ABCUL
Association of British Credit Unions Limited

5th August 2022

To Whom it May Concern,

Statutory Debt Repayment Plan 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 who provide financial services – primarily savings and loans 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 loans 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 250 credit unions active in Great Britain today with more than 1.4 million members and £2.3 billion in assets under management. They range from mid-sized businesses of up to 50 staff to small voluntary organisations.

Response to Consultation

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

We would comment that the extensive policy issues surrounding the IVA market must be tackled for the SDRP to achieve its intended impact – otherwise many debtors for whom the SDRP would be appropriate will likely still enter an IVA due to the aggressive marketing tactics and ease of entering these solutions.

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

We agree with the broad approach to debtor eligibility.

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However, it is concerned that the 12-month minimum period to re-enter a plan is too short. If the debtor had successfully completed a plan previously, we do not believe they should be able to enter a plan after only 12 months, as it would be unreasonable to allow the debtor to access a pause of interest accrual and fees on all their debts again in this short of a timeframe. If the debtor had not completed the previous plan they were in, the nature of the reason for revocation would be important for assessing whether it was appropriate to enter another plan 12 months later. It is not clear the 12-month minimum period to re-enter a plan prevents against repeated usage.

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

We broadly agree with the approach towards qualifying debt. We agree that future and contingent debts should be made eligible for the scheme for consistency and equal treatment of creditors. Further, we agree that is appropriate for internet & mobile phone bills to count as priority debts, given the essential role these services play in debtors' lives.

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

We believe that pre-existing payment arrangements and plans should be included within an SDRP, both for simplicity and to ensure equal treatment for all creditors owed.

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

In principle, we agree with the proposal to include small debts out of fairness, both in the equal treatment of creditors and to not set an arbitrary threshold of debt value. Nevertheless, we believe that it could also be appropriate to excluding debts with a low outstanding balance for which the administration involved with inclusion in the scheme would outweigh the value of treating all creditors equally.

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?

If small debts were to be excluded, we foresee the threshold balance for debt balances to be excluded from a plan to be very low, circa £50. However, we would envisage there being a limit on the total value of small debts excluded from the plan to protect against cases where there are a number of small debts excluded. If the value of debts exceeded this threshold, we would suggest excluding the debts in order of increasing size, up to the limit on excluded small debts.

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

We agree with the set of protections proposed and believe it is both appropriate and practical to have the same protections in place as for Breathing Space. We agree with the decision to allow creditors to continue to engage with a joint debtor who is not in a plan if they wish.

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

We believe the option for a one month/one payment per year payment break would allow individuals the flexibility to ensure the plan is sustainable. We also agree that the set limit for payment breaks of up to two months/payments is important, to prevent the plan being extended beyond a reasonable timeframe.

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

We believe the payment plan schedule should be limited by a cap on the total duration of the plan rather than by setting a minimum value for repayment. It would be challenging to set a minimum payment threshold that is appropriate for all plans. The mechanism for creditors to object to a plan variation should be adequate in preventing payments from being varied to an unreasonably low level.

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

We strongly agree that debtors should be required to disclose that they are in a plan to potential creditors. As debtors have an obligation to not obtain further credit above a set amount, it is essential that there is full transparency around their plan when they approach potential creditors. Furthermore, it is fair to potential creditors to disclose this information given the nature of the debtor's financial situation and the fact that they are already committed to a long-term plan to repay their bad debts.

In practice, there will be debtors who will not disclose their plan to creditors. Subsequently, it is crucial that creditors can easily verify if a loan applicant is in a plan, either through a public register or on the debtor's credit file, in addition to mandatory disclosure from the debtor.

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

We would anticipate that SDRPs are marked in a credit file by creditors adding a note to debts in a plan, with the debt to be marked as satisfied once the SDRP is completed.

However, we do not agree with the expectation for creditors to report payments to the CRAs as though the debtor has met the terms of their loan agreement. It would involve the credit union having to restructure the loan to hide the arrears – which is not fair nor transparent.

We do not think it is necessary to hide the fact that debt is in arrears when the debtor has not met the terms of their loan agreement. Though the debtor will be making considerable effort to repay

their debts, these will still be bad debts: the debt will not be repaid in full when taking into account fees and be repaid over a longer time period than originally agreed. For small and low interest loans, the 10% fees combined with a pause on interest may negate any income to creditors from the loan.

Credit unions would usually mark debts being repaid in a DMP as in arrears but would add a flag to indicate the debt is in a DMP for clarity. We do not see why a different approach should be used for the SDRP.

During the plan, creditors should be able to assess from a credit file that the debtor is continuing in an SDRP and see this as an explanation for the arrears. Though we understand the need to incentivise debtors to enter these solutions, there is still the incentive that a completed SDRP will be much more favourable to future creditors in comparison to other debt solutions. There should also be the incentive for individuals to continue to pay their debts without entering a SDRP wherever possible, therefore there should be differentiation in a credit file between a debtor who has continued to meet the terms of their loan agreement and a debtor in a plan.

Furthermore, many credit unions have a regulatory limit to loan terms of five years, that would need to be overcome if the loans were required to be restructured.

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

We are concerned that flexibility to allow debtors to potentially take out up to further credit of up £2000 at any point during the plan is far too high. Given the debtor has built up problem debt, to the point of not being able to repay their obligations as they fall due, it is not appropriate or responsible to allow them to build up a significant amount of additional credit whilst in the plan. This would risk the debtor getting into an even deeper cycle of problem debt and would threaten the sustainability of their plan. It is also not fair to the pre-existing creditors who have lost income due to the bad debt.

If the debtor is unable to meet their costs using their income, savings balance or payment break, a plan variation or, if appropriate, another debt solution should be considered, as their financial difficulty cannot be resolved with further credit.

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

We agree with the approach, and don't foresee any issues with not requiring previous addresses as long as all addresses associated with all plan debts are provided.

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

We believe that a pro-rata distribution is the fairest method of distribution between creditors.

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

We believe that 30% plus the pro-rata share of the remaining 70% of payments is a reasonable allocation of payments to priority debts. This is provided that the SDRP is designed to encourage sustainable plans. Given that returns to non-priority debts will be weighted towards the end of the plan, there is a risk that plans that are ended early will see little return to non-priority creditors, so if it becomes evident that SDRPs are being revoked at a high rate, appropriate action to mitigate this should be taken.

As there will be two allocations in the payment distribution to paying down priority debts, we believe that this 30% for separate allocation to priority debts should not be increased.

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

We do not believe that the debtors should be given greater flexibility in deciding payment size, as the purpose of using the Standard Financial Statement is to deliver a consistent method of devising a payment plan and to ensure the debtor is paying the amount they can afford to repay into the plan.

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

Yes, if the debtor finds themselves able to afford additional funds to make payments into their plan, and there is not a need for a plan variation (such as the additional income being a one-off occurrence), the debtor should not be prevented from making additional payments.

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

We consider the information proposed to be provided to creditors is appropriate – it is important for the creditors to receive a full breakdown of income and expenditure to assess whether the proposed payment schedule is reasonable.

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

We consider the grounds for objection to be sufficient for creditors to challenge a plan where 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?

We believe that the timing of process to initiate a plan is appropriate and would allow sufficient time for creditors to respond to a notice of intention.

Question 25: Do you consider that the proposed mechanism for implementing payment breaks is appropriate?
Given the short length and limitation on payment breaks, it is reasonable to not allow creditor objection, provided there is the opportunity for creditors to call for a review of a decision to grant a payment break (as has been stated in the guidance on grounds to request a review). It should also be ensured that the electronic system notifies creditors of a payment break promptly.

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

We consider the objection process, timeline and grounds for objection to be sufficient for creditors to challenge a plan where appropriate.

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?

We believe that the additional review process for creditors is appropriate as proposed. Though it is clarified that creditors can request a review if they consider a plan has been extended too far due to payment breaks under the grounds that this unfairly prejudices the interests of the creditor, it may be useful to include this as a separate ground for clarity to both creditors and debt advisors.

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

We believe that the register should be accessible by creditors, similar to the insolvency register, so that creditors are able to check whether loan applicants have a plan in place. However, this we feel that this could be comprised on if a plan is clearly marked on a debtor's credit file.

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

We believe that it should be an explicit obligation for the debtor to notify the debt advisor of a positive or negative material change to their circumstances.

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

We agree with the proposed grounds for revocation.

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

We believe that it is appropriate that there is at least a 12-month minimum period for reapplication. The debt advisor should be required to consider the reason for revocation of the previous plan if the debtor were to reapply.

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

We encourage the proposed level of fees as this is lower than many non-statutory debt solutions and would deliver a high level of returns to credit unions. However, if the Government think that the scheme could meaningfully compete with IVAs, creditors may be willing to accept a higher fee level as the returns would still be much greater than the average IVA.

It would be reasonable for the fees to be at a higher level if the SDRP can realistically compete with IVAs and encourage debt advisors to offer this option. We understand that the SDRP is intended to replace DMPs and payment arrangements. Nevertheless, if the poor practices of the IVA market are not tackled then many debtors for whom a SDRP would be appropriate will still enter IVAs, from which creditors will usually see very little return.

We would stress that the foremost preference is for the issues of the IVA market to be tackled and we hope that the current personal insolvency call for evidence will lead to reform of the regulations around IVAs. However, until this happens, it would be appropriate for the SDRP to offer a viable alternative for insolvency practioners to offer in comparison to IVAs. For this reason, we are accepting of a higher fee rate if this were to successfully reduce the incentive for insolvency practioners to instead direct.

As a result, we feel strongly that the level of fees should be able to be varied via secondary legislation by HM Treasury, in order to reflect the wider personal insolvency market and whether the SDRP needs to compete as alternative to IVAs.

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

For transparency, we believe that the Insolvency Service should be required to disclose to creditors the reasoning behind a decision made with a fair and reasonable assessment.

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

We have no concerns with proposed changes to the Breathing Space regulations.

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

There are two issues about the ways the Breathing Space regulations function in practice that we would like to comment on. It is apparent to credit unions that debt advisors are regularly not making it clear to debtors that breathing space is not a payment holiday. Debtors are not making

any payment during a breathing space in many cases, reporting that they were not told by a debt advisor that they should continue making payments. They will often pass on to the credit union that they were under the belief that a breathing space is a payment holiday.

We note that it is not a formal obligation for debtor to continue making payments during a breathing space in the regulations, nor is there an obligation for the debt advisor to inform the debtor that breathing space is not a payment holiday. We believe that there is at least scope to change the regulations to introduce an obligation for the debt advisor to clearly inform the debtor on the requirement to continue making payments during a breathing space.

Further, credit unions are regularly approached by debtors in a breathing space who are seeking further credit and have not been made aware that they are not permitted to have additional credit over £500. As above, we believe that a requirement for debt advisors to clearly inform debtors of this condition of a breathing space.

Please get in touch should you wish to further discuss our consultation response.

Yours sincerely,

Niamh Evans

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