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To Whom It May Concern,

Debt Recovery (Mental Health Moratorium) (Scotland) Regulations Consultation

We welcome the opportunity to respond to this consultation. ABCUL is the primary trade association representing credit unions in England, Scotland and Wales with around two-thirds of credit unions in mainland Great Britain affiliated to the Association.

Credit unions are co-operative societies that provide financial services – primarily savings and loan facilities – to their member-owners. They are registered as Co-operative Societies under the Co-operatives and Community Benefit Societies Act 2014 and the Credit Unions Act 1979. As deposit-takers, they are dual-regulated by the Prudential Regulation Authority and the Financial Conduct Authority.

Credit unions have, since their inception in Britain in 1964, been closely associated with anti-poverty and financial inclusion. They tend to provide savings and loan facilities to those with limited or no access to financial services from mainstream providers, generally due to their low income and/or lack of a developed credit profile. They have been a central element of numerous government and philanthropic initiatives to extend financial inclusion and address the lack of adequate provision of affordable credit and secure savings facilities for large sections of the population. They are capped in the interest that they can charge at 42.6% APR under the Credit Union Act 1979 and provide credit in competition with high-cost lenders.

They are numerous, with over 230 credit unions active in Great Britain today, with over 1.5 million members and £2.7 billion in assets under management. They range from mid-sized businesses of up to 50 staff to small voluntary organisations.

ABCUL's Response

ABCUL welcomes the opportunity to respond to this consultation and has responded to the questions applicable to our member credit unions.

Question 1. Do you agree with the proposed mental health eligibility criteria as listed above?

We would urge that there should be a cautionary approach to the eligibility criteria. There should also be a robust process for verifying individuals who fall under the criteria listed. If the criteria were widened, it would need to be ensured that there is no abuse of the system process.

We support the Scottish Government's concerns about the possible resource constraints that could take place due to the widening of eligibility. It should not be embedded but could be part of an exceptional circumstances review done on a case-by-case basis.

Question 2. Do you agree with the proposed debt eligibility criteria as listed above?

We support the Scottish government's stance, saying that we believe the money advisor should not be making a statement without spending time with the individual and fully understanding the individual's financial circumstances as well as going through a financial assessment process, but this would not be appropriate during any mental crisis.

We would suggest that availability of the moratorium should be based on assessment by a treating professional on need and potential benefit. We support the proposal that mental health professionals must provide a statement that financial debt is negatively impacting mental health.

Question 3. Do you agree that an individual subject to a statutory debt solution should not be eligible for a Mental Health Moratorium?

We agree with this and support the Scottish Government's stance regarding an individual in a statutory debt solution. The individual should not also have the opportunity to apply for a Mental Health Moratorium.

Question 4. Do you agree with the proposed definition of moratorium debt which would qualify to be protected in a Mental Health Moratorium (see regulation 3 in particular)?

We support that the individual should pay their ongoing liabilities during the Moratorium. We also agree with the protections for creditors. Protections need to be in place for creditors who are unaware. Given there will be no public register, there must be some reassurances made to creditors who have given credit to someone without knowing the individual is within a mental health moratorium.

We also agree with the definition: up until the date of application, it should be subject to this regulation.

Question 5. Do you agree with the proposed requirement for AiB to confirm that the mental health eligibility criteria are continuing to be met?

We agree with the proposed requirement for the AiB to review whether the eligibility criteria continue to be met. However we would recognise the ongoing pressures that mental health services are facing currently so this process may face delays.

Question 6. Do you agree with the proposed application process?

We agree with most of the application process but strongly oppose the notion that someone else can agree on their behalf who does not have the power of attorney as this could be utilised maliciously. This should only be carried out in exceptional circumstances, i.e. no family or support, and then we agree it should be a mental health professional.

We do agree that individuals should not be forced into a Mental Health Moratorium if they do not wish to enter.

Question 7. Do you agree with the proposed process for the notification of the Mental Health Moratorium?

We agree with the proposed process. The proposed process allows for both the individual or legal representative, mental health professional or money advisor, and every creditor or enforcement agent to be notified. Ensuring every creditor and enforcement agent is notified

allows for the intended purpose of the Mental Health Moratorium. However, we do have concerns about the accuracy of the creditors notified.

For example, if the individual has not provided all creditor information to the money advisor, some creditors may not receive notification. We would also like to raise an issue for some potential creditors, like credit unions, where an individual is a member but currently only saves into the firm could have access to lending. The credit union does not have any way of knowing if that individual is in a mental health moratorium or if an individual applies for credit after the application process is complete.

Question 8. Do you agree with the proposed process for the registration of the Mental Health Moratorium?

We agree that listed creditors are notified, but how can one ensure that all creditors in the application from the final list, as not all creditors appear on bank statements.

For creditors not listed in the application (but contacted by the individual after submission for further lending), how can these creditors check if the individual is within a moratorium period if there is no public register. If there is no way for member credit unions to check the register, this places a risk that someone who is in a Moratorium could be provided with additional credit.

We would urge for a procedure to be implemented that would allow creditors, like credit unions, to have limited access or a verification process for lending applications to ensure responsible lending and fulfil their consumer duty requirements to their members. Creditors require oversight of individuals potentially in the Moratorium. As a result, could there be a login process which then allows creditors to preform search driven results for example name and date of birth. If the data entered does not match with a individual in a Moratorium then no results would be visible, we are not advocating for full access to the complete register but to a limited search functionality.

Question 9. Do you agree with the proposed Mental Health Moratorium protections included in the current draft regulations?

For the individual in a Moratorium there should be certain protections in place. We would support the inclusion of protection against eviction and protection from utility supplies being disconnected/pre-payment installation. Currently under section 73j (2) of the Debtor (Scotland) Act 1987 creditors cannot petition for bankruptcy and relevant arrestment funds cannot be released to creditors, so we agree that these protections should be expanded to include protection against eviction and utility supple disconnection. These implementations would also reflect the breathing space scheme in place in England.

Question 11. Do you agree that protection against the installation of pre-payment meters and disconnection of gas or electricity supply should be one of the protections available under the Mental Health Moratorium?

As stated above we support the proposal to have similar protections to safeguard individuals against higher costs for Gas and/or electricity or against disconnection, which are a vital necessity for basic living standards.

Question 12. Do you agree with the proposed framework for the Mental Health Moratorium period?

We agree with the proposed framework in relation to the recovery period and agree that a shorter time frame may not be sufficient.

Question 13. Should an individual in a Mental Health Moratorium be subject to the following proposed obligations?

We strongly believe that an individual in a Mental Health Moratorium should be subject to the following proposed obligations:

- An obligation to pay a continuing liability
- An obligation to not obtain additional credit
- Some other obligation (please specify in the comment box below)

We strongly disagree with the arguments made that there should be no obligation against obtaining additional credit, stating that some individuals may engage in compulsive spending due to mental health conditions and situations where an individual requires credit such as a remortgage to deal with current debt problems. If the individual is not able to pay ongoing liabilities then there should be no access to further credit, unless under a limited amount for exceptional circumstances.

An individual should not be able to get additional credit unless it is in an exceptional circumstance. If decisions are made to allow credit applications, the £2000 proposed is far too high. Existing limits on proven initiatives like IVA/DRO are set at £500, and we would push for a similar limit. We do, however, support that the individual should pay their ongoing liabilities during the moratorium.

Question 14. Do you agree with the proposed process for a creditor's search?

We agree with the proposed process for the creditors' search to identify the debt owed and with the provision of details to AiB. However, 'as soon as reasonably practical' in undertaking the search of records may be open to interpretation by any individual in the AiB, a firm timescale is needed.

Question 15. Do you agree with the proposed consequences for creditors?

We partly agree with the proposed consequences for creditors; actions taken by a creditor against the protections may make the Mental Health Moratorium aims invalid. Furthermore, the wording of 'as soon as reasonably practical' is too open for interpretation by any individual in the AiB; a firm timescale here is also needed.

Question 16. Do you agree with the proposed process for an individual to request a review of AiB's decision to either not grant or cancel a Mental Health Moratorium?

We partly agree with question 16 in relation to question 6; an individual unable to make decisions on their own suggests they will not be able to request a review on their own. This further exposes the individual to malicious intent. There must be robust safeguards in place regarding the autonomy of the individual.

Question 17. Do you agree with the proposed process for a creditor to request a review of AiB's decision to grant or not cancel a Mental Health Moratorium?

We agree with the proposed process for a creditor to request a review; creditors should have the option to request reviews of the Moratorium.

Question 18. Do you agree with the proposed cancellation process?

We agree with the proposed cancellation process. The proposed cancellation process provides a robust and fair approach. The example given where an individual has sufficient funds to pay their creditor but simply refuses to do so.

Question 19. Do you agree with the proposed interaction between the Mental Health Moratorium and the standard moratorium?

We partly agree with the proposed interaction between the mental health moratorium and the standard moratorium and the ability to enter a new mental health moratorium immediately upon meeting the eligibility criteria. However, creditors may note the inability to recover debts for another 6 months.

Please contact us at advocacy@abc.ul.org if you have any questions about our response to your consultation.

Kind regards,



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ABCUL