Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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05 August 2022

By email: SDRPresponse@hmtreasury.gov.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to HM Treasury consultation on the Statutory Debt Repayment Plan

The Financial Services Consumer Panel is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK. The emphasis of our work is on activities that are regulated by the FCA, however we also look at the impact on consumers of activities that are not directly within but are still relevant to the FCA's remit. We are responding to this consultation on the basis that its proposals are relevant to the operation of the FCA's rules and monitoring activities in the consumer debt advice sector. Whilst all of the questions are not applicable to the Panel, we have included our comments in this covering letter.

The Panel is supportive of introducing a new statutory debt repayment plan (SDRP) to support consumers in financial difficulty and welcome the opportunity to comment on HM Treasury's proposals. We have summarised our feedback in the sections below, focussing our response on proposals relating to the SDRP. We do not have specific comments on the proposed changes to the breathing space regulations.

In addition to our comments below, we are concerned about the extended implementation period proposed as part of this consultation. While we appreciate there may be considerable effort required to ready IT systems and resources to support the SDRP, we also expect significantly more consumers to need the support offered by the SDRP in the near term given the ongoing cost-of-living crisis and expected economic downturn. We therefore encourage the Government to identify suitable alternatives to implement the SDRP without delay and well before the 18-month timeline proposed.

Eligibility for a plan

The Panel would like to see plan eligibility determined as part of consumers receiving high-quality debt advice and individual circumstances. While we understand the need to present guidance on plan eligibility, we urge HM Treasury to allow movement between statutory debt solutions – including moving from an Individual Voluntary Arrangement (IVA) to a SDRP or from a SDRP to a Debt Relief Order where circumstances have deteriorated. This is especially necessary given the known issues related to IVA mis-selling and other risks present within the IVA market as identified by the FCA's Woolard Review[1]. While changing existing payment arrangements may be costly or disruptive, given the volatility of consumer budgets in times of significant external events such as high inflation, pandemics, or other financial shocks, we believe consumers should have the ability to include existing

[1] See https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf.

payment arrangements as eligible debt for a SDRP and that these may need to be re-negotiated with creditors using up to date budget figures and consumer circumstances.

The Panel further believes that the provisions outlined in paragraph 2.22 are unacceptable and Universal Credit (UC) advances along with third-party deductions should be included with SDRPs at the outset. While we recognise the IT challenges associated with migrating away from legacy payments, UC claimants represent some of the most vulnerable people in our society who are also more likely to experience financial difficulty as a result of the increased cost of living. Excluding these portions of a consumer's financial circumstances until 2024 would present a significant risk to these individuals. Given the ongoing delays experienced with UC rollout since its inception, the Panel cannot be sure that the implementation would not be further delayed, causing additional detriment to this population and creating further inequalities in the treatment of UC claimants in financial difficulty.

In addition, we believe consumers and creditors will benefit from a special mechanism to manage smaller debts. This could include larger pro rata payments in the early months or years of the plan. The ability for a consumer to pay off some of their debts will provide the much-needed sense of progress and incentivise consumers to maintain repayment plans agreed as part of the SDRP. Additionally, creditors who offer smaller loans often cater for the most vulnerable consumers. The Panel is concerned that such lenders are likely to leave the market or increase their pricing if they must wait up to 10 years for repayment of small loans. We believe this would lead to poor outcomes for consumers and we urge HM Treasury to consider options for faster small debt repayment.

Finally, we are not aware of situations where a consumer would incur additional unintended debt while in a plan as suggested in Question 8 of the consultation. However, where additional debt is incurred as a result of creditor administrative error or where a payment plan has been broken and the creditor would like to apply accrued fees or charges, we believe this should not be allowed. Creditors should be encouraged to get it right the first time. Where they know they will have no additional opportunity to include additional debts, the creditor will likely take more care to ensure accuracy at the start of the plan which should lead to better consumer outcomes. Where the creditor would like to apply fees and charges, we do not believe this would be in line with FCA guidance on forbearance and therefore should not be allowed.

Protections in a plan

While we are generally supportive of the measures proposed to protect debtors in a SDRP, we believe that the proposal stated in paragraph 3.9 – to allow creditors to apply protections afforded by the SDRP during the development phase voluntarily – will create disparity in consumer treatment between lenders. As a result, we believe protections should be mandatory for creditors when a SDRP is initiated.

In addition, the Panel does not agree that the existence of a SDRP should be excluded from credit reference agency (CRA) reporting. While we support the need keep the register private to reduce the risk of SDRP solicitation, not reporting the plan to CRAs does not provide a fair and accurate record of the consumer's financial situation. Furthermore, it is possible that most lenders will identify the existence of a plan or the presence of a debt solution via Open Banking data or another method. In this context, not reporting will create gaps in information where lenders will be forced to make assumptions or guesses, leading to potentially detrimental consumer outcomes.

The Panel understands that consumers may need to borrow money while on a plan. We believe this need could be better fulfilled when lenders have the right level of detail about a person's financial situation and are able to create clear eligibility criteria and pricing based on such information. We recommend that HM Treasury work with the CRAs and lenders to introduce a new CRA status to clearly identify the existence of a SDRP. If this is not possible, then utilising existing codes for debt management plans may be a suitable alternative.

Starting a plan
The Panel is generally supportive of the proposed requirements around starting a SDRP and agrees that where a plan is not accepted by creditors there is a need for an appropriate person or body to complete a fair and reasonable assessment. However, we are concerned about the ability of the Insolvency Service (IS) to manage this process effectively given challenges observed with previous implementations including breathing space, which highlighted gaps in the ability of the IS to adequately resource projects, deliver on time, and provide suitable IT infrastructure leading to delays and potential poor consumer outcomes. If the IS were to take on the role, HM Treasury must ensure that it is appropriately resourced with enough skilled resources and backlogs do not develop. Delays at this crucial stage of developing a plan can lead to consumers becoming disengaged with the debt solutions process and experiencing poor outcomes, or being open to predatory practices within the markets for IVA or other debt solutions. Likewise, the Panel encourages the IS to ensure it has sufficient resources and focus on the delivery of the SDRP to prevent delays and additional consumer detriment.

During a plan
The Panel would encourage HMT to review the proposed fee model. The proposed model does not cover the cost of the debt advice provided in order to reach the point of entering the SDRP or any other debt solution. We feel this is an unsustainable model and will lead to issues previously experienced with Debt Relief Orders. We propose a model funded via the Money and Pensions Service (MaPS) that covers the cost of the advice provided as well as administration of the plan while also reducing barriers for consumers and allowing all monies paid to be applied to outstanding debts.

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel