advice UK
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Statutory Debt Repayment Plan: Consultation (HM Treasury)

AdviceUK response

August 2022

Thank you for giving AdviceUK the opportunity to comment on Statutory Debt Repayment Plan: Consultation.

Section 1 of our response includes background information on AdviceUK. **Section 2** details our response to the consultation.

SECTION 1: BACKGROUND AND OVERVIEW

About AdviceUK

We would like to take this opportunity to provide you with some background information about AdviceUK: -

- AdviceUK is the largest network of independent advice centres in the UK, with (at the time of writing) over 650 member organisations in England, Scotland and Wales.

- Our members are very diverse both in terms of size and nature. Some are large organisations with predominantly paid staff. However, many are small community-based organisations, some of whom are staffed and managed by part-time volunteers.

- For many AdviceUK members, the provision of advice is their core business activity. However, for a significant minority advice is only one of a range of services provided, e.g. our members include housing associations, student unions, and women's refuges.

- Some of our members provide advice across a range of areas of social welfare law, e.g. housing, debt and benefits. Others only provide advice in one area of law, e.g. immigration or employment.

- More than 250 of AdviceUK's members provide debt advice to the general public. The Money Advice Trust has estimated that they account for 25% of free- to-client face to face money advice provision in the UK.

- Most of our members work in areas with high levels of multiple deprivation and over a quarter specifically serve niche communities, e.g. defined ethnic minority groups (very often where English is not the first language), or disabled people.

- Debt advice was first developed by AdviceUK member the Birmingham Settlement in the 1970s and since then our money advice members have been at the forefront of innovation in the sector. This continues to be the case today as members have responded to the COVID-19 pandemic and the current cost of living crisis.

- AdviceUK has been designated as a Competent Authority under the Debt Relief Order regulations.

SECTION 2: ADVICEUK'S RESPONSE TO THE CONSULTATION

Introduction

In our response dated January 2019 to the Government's consultation on the proposed Breathing Space scheme we wrote:

> AdviceUK welcomes the Government's proposals to introduce a breathing space scheme and a statutory debt repayment plan. We believe that these proposals will bring important protections to overindebted people, including clients of AdviceUK members.

Since then, the Breathing Space scheme has been implemented and our views on the Statutory Debt Repayment Plan (SDRP) have changed.

The debt advice landscape has been significantly altered in the last three and a half years, partly due to the impact of the COVID-19 pandemic and partly due to the current cost of living crisis. We no longer believe that the Government's proposals to introduce a SDRP will bring significant benefits to overindebted people, including clients of AdviceUK members. Furthermore, we fear that the proposals run the risk of doing more harm than good.

Because we have limited capacity, it has not been possible for us to provide detailed responses to the questions asked in the consultation. Instead, we have set out below our main concerns about the proposed SDRP. These concerns address many of the questions asked in the consultation.

The size of the potential market is very small

We think that only a very small percentage of clients seen by AdviceUK members will be eligible for the plan. We estimate that this figure is likely to be less than 5% of debt clients.

Household budgets have been under significant pressure for more than a decade. This trend has been exacerbated by the cost of living crisis. Recent research indicates that a fifth of the UK population are currently trying to live on deficit budgets. For people seeking advice, the figure is much higher, with between 30 and 40% of clients having deficit budgets. This means that, beyond not having enough income to meet essential expenditure, nearly half of the clients seeking debt advice from AdviceUK members do not have any income available for debt solutions that require payments to creditors such as Individual Voluntary Arrangements (IVAs) and informal debt management plans. The eligibility criteria proposed will further reduce the number of clients for whom a SDRP will be an available option. We do not see this situation changing in the short to medium term and therefore question the value of dedicating scarce resources to this solution when there are more pressing issues in the field of debt advice that need to be addressed, in particular the needs of people who are struggling to live on deficit budgets.

The timing is poor

We welcome the publication of the recent call for evidence on personal insolvency. In our view, the landscape of personal insolvency is in need of major reform: there are problems with access to bankruptcy, the Debt Relief Order (DRO) scheme is overly complex, Administration Orders are effectively redundant and the market for IVAs is largely dysfunctional. Introducing a new debt solution at a time when the outcome of the call for evidence is unknown simply does not make sense.

We recommend that the proposal for a SDRP should be put on hold until the outcome of the call for evidence is known.

There are serious implications for the role of the debt adviser

Our biggest concerns about the SDRP relate to the role of the debt adviser. The origins of debt advice lie in community activism and the role of the adviser has traditionally been to act as an advocate on behalf of their clients. Trust lies at the heart of the adviser-client relationship. In our view, this should continue to be the case but the SDRP may put this at risk.

We think that the proposed role of the debt adviser in adjudicating and policing SDRPs is at odds with the role of adviser as a client advocate and will be very difficult to work in practice.

We had concerns with the implementation of DROs about its implications for the role of the adviser and the way in which the adviser became in effect a gatekeeper to the scheme. However, SDRP goes much further and runs the risk of repeating the mistake of Breathing Space, where the adviser is both advocate and adjudicator and expected to play a quasi-judicial role.

The tone and language proposed for SDRP is very different to how debt advisers currently work with clients. To many frontline advisers, conditional and final notices feel very much like debt collection and risk damaging the trust that should exist between an adviser and a client. For this reason, they feel that SDRPs have no role in the advice process and are resistant to what they see as a stealth change. It seems likely that for many debt advice organisations their role in relation to SDRPs will be limited to signposting to other providers.

Potential threat to impartiality

The Financial Conduct Authority's (FCA) rules and guidance in relation to debt advice make it clear that all advice provided must be given in the best interests of the client. Fundamental to good advice is that it is impartial and that options are presented to clients in a way that is not influenced by commercial considerations.

We have had long-standing concerns about the way in which business models incentivise poor behaviours in debt advice. Prior to the FCA taking on responsibility for the regulation of consumer credit in 2014, we saw widespread evidence of clients who had been put into inappropriate debt management plans by fee-charging debt management companies when there were better and cheaper debt options available. We still have similar concerns in relation to clients being entered into inappropriate IVAs. In both cases, business models prefer options that generate income for the advice provider even when these options are not in the best interests of the client.

We have the same concerns about the SDRP, which will generate income for plan providers. We note that it is major debt management plan providers who have been calling for a SDRP, and we believe that protecting a business model that has been under threat for some time has been a significant driver behind this. We therefore believe that the SDRP presents a serious risk of consumer detriment if the impartiality of advice provided is compromised by commercial incentives.

The protections are inadequate

We have two concerns about the protections available in the proposed SDRP. These are:

- The exclusion of Universal Credit advances. We think that there is a strong case to argue that this exclusion is discriminatory due to the disproportionate impact it will have on groups with protected characteristics, and as such may be unlawful (please see the case of Payne & Cooper in relation to this issue).

- The proposals do not include any creditor compliance measures. One option that could be considered to address this problem could be to exclude non-compliant creditors from disbursements for a period of e.g. six months. This would encourage creditor compliance.

There is a lack of flexibility

We think that there is a lack of flexibility in the proposed SDRP, both in relation to payment breaks and variations. This inflexibility is likely to further reduce the number of clients eligible for a SDRP. Plans are anticipated to last for up to seven years but the proposals do not build in sufficient flexibility to allow for changes of circumstances within that time. This compares to the Scottish Debt Arrangement Scheme, which allows for much greater flexibility than that proposed for England and Wales.

The proposals are unworkable for many debt advice organisations

We have already indicated above that we think in several ways the SDRP is not workable for debt advice organisations. In addition, we are concerned that they will be onerous to administer and will add significantly to workload at a time when the debt advice sector is already struggling to meet demand.

Many AdviceUK members are relatively small organisations and are unlikely to have the capacity to commit to the 7-10 year relationship with a client that the SDRP requires. There has been a lot of emphasis in debt advice in recent years on encouraging client empowerment. However, the nature of the SDRP runs directly counter to this.

For these reasons, in addition to the concerns detailed elsewhere in our response, we think that very few, if any, of our members will want to become SDRP providers if the proposals remain in their current form.

CONCLUSION

Thank you once again for giving us the opportunity to comment on the consultation paper. We hope you have found our response to be both helpful and useful.

If you have any questions or require further clarification on any of the points that we have raised then please contact: -

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