go beyond the regulations. In all, deciding on the appropriateness of SDRPs with terms above 7 years should be left to the discretion of debt advisers operating under FCA rules.

Applying the 7 year rule too rigidly will lead to cliff-edges and tensions. For example, some people may have to choose between setting aside money for savings and qualifying for an SDRP. There is provision within the Standard Financial Statement for clients to allocate a portion of expenditure (up to a maximum of £20 a month) to savings, an important buffer given that SDRPs will typically extend over a number of years. A group of clients will be in a position where they are assessed as able to repay their debts within 7 years but only by sacrificing the savings element of their budget. Giving advisers greater flexibility and discretion over the length of SDRPs would avoid this scenario.

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

We welcome the broad approach to qualifying debts, the very limited nature of exclusions, the inclusion of future and contingent debts, and the discretion not to include housing debt or statute-barred debt.

We are very disappointed that Universal credit advances will not be included. This decision undermines the principle that SDRP should provide comprehensive protection in relation to unsecured debts and may encourage other creditors to seek exclusions from the scheme. On a practical level, the decision means a significant group of particularly disadvantaged people will be effectively prevented from accessing SDRP and the protections it offers. This is because the high deductions rate for UC advances affects the amount of disposable income available for other debts, making it very difficult to propose a plan that fits within the maximum duration of an SDRP. It needs to be emphasised that those with UC advances are particularly disadvantaged compared to Citizens Advice debt clients overall. They are more likely to have serious priority debts, to be in need of crisis support and to have a long-term health condition or disability. We advised 11,827 people with UC advances between the launch of Breathing Space on 4 May 2021 and 30 June 2022. Of these people, 50% were advised on council tax arrears, 45% were advised on fuel debts and 38% on water debts. 23% were advised on food banks, 22% on charitable support and 32% on Personal Independence Payment.

Given the demographic characteristics of people with UC advances, this exclusion will have a disproportionate impact on women, lone parents and people with long-term health conditions. 63% female, 61% reported a long-term health condition (6% disability), 34% were lone parents.

We also consider that excluding UC advances from SDRP is inconsistent with case law from bankruptcy related to the social fund (DWP v Payne & Cooper [2011]UKSC 60). The Supreme Court found that deductions for social fund loan payments were a remedy for a debt, and not a reduction in entitlement to the benefit in question. On this basis we think the policy of excluding UC advances could be subject to legal challenge.

We are similarly disappointed at the delay in bringing third-party deductions from Universal Credit into Breathing Space and SDRP. This should be brought forward urgently and HMT should work with the DWP to resolve any operational barriers required. Feedback from debt advisers in our network consistently highlights the non-inclusion of UC advances and third party deductions as a key factor limiting the take-up and effectiveness of Breathing Space among our clients. Many clients are in a position where although they qualify for Breathing Space they would gain very little practical benefit from it, as they have multiple benefit deductions that would continue to apply during the moratorium period. These deductions tend to push their income below a sustainable level and cause them to experience continued hardship or incur further debt, negating the effectiveness of Breathing Space.

We have a number of observations to make in relation to qualifying debts and debt status. Reflecting standard money advice practice, TV Licence arrears should be included as a priority debt, since non-payment can result in a magistrates court fine. Debts in relation to a hire-purchase agreement (arrears) are listed as a priority debt in the regulations. This will be appropriate if the agreement relates to an essential vehicle or goods which the applicant still possesses and wishes to retain, but there will be other scenarios where this does not apply, e.g. if the goods have already been returned or repossessed, or the applicant wishes to terminate the agreement. In the latter case, the shortfall resulting from the agreement should be treated as a regular debt for SDRP purposes, and not as a priority debt or non-eligible debt.

The easiest way to remedy this would be to reclassify hire-purchase (along with conditional sale, which has been omitted from the relevant sections of the regulations) as a discretionary non-eligible debt. This would allow applicants and advisers to distinguish between essential and non-essential goods and reflect the different statuses of agreements. If essential, hire-purchase and conditional sale agreements could be excluded from the plan, and if non-essential they would be included as ordinary non-priority debts.

It is not clear from the regulations how bills of sale are intended to be treated. This type of debt is particularly challenging because the loan amount and the value of the asset it is secured against will both change over the lifetime of an SDRP. There will be scenarios where, due to asset depreciation, the loan exceeds the value of the security and should no longer be treated as a priority debt. This will need to be clarified so that lenders and advisers are clear on how this type of debt is to be treated.

The draft regulations list debt in relation to an agreement with an internet service provider or mobile phone network as a priority debt. On this basis, debt owed to such providers would always be a priority whether they continue to supply services to the applicant or not. The regulations should be revised stipulating 'in relation to the supply of' as already applies to gas and electricity, clarifying that such debt is only a priority where the applicant needs to treat it as such to retain access to an essential service.

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 do not see any rationale for this. Some of the key advantages of SDRP are that it gives statutory protection, is comprehensive in its inclusion of debts and avoids the need for clients to make separate payments to multiple creditors. Excluding debts which are subject to an existing voluntary payment plan would undermine all the above. It would be extremely difficult to interpret and implement in practice, given that advisers will not necessarily be aware of payment plans or arrangements their clients have agreed to. It creates a potential scenario in which clients are forced to default on existing payment plans in order to qualify for an SDRP. We are also also concerned that such a change could be exploited by less scrupulous creditors, collections agencies and enforcement firms.

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

This proposal seems to add unnecessary complexity for no clear benefit. We recognise that creditors may be concerned about the administrative costs associated with very small debts. However it is open to creditors to write off small debts as uneconomical if they so choose. Creditors will have different policies and thresholds for collecting small debts, so we think it better to place the onus on creditors to assess what level of debt to retain or write-off than for policy-makers to decide on a figure which will inevitably be arbitrary and need updating at a future point in time .

Question 8: Are there scenarios in which a debtor may 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 envisage two sorts of scenarios where a person might incur additional debt during a plan without intending to. The first, as referenced in the proposals, is an administrative error by the creditor. In this scenario, it would be appropriate for the new/additional debt to be added to the SDRP, since it was the creditor's error that prevented the client adding the debt to begin with. The same should apply to official error in benefit assessments, which in any case are likely to be contingent debts.

The other main scenario relates to the supply of domestic utilities (gas and electricity and measured water charges). It is often difficult for consumers to effectively track their usage. Combined with billing errors and price volatility in the energy market, it is not uncommon for customers to face unexpectedly high bills which they are unable to pay. If this occurs within an SDRP, it is likely to mean that a plan will require variation to include the new debts within the plan. We do not think it would be desirable to exclude unintentional new debts from an SDRP since this would potentially make the plan itself unviable due to the amounts needing to be paid out outside it. Treasury and creditors need to take a pragmatic approach to this issue, recognising that causing an existing plan to fail for reasons outside the individual's control is in no-one's interests.

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

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

We welcome the proposed protections, which mirror those of Breathing Space. However, regulations should stipulate that protections apply from the notice of intention rather than relying on the expectation that creditors will apply protections voluntarily.

Government should develop mechanisms to ensure creditor compliance. Given the wide range of creditors potentially bound by the plan, many of them in unregulated sectors and with varying levels of size and sophistication, there is a real risk of non-compliance. Any non-compliance that occurs will expose consumers to unnecessary detriment and risks undermining confidence in the scheme and its protections. Non-compliance will also create additional administrative burdens for debt advice agencies due to the additional advice / reporting required. To safeguard against this, the Insolvency Service could be empowered to impose sanctions for creditor non-compliance by suspending distribution of payments due for an appropriate period of time.

As we have already noted, we are disappointed that UC advances will be excluded and that third-party deductions will only be brought into SDRP following the rollout of Universal Credit.

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

If the proposals go ahead as planned, SDRP will offer much less flexibility than a voluntary Debt Management Plan or protocol-compliant IVA. This will make it a less attractive debt option for some people and will limit consumer uptake. It will also make SDRPs unnecessarily prone to failure, increasing the administrative burden on debt advice agencies and creating challenges around continued client engagement with debt advice.

A number of relatively small changes would significantly improve the flexibility available within an SDRP

- To provide more short-term flexibility, a **payment break should automatically cover two months rather than one month**. This would significantly increase the value of a payment break for individuals and, by removing the need for an extension at the one-month mark, would alleviate the administrative burden on debt advice providers. Since people will often not be in a position to give advance notice, the regulations should **allow for payment breaks to be retrospectively applied**.
- To provide flexibility for people who experience a significant income shock or life event that is unlikely to be resolved within two months (such as the loss of a job, relationship breakdown or period of ill health), the regulations should allow for a **temporary low payment plan for up to six months**. This would allow people time to stabilise their situation, during which time they would maintain their engagement with debt advice and continue to pay what they can, with the objective of resuming an SDRP once their situation improves. This could be achieved by waiving the requirement for SDRPs to not exceed 10 years in the specific circumstances described above - where a debt advice provider proposes a temporary low payment plan for up to six months following a significant life event or income shock. Creditors would retain their right to object in such circumstances, but we anticipate that financial services providers and other major creditors would be inclined to take a pragmatic approach and allow reasonable time to avoid unnecessary failures of plans that could be rescued.

The stipulation that a payment break can only be based on 'a material change in the debtor's circumstances that could not reasonably have been foreseen' is unhelpful. These are subjective terms which will require further guidance and even then are likely to vary in interpretation considerably. When advising prospective SDRP applicants, it will be challenging for debt advisers to assess the likelihood and impact of a potential (but not definite) change in their circumstances, given the intrinsic uncertainty involved. It will be even more challenging for debt advisers to adjudicate on whether a change could have reasonably been foreseen and to agree or reject a payment break as a result.

Extending the term of a plan should not be a valid grounds for creditor review where that extension is due to payment breaks, as suggested in the proposals (5.45). Since payment breaks are provided for in the regulations, and so long as they are administered properly, the scheme is working as intended. Following Axnoller v Brakes [2021] EWHC 2308 (Ch) where a scheme is working as intended it impacts all creditors the same. It is not a fault of the scheme so is not unfair prejudice.

Use of the SFS savings category is to be encouraged, but provides only a small buffer for changes in circumstances. The suggestion that plans should cater for foreseeable changes in circumstance through the SFS savings categories is a reasonable suggestion up to a point. However, the amount of savings allowed within SFS is capped at £20 per month and therefore the maximum possible savings a client could accumulate in a 12 month period would be £240. This level of savings is a small contingency fund in the face of essential household appliances that break down and need to be replaced, vehicle repairs, unpaid time off work due to illness and other such likely income shocks.

Further borrowing is not a substitute for proper flexibility within SDRP. We agree that it is sensible to make some provisions for further borrowing by individuals subject to an SDRP, given the long duration of plans. The reality however is that people in an SDRP will have very restricted access to credit and will pay high rates of interest due to their impaired credit history. Further borrowing will put pressure on the sustainability of an existing SDRP, increasing the risk of plan failure, and may well result in stress and anxiety for individuals so needs to be avoided wherever possible.

Advisers should not be required to adjudicate on borrowing decisions. We do not agree with the proposal that individuals seeking to borrow above a certain threshold should be required to establish that their debt advice provider does not object. This places debt advice providers in an extremely difficult position. Adjudicating on the appropriateness of further borrowing is an entirely different function to the normal role of debt advisers and would change the adviser-client relationship considerably, with a likely negative impact on client engagement. Ideally we think a simple obligation to declare the SDRP to lenders when applying for credit, as in bankruptcy and DROs, should be sufficient. However, if it is deemed that adjudicating on borrowing is an essential function that needs to be carried out, it should be undertaken by the Insolvency Service rather than by debt advice providers.

Clarity is needed around what constitutes '**additional credi**t'. Many people pay for car insurance and house insurance over a period of 12 months via direct debit, which normally entails a credit agreement. Instances of essential expenditure such as this should not require 'permission' or be included in the 'additional credit' amount, but should be included rather as an ongoing liability.

Unnecessary variations should be designed out of SDRP. The proposals envisage the variation process being required in situations where it may not be necessary or proportionate. Where a client has a contingent debt which is known at the outset, this could be factored into a plan at that point rather than at variation. In instances where a debt balance is wrong due to creditor error, it is unfair to jeopardise the plan for actions outside the individual's control. Where a creditor writes off a debt or priority debts are repaid, it seems excessive and unnecessary to trigger a variation that goes to a vote, instead of a simple recalculation that could be automated by Insolvency Service systems.

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

We understand the thinking behind this proposal but think it is unlikely to be helpful or necessary in reality. When varying an SDRP, advisers will need to consider whether it remains a suitable solution and can be expected to take very low payments into account as part of that process. Creditors will also have the standard opportunity to object. These two mechanisms should be sufficient to deal with the problem and are preferable to setting an arbitrary value which subsequently has to be updated.

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 agree that it's proportionate to require people to divulge to lenders that they are subject to an SDRP. Ideally this should mirror bankruptcy and apply only when seeking to borrow £500 or more (but the requirement to inform the debt advice agency should apply to amounts both above and below £500).

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

We welcome the proposed approach in which agreements will be varied as to payment terms. Based on that, we don't see a requirement for any special flag or status to reflect SDRPs on credit reference files. We look forward to further details on the approach to credit referencing following discussions with the industry.

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

It should not be a requirement for an individual to take advice before cancelling a plan. We understand that this is intended as a safeguard, but it presents a number of practical challenges. Although likely to be rare, there may be situations where an individual's relationship with their adviser or debt advice agency breaks down or they are no longer able to contact their adviser or advice agency in the usual way (for example because they have moved away from the local area). There may also be situations where an advice agency closes or reduces services due to loss of funding, and as a result clients may have to be transferred to another SDRP administrator that they do not have a prior relationship with. There will also be situations where an individual simply makes an informed choice to cancel a plan. Given that regulations 42 and 43 make it practically impossible for a debt advice agency to refuse to cancel a plan on request, requiring advice will be an unnecessary barrier for those who do lose contact with an adviser.

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?

We support the thinking behind this proposal, but would suggest the requirement should be for all addresses in the previous 6 years. People seeking advice will not necessarily be able to recall which addresses may be linked to particular debts, so having six years worth of addresses is more workable in practice and more likely to achieve the desired result. We welcome the inclusion of an 'at risk of violence' protection alongside standard rules.

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?

We would suggest the following pieces of information:

- Debt amount
- Debt type
- Account number
- For debts which have been sold, the identity of the firm to which it is has been sold.
- Ideally, the date the agreement was made and the balance at the date it was entered (capital sum). This reflects the fact that some people are more likely to recall the amount they originally borrowed than the amount still outstanding.

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 agree with the approach put forward in the proposals and we are pleased to see a straightforward pro-rata approach being adopted. However, we would welcome clarification as to whether debt advice agencies will be required to vary plans as soon as priority debts are repaid, as suggested in the proposals (4.28). This seems to be an unnecessary step which will create an administrative burden on advice agencies for no purpose. It should be possible for debts with a nil balance to remain listed without the need for variation, with payments automatically being reallocated among remaining debts based on the normal allocation rules.

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

There is a strong argument for significantly increasing the proportion of payments allocated to priority debts so that they are paid off much more quickly. It is normal within money advice to allocate the vast majority of available surplus to priority debts, perhaps reducing the amount available for non-priority debts to token payment levels. This is done to minimise the risk of enforcement and the period in which the client is exposed to that risk. Since SDRP protects against enforcement, that is not a consideration as long as the SDRP remains in place. However, clients will be once again at risk of detriment within a short period of time if their plan is revoked, so it remains in the client's interests for priority debts to be paid as quickly as possible.

We don't think it would be helpful to revise this aspect of the proposals at this stage and, notwithstanding our concerns, we think the proposed approach is broadly suitable. We do however think the prolonged risk of detriment in the event of plan failure is another reason to build greater flexibility into SDRP by increasing standard payment breaks to two months and allowing for a temporary reduced payment plan for up to six months following major income shocks.

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?

We are unclear on this question as it does not appear to relate to a specific proposal in the consultation document. The size of payments made into plans will be determined by debt advisers completing an appropriate Standard Financial Statement with their clients. As we interpret it, flexibility is largely a question of ensuring the SDRP is able to reflect sudden changes such as income shocks via payment breaks (which we have discussed in more detail below) and more gradual, incremental changes through payment variations.

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

This is a sensible proposal. We anticipate that it might be helpful to people who have access to occasional overtime or employment bonuses. This type of income is not guaranteed and therefore would not usually be factored into their regular surplus income, but they might choose to use it to pay down debts. Additional payments should be paid into the plan and distributed according to the normal prioritisation and pro-rata rules to ensure fair treatment of creditors and avoid triggering a creditor review on the grounds of ‘unfair prejudice.

Question 22: What information do you consider needs to be provided to creditors as part of a provisional plan?

The information listed in regulation 22 and in paragraph 4.29 of the consultation document appears sufficient. However we would welcome clarification regarding account numbers. The regulations state that these should be provided 'if any' account number is available. It is unclear whether this means that an account number should be included if the client is able to provide those details (taking into account that some people will not have full details of their debts) or that it is the responsibility of the debt advice agency to locate and supply a reference number in any situation where one exists.

We do not agree that it is appropriate to require information about assets and savings to be disclosed as part of the application process. It is a normal part of the money advice process to discuss the potential use of assets to repay debts, where applicable. This is reflected in the Standard Financial Statement, which includes a box to confirm that this discussion has taken place.

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

We broadly agree that the grounds for objection are suitable, but have reservations about several details. We are pleased to see that creditors will be required to provide supporting evidence whenever they submit an objection. Government needs to give further thought to minimising groundless creditor objections to valid plans which have been calculated in accordance with the scheme rules. It must be clear to creditors that agreed SFS spending categories and guideline figures, the classification of certain debts as priorities, and the method of allocating payments to debts within a plan are non-negotiable. Objections solely on these grounds should be treated as null and should not require a review. Repeat instances should be treated as vexatious and subject to a sanction, such as suspension from payment distribution. This should be incorporated into the regulations rather than the guidance.

We are also concerned by the grounds that 'the information relied upon in development of the plan was inaccurate'. This appears to be a new ground for objection, not found in Breathing Space. While we recognise this is intended as a safeguard against potential abuse of the scheme by applicants withholding or falsifying information, it could give rise to considerable misunderstanding or misuse by creditors. Creditors may be tempted to object based on minor discrepancies or extraneous information which are not material to the validity of the plan. While this may be unlikely to occur among large regulated firms and public bodies, the same cannot necessarily be assumed of private rent arrears, trade debts, nursery fees and other unregulated debts.

We don't agree that creditors should be able to object if debt values increase by 10% or more. This is a low threshold and is likely to generate unnecessary administrative work for advice agencies. A threshold of 25% would be more realistic and proportionate.

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?

Customer journey and intra-agency referrals. The proposals assume a straightforward advice journey, in which a single debt advice agency provides both advice and SDRP administration. The reality will be more complex, since many advice agencies will not be in a position to offer SDRPs themselves and will need to signpost or refer eligible clients to other providers.

We are concerned about this because a significant amount of work will be required to determine whether a client is eligible, e.g. establishing eligible and non eligible debts, gathering total debt amounts, building complete income and expenditure, establishing surplus income and calculating if the debts could be paid off within the 7-10 years of a proposed plan. Debt advice agencies receiving referrals to administer plans are likely to want cases ‘packaged’ and to include comprehensive details of debts, income and expenditure and other relevant details, which is time and resource-intensive to provide. Advice and pre-referral activity will impact on adviser time but do not attract payment as part of the SDRP funding mechanism.

There are also customer journey implications that need to be properly considered. Clients who begin their advice journey with one provider but then transfer to another will potentially have to repeat information and processes. Even if there are formal referral routes in place, each debt advice provider will have their own standards and quality measures to work to, leading to repetition and duplication of effort, which impacts on both the customer journey and adviser resource.

Notifying errors in debt balances. We are concerned that regulations 27 and 32 give too much latitude to creditors regarding notifying errors in debt balances. Creditors can notify in the period up to the final plan, with increases in debt balances over 10% causing the provisional plan to be cancelled. As we have suggested above this threshold should be increased to a more realistic and proportionate level of 25%. Additionally, regulation 32 allows creditors to notify errors in debt balances up to 120 days after the final plan starts, or more if there are ‘exceptional circumstances’ for not notifying sooner. Having already had the opportunity to notify an error, giving creditors a further 120 days plus further leeway is excessive and places an undue burden on clients and advisers, particularly given the potential for such late notifications to trigger in-year reviews, variations, objections and fair and reasonable assessments. We would urge instead that the new balance should be included at annual review without the need for a variation and the plan extended automatically.

Timescales for submitting a provisional plan. Following the notice of intention to submit a proposal and the 21-day search window for creditors, debt advice agencies only have a period of 7 days to submit a provisional plan. This is a short window of time, particularly as the result of missing the deadline is that the plan will be cancelled. One of the challenges this presents for advice agencies is that in some cases it will be necessary to negotiate arrangements to repay non-eligible debts, for example housing debts, which will have an impact on the amount of disposable income available for the plan. Advisers can deal with this in a number of ways, for example by 'setting aside' what they believe will be acceptable to a landlord or mortgage lender (which involves the risk that the plan needs to be varied very shortly afterwards if that offer is not accepted). Alternatively the adviser might wait to get arrangements in place first before proceeding with an SDRP application, which would avoid the risk of the plan needing to be varied but delay the point at which the client benefits from protections. To avoid these difficult trade-offs it would be better to give longer in the first place to account for negotiation with non-eligible creditors.

Ongoing engagement is needed as guidance develops. It will be important to continue stakeholder engagement after the launch of SDRP. As with Breathing Space and DROs, many issues will arise that require the Insolvency Service to interpret regulations and develop guidance - particularly in relation to fair and reasonable assessments. Continued engagement will support advice agencies and creditors to become familiar with the Insolvency Service's approach in practice, and ensure practical challenges can be identified and addressed at an early stage and in a collaborative fashion.

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

The regulations state that the request must be made no later than 14 days before the date of the payment that the debtor wishes to defer (we assume this means calendar days but would appreciate clarification). The regulations go on to say that the debt advice provider must consider and make a determination on an application no later than seven business days after the application is received.

This approach doesn't take account of sudden unexpected events. People are unlikely to know in advance that there is going to be a short term change in their circumstances that would trigger a payment break. It is more likely that they will miss a payment due to unforeseen circumstances and then contact the debt adviser to let them know and see what they can do about it. Or, if they are able to give notice, it may only be possible to give a few days notice rather than the 14 days the regulations call for.

We also have concerns about the proposed timescale of 7 days for advice agencies to respond to payment break requests. This is unlikely to be long enough, considering that the adviser has to review the income and expenditure, establish if the plan is still the correct solution, check if the debtor has already had a payment break in the last 12 months, review their payment history, consider the effect on the duration of the plan and any material change in circumstances. Advisers will be managing this alongside in-year reviews and annual reviews and variations, and in many cases a full caseload outside of SDRP. In many or most cases it will fall to the adviser to draw up a written statement of supporting reasons for the payment break, which will further add to the administrative burden on advice providers. 14 to 21 days would be a much more manageable timeframe for advisers, but would impact on the speed with which clients are able to benefit from the payment break. If an extension to two months is required, this would entail further administrative work and pose similar challenges around timescales for giving notice and responding to requests.

We propose two changes to make payment breaks effective and feasible. First, it should be possible for a missed payment to be retrospectively applied and counted as a payment break. Second, payment breaks should be 2 months as standard, without the need for an extension. Advisers could still be involved in this process but the payment break itself could be triggered by 'debtors' themselves via the Insolvency Service to minimise administrative effort and remove unnecessary friction from the process.

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

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?

A fair and reasonable assessment carried out by the Insolvency Service should apply before any instance of court action. At present, it is only reserved for some instances, for example, a rejected in year review that the adviser upholds on a creditor appeal, is not subject to the fair and reasonable test. If court is to be an option there should be a separation between the adviser and the court.

We agree that individuals subject to an SDRP should be able to ask for a review and appeal, but here also there should be a fair and reasonable process carried out by the Insolvency Service. As we have seen in Breathing Space, court costs fall on the client if a challenge is unsuccessful. This means that in effect an adviser refusing a creditor review would be taking a risk that has potential financial consequences for the client.

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

Yes, we support the proposal to have a private register and the reasoning behind it.

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

The overall design of the scheme risks creating a significant volume of extra administrative work for debt advice providers in the form of reviews, variations, dealing with creditor objections, dealing with client requests for payment breaks and payment break extensions, or to take out additional credit. An annual review and in-year review following changes in financial situation are certainly reasonable and mirror existing DMP processes, but many of the other requirements appear excessive. Government needs to give serious consideration to how it can reduce the administrative burden of SDRP and align it more closely with DMP processes.

TV Licence should be added as an ongoing liability.

Chapter 6 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?

Before addressing specific concerns about the processes for ending an SDRP, we would first like to note that the terminology and approach suggested do not reflect good practice in debt communications and may lead to disengagement. 'Revocation' is an overly formal term for a consumer audience while 'conditional warning' and 'final warning notice' are highly loaded terms implying misconduct and the threat of sanction. This language and the assumptions that underpin it are at odds with the supportive and non-judgmental approach adopted by debt advisers. Many creditors and debt collection agencies have likewise moved away from this sort of language, adopting a much more sympathetic and positive approach which they recognise to be more effective as well as more appropriate. It should not be presumed that people who stop paying into an SDRP are acting irresponsibly or deliberately seeking to abuse the scheme, rather than experiencing genuine difficulties. The approach implied by the proposals and regulations will not in our view be successful in helping people overcome short-term challenges, maintain engagement, and successfully discharge their debts.

Building on the point above, our view is that debt advice agencies should not be tasked with issuing warning notices or revoking plans (unless at the client's request). Introducing such a requirement is a significant challenge to the relationship between adviser and client. Where an adviser revokes a plan, this may result in a client being put off receiving further debt advice in the future. Ideally therefore decisions around revocations should sit outside debt advice with an independent third party such as the Insolvency Service, as we have similarly suggested for additional credit decisions.

We broadly agree with the specific grounds for mandatory revocation, although we would suggest that creditors may be more likely to become aware of the death of a client than the advice agency, so should also have a duty to notify. We agree that entering a DRO and bankruptcy should be a mandatory ground and suggest the addition of Individual Voluntary Arrangements for completeness.

We think it is very unhelpful to make revocation mandatory in cases where a third final notice is issued. Notices are served under discretionary grounds and there may be valid reasons for missing payments. This rule in relation to a third notice removes the element of discretion and appears arbitrary and disproportionate in this context. Finally, we note that a client has to apply to cancel if they think they can pay their debts and that an adviser can choose not to cancel at this point. This removes client choice and unnecessarily over-complicates the process.

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

As noted above, we do not agree that the debt advice provider should play a role in deciding whether to revoke a plan or not unless it is at the request of the individual subject to the plan. Final decisions should instead lie with an independent body such as the Insolvency Service. We also disagree that it is appropriate for multiple discretionary notices to result in a mandatory revocation.

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

While we recognise that safeguards are appropriate, we would question the assumption that widespread abuse will occur. The revocation processes will mainly come into play following life events which prevent people from paying and make it difficult for them to engage. Rather than a tightening of the revocation process we would prefer to see improved flexibility, e.g. a two month payment break and provision for a six-month temporary low payment plan following significant income shocks and life events, to minimise the risk of breakage and improve the long-term sustainability of SDRPs.

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

We strongly disagree with the rule barring individuals from applying for an SDRP if they have had a previous plan revoked in the previous 12 months. We think this is disproportionate, arbitrary and likely to be counterproductive, as it will result in people being needlessly excluded due to changes in circumstances. As part of advising on suitable debt solutions, debt advisers take into account what debt solutions a client has previously used. If the circumstances of a previous plan being revoked suggest that SDRP is not a suitable option - for example because they are unlikely to be able to commit to regular payments - this can be factored into the advice process and would lead to an SDRP not being recommended. This would be a more nuanced and proportionate approach than a blanket ban on reapplication.

We broadly agree with the protections for people in joint plans following revocation, but there is the potential for a protections gap if people are not able to reapply within 21 days of the previous plan ending. As it stands, to get the protections to bridge between plans, an individual would have to apply within 21 days of the previous plan ending, which would secure protections up to the provisional plan. But, if they don’t apply within 21 days, they lose the protections after 6 weeks. It would be simpler and more realistic to say the protections apply up to the next provisional plan if you apply within 6 weeks. It is likely that people leaving a joint plan will be making major adjustments due to life events such as separation or loss of a job, so allowing the full six weeks to apply would be more realistic and appropriate.

Generally, we think the 14-day grace period following SDRP revocation in cases other than the death of a client is too short, particularly compared with the period of up to 3 months which the Official Receiver has the discretion to allow in DROs.

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

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

We agree with the approach in principle, but we are concerned that in practice SDRPs may not be cost effective for debt advice agencies to administer. The costs of administration are difficult at this stage to predict. Some of the costs will depend on creditors' propensity to object and request reviews, and on breakage rates, which are inevitably uncertain at this point. Basing funding on the payments made into an SDRP is a sensible mechanism, but at the same time means that funding may not be reflective of the actual administrative work involved in setting up plans. Low-value SDRPs will require as much work to administer as high-value ones, or may in fact be more expensive, if people with smaller debts and lower surplus incomes are less able to sustain a long-term repayment arrangement and require more frequent payment breaks and variations.

Beyond the remarks above, we have limited feedback to provide on this aspect of the proposals since we do not administer debt management plans or use a FairShare funding model so we are not well placed to speak to funding requirements for administration. One issue we think needs to be acknowledged explicitly is that a considerable amount of preparatory work will fall to advice agencies that don't offer SDRPs and therefore do not attract any funding from administration. In addition to the impact on adviser workload there will be impacts on supervision, training, adviser reference resources and public information materials. Treasury will need to work with the Money and Pensions Service, local authorities and other funders to monitor the impact of SDRP on capacity across the entire debt advice sector to minimise additional costs for non-administering agencies and secure additional funding to defray those costs where necessary.

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

In all three cases we await further detail. We look forward to working with HMT and the Insolvency Service as a stakeholder to shape the electronic system, register and the guidance on fair and reasonable assessments. On the latter, we would like to see more use of the fair and reasonable assessments in place of adviser decisions in some areas, notably warning notices and the revocation process.

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

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

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

We have nothing to add to these questions.

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

We welcome the headline changes relating to future and contingent debts, but we would welcome the inclusion of council tax here, instead of maintaining the separate treatment of council tax in regulation 5. Council Tax is the most likely contingent debt and if someone has not received a reminder, and then enters Breathing Space and falls behind, they still won't be able to include it. This is a common scenario and will put pressure on many SDRPs, so should be included.

We don't agree with the proposal to make internet and mobile contracts an ongoing liability. Although these services are essential, customers often purchase them as bundled packages including TV and landline services, which may be poor value, unsuited to the individual's needs and unaffordable going forward. It may well be appropriate for someone entering an SDRP to reduce such a contract or even to cease paying where it is unaffordable, with the remaining contract debt becoming a normal non-priority debt within the SDRP.

We welcome the specific inclusion of secure tenancies, but it would be helpful to clarify whether secure tenancies are protected more generally under regulation 7 until the amendment is made. We would also welcome clarification on the effect of removing regulation 7(11). This seems to now allow deductions to be requested from legacy benefits as well as Universal Credit, since it relates specifically to the 1987 regulations covering legacy benefits. We would appreciate confirmation that removing 7(11) will not allow new deductions to be requested from legacy benefits along with clarification that existing third party deductions from legacy benefits will stop on entry to Breathing Space as they do now.

We are concerned that specifically excluding the Traffic Enforcement Centre from legal proceedings (Penalty Charge Notice enforcement) creates an unnecessary cycle. The TEC process is not stopped, but a warrant can't be issued, or if it is, it can't be enforced. We would suggest that rather than carving it out from legal proceedings, it makes more sense to include TEC proceedings as a form of enforcement in regulation 10 as a process that is paused to continue after Breathing Space. At the moment regulation 10(5) relates to enforcement of a judgment or order, which does not capture TEC proceedings as no order is made until the process is completed. However there is nothing preventing the regs simply saying that the TEC process is also paused.

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?

As we have already noted in relation to SDRPs, the exclusion of Universal Credit advances earlier and third party deductions from Universal Credit means many of the people we help with debt are unable to benefit from Breathing Space. Breathing Space should also stop an attachment of earnings in relation to a county court judgment or for council tax debt, and deductions from earnings orders for benefit debts.

The requirement to obtain evidence from an Approved Mental Health Practitioner (AMHP) in order to enter a mental health moratorium is a major barrier. We have received evidence from our network of advisers that a) finding an AMHP and b) getting an AMHP to engage and sign the evidence form is proving extremely problematic. This results in eligible clients not being able to benefit from the protections of a Mental Health Crisis Breathing Space. Since the launch of Breathing Space on 4 May 2021 up to 31 May 2022 our network of debt advisers have only been able to submit applications for 75 Mental Health Breathing Space cases, in comparison with 10,410 Standard Breathing Space applications. Across the sector as a whole, during the period 4 May 2021 to 31 May 2022 only 1,123 applications for Mental Health Crisis Breathing Space have been made, compared to 68,490 applications for Standard Breathing Space. Amending the regulations to widen the pool of mental health mental health professionals able to supply evidence that a person is receiving crisis mental health treatment would enable more clients to benefit from protections under this route, free up adviser time and align more closely with mental health services on the ground.

Finally, the standard Breathing Space moratorium period should be extended to 90 days, a move which would benefit a much wider group of people than SDRP and alleviate pressures on people falling into debt or further into debt as a result of cost-of-living pressures.

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?

No.

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

No

Impact assessment

The questions in this section will be most relevant to agencies that provide debt management plans (DMPs) and can draw on historic DMP data to model the impact of SDRP. Citizens Advice is not a DMP provider so we are not in a position to provide this type of data, but we have set out observations on factors that are likely to influence the approach of advisers and clients towards SDRP and other debt solutions, as well as other operational issues below.

Question 44: For those eligible for both a SDRP and a DMP, would you expect to still recommend a DMP in any circumstances? If yes, what proportion of those eligible for both solutions would you expect to still recommend a DMP?

As noted, Citizens Advice is not a DMP provider and we do not currently encounter very large numbers of clients for whom a DMP would be a suitable option. After completing an income and expenditure assessment, 46% of Citizens Advice debt clients have a negative budget, which rules out a repayment option and makes temporary reduced payments or insolvency options more appropriate. Many clients have priority debts without arrangements in place, which also rules out a DMP, though not an SDRP.

We don't anticipate that advisers will routinely recommend a DMP in preference to an SDRP, given the protections it provides and its broad debt coverage. Possible scenarios in which a DMP might be recommended include:

- If a client's creditors are likely to accept a repayment plan and extend SDRP-type protections voluntarily, there may be little benefit to entering a binding SDRP. Advisers will be aware of the normal practices of different creditors and can make an informed assessment of their likely response to an informal payment arrangement.
- If a client is likely to require more flexibility than is allowed for within SDRP, it may not be a feasible option for them. For example, if a client

experiences occasional fluctuations in income that can't be factored into a plan and could require frequent variation.

- If a client is able to clear their debts within a relatively short time frame, the formal requirements of an SDRP may not appear proportionate.
- Finally, some clients may find the legalistic language and binding nature of SDRP intimidating or off-putting, preferring a less formal option instead as a result. We are unable to quantify the size of any of these client groups as it will depend on multiple factors, some of them specific to individual clients.

Question 45: Would you recommend SDRPs to those who would otherwise enter insolvency (e.g. DRO, bankruptcy, IVA)?Q If yes, what proportion of those clients would you instead expect to recommend a SDRP?

Assuming there are no significant risks to the client's assets, job or home, insolvency options are likely to be preferred if repayment would take an unreasonably long period of time. In the case of DRO, a client with the maximum surplus income of £75 per month could in theory repay £6300 over a 7 year period. This being the case it is very unlikely that an adviser would recommend an SDRP to any DRO-eligible client with debts significantly in excess of £6300.

There is unlikely to be a large cohort of clients for whom DRO and SDRP are both realistic options. SDRP might be recommended in preference to an IVA or bankruptcy if a client is anticipating a potential positive change in their circumstances in the future, and wishes to avoid a more drastic option. Here too however the requirement to be able to repay debts within 7 years sets a limit on the amount of people likely to benefit in reality. We do not have sufficient data to quantify the numbers involved.

Question 46: Would you recommend SDRPs to those who are currently not recommended either a DMP or an insolvency solution (e.g. those entering into informal solutions)? If yes, what proportion of those clients would you instead expect to recommend a SDRP?

We would suggest however that the group of clients alluded to in the question is relatively small and largely composed of:

- homeowners with equity in their property (making a DRO or bankruptcy unsuitable)
- low debt or low disposable income (below the level which would make an IVA worthwhile)
- Priority debts which would not be included in a DMP (particularly rent, energy, council tax given the risks of enforcement).

Question 47: For each of the above, why would you expect to recommend or not recommend a SDRP over the alternative solution (DMP, insolvency or informal solution)?

For the reasons noted in previous answers, but also taking into account client choice and preferences.

Question 48: Is the assumption that the SDRP caseload will be reduced by 50%, 30% and 10% in its first three years respectively due to a period of transition a reasonable estimate? How long would you expect the scheme to take to reach a steady state and what impact would you expect this transition phase to have on the scheme?

Question 49: What proportion of an individual's debt would you expect to be repaid in a successful SDRP? How frequently would you expect voluntary debt writeoff to occur and to what degree?

Question 50: If you expect the level of repayment to be different in SDRPs compared to DMPs, what impact would you expect that to have on your clients in SDRPs?

Question 51: For those who do not complete their DMP and subsequently enter another solution, to what degree is their repayment reduced, if at all?

We have nothing to add in answer to above questions.

Question 52: Is it reasonable to assume that the benefit to a debtor from a debt repayment solution is proportionate to the amount of repayment that the solution delivers? For instance, would a SDRP that yields 50% repayment be half as beneficial to a debtor as one that yields full repayment?

The benefit to individuals using SDRP has to be approached primarily in terms of outcomes, which in the short term should include improved health and wellbeing, financial stability, and, in the long-term becoming debt free and financially stable. SDRP is expressly designed to enable people to repay their debts in full, but as we have highlighted in our main response there is a risk that a large proportion of plans will fail early due to a lack of proper flexibility. In this context, we don't think it's reasonable to conclude that a plan which fails halfway through has been 50% successful, particularly as an individual in this position may then experience considerable detriment. Government needs to assess this more broadly, based on client outcomes and failure rates in the round.

Question 53: How beneficial to your clients do you expect the protections of the SDRP to be?

It is difficult to quantify the benefits of SDRP across our client base as a whole. There will be particularly strong benefits for people facing enforcement for priority debts such as rent arrears, council tax arrears and energy arrears.

Question 54: How much would you expect it to cost to familiarise yourself with the scheme, and to train debt advice providers within your agency?

We have not carried out an assessment of the cost of familiarisation or training at this stage. To do so, we would require more detail of the final proposals, adviser guidance and Insolvency Service Technology guidance on use of the new system it is developing to support SDRP.

Question 55: If you expect to develop and implement new systems to administer SDRPs, can you estimate what the upfront and ongoing costs of this might be?

We are unable to assess this since we do not know what the requirements of the Insolvency Service system will be and what the impact would be on our network, should we make the decision to administer SDRPs.

Question 56: Would you expect the ongoing administration costs of SDRPs to be higher than that of DMPs? How much would you expect it to cost to set up and maintain a SDRP?

We have no experience of administering DMPs therefore cannot comment on how the costs of administering SDRP would compare to those of providing DMPs.

Question 57: Would you expect to act as a payment distributor for SDRPs you administer? If so, what additional systems or administrative costs do you anticipate as a result?

Question 58: Would you expect the SDRP to have any further impacts, positive or negative, on those with protected characteristics that have not been identified by the impact assessment?

We have nothing to add in answer to these questions.

Question 59: Do you agree with the assumption that the impacts of Covid-19 on consumer debt levels and on debt advice demand will have receded by the time the SDRP launches? If not, which impacts do you expect to remain and to what degree?

We do not agree with this assumption given recent forecasts indicating that energy prices and general inflation will remain at very high levels into 2023 and potentially 2024. We are carefully monitoring the impact of cost of living pressures through our service data and will continue to engage with HMT, the Money and Pensions Service and other key stakeholders as the situation evolves.

Question 64: Do you have any further comments on the consultation stage impact assessment or what is included within it?

We have nothing to add at this stage.