UK FINANCE

UK Finance response to the HM Treasury consultation – Statutory Debt Repayment Plan

Date: 5 August 2022

Sent via email to: SDRPresponse@hmtreasury.gov.uk

1. UK Finance ("UKF") is the collective voice for the banking and finance industry. Representing around 300 firms, we act to enhance competitiveness, support customers, and facilitate innovation.
2. We welcome the opportunity to respond to HM Treasury's (HMT) consultation paper on the Statutory Debt Repayment Plan (SDRP). We have set out our response to the relevant consultations below.

Executive Summary

3. Industry is committed to supporting consumers who may experience financial difficulty and require an extended period of time to repay their debts in full.
4. Industry already provides significant support to consumers to achieve this objective through the Debt Management Plan (DMP). Financial Services is subject to conduct, prudential and court rules (including Pre-Action Protocols) that provide a robust framework of consumer protections.
5. Industry recognises that the SDRP will formalise the key voluntary protections that it provides to consumers under the DMP (protection from enforcement and escalating debts), and importantly the new SDRP will extend statutory protection to cover all creditors (such as local authority debts, utilities, and rent). As currently designed, it is unclear what are the incremental benefits of SDRP in comparison to the DMP. From our perspective, the industry already provides consumer protections through applying their regulatory obligations to a DMP and has material concerns of the disproportionate impact on both creditors and the debt advice sector in introducing the SDRP.
6. Industry has material concerns that the proposed regulation will not lead to improved consumer outcomes and potentially risks placing consumers in a worse off solution, because of the inflexibility of the proposed framework. As a starting point, the design of the SDRP should provide the same payment conditions as the existing DMP. This has greater potential to enable debt recovery where a consumer may experience changes to circumstances over the life of the plan. Instead, we consider the structure of the SDRP to be too restrictive and could result in either consumers not being recommended an SDRP or failing it once the plan is in place.
7. As currently designed, it also introduces significant operational complexity and legal risk. We do not think that this is an effective or proportionate approach, and unlikely to deliver the desired consumer take up and outcomes that a statutory plan should achieve. HMT has engaged with industry and the debt advice sector during the consultation period and will have heard some of the shared concerns across both parties. We think that this should result in a time of reflection. Key expert stakeholders should be engaged to analyse the detail to achieve the policy objectives in an effective and proportionate way.

8. It is critical that key elements within the consultation document and draft legislation are clarified to improve understanding of the policy intent so that implementation and the Impact Assessment can be fully scoped. Additionally, the FCA has published its final rules and implementation timeline for the Consumer Duty. The Duty will apply to all new products and services, and all existing products and services that remain on sale or open for renewal from the end of July 2023. The Duty will apply to all closed products and services from the end of July 2024. The design of the SDRP should not prevent firms from meeting their obligations under the Duty. Our key concerns are:

   a. Secured Loan Arrears

      - All Secured Loan arrears should be excluded from a plan or only included within a plan with the express agreement of the lender. Having a credit agreement with separate payment, legal and operational implications is overly complex for debt advisers to advise on, consumers to understand and lenders to implement. Should secured loan arrears be recommended to be included in a plan, the rationale for doing so should be disclosed to the secured lender. If the secured lender objects, as a minimum, this should meet the threshold for a Fair and Reasonable Assessment irrespective of the 25 per cent debt value objection threshold.

      - Differing and poor customer outcomes could arise and the range of potential circumstances where inclusion of arrears would not be workable has not been clearly thought through, for example, joint mortgages in a solo SDRP, mortgage term shorter than the SDRP term, term expired Interest-only mortgages, shared ownership structures, and suspended possession order from the court already in place.

   b. Treat as though the original plan has been varied

      - The proposal intends to require that creditors “treat” the SDRP as though the schedule of payments in their original contract with the debtor in relation to the terms of the repayment has been varied. The drafting of the regulations is unclear. Industry does not support this having any legal effect on the credit agreement (for example for consumer credit requiring the original agreement to be modified under s82 of the Consumer Credit Act (CCA) or implications for Notices of Sums in Arrears). This would be a disproportionately complex process and has associated operational and legal risks (including the prospect of agreements needing to be treated as unenforceable under the 1983 and 2010 regulations) that have not been commented upon (or considered) in the consultation. There is also potential for multiple variations to be required if the plan changes (through variations or new debts). It is critical that the requirement and intention of the regulation is clear to avoid unintended legal risks.

   c. Payment distribution

      - The customer repayment should be remitted to creditors without the deduction of the ten per cent funding amount, so that the debt reduces by the full contribution. This is the existing well-established process under the DMP (which even some utility companies use). Extending this existing process to SDRP (with a statutory requirement for creditors to pay the required funding amount) will minimise confusion and operational complexity. Receiving a lower payment introduces regulatory and legal risks relating to reporting and disclosures and would compound the concerns identified in a. and b. above. In the case of any change of treatment to debt obligations, potentially statutory reporting and disclosures under the CCA would be affected – such as account balances and notices of sums in arrears.

d. Credit Reference Agency (CRA) reporting

- The reporting of the SDRP must be consistent with the existing industry approach for reporting forbearance arrangements and payment plans against the contractual payments due. The customer credit file will recognise the payments being made, but also provide transparency and consistency for CRA data users. It is essential to protect the integrity of information shared through CRAs and there must not be an attempt to 'mask' the payment performance, and there is limited benefit of doing so for the customer who is restricted in their ability to access new credit during the life of the plan.

e. Electronic System

- There is a key dependency on an Electronic System to be maintained by the Insolvency Service. This must be subject to robust project disciplines and must be designed to allow firms to meet their obligations under the FCA Consumer Duty. It will be critical that the key requirements, specifications, and milestones are discussed and agreed with all stakeholders and published to enable progress tracking to take place. There must be a testing schedule that is agreed with creditors and the date for the regulations coming into force should not be confirmed until the electronic system can be fully tested and is operational.

f. Termination of agreements

- There must be an ability for lenders to be able to terminate the agreement with the customer when an SDRP commences. As currently proposed, termination will occur at failure of an SDRP and subsequently default/termination will report on the customer credit file. This default applies for 6 years from the default date and could create poor customer outcomes. For example, a customer defaulting in year four of their plan, would have a total impact of ten years where those debts are reported to a CRA. This is potentially unfair treatment for the customer.

g. Implementation:

- As drafted, there are a number of sections within the regulations where the policy intention or legal requirements are unclear or open to interpretation (e.g., Reg 26). Without clearer drafting, it is not possible to confirm the implications of the regulations and, therefore, whether implementation timescales would be achievable. A credible implementation timeline will be predicated on our questions and issues being resolved. We ask that HMT is also thoughtful of the implementation timeline of the FCA's Consumer Duty, which requires significant change programmes by firms.

- This uncertainty also impacts upon our ability to comment accurately on the impact assessment. Industry does not recognise the assertion that delivery of the SDRP (to replace and enhance the DMP) will be able to generate increased debt recovery of £1.8bn over 10 years. As per point (e), an implementation period must include sufficient time for testing of the new electronic system. We suggest a minimum of six months for testing.

h. New credit

- Clarity is required on what the obligations are on the customer to comply with the regulations, including the possible consequences of a fraudulent application for credit if an SDRP is not disclosed. Access to new credit over statutory limits must not deem the debt unenforceable. Clarity on how existing open lines of revolving

credit is treated within the 'new credit' thresholds is also required. Customers accessing credit outside of the regulations should be grounds for revocation of the SDRP, absent the agreement of impacted creditors for it to continue.

i. Operational inflexibility and complexity

- The current framework for the SDRP is too complex and inflexible to be workable in practice. Consequently, we expect DMPs to be considered the better approach for most consumers. It is reasonable to expect that consumer circumstances and affordability will vary frequently over the period of an SDRP. We consider it too restrictive to mandate that 100 per cent of disposable income is always allocated to SDRP payments, particularly when the processes for resetting plans or applying payment breaks are so inflexible. This requirement should be reconsidered.

- The inability to make overpayments also does not support customers reducing their debts as quickly as possible. This should be reconsidered.

- The allocation of funds between priority and other debts means that priority debts will be repaid over a much longer period than is currently the case for DMPs. This will prolong the period during which consumers are at risk of adverse consequences in relation to these priority debts should the plan fail.

- There are a number of additional operational issues where greater clarity is required, including the approach and complexity for joint debts; annual review consequences, the need for a debt advice conversation and not just self-serve applications, and variations and voting arrangements.

9. While we acknowledge the commitment to lay the regulations by the end of 2022, we look forward to working with you, alongside the debt advice sector, to design and fully deliver a fit for purpose solution that achieves the required objectives and enables good customer outcomes through debt recovery.

CONSULTATION QUESTIONS

Chapter 1

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

10. We are unable to provide an accurate estimate of how long the implementation period should be due to the lack of detail provided on material elements of the policy and operationalisation of the SDRP. In order to determine what might be a reasonable implementation timescale, we require clarity on:
    a. Delivery timeline and functionality of the Insolvency Service portal
    b. Clarity on the intent that the contract should be treated as varied (to understand the legal change implications)
    c. Confirmation that our proposals on full payment distribution to creditors will be adopted
    d. Detail on the fair and reasonable test (including meaningful consultation on any guidance to be published)
    e. The agreed approach to CRA reporting

11. Members consider that a period of 18 months between the policy requirements being finalised (including the final regulations, final guidance documents, the design and functionality of the

Insolvency Service portal being tested) is too short. In view of the existing significant regulatory change initiatives (see box), a period of at least 24 months post-finalisation of the policy, guidance and systems is suggested.

Pre-Existing Mandatory Change Requirements Conflating with SDRP

- FCA Consumer Duty
- FCA/ PSR APP Fraud
- FCA Borrowers in Financial Difficulty/ Cost of Living
- FCA Credit Card Market Study Review
- FCA Credit Information Market Study
- BoE/FCA/PRA Operational Resilience
- FCA Overdraft Remedies Review
- FOS Funding/ Business Model Review
- HMT Access to Cash
- HMT (then FCA) Buy Now Pay Later
- HMT (then FCA) Consumer Credit Act Review
- (Various) Open Finance
- BoE/PRA Operational Continuity in Resolution (OCIR)
- CMA Opening Banking Implementation

Further challenges which may extend the implementation period:

12. The potential interpretation of how lenders are required to treat the contractual agreement as though it has been 'varied' could introduce significant legal and operational complexities. This is particularly acute for CCA regulated credit agreements in view of the potential sanctions that The Act imposes for non-compliance. If mortgage arrears are not excluded from the scope of SDRPs, it will be similarly administratively complex to implement system changes to separately track and communicate to customers the mortgage debt inside and outside of an SDRP, or the separate interest treatment.

13. The implications for lenders receiving customer payments after deduction of the ten per cent 'funding amount' and how this is reflected in the customer and the lender records could also create complex and disproportionate change requirements. We seek further clarification of the intent and meaning of the regulations. With the expectation that the SDRP will be a high-volume debt solution, it is not realistic for manual adjustments to be made. We have made recommendations as to how this potential risk could be avoided, through debt advisers sending the full repayment amount (as is the existing process for DMPs) in paragraphs 69-70.

14. If secured arrears are included in an SDRP, we anticipate major and complex system change requirements to comply with both the regulations and FCA rules. In the case of a mortgage lender providing an annual statement (as required by FCA rules), they would need to be able to communicate the balance of the mortgage outside an SDRP and its composition (mortgage balance, any outstanding fees, any new arrears arising post the start of the SDRP etc), the interest rate applicable to that balance and the payments received during the year. The corresponding information would also now need to include the arrears within the SDRP. In the case of quarterly arrears statements, these would need to reflect arrears covered by the SDRP and any arrears outside of the plan. In the event of an increase in reference rates, letters and

systems would need to be changed so that when a variable rate mortgage experiences a rate change, the new interest rate can only be applied to the balance outside of the SDRP and the new monthly payment calculated and communicated to the customer on only that portion of their balance. To achieve compliance with these requirements in an automated way we anticipate significant system and process change, including the creation of new data fields in administration systems to capture non-interest-bearing arrears covered by a SDRP.

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

15. Industry continues to support the principle of helping customers get their finances back on track, where they can repay their debts in full but require more time, through sustainable and efficient debt solutions.

    Existing debt solutions: The voluntary DMP is a long-established approach to debt repayment, and financial services firms ensure consumer protections through their regulatory obligations to not enforce debts and give consideration to the waiver of interest and charges. As noted throughout this response, we consider these positive aspects of the DMP, coupled with the flexibility available to help consumers remain on a plan, as a template upon which to build a statutory plan. The implementation of the SDRP must not remove the ability for an individual to be able to access a DMP where the debt adviser considers it appropriate.

16. We do not recognise the assertion in the consultation that existing DMPs fail due to the lack of sufficiently broad protections. It is unclear how a regulated debt adviser will assess an SDRP differently to their current approach for a DMP, given that the assessment of the Income and Expenditure is the same. The increasingly variable nature of income (through the gig economy and self-employed) make these consumers more susceptible to plan failure where the full disposable income is to be used as their repayment. Members are of the view that life events (loss of job, health, relationships) are key drivers of DMP failures. The SDRP will not reduce this and might compound failure rates as there is less flexibility to accommodate short term changes in circumstances.

17. Funding of debt advice: Industry recognises the benefits that quality debt advice can deliver to individuals with money worries. The consultation highlights that funding of debt advice provision through the Money and Pensions Service (MaPS) commissioning continues to be maintained at record levels. The MaPS funding is raised through a levy on FCA regulated firms. All creditors benefit from the provision of debt advice, including non-financial services (such as council tax, rent and utility bill debts). Industry continues to advocate that all creditors who benefit from the debt advice should contribute towards the costs.

18. Consideration should be given as to whether a higher funding amount should be levied, with any premium over the ten per cent funding amount collected as a statutory fee on behalf of the Money and Pensions Service. This would be earmarked by MaPS to support costs of the commissioning of broader debt advice requirements (e.g., Debt Relief Orders). It would be a statutory way of achieving greater contributions from the non-financial sector, without increasing the existing burden of financial services by implementing a proportionate adjustment to the FCA levy.

19. Dependency on third party system delivery: The consultation highlights the dependency on building the necessary administrative and operational structures ahead of the SDRP start date. Industry does not yet have any visibility as to the form and content of these structures to identify if they will meet their needs to effectively and efficiently operate the SDRP scheme. The system

development must include an adequate timescale for lenders to be able to receive and test systems ahead of any live date. Members consider the system should be delivered to creditors for final testing at least six months ahead of live date. Members consider it essential that detailed project plans of the system development are published (e.g., business requirements specifications, technical specifications, and development timeline) against which delivery can be tracked.

Chapter 2

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

20. We agree with the approach to eligibility for a new SDRP, where an individual:
    a. Accesses FCA regulated debt advice (or local authority debt advice function).
    b. Is unable or unlikely to be able to pay their debts as they fall due.
    c. Assessed by the debt adviser that a plan is an appropriate debt solution.
    d. Has not been subject to another plan within the last 12 months (as flexibility for existing SDRPs are to be included in the regulations). Clarity is required that a customer who has accessed a different type of plan (e.g., DMP or internal firm plan) within the last 12 months, that they would be eligible for an SDRP.

21. Joint Debts:
    a. There is significant complexity with joint debts. A general view is that joint debts would typically require a joint SDRP. We would welcome a clear articulation of the protections that would apply in different scenarios to all principal debtors of debts included in the plan
        i. Two parties take out an SDRP, with joint debts and sole debts
        ii. One party takes out an SDRP but also has a or multiple joint debts
        iii. Whilst protections will apply to all parties to a debt within an SDRP, repayments received from one borrower in an SDRP would not extinguish the other borrower's liability for the reduced payment received (administration fee cost). It would be up to lenders to determine whether the shortfall would be recovered, and it would create significant complexity of communications to the non SDRP borrower.

    b. Mortgage borrowers are joint and severally liable for the debt. This means that both parties are individually responsible for maintaining payment of the mortgage. In mortgage lenders' view, it would be unworkable for arrears on a joint mortgage to be included in an SDRP unless that SDRP is a joint plan covering both borrowers. All borrowers that are party to a mortgage legally have the same liability and, therefore, must receive the same communications regarding that liability. Practically, system changes could turn off interest and fees on mortgage arrears included within the SDRP, even if only one party was subject to an SDRP. This presents fundamental complications, as the other party would not be entitled to information on the plan. In instances where the other party is not subject to the plan or does not agree (a likelihood in instances of relationship breakdown), it would be inequitable for an SDRP to impact the other borrower for a period of up to 10 years without them having the right to have any information on the plan or any ability to influence its operation. A joint borrower may want to repay the mortgage arrears faster than provided for in the SDRP, to remortgage on a solo basis or reduce the period for which their home is at risk should the SDRP fail. It is not clear whether this would be possible given only payments made via the SDRP would repay the arrears included within the plan and the proposal that there be no mechanism for removing mortgage arrears from the scope of an SDRP once they are included.

c. It is not clear whether a joint borrower who is not applying for an SDRP would be able to object to the debt being included in the SDRP. A joint borrower may not require the protections in an SDRP (due to maintaining payments), may not want a record on their credit file or may have other motivations such as a desire to sell the property or move.

d. More thought needs to be given to ensuring that consumers are not made vulnerable or exposed to the risk of financial abuse. The industry is committed to support victims of financial abuse as per the UK Finance voluntary Financial Abuse Code of Practice. Where a joint debt is being considered for inclusion in the SDRP, there is a need for the debt adviser to consider how the debt came about (e.g., fraudulent or coerced debt); if there are any extenuating circumstances (e.g., financial abuse that has resulted in the debt occurring); if there any other routes to explore how the individual can pay back debt (e.g., via the courts or as per the Financial Abuse Code of Practice). This additional consideration could extend the period between initiation and finalisation of a plan.

e. Joint borrowers outside an SDRP may suffer by not being able to remortgage while the SDRP is in place or facing the risk of loss of their home if the SDRP fails where they are the resident of the mortgaged property (rather than the borrower in the SDRP). Disclosure of financial and personal information, and treatment of payment plans may exacerbate these risks.

22. Mental Capacity:
    a. The FCA's Consumer Duty and Vulnerable Customer Guidance requires that consumers make informed decisions. Further thought should be given to treatment of debtors with reduced mental capacity. Where a debtor has reduced, limited or fluctuating capacity, they may require an authorised third-party to act and agree on their behalf. We expect that FCA-regulated debt advisers, who are also bound by the Duty and Vulnerable Customer Guidance, could consider whether a debtor will be able to make informed decisions over the life of the plan.

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

23. We agree with the general approach to qualifying debts. Including as many debts as possible within the plan will:
    a. Achieve an equitable repayment of debts across all creditors
    b. Minimise the potential for actions taken by creditors on excluded debts to jeopardise the success of the plan

24. Secured Debt: We continue to strongly advocate that secured loan arrears should be excluded from the SDRP, or only included with the express agreement of the lender. The potential inclusion of mortgage arrears could drive poor outcomes for individuals and unintended consequences, complications, and disproportionate impact on secured lenders:

    a. The approach to existing court payment agreements such as suspended possession orders, could offer a more sustainable outcome for consumers, as repayment of the arrears could be spread over the remaining lifetime of the mortgage. Replacement of such arrangements with the SDRP could introduce confusion and contradiction around compliance with court orders.

b. The same mortgage contract would have two separate repayment profiles that would introduce huge complexities for monitoring and reporting arrears, including statutory reporting of arrears.
c. As currently structured, failure of a plan results in increased risk of homelessness. Under the Pre-Action Protocol for Possessions Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property (MPAP), the threshold for starting a possession claim could be deemed satisfied should a plan break. In contrast, a customer in receipt of lender forbearance would benefit from exhaustive attempts to enable the customer to come to a sustainable position on the mortgage.
d. Whilst the regulations propose to categorise mortgage arrears as a "discretionary non-eligible debt" that has the potential to be excluded from the plan, this would only be possible with the agreement of the debtor and on the advice of the debt adviser. The debtor could therefore use this to delay and frustrate the legitimate collections activity of the overarching total debt.
e. The potential for Interest-only Past Term mortgages to be recommended for inclusion in an SDRP remains a concern. The regulations as drafted treats the total capital balance as past due and may meet the definition of qualifying debt. Such an approach would be inappropriate as (absent missed payments), the balance of an Interest-only mortgage represents the initial sum borrowed, none of which has been repaid during the life of the mortgage. Interest payments on a past term mortgage should be ongoing liability. The debt adviser should consider any repayment vehicle that will crystallise in the near future (e.g., endowments/pension payments), including whether the sale of the property/downsizing is a better option and will help the customer move to a sustainable debt position.
f. Mortgage lenders already have a range of options to support consumers, including the potential to capitalise the arrears over the remaining term of the mortgage, which might be a better and more sustainable solution to their finances.
g. In the event of the sale of an asset that is held for secured arrears within a plan, the secured debt lender must be able to utilise any sale proceeds to repay or reduce their secured debt arrears. There must be no restriction (e.g., considered an overpayment) and this must be explicit in the regulations. If an asset is sold, the debt adviser should review the customers finances, whether any surplus funds should be used to repay debts within the SDRP, or whether any shortfall would require the review of their options.

25. Future debts and contingent debts: The intention and practical application of allowing debts that are owed at the point of an application but not yet due is unclear. There are concerns that this could lead to confusion and delays in establishing a viable SDRP.

a. We could see that there would be merit for a debt adviser to include debts that are expected to become due during the SDRP application period. For example, council tax payments for the remaining financial year where full and immediate demand is expected (although council tax payments are an ongoing liability and excluded).

b. The balance of an Interest-only mortgage is not a qualifying debt and is also not an ongoing liability, although this debt is known at the point of application. It would not be appropriate to try to include such secured debt as a 'future debt' within the SDRP. This needs to be specifically clarified as not a 'future debt'.

c. It is unclear what is intended to be included as 'contingent debts'. If an individual entering an SDRP is a guarantor under a guarantor loan, that would be a known debt at the point of application. It would not be appropriate to include that contingent liability in the SDRP unless demand for repayment of the debt has been made. As the guarantor would be liable

for a defaulted debt as well as the borrower, the debt adviser would need to explain their proposal for the repayment of that debt (with the inherent complications of dealing with 'joint debts' as previously highlighted).

d. We would recognise the merit of including debts which will fall due if exclusion would jeopardise the serviceability and sustainability of the plan. Where future and contingent debts are to be included in an SDRP, the creditor details, debt value and reasons for inclusion must be explicitly communicated to creditors to enable them to make an informed voting decision.

e. We would request that HMT provide greater clarity on their policy intent with future and contingent debts, including examples of where they anticipate this will arise.

26. We agree that contributions payable under an Income Payment Arrangement (IPA) or Income Payment Order (IPO) should be considered non-eligible debt to repay debts within the Bankruptcy.

a. We would, however, expect that the existence of new debts so soon after a Bankruptcy (and the limitations on accessing new credit) would be a key consideration of the debt adviser in assessing whether an SDRP is appropriate.

b. We would also welcome clarification on how a future expected increase in debt repayments (e.g. the end of the IPO/IPA payments) can be considered by the debt adviser, if the initial SDRP plan payments would require repayment which exceeds the maximum 10 year loan term (e.g. can an SDRP be agreed where the payments start low but are realistically expected to grow in the near term and would then achieve repayment of the debt within the maximum term). We understand from the debt advice sector that plans often have an initial repayment term in excess of 7 years, with an expectation that changes in circumstances will reduce the term. An inflexible approach to assessing the term could lead to consumers not being eligible for an SDRP.

27. Internet Service provider and Mobile phone network debts: We acknowledge that connectivity to the internet and phone network is a key service for individuals. The extent to which such debts are considered 'priority' should be limited to the ability to access the broadband and phone network, and not extend to other services that might be provided (such as sports/movies or music subscriptions).

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

28. Where a payment arrangement or payment plan has been agreed by a court, this should be treated as a non-eligible debt.

29. There is a lack of clarity as to whether an arrangement under an SDRP would revoke any pre—existing court order for payment, and consequently the implications for the non-payment of the court order. For residential mortgage lending, we consider that debts subject to a Suspended Possession Order (SPO) should be considered non-eligible on the basis that the courts will have made a determination on (a) the ability of the borrower to pay the mortgage and (b) the reasonable amount of time required. This aligns to the precedent set via Cheltenham and Gloucester v Norgan (1996) which means that a judge may determine that a reasonable time for

repayment could be the whole of the remaining mortgage term rather than the shorter maximum period of the SDRP.

30. Scope of the regulations: We would welcome written clarification of the treatment of the following debts:

    a. Services charges and ground rent: if to be paid by the lender to protect their security. Our interpretation is that these do not fall within the definition of a qualifying debt as they would not normally be considered as immediately due and payable.
    b. Intended treatment for shared ownership rent arrears: We would expect these to be treated in the same way as other forms of rent arrears.
    c. Buy-to-let lending, which is a secured debt: We consider this should be clearly excluded from the scope of an SDRP on the basis that it is funding an investment vehicle. As drafted, there is differing treatment of a buy-to-let mortgage within the regulations:
        i. it is not exempted as a mandatory non-eligible business debt
        ii. it is not a discretionary non-eligible debt (as not main residence)
        iii. it is not included in the definition of an ongoing liability and therefore, payments do not have to be maintained
        iv. although a secured loan, it is not included in the definition of priority debt, therefore, arrears could be paid over a longer period, which is inconsistent with the treatment of other secured debts.
    d. Credit approved but not drawn: new credit facilities that have been approved by a lender before the notice of initiation, but not yet drawn down. A customer applying to enter into a SDRP should be precluded from drawing down any new credit.
    e. Business Lending: arrears against loans secured against land (business premises) are eligible for inclusion in an SDRP, however future payments are not considered ongoing liabilities. HMT should clarify that these loans are to be treated as an ongoing liability and payments need to be maintained.

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

31. The general principle should be that all debts are included in the SDRP, as this will provide assurance of protections to the individual and an agreed and equitable repayment across creditors.

32. This principle does need to be balanced against the practical and operational complexities and inefficiencies that monitoring and distributing small monthly repayments to creditors would create.

33. On balance, members agree that it should be possible for small debts (and priority debts where a more appropriate repayment schedule will achieve a better outcome) to be excluded from a plan. For this to be fair and equitable to creditors, HMT should consider:

    a. Consumer protections: Excluding a debt from the SDRP would not prevent that creditor undertaking collections and enforcement activity or charging interest and fees. This could have the effect of jeopardising the SDRP which would be counterproductive for the individual and the general creditors. Whilst Financial Services will need to consider their regulatory conduct responsibilities, and to treat customers fairly, we are not aware that other creditor types would have similarly robust regulatory obligations.

    b. Small debt scope: It should be for the debt adviser and the debtor to make a proposal in the SDRP as to what should be considered a “small debt” and if it is to be excluded from

the SDRP. Full details of proposed excludable debts must be disclosed to enable creditors within the SDRP to make an informed decision when voting on the plan, both whether their small debt should be excluded from the plan, or that other small debts are proposed for exclusion.

c. Multiple debts with a creditor: The general view from members was that the definition of a small debt should consider the total value of debt that the individual owes to the creditor (potentially across multiple products or contracts). There was also a counter view that each debt should be treated separately, and therefore potential for the same creditor to have a number of small debts. It would be for the debt adviser to propose that some or all of the individual small contracts be excluded from the SDRP.

34. The assessment of what might constitute a ‘small debt’ should be considered at a creditor level rather than an individual contract level. A preference has been expressed that payments are made at an individual debt level. If a single payment is made to a creditor, we have additional questions on the appropriation of credits to debts with the highest potential costs, in view of the consequences in the event of the failure of the SDRP when there is potential for interest and charges to be applied to the debts on a go forward basis.

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?

35. Please refer to the answer to question 6. Members do not have a strong view as to the amount of debt that should constitute a small debt. Exclusion of a debt should be optional, recognising that creditors have the ability to waive their rights to demand repayment of a debt (write off the debt as partially settled with no further obligation for the customer to make repayments) if they do not wish to receive payment distributions.

36. We consider the primary objective of excluding small debts relates to operational efficiency and therefore the value of the debt and the amount of the payment distribution would both be relevant when the debt adviser is considering/proposing for a debt to be excluded. We advocate flexibility for the SDRP and would not want to be overly restrictive in a definition. However, for the sake of consistency it might be helpful to issue guidance as to what value of debt, percentage of debt, and/or monthly contribution would likely be appropriate as a small debt. A view has been expressed that this is most appropriately set as a £ repayment amount (monthly equivalent).

37. Concerns exist that some small debts excluded from the SDRP will be subject to collections activity (although financial services will be aware of their existing regulatory obligations to treat customers fairly and the FCA’s Consumer Duty). There should be a clear expectation that debts excluded from a plan are primarily for operational efficiency reasons and not to facilitate collections activity.

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?

38. There will be scenarios where additional debt arises or is identified during the SDRP:
    a. Debts outstanding at the start of the SDRP plan but not declared
    b. Taxes or Fines

c. Legitimate consequences of genuine banking transactions, e.g., debit card posting of entries (such as offline train travel transactions below an operational threshold). These should not be considered creditor errors.
d. Product transfers or re-mortgaging where a fee is added to the debt
e. Taking out insurance contracts (where cost is spread over the year)
f. Taking out a season ticket loan with an employer
g. Whilst not additional debt, the sale of a property that results in a payment shortfall (potentially unexpected) would change the debt composition. How this previously secured debt should be considered should be made clear. In this scenario we would expect the debt adviser to undertake a full review of their finances and request a variation/recommend an alternative debt solution as appropriate.

39. In the event of additional debt being identified, the debt adviser will need to re-evaluate the customers financial circumstances:
    a. Consideration of whether the increase in debt has been a breach of the regulations.
    b. Re-assess the finances and the revised disposable income to repay debts, to determine whether SDRP remains the appropriate solution.
    c. Where there is a material change to the payment distribution to creditors and or repayment term, creditors should be allowed to vote on the proposal again.

40. Where a consumer has an open line of revolving credit, such as an overdraft or credit card, clarity is required as to how drawings against an existing credit limit are to be treated, e.g., if a customer has a £1,000 overdraft, and the monthly salary repays an overdrawn balance, would redrawing of the overdraft constitute 'new credit'.

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

41. Maximum Term: The regulations should be specific as to how eligibility of a maximum term of up to 10 years should be considered for individuals where the initial repayment would result in a repayment term more than 10 years. Debt advisers should be able to assesses whether there is a realistic expectation that the customer's disposable income will increase in the near term, which would reduce the repayment term to within the maximum term (e.g., ending of Child Maintenance payments or Secured Finance payments). The Debt Adviser should be able to document this assessment, allowing the debtor the same flexibility as under a DMP, without which it would restrict access to an SDRP.

42. Scheme Guidance: It is essential that industry is given ample time to review and engage in any scheme guidance document, as this will have the effect of becoming quasi regulation. A clear plan and timeline on the delivery and consultation on the guidance must be published.

43. Debt levels and voting: Any proposal from the Debt adviser must provide transparency as to which debts are being included or excluded from the plan. There should also be appropriate disclosure of qualitative information to avoid queries and delays. This is essential for creditors to make an informed decision. his information should be provided in a consistent format through the proposed electronic system. We consider that the proposal must have a specific requirement to disclose:
    a. The debts being proposed for exclusion from the plan
    b. Future and contingent debts being included in the plan
    c. Joint debts (where the joint borrower is not a party to the SDRP)

Chapter 3

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

44. Intention to initiate a plan: We note the government's expectation that creditors will voluntarily apply protections from this point where feasible. Whilst we are generally agreeable in principle to this approach, there must be a requirement for debt advisers to accurately monitor and report to the progress of the plan from the sending of the provisional plan to making the first payment under the plan. This will help to:
    a. Identify individuals who are seeking to frustrate collections activity (protections being applied during the development stage would not constitute entering a plan, and therefore the individual could apply again for protections through another debt adviser); and
    b. Evaluate the effectiveness and timelines required to develop the plan and for the plan payments to commence.

45. Interest-only past term and defaulted mortgages: As part of the Debt Respite Scheme consultation, we argued that a qualifying debt should not include secured lending that related to the full debt that is outstanding and is considered as 'fallen due' because the account was past term or formal demand had been made due to arrears. We maintain the same position for the SDRP but emphasise any lack of clarity in relation to a SDRP will be much more material and problematic given their typical duration. As explained in paragraph 24(e) above, absent missed payments, the balance of an Interest-only mortgage purely represents the initial sum borrowed, none of which has been repaid during the life of the mortgage. If the scope of SDRPs is not amended in line with our arguments to remove all arrears on secured lending, we consider specific provision must be made excluding term expired Interest-only mortgage balances and making clear that the obligation to pay interest on the outstanding balance should be treated as an on-going liability. This will minimise the risk of possession. Members are seeing scenarios where debtors are 'gaming the system' and debt advisers are entering such mortgage accounts into a Breathing Space. Industry practice in the case of such loans is to allow borrowers a period to resolve how they will pay the outstanding mortgage balance provided they continue to pay the interest accruing on the balance. The disproportionate impact on lenders if borrowers are able to include the term expired balance in an SDRP (resulting in the lender being only able to recover 90 per cent of that balance despite their security rights) and to charge no interest on the balance during the life of the SDRP is expected to mean that such loans cannot be funded at commercially viable rates. Given the secured nature of the product, and our assertion that mortgage balances/arrears should not be included within an SDRP, there must be recognition from HMT that lenders would not be expected to apply the protections relating to interest charges on what would be significant mortgage balances when they have received notice of an intention to initiate, even if it were feasible.

46. There must be a recognition that whilst consumers are not required to pay interest on qualifying debts in an SDRP, lenders will make the necessary adjustments as soon as practical which might include the need to refund interest after the SDRP protections have come into force. It will not be possible for all lenders and products to waive/freeze interest up front, an operational issue that will be heightened for secured loan arrears where only arrears in the SDRP are not required to pay interest. Confirmation of this practical approach, which achieves the policy objective, should be included in the consultation response and guidance.

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

47. Payment breaks: We agree with the principle that payment breaks should be available. Customers may experience unforeseen costs or cashflow problems, and it is appropriate that flexibility is provided to maintain customers on a plan with the associated protections where appropriate

    a. One month or one payment: There should not be inequitable treatment should any SDRP be established with weekly or fortnightly payments. We propose that a single timeframe be set for payment breaks (i.e., that all borrowers be able to miss the equivalent of one month of payments regardless of payment frequency). We have concerns that the approach to payment breaks and variations are overly restrictive and will lead to the unnecessary breakage of the SDRP, which might not have occurred with the flexibility available under a DMP. The design of the SDRP should deliver the desired good consumer outcomes.

    b. Apply 14 days before the date of payment Reg 41 (2) (b): We consider this requirement to be overly restrictive, as a customer with an unforeseen circumstance will not always have 14 days' notice and therefore be precluded from applying for a payment break. A more sensible approach would be to allow for a payment break to be requested before the next monthly/weekly payment is taken.

    c. Treatment of payment breaks: The regulations propose that overpayments should not be permitted (a policy position which we disagree with). Where an individual has a cashflow timing issue, they should not be precluded from making the 'missed payment break payment' at their earliest opportunity. This inflexibility around payments will inhibit the usefulness of the SDRP. As previously highlighted, for joint debts, the inability for a joint party to make a payment to the debt could result in detriment and adverse credit reporting.

    d. Maximum SDRP term Reg 41 (4)(d): Where payment breaks are granted in accordance with the regulations, any associated term extension should not be limited to the maximum 10 year and 6 months SDRP term. In granting the payment break, the debt adviser must consider whether the plan extension is reasonable (e.g., if the debt adviser agrees during the term of the SDRP for contributions to be reduced and payment breaks allowed that would take the term beyond 10 years and 6 months, that should not be an automatic decline or revocation of the plan).

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

48. The variation will need to be proposed by the debt adviser after a detailed re-assessment of a customers' circumstances. A determination should be made as to the appropriateness of SDRP as a solution, and subsequently appropriateness of payment amount. Therefore, we do not think there is merit in setting an arbitrary minimum value to which payments can fall.

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?

49. Yes, we agree that debtors should be required to disclose that they are subject to an SDRP to any potential creditors or for any new credit application, irrespective as to whether the debtor has an existing relationship with that lender (or lender group). It should be the responsibility of

the debt adviser to ensure that the debtor is aware of their statutory obligations when accessing credit (including clarification as to what constitutes credit such as unregulated buy-now pay later (BNPL) lending and insurance premium payment plans), and that the total amount of additional credit across all credit providers cannot exceed £500 without the prior notification and non-objection by the debt adviser. There needs to be recognition that the majority of price comparison sites and lenders have digital journeys, and the consumer will need to contact the lender directly to explain their circumstances, as without a mechanism in place to notify lenders (such as bankruptcy, IVA etc. using CRA data) there is no evidence of an SDRP. Some members are of the view that the SDRP should be a public record (like Bankruptcy, DRO, IVA) to minimise the potential for additional debt to be incurred. It is considered disproportionate for all lenders to change their systems and processes to enquire/investigate/obtain a declaration whether a borrower is subject to an SDRP. Debtors should be made aware that failure to disclose the SDRP when applying for credit could result in them being reported to application fraud databases when non-disclosure is detected.

50. There must be tacit recognition that the failure of the debtor to meet their statutory obligations to declare a plan or seek debt adviser non-objection would not make any debt that they incur deemed as unenforceable by the courts, regulator, or ombudsman.

51. Existing lines of credit: The regulations should be clear as to how existing lines of credit should be treated when assessing access to new credit (e.g., Rule in Claytons case and new drawings under a revolving credit constitute a new debt).

    a. Where the customer has an existing consumer credit product with a credit limit (e.g., an overdraft or credit card agreement) for practical reasons, it is suggested that that drawings against any formal credit limit that is retained on that existing product are not considered new credit for the purposes of the regulation.

    b. Where an individual takes out a revolving credit product, and the initial limit exceeds £500, there should not be a requirement for any drawings that exceed £500 to be approved by the debt adviser each time the borrowing exceeds £500.

    c. Mortgage overdraft: The ability to limit drawings on a mortgage current account will be subject to lenders individual terms and conditions. This scenario needs to be considered and clarified. Also, how debt is defined for offset mortgages needs to be clarified. We do not think that a reduction in offset balances should be considered as new credit, even though debt levels would increase.

    d. Joint party to an SDRP: Clarity is required on the implications when one party is not subject to an SDRP and applies for credit (or increases an existing limit) whilst the other party is on an SDRP e.g., a joint account overdraft and the increase in credit is requested by the joint borrower that is not subject to SDRP protection.

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

52. The reporting of DMPs and forbearance arrangements for customers that are experiencing financial difficulty is a long-established practice across the industry.

53. The approach to the new SDRP should be consistent with these existing practices to drive:

a. Factual accuracy.
b. Consistency and comparability.
c. Analysis of customer behaviour.
d. Confidence in the integrity of the CRA reporting system

54. Factual Accuracy:

   a. Arrears Level/Account status: The level of arrears must be assessed based upon the payments received compared to the expected contractual repayment amount. This is a consistent and factual approach. It also removes the subjectivity when lenders allow customers to make low/token payments under a forbearance arrangement. During this period, the lender would waive their rights under the agreement to take enforcement action. For example, where a lender allows a customer to make a token £5 payment for a period of time, if reported to CRAs in the same way as a customer making 50 per cent of the contractual payment, this would not provide transparency for data users and would mask the true level of financial arrears. It is important to avoid the same occurring under an SDRP.

   b. CRA 'Plan' flags: The presence of a plan flag is a consistent way to inform users of the CRA data, signifying that whilst the customer is not making their full contractual payments and is reported in arrears, a repayment plan has been agreed and is being maintained by the customer. The removal of the plan flag would signify that the plan has 'failed' and would allow data users to interpret the data accordingly.

   c. Balance: The balance reported should be the balance recognised by the lender on the customer account. If lenders are to be sent repayments after deduction of the 'funding amount', the reported balance will reflect the reduced payment. (This further supports our recommendation that the full customer repayment is sent to the creditor to reduce the debt).

55. New Plan Flag: We do not support the introduction of a new 'flag' to be reported at CRAs for SDRP. Industry does not see a benefit for consumers, and the introduction of the new flag would introduce significant cost, technological complexity, and implementation delays (which have not been considered in the impact assessment). A new flag would require all lenders across all sectors to:
   a. Consider how their systems would capture this new requirement.
   b. Amend the data submission files to the CRAs to allow this new flag to be shared.
   c. Amend the files that they receive from the CRAs to accept a new data characteristic.
   d. Analyse in all their scorecards how this new characteristic that signifies a SDRP should be interpreted and weighted (based upon the risk probabilities of these customers). As a new data point, this will take a time to build up enough data/ robust evidence to have confidence in the power of the individual characteristic.

56. SDRP payment behaviour: Whilst we advocate that the existing reporting against credit agreements/commitments should remain unchanged, we believe there is merit is exploring whether the payment profile under the SDRP can be tracked as a 'dummy record' that could be shared with the CRAs. The factual payment profile could be shared by the debt adviser, including recognition where payment breaks have been agreed, and non-receipt of a payment should not be considered as a 'breach'. This separate reporting has the potential to enhance the visibility of any positive payment behaviour of the customer and could be considered alongside the standard credit file information in decisioning. Implementing this change would need a detailed review of the implications and assessment of the practicality and proportionality of operational

changes required. Benefits need to be weighed up against costs, recognising that during the term of the SDRP the customer is limited as to the extent of new credit that they can access.

57. Customer outcome: The consistent reporting of data enables lenders to analyse those data and differentiate the good repayment behaviour that the customer on a plan is demonstrating. This would be evidenced by reducing balances and the maintenance on an agreed plan through the presence of a plan flag.

58. Unintended consequences
    a. Masking of Data: If the way that SDRP is reported to CRAs differs to other plans, this introduces a considerable risk that the true customer financial position will be masked (e.g., if there was an intention to report the customer as being up to date on their SDRP). This outcome would undermine the integrity of CRA data, which is a fundamental component of the industry's commitment to responsible lending. It would have material consequences for lenders in their data analysis and lending/ affordability assessments (and it should be noted that during the life of the SDRP the debtor is limited in terms of the additional amount of credit they can access).
    b. Comparability: There should not be a different interpretation for a customer who is seeking to repay their debts or arrears depending upon the debt solution that they choose. An SDRP should therefore be considered in the same way as a DMP.
    c. Payment breaks: Where a customer experiences financial difficulty in making a payment, the SDRP allows flexibility to remain on the plan through a payment break. The existing reporting protocols would recognise that due to financial difficulties the customer is not able to make a payment, and the missed payment would be considered as arrears, even though an agreed payment break does not lead to revocation of the plan. This approach should continue to provide an accurate and transparent view of the customer payment history.
    d. Joint Debts: The debt is sent as one record to the CRA. Whilst it is reported on each individual borrowers' credit file, it will have the same reported detail. It is not technically possible or desirable to have two different reporting treatments for the same debt.

59. Note that the comments on CRA reporting assume that the payment that the lender receives is considered to be the true repayment value to be reflected on the customers record, as we have highlighted elsewhere in this consultation response. Industry advocates that the full 100 per cent customer repayment is sent to the lender to reduce the debt. If a repayment is sent after deducting the ten per cent funding amount, it is assumed that this reduced amount will be treated as the accurate value of repayment for any CRA reporting (such as for balances and arrears calculations).

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

60. "Treat the plan as though the original agreement has been varied": We have significant concerns over the intention and interpretation of this wording. This cannot be considered to have any legal impact upon the underlying credit agreement and cannot be interpreted as a formal modification or variation of the contractual agreement (e.g., in line with s82 of the CCA). This would have serious consequences from the perspective of compliance with legislative requirements, for example the CCA:
    a. Formal legal modification / variation of the credit agreement on entry into the plan – which could require acknowledgements and agreement from the debtor

b. Implications for a joint borrower (where a joint SDRP is not being proposed)
c. Implications for the varied agreement if the SDRP were to fail, and the legal repayment terms to be applied after failure (would a further modification or variation be required, and would the debtor be co-operative)
d. Although we do not support the proposal that the payment distributor sends repayments after deduction of the ten per cent funding amount, if this is implemented, clarification is needed on the potential implications for the reporting of the customers balance, arrears calculation, and NOSIAs as required under CCA if creditors only receive 90 per cent the payment in reduction of the debt. The draconian sanctions of the CCA could result in unenforceability of the contract and disentitlement to interest.
e. The potential for the distribution of payments across creditors to result in roundings, which over time could mean that the outstanding balance and arrears values differ by pennies. The issue of rounding of payments could lead to an interpretation that the reporting of balances and arrears is 'incorrect'.
f. It is critical that the requirement and intention of the regulation is clearly articulated by HMT to avoid unintended legal risks.
g. The consultation does not consider the potential interaction or conflict between the SDRP and the FCA handbook rules, including the situations when lenders should provide forbearance.

61. We agree with the consultation document, that if the debtor makes all of the required payments under the plan, then that should be treated as repayment of that SDRP debt. The original agreement could be considered to be varied to the extent that completion of the revised payment schedule would be accepted by creditors as repayment of the SDRP debt.

62. Mortgage arrears: If mortgage arrears are included in an SDRP, then completion of the SDRP payment plan does not extinguish all mortgage debt, only the debt in the SDRP. The draft regulations - Reg 26 (3) - should be amended to clarify that limitation.

Chapter 4

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?

63. We agree to the approach for personal details. The provision of full customer details and addresses is essential to ensure efficiency and completeness as it will support creditors to identify all potential debts within their systems.

64. Where a customer has applied for a Breathing Space under the debt respite scheme, it is anticipated that searches against the provided addresses have already been carried out. If a debtor is applying directly for an SDRP, the level of detail provided to creditors should not be of lower standard than for Breathing Space, to maximise the ability for creditors to search their systems to identify all debts.

65. The consultation advises that creditors will be notified by the Insolvency Service of the intention to initiate a plan. As a dependency for the operation of the SDRP, it is essential that industry has visibility as to the technical requirements and content/form of notices well in advance of the live date to enable system and process testing. Members consider the system should be delivered to creditors for final testing at least six months ahead of the live date.

66. Details of debts: The SDRP application must include all debts that the debtor owes, including those where the debt adviser is proposing that they are excluded from the plan; why the debts are being excluded, who the creditor is; and proposals for the settlement of that debt

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?

67. *Not applicable*

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?

68. We agree that the allocation of payments to creditors should be based upon a pro-rata basis by debt value, rather than being split equally based upon the number of creditors. Allocating payments based upon debt value is the most equitable approach.

69. Ten per cent funding amount: The Debt Adviser/Payment Distributer should make full repayment to a creditor without the deduction of the funding amount, so that the debt reduces immediately by the full amount of the customer payment. The payment distributor/debt adviser should then invoice the creditor for payment of the ten per cent funding amount which would be a statutory payment. This approach is established practice under the 'Fair Share' arrangement for DMPs currently provided by the largest free to client debt advice providers.

70. If creditors are sent the net payment after deduction of the ten per cent funding amount, this will introduce significant legal and regulatory risks. As the payment is to be treated as though the full payment has been made, it will require lenders to adjust each payment upon receipt. Failure to make adjustments will result in the customer balance and arrears levels being inaccurate where statements and notices are required to be sent, and also affect regulatory reporting. The existing process under the DMP is for creditors to be sent the full repayment which avoids this risk. It is considered disproportionate to require each payment to be adjusted, or system changes to be considered for all products and brands. Even though the current Fair Share payment for a DMP is voluntary, members pay their Fair Share contribution. We support SDRP making the funding amount payment a statutory requirement that would ensure contribution to the debt advice sector costs from all creditors. We would expect that the significant value of creditor debt within the SDRP would be from large organisations and any potential 'leakage' of income would be relatively low.

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

71. Members recognise the potential for increased consumer detriment if priority debts remain outstanding. We have no objection to the proposed direct allocation to accelerate the repayment of priority debts. We do however recognise the potential for detriment if priority debts remain outstanding due to a longer payoff timescale. We understand that a different approach is typically taken within the DMP to clear priority arrears quicker. As part of our recommendation for a holistic review of the SDRP with cross sector experts, the approach to priority debts should be considered.

72. We recognise the need for transparency and consistency of payments to creditors. The consultation proposes that allocations calculated at the start of the plan should remain fixed until a plan variation requires them to be changed. As we are proposing that debtors can make additional voluntary repayments to their plan debts, the debt adviser should consider any material change in debt values at the annual review and require a re-calculation of allocations as appropriate.

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?

73. No. The proposed approach to use the Standard Financial Statement (SFS) as a tool to review the customers finances and determine their net available income is appropriate. The SFS makes provision for the customer to build a contingency fund (through an accepted allowance for savings in the SFS), and the SDRP scheme has provision for unexpected shocks by allowing payment breaks. The debt adviser must identify what is a sustainable repayment and propose that to creditors. We recognise that it is in no one's interest to establish a plan where repayments are not sustainably affordable, however, in accessing a statutory debt solution where there is no requirement to pay interest and charges, the customer should not be able to dictate how much they are willing to contribute to repayments.

74. We do not think that it should be mandated that the full disposable income is always used as the debt repayment. Workers in the gig economy and self-employed can have a variable and less predictable income. Even though the SFS makes provision for customers to make savings out of their income to provide resilience for fluctuations in finances, this might not be sufficient to cover a monthly repayment. We do not advocate an overly prescriptive requirement that would risk the plan breaking. The debt adviser should determine what is a prudent regular payment of identified disposable income to be set as the plan repayment. Linked to this is the points made earlier on flexibility of payment breaks and overpayments at paragraph 47.

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

75. Yes. Where customers have additional funds they should be able to make additional voluntary payments. These additional voluntary payments should be able to be allocated to specific debts if the customer requests this (e.g., to repay a priority debt quicker, or extinguish a small debt), rather than distributed under the standard payment allocation for the regular payments.

76. Where a significant reduction to a debt value is made, the regular payment allocation should be reviewed at the annual review by the debt adviser.

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

77. Standard Financial Statement (SFS): Clarity is required whether a regulated debt adviser is able to propose a plan if they are not a registered user of the SFS (i.e., the use of the SFS is a statutory requirement).

78. In addition to general information setting out the causes of the financial difficulty and any appropriate commentary to support the SFS information and proposed repayment amounts, the following specific information should be provided to creditors to provide transparency when assessing and voting on the proposal:
    a. Disclosure authority: Authority from the debtor that the creditor is able to disclose their financial information to the debt adviser.
    b. Excluded Debts: Debts which the debtor and debt adviser are excluding from the plan (e.g., small debts). The value of the debt and creditor name should be provided.
    c. Format: The information provided to creditors should be in a standard and consistent format. This will help to ensure all relevant information is provided by the debt adviser and readily identifiable to make the process efficient.

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

79. No. Creditors should be able to object:
    a. If the debtor is known to have assets that could be realised to repay the debt. Even though the debtor might not be able to repay their qualifying debt as it falls due, repayment through the sale of assets rather than a long term SDRP might be a better outcome.

    b. Should secured arrears be proposed to be included in an SDRP, the objection by this creditor on its own should require the plan to be subject to a fair and reasonable test in all circumstances (and not be subject to the 25 per cent debt threshold as proposed in Reg 13.). There should be a presumption that the objection would be upheld in favour of the creditor unless there is clear and demonstrable evidence of a clear benefit for the arrears being included in an SDRP rather than subject to the existing forbearance arrangements under mortgage regulations. Expired Interest-only mortgages should not be classified as arrears or considered eligible for inclusion in an SDRP.

    c. Should the provision of a SDRP for a customer conflict with the FCA's new requirements under the Consumer Duty

80. We do not think that creditors should be required to provide evidence in order to object the plan. We think a reason offered should be sufficient, with further evidence required as part of the Fair and Reasonable Assessment. If there are concerns that this will lead to unwarranted objections, the Insolvency Service should track objections and engage the creditor/ escalate to their regulator as appropriate.

81. The consultation proposes that the creditor must object before the end of a 14-day period after the Secretary of State sends out notice of a provisional plan. Not all creditors might receive electronic notification of the application, and experience from the Debt Respite Scheme regulations identified that notifications were sent to incorrect creditors or addresses. Provision should be made that where creditors have not been informed of the provisional plan, a similar approach to Reg 32 (error in debt value) is available to that creditor, whether the nature of their debt (e.g., secured mortgage arrears) or the value of their debt (e.g., would take objections above 25 per cent of the debt).

82. We agree that where it can be evidenced that a creditor has received notice of a provisional plan and does not respond, this should be deemed as consent to the plan. We have concerns that the communication issues that arose as part of the Debt Respite Scheme, where moratorium notices were not delivered to the correct creditor or creditor address, would result in creditors missing the opportunity to vote on a provisional plan. In the event that the creditor has not been

able to vote against a plan due to no fault of their own (e.g., the debt adviser/customer not providing the correct details), the debt adviser should be required to accept that vote as though it had been received within the due timescales and revisit the plan as appropriate.

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?

83. Annual review: The regulations should be clear as to the implications for the customer who does not engage with the debt adviser at the annual review, even if they are maintaining their plan payments. There should not be a divergence in the SDRP requirements from those that the FCA expect for the management and annual review of DMPs.

Chapter 5

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

84. Yes, however as advised in paragraph 47 the ability to apply for a payment break should not be restricted to the debtor requesting this at least 14 days prior to the payment being due. This is considered too restrictive.

85. We agree that the debt adviser should inform the creditor of any agreed payment break and the subsequent extension of the payment break as appropriate. The communication to the creditor should require the debt adviser to provide a brief explanation of the reason for the payment break. The debt adviser should also keep creditors informed if payments are not made and update creditors regularly on discussions with the customer. Payment Break information should also be collated to understand/guard against any plan/design/scheme shortcomings and support regulatory oversight.

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

86. Plan payment variations: The regulations are not clear as to how a reduction in the plan payments of up to ten per cent is defined. The intention should be that the debt adviser is able to vary the initial plan payment by up to ten per cent without an ability for creditors to object. The debt adviser should not be able to reduce the current payment plan by ten per cent, where the cumulative effect of the reductions is that the initial payment reduces by over ten per cent, without submitting a variation to creditors to vote / object to the change.

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?

87. Where a creditor wants to raise an objection outside of the initial proposal or where debtor payments have changed, currently, it is at the debt adviser's discretion to conduct a review. The only option available to creditors is to challenge this is via the courts. This is too onerous, and a fair & reasonable assessment should be possible in these scenarios.

88. The governance and oversight responsibilities of the Insolvency Service and FCA are unclear in the event of a complaint. It is possible for a non FCA regulated debt adviser to process a SDRP proposal. We therefore consider it essential that a clear delineation of the regulatory responsibilities for the debt advice and regulatory compliance is documented.

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

89. Yes, we agree with the principle that the SDRP will only appear on a private register. There should be acknowledgement that as the plan is not public information:
    a. Lenders will not be able to see if a customer is on a SDRP when assessing a new credit application. The onus remains on the debtor and as highlighted in paragraphs 49-51 a customer accessing credit outside of the regulatory thresholds would not make that debt deemed unenforceable by regulators or the Ombudsman

    b. The information of being on a specific SDRP plan would not be reported on the customers' credit file, however each debt within the SDRP could have a flag applied to the account at the CRA to indicate that they are on a plan without being specific to whether an SDRP, DMP or other plan agreed with the creditor.

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

90. Ongoing liabilities: Internet services or mobile phone bills should be limited to the core functionality to enable access to internet and telephone networks. Ancillary services and products such as entertainment packages should be excluded.

91. Writing off debts: There may be certain circumstances where lenders may wish to 'write of the debt' and terminate the agreement with the customer. Through exclusion of the debt from the SDRP, the lender would be able to issue the necessary CCA documents to terminate the customer agreement. If a lender is to undertake this course of action (i.e., by allowing for the termination of agreements while the debt is on an SDRP), they will need to be clear of the implications for the customer, which could include:
    a. Whether they will consider the repayment of the debt to date as settlement of the debt, and no further payments are due, or
    b. Whether the account will be terminated and defaulted, and the lender waive their rights to collect the outstanding debt. The implications for the customer's credit file would need to be communicated.

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?

92. Mandatory:
    a. Where a debtor can repay their debts in full within a reasonable period of time, the debts will be reduced from the plan. As we have asserted in paragraphs 69-70 the debt adviser should be required to send the full repayment to the creditor to reduce the outstanding debt.

93. Discretionary:
    a. Arrears: Non-payment by the debtor is only a discretionary ground for the debt adviser to revoke the plan. Whilst the grounds for revocation start when a customer has failed to make payments, the revocation is still at the discretion of the debt adviser. There is potential for an extended period of non-payment to occur if the debt adviser exercises discretion to not revoke the plan. Where the plan is in arrears by the value of two payments, the plan should be revoked unless the debt adviser gets agreement to a variation from creditors. (Also note our concerns in paragraph 47 regarding two payments of arrears where these are not monthly payments).
    b. The non-payment of ongoing liabilities, or the breach of the regulations with respect to access to new credit should also be grounds for revocation. There is a view that these scenarios should be grounds for immediate mandatory revocation, so that a consumer cannot delay and obstruct recovery action (such as secured loan possession proceedings).

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

94. Conditional notice: The maximum time allowed for any conditions to be complied with should be stipulated in the regulations, and not left to the debt adviser to define within the notice. With the flexibility built into the regulations, a period of a maximum of 1 month in which to evidence the debtor has met the conditions would appear appropriate.

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

95. Effect of revocation: The revocation of a plan has effect 14 days after the date on which the plan is revoked, or 6 weeks in the event of the death of the debtor (Reg 48 (1)). For joint debts, Reg 48 (6) indicates that the protections continue for 6 weeks, irrespective as to whether the other borrower applies for a new plan. We seek clarification as to why this extended period is proposed/required, as we would not support an extension of the protections for this period.

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

96. We agree that the limitation on a debtor applying for protections once every 12 months is appropriate.

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

97. Treatment of payments: The consultation proposes that at the end of a plan, whether that is an early revocation or the completion of the required payment plan, creditors should treat the payments received as though they had not been reduced by the 'funding amount'. As highlighted in paragraph 70, we advocate that the customer full repayment is sent each month to the creditor in full reduction of the debt.

98. Should the full payment not be sent to the creditor, there cannot be any legal obligation mandated on the creditor to recognise the full payment any earlier than the end of a plan (either through revocation or completion of the required payments).

a. System changes: It would be unnecessarily complex for creditors to amend all their product accounting systems to 'gross up' the payment received each month. There is no evidence that the complexities of this operational change have been considered in the consultation of the costs considered.

b. CRA reporting: The reporting to the CRA would be based upon the factual data that the creditor has on their records and not assumption that the full payment would be recognised when the plan is closed or revoked

c. Regulatory reporting: Given the complexity of amending individual payments, we would welcome HMT views on how they have considered the impact on any regulatory reporting, such as mortgage arrears, where the value of arrears is a component of the reporting calculation or mortgage performance data (PSD007).

d. Audited accounts: Debt balances being overstated in audited accounts where the ten per cent of SDRP repayments not received are not payable by the customer and are not an asset on their balance sheet.

e. Impairment and Capital: Implications for capital and impairment reporting requirements.

f. Consumer Credit Act: As we have highlighted in paragraph 60, there cannot be any implications for the underlying credit agreement when a customer enters an SDRP. We have material concerns should members be required to reflect the full payment in communications, statements and notices being sent to the debtor, and the potential for a legal challenge that could render the agreement unenforceable:

    i. Annual statement balance – reflecting the actual payment received and not the grossed-up value as though the funding amount had not been taken.

    ii. Notice of Sums in Arrears (NOSIAs): Will calculate the level of arrears based upon the expected contractual commitments in the credit agreement, and the actual funds received.

    iii. Rounding errors: Grossing up a payment received after the deduction of the 'funding amount' can lead to rounding errors. These rounding errors could result in the payments made to a customer being pennies different over a period of time. The potential for rounding errors to create 'incorrect' balance reporting would have material consequences for CCA compliance.

g. FCA MCOB requirements: Factual accuracy issues around statements issued under the FCA MCOB rules i.e., annual statements, quarterly statements, and confirmation of arrears balance as per paragraph 60.

99. We would welcome confirmation from the project team that the potential unintended consequences and complexities of payments being made to creditors after the deduction of the funding amount have been fully considered and that the regulatory and legal implications considered. We advocate that the full repayment is sent to creditors to avoid the unintended consequences and complexities highlighted above. If this is not to occur, guidance on how the ten per cent write off should be treated in reporting is necessary to operationalise the SDRP.

Chapter 7

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

100. No. The deduction of the funding amount before the payment is sent to a creditor adds undue complexity, regulatory risk, and legal risks to firms.

101. We agree that all creditors that benefit from the plan should contribute, and that the contribution should be a statutory requirement rather than a voluntary contribution. The Debt Adviser/Payment distributer should make full repayment to a creditor without the deduction of the 'funding amount' so that the debt reduces by the full amount of the customer payment. The debt adviser should then invoice the creditor for payment of the ten per cent funding amount which should be a statutory payment. This approach is established practice under the 'Fair Share' arrangement for Debt Management Plans currently provided by the largest free to client debt advice providers.

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

102. Electronic System: The consultation highlights the dependency on the work to build the necessary administrative and operational structures ahead of the SDRP start date. Industry does not yet have any visibility as to the form and content of these structures to identify if they will meet industry needs to effectively and efficiently operate the SDRP scheme. The development of the electronic system must include an adequate timescale for lenders to be able to engage in the development of a fit-for-purpose system, and then receive and test systems ahead of any live date.
    a. Members consider the system should be delivered to creditors for final testing at least six months ahead of live date.
    b. Members consider it essential that detailed project plans of the system development are published (e.g., business requirements specifications, technical specifications, and development timeline) against which delivery can be tracked.

103. Plan Register: An email address for the debt adviser organisation should be provided to improve efficiency.

104. Fair and Reasonable assessments:

    a. As a new process, it is critical that any guidance that the Secretary of State intends to publish on how it intends to exercise this function engages all stakeholders at the earliest opportunity. As the regulations require the fair and reasonable assessment to have regard to the guidance published, this will have quasi regulatory standing, and must be subject to scrutiny and challenge.

    b. There should be provision for an independent third-party review of how the operation of the Fair and Reasonable assessment process and guidance is working after 12-18 months of the regulations coming into force, the timing being dependent on a representative volume of assessments having been conducted. This review must consider the need for any changes/improvements to the guidance in the light of experience of its practical application. Any recommended changes in the guidance being subject to consultation with all stakeholders.

c. There must be a clear responsibility on the Insolvency Service to oversee the ongoing review of guidance and to action any requests for review in light of changing regulation or legislation that might render it unsuitable or irrelevant.

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

105. Yes. However, we would question whether the payment distributor would have sufficient knowledge of payment variations or payment breaks to be able to categorically state that all of the payments required under the plan have been made and all liability to the debt in the plan is extinguished. Before the completion of the plan is communicated to the debtor, the debt adviser and payment distributor should review and agree all required payments have been made.

106. The regulations should be specific as to how distribution of debtor funds should occur if less than the full repayment is received. We recommend that each creditor should receive a payment, reduced by the pro-rata amount relative to the reduced payment received. Payments should be made on a per debt basis.

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

107. In developing the plan, the debt adviser should obtain the payment details that the creditor wishes to use for receipt of payments for that debt/customer.

108. The debt adviser should share these with the payment distributor at the point that the plan is agreed. Debtors could make payments immediately, and there should not be a delay in debtor payments being sent to creditors.

109. Payments to creditors should be made at an individual debt level so that funds are appropriated according to the SDRP requirements.

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

110. A concern is that debt advisers could have a conflict of interest to include debts within an SDRP (e.g., high value of mortgage arrears, which might not be the best outcome for the customer), as the remuneration for the debt adviser is linked to the value of debt being recovered. Consideration could be given to how perverse incentives could be minimised, and any conflict of interest should be taken into account in Fairness and Reasonableness assessments.

Chapter 8

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

111. Yes, we are supportive of the changes subject to the following comments.

a. Reg 5 - Qualifying debt to include future and contingent debt: Clarity is required as to the policy intent. Monthly mortgage payments are "known and quantifiable at the date of the application for a moratorium and which become due for payment during the period of the moratorium". Where a secured debt payment is not considered an ongoing liability (for example where the mortgage debt is not relating to the primary residence) it is unclear how the future debt payments should be treated, and there is an unintended risk that these are included. Greater clarity and examples of the policy intent of 'future and contingent liabilities is required.

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?

112. We have no comments at this stage.

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?

113. The regulations should be clarified to make clear that the balance of Interest-only Term Expired mortgages does not qualify as "arrears" and hence are not a qualifying debt. This would avoid the risks seen to date of some borrowers seeking to game the system by including their whole mortgage balance in breathing space. It would also avoid debt advisers having to make judgement calls on whether the legislation is intended to result in the whole balance of such mortgages being eligible for breathing space and the resulting inconsistent practice in this regard. This is consistent with our arguments that Interest-only mortgage balances should be excluded from SDRPs and interest payments on the balance treated as ongoing liability.

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

114. We have the following comments regarding the breathing space regulations:

a. Insolvency Service portal functionality prevents a number of key fields, including debt type and debt reference, to be updated by debt advisers or creditors after the initial request has been submitted. This prevents input of additional information which may help creditors to find the account in a timely manner. This is currently a manual process e.g., via email, and risks a delay in the customer receiving Breathing Space protections. These fields should be made editable to improve the overall experience for all parties.

b. Planned updates to creditor guidance should be provided to creditors in advance with sufficient notice and consultation period for each change to give creditors time to review and input. The changes should be clearly set out rather than creditors having to compare versions to establish the changes, as occurred the first time the guidance was updated.

c. Insolvency Service updates are scheduled with little notice to creditors (c2 weeks) which limits preparation time for changes. An ongoing engagement model is required with Insolvency Service including an advance quarterly change roadmap. Failure to do so risks Insolvency Service changes unexpectedly and adversely impacting creditor Breathing Space processes and temporarily delaying/prevent customers receiving Breathing Space.

d. Mental Health Crisis moratorium (MHCM): The duration of a MHCM moratorium is often lasting for significantly longer than the average 64 days stated in the Impact Assessment. Where a party to a joint mortgage is in a MHCM, there are practical challenges in achieving what could be the best outcome for all parties where the ongoing liability payments are not being maintained. Lenders want to support their customers and whilst one party is in a MHCM, still have a regulatory duty to advise all parties of any arrears, with new arrears arising after the commencement of the moratorium not being subject to the moratorium protections. We recommend that appropriate subject matter experts across stakeholders review this issue.

Chapter 9 For debt advice agencies:

Questions 44 – 63: Not Applicable

For all:

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

115. We do not believe that the Impact Assessment provides a realistic or credible evaluation of the SDRP.

116. Costs: The SDRP proposals risk introducing significant complexity for creditors to implement. It is essential that lenders have a clear understanding of the intent and meaning of the draft regulations to be able to evaluate.

117. Benefits: Industry challenges the assertion that the SDRP will generate an additional £1,834m from increased recoveries in the first 10 years.

a. Industry already collaborates successfully with the advice sector to provide support for the repayment of debts through a DMP. The creation of the SDRP will not increase the disposable income available to customer and therefore increase their payments under a plan.

b. Whilst the additional protections of the SDRP should encourage more customers to seek debt advice and prevent any poor practice from creditors where debts are in the plan, we do not agree with the assertion that the protections within the DMP are insufficient and lead to high failure rates. Industry view is that the fluctuating nature of many customers finances and their lack of financial resilience impacts their ability to maintain sustainable plan payments. Participants in SDRPs will be exposed to fluctuating finances in the same way, and the risk of failure of an SDRP appears greater given their inflexible design compared to a DMP.

c. We request confirmation from HMT that an SDRP account can be included within a debt sale by a lender (subject to the continuation of the consumer protections by the purchaser). This would align with the existing approach for a customer on a DMP.

118. Detailed feedback on the Impact Assessment will be sent under separate cover. This will include responses to the questions raised by HMT for discussion at a roundtable on 20 July 2022.

If you have any questions relating to this response, please contact Ian Fiddeman (ian.fiddeman@ukfinance.org.uk) or Sonia Fernandes (Sonia.Fernandes@ukfinance.org.uk).

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