christians against poverty

CAP

The Statutory Debt Repayment Plan: consultation on draft regulations

CAP's written response to HM Treasury's consultation

May 2022

always hope.

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Summary

Christians Against Poverty (CAP) has provided free and independent debt advice to people in financial crisis for 25 years. CAP is an FCA regulated debt advice provider, offering home visits through a network of 300 Debt Centres operated in partnership with local churches across the UK, and a full debt management service from our Head Office in Bradford.

Financial difficulty puts significant personal, social, and economic costs upon people in debt, creditors, and society as a whole. Problem debt has been shown to have a detrimental impact on health, relationships and employment. Effective debt solutions are vital to enable people to move forward and relieve the social and economic costs of problem debt.

The Statutory Debt Repayment Plan (SDRP) fills a gap in the current range of debt solutions available in England and Wales as there is no current statutory repayment solution. Guaranteed protection from enforcement action and acceptance of affordable repayment offers is needed to improve the level of forbearance currently offered from particular creditor types. This is especially important for local and central government debt collection with respect to benefit deductions and enforcement agent action.

However, the lack of flexibility built into the proposed SDRP means that take-up of the solution is likely to be lower than hoped. As a result, it is difficult to justify the technical and resource requirements to implement the SDRP, especially at a time of great need due to rapid rises in the cost of living.

While the SDRP is a potentially valuable addition to the existing debt solutions, these proposals come at a time when there are already considerable demands on the debt advice sector. These demands stem from the cost of living crisis, as well as existing regulatory changes such as the FCA's Consumer Duty. This puts resources for training, systems development, and policy and process development under considerable strain. Furthermore, the proposed SDRP also comes ahead of the first major review of the personal insolvency framework in 40 years. The SDRP will not be a part of this review, but any changes will need to be considered to ensure a cohesive debt solution framework is created.

There are more immediate changes that could be made to government policy to support people in financial difficulty. For example, the length of Breathing Space could be extended to 90 days. This would provide upfront support for people in need of advice, regardless of their route out of debt. The proposals for the SDRP could then be developed further into a workable and valuable additional solution to sit alongside informal debt management plans (DMPs).

Key points

- It will not be possible to complete the required technical development within the proposed implementation period. Any implementation period must begin from when the regulations, full guidance, and technical specifications are made available.

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- The protections available in a SDRP, especially stopping enforcement action like evictions and enforcement agents, are a welcome addition to the provision of informal DMPs. However, a lack of protection is not the primary reason for DMP failure. The SDRP proposals need to appreciate the volatility and variability of individuals' incomes and expenditure due to circumstances out of their control.

- There needs to be greater provision of payment holidays within the SDRP, as implemented in the Debt Arrangement Scheme (DAS) in Scotland. The suggested requirement for 14 days notice before a payment holiday is unworkable. It should be possible to designate missed payments as a payment holiday where exceptional circumstances are notified.

- SDRPs should be made available to people within the DRO moratorium period and to individuals within twelve months of a failed joint SDRP.

- It is unacceptable that Universal Credit advances will be excluded from the SDRP for those who have an active Universal Credit claim. This unjustifiably preferences the government's interests and is against the previous basis for qualifying debts.

- The discretion to exclude rent or mortgage arrears and statute barred debts from the SDRP is welcome, but should also include debts owed to friends and family. This change should also be made to Breathing Space. Robust guidance is needed to establish how repayments to these debts should be apportioned outside the methodology for debts within the SDRP. It must be clearly stated that this discretion is for the client, and not the landlord, to exert.

- The current proposals for adding additional debts into a SDRP will limit the scheme's effectiveness. There needs to be a facility to add pre-existing debts into a SDRP beyond the first 14 days, and allowance for certain new debts such as energy arrears that can arise despite the payment of ongoing liabilities.

- There needs to be greater power to enforce creditor compliance with the SDRP scheme rules than there presently is in Breathing Space. The preferred approach would be in-scheme penalties due to the extent of unregulated creditors. For example, the withholding of repayments with full write-down for a number of months.

- There should be a facility for people in a SDRP to negotiate partial settlements if they receive a lump sum during the SDRP.

- The proposed variation process will create considerable administrative burden for advisors and creditors. Variations that increase payments to creditors should be automatically approved, and the 10% threshold increased to 25%.

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- When voting on SDRPs a fair and reasonable test should only be triggered where two creditors, who are collectively owed more than 25% of the total debt balance, object. This is to reduce instances where a single creditor can block a SDRP.

- There should be seamless pathways between a SDRP and other debt solutions for when circumstances change. Composition should also be available in SDRP, as it is in DAS, to support those whose circumstances change during the plan when they have already repaid the majority of their initial debt.

- There is an opportunity to support the financial rehabilitation of people in financial difficulty through enabling the SDRP to have a positive impact on someone's credit score.

- The funding implications for the debt advice sector, including the waterbed effects on Fair Share from informal DMPs, should be kept under review.

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Questions

Chapter 1

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

The implementation period should begin from when the regulations and technical guidance for the scheme are delivered. Learning from the experience of Breathing Space, this was the point at which there was enough information and certainty for debt advice providers to complete internal process mapping and build systems. Technical development and testing of systems is dependent on when the API information is made available by the Insolvency Service, so the government needs to make a time commitment on this.

In common with a significant part of the advice sector we consider that the proposed implementation period of 18 months is too short. The suggested start date of January 2023 would also be rather poorly timed. Focussing significant resources on developing a new debt solution that, in its proposed form, will only support a small number of our clients, cannot be justified. This would lead to investment being taken away from the life-affecting challenges of the cost of living crisis. Furthermore, it will not give sufficient time to complete all the necessary development and changes that may be required to be compliant. HMT should take into account the rollout challenges experienced when launching Breathing Space and any historic and ongoing issues with the current Insolvency Service platform when making a commitment on the implementation period. A more precise proposal for the length of implementation period will be dependent on when HMT publishes the draft regulations and technical specifications, as well as the wider economic picture of the predicted recession.

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

The protections available in SDRP are a welcome improvement compared to an informal DMP. The stopping of enforcement action like evictions and enforcement agent action and the stopping of interest and charges is particularly welcome.

1.4 - In our experience, a lack of protections is not the primary reason for DMP failure. The most significant factor is the volatility and variability of individuals' incomes and expenditure due to circumstances out of their control. This can lead to a periodic inability to maintain payments to the DMP. 35% of CAP's active DMPs have been placed on 'hold' for a period of time while advice is reassessed or the SFS amended due to changes in circumstances.

While the intent of the SDRP is to minimise the administrative burden of a plan, in reality it is likely that a significant administrative burden will be placed on debt advice providers, as recently experienced in Breathing Space.

All FCA regulated debt advice providers will be obliged to advise whether SDRP is an appropriate solution, and some of these organisations will also perform the role of payment distributor. With more stringent time constraints, there is a risk that a

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noticeable and disproportionate burden will be placed on debt advice providers who provide a free service to clients. This will further reduce debt advice provider capacity. While improvements to the design of the scheme can reduce this burden, it is essential to ensure that there is sufficient long term funding and facilitatitation of system development for the free debt advice sector.

1.6 - Further clarification would be needed in the regulations on whether the protections of SDRP would continue for debtors who were domiciled in England and Wales or ordinarily resident in England or Wales on the date of application for a plan, but subsequently move to either Scotland or Northern Ireland during a plan.

Chapter 2

3. Do you agree with the approach to debtor eligibility?

2.2 - While a reasonable repayment term is important, there should be sufficient flexibility built in to enable the plan to be sustained if an individual's circumstances change. There is a risk that SDRP would become a solution only available for people with stable employment and sufficient disposable income. This would deny protection to individuals who can repay their debts in full but require more flexibility.

It is advantageous to bring the Standard Financial Statement (SFS) into statute, and oblige creditors who do not currently accept offers based on it. However, when debts have to be repaid in full over a long period of time i.e. seven to ten years or more, the SFS does not offer sufficient flexibility to save for income shocks or unexpected expenditure.

2.4 and 2.5 - The joint plans presented in the current proposals are unworkable. Having a joint plan calculated using joint income and expenditure could be complex to set up. There would be significant administrative hurdles when the two eligible debtors are not part of the same household and live in separate properties with completely separate bills. CAP is of the view that there should only be individual plans. These should have the option of being interlinked where joint debtors are living in the same household. If households split, this will also enable the separate plans to continue rather than be ended.

2.6 and 2.7 - Arbitrarily excluding a debtor from being eligible for SDRP if the individual has been in a SDRP in the most recent twelve months would be detrimental in many scenarios that are not included in the list of exceptions. For example, where partners split up or get divorced, are imprisoned, serve in the navy, or move abroad on a temporary basis. CAP is of the view that this restriction on re-entry to SDRP needs to be removed. Where appropriate, people should be allowed to have more than one SDRP in a twelve month period.

2.8 - The proposed application requirements for a plan stipulate that those subject to a Debt Relief Order (DRO) or undischarged bankruptcy are not eligible for a SDRP. CAP

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strongly suggests that SDRPs should be made available to people in the moratorium period of a DRO. For some individuals, additional debts are discovered after a DRO has been approved. These cannot be added to the DRO retrospectively, so an alternative payment arrangement is necessary.
Undischarged bankrupts, as well as individuals on unsustainable budgets, who fall into debt during the moratorium period due to cost of living pressures might accrue additional debt due to their deficit budgets. Such debts may need to be brought into the statutory protections that SDRP offers when being repaid.

It is possible for a debtor to have an administration order in place to deal with their debt and to have accrued further debt after the order was made. If the court does not agree to add the new debt to the existing order, or there is the risk that the court will revoke the existing order, clarification is needed on whether the debtor can put those new debts, if qualifying, into a SDRP.

4. Do you agree to the approach to qualifying debt?

CAP agrees with the policy intent for the widest range of debts possible to be able to be included in the plan.

Clear guidance should be provided on how to treat debts owed to illegal money lenders such as loan sharks and how repayments will be reflected in a SDRP. The Insolvency Service DRO guidance for debt advisors states that repayments for illegal money lending are not an allowable expense as they are not qualifying debts.

There should also be flexibility to treat debts owed to family members or friends as discretionary non-eligible debt. Often clients do not want these people to be notified or made aware of their wider financial difficulties. Currently 17.4% of CAP clients have a debt owed to friends and family and some clients prefer to manage these debts themselves.

A client might also be disputing their liability for a debt and there should be discretion to exclude this debt from a plan until their liability for the debt is confirmed.

2.16 - If a statute barred debt has been added to the plan and it is subsequently discovered by either party that it was statute barred prior to the notice of intention being issued, there should be a mechanism to remove that debt from the SDRP without needing a variation.

2.17, 2.18, 2.19 - Often there are qualifying debts for which complete information is not immediately available. In 2021, 47% of CAP clients who entered a DMP mentioned at least one debt which they could not initially provide the creditor details for.
Clients also do not know at the outset all details of any future or contingent debts they might have. Often these debts are not reported to Credit Reference Agencies (CRAs) so are not picked up in credit report checks done by the debt advisor when setting up a

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case. In a DMP there is flexibility to add these debts at a later point, without much administrative burden.

In informal DMPs it is normal for payments to be varied regularly. If a debt has to be managed outside a plan, it would increase the risk of the plan failing or payments being unfairly shared between creditors. It would be beneficial to build in flexibility to add some of these debts to the SDRP in the first three to six months, without the need for a formal plan variation. This would reduce administration for creditors and the debt advice organisation.

2.20 - It is rare for clients in a DMP to take out additional credit. Less than 1% of CAP DMPs are closed each year due to clients breaching policies on taking out additional credit. However, in some circumstances it is reasonable and beneficial for the client to take out additional credit during a plan. No comment is provided on the proposed limit for this, but the lifetime limit of £2,000 should be kept under review as to whether this is too low.

CAP is also of the view that there should be flexibility in some circumstances to include additional debt incurred to a plan where it is beneficial to the stability of the client's circumstances and the plan.

Managing a non-payment of bill debt outside of the plan, that has arisen during the period of a plan, will create a challenge for the client who in some cases might be already paying the same creditor for arrears in a SDRP. This could mean two monthly payments for arrears have to be made to the creditor for the same account. The new arrears, if dealt with outside the plan, still have to be repaid from the same available disposable income from which the payments into the plan are made. This would require a plan variation to reduce the payment rate but the client would not have the protections of the scheme for the arrears being managed outside the plan.

There are also situations, when a client needs rehousing, where local councils offer rent deposit schemes. These could be interest free loans to be paid back in instalments. Similarly, some councils offer a loan to pay off rent arrears to prevent homelessness.

Ideally there should be a mechanism to manage all the debts owed within a plan. However, if these kinds of additional credit debts have to be managed outside the plan then the SDRP variation process should be flexible. Disposable income used to pay into the current plan should be released to pay the extra debts outside of the plan.

Credit agreements to allow for insurance policies to be paid in monthly instalments should be explicitly excluded from the additional credit rules. Most people entering a SDRP will not have been able to pay these mandatory costs upfront, and as these are allowable expenditures in the SFS, they should not be treated as additional credit for the purposes of the SDRP.

2.26 - CAP welcomes the proposal for Universal Credit advances and budgeting loans to continue to be available to those on SDRP for unexpected or emergency costs. CAP is

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of the view that any reduction in subsequent monthly UC payments while the UC advance is recovered should automatically allow the plan to be varied without a creditor vote.

2.27 - CAP strongly disagrees with the government's position on UC advances being managed outside the scheme. Fixed percentage deductions are detrimental as they do not take into account whether the person can afford the deductions. They can leave people without enough money to meet their essential living costs. The definition of qualifying debts for SDRP and Breathing Space thus far has been drawn from that of insolvency solutions. UC advances are qualifying debts for DROs and bankruptcy, and therefore the suggested decision is at odds with the existing approach, without reasonable justification. It is unclear why UC advances for people who no longer claim UC should be considered a qualifying debt for the SDRP, but those of current claimants should not. To be effective, and to fairly distribute payments across creditors, repayments to UC advances must be set in accordance with other debts in the SDRP. Under the proposals, this type of debt would be treated as a priority and receive a higher share of disposable income than other creditors. Keeping UC advances outside of the SDRP scheme would mean that the government is unreasonably preferencing their interests at the detriment of the debtor. Other forms of government debt are included in the SDRP as qualifying debts, including Council Tax arrears and tax credit overpayments, both of which are also important for the provision of public services. As the SDRP is a repayment solution and debts will be repaid in full, there is no justification for keeping UC advances outside of the scheme. As such, UC advances should be included in the SDRP and be treated as priority debts to be managed within the plan.

Furthermore, by the same rationale, legacy social fund loans and court fines should also be qualifying debts for the SDRP. As SDRP is a repayment solution, the justification employed for not including court fines in insolvency solutions is invalid. These fines will be repaid in full, and therefore restructuring the rate of repayment is appropriate within the context of a SDRP, and can be expedited as a priority debt.

2.28 - CAP particularly welcomes the inclusion of debts owed to local and central government as qualifying debts. Currently, local authorities or enforcement agencies collecting on the government's behalf for Council Tax, Penalty Charge Notices, housing benefit overpayments or sundry debts, often reject affordable payment offers in line with the Standard Financial Statement (SFS) and continue with enforcement.

Further clarification should also be provided on whether debt owed to government executive agencies is covered by the protections of SDRP. For example the Legal Aid Agency, which is an Executive Agency of the Ministry of Justice, might place a statutory charge on a property and charge statutory interest of 8% until legal costs are repaid. CAP is of the view that such debts should be qualifying debts and ongoing interest that is charged should be stopped while the debt is in the plan.

2.29 - In 2021, 26% of CAP clients had a debt with their broadband provider and 44% had a debt with their mobile phone provider. If the existing package with a provider becomes unsustainable or is more expensive than other providers' offerings, then it may

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be beneficial to the customer and their other creditors to exit the current contract and make cheaper arrangements. CAP is of the view that any amount owed in arrears or termination fees should be able to be included in the plan so that there is protection against enforcement.

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

CAP is of the view that pre-existing payment arrangements should not mean a debt is automatically treated as non-eligible for a plan. These arrangements to repay might have been agreed without consideration of any other debts the client might have, and could therefore be unsustainable. To work effectively the SDRP must have the ability to holistically consider all debts owed by the debtor including those with pre-existing payment arrangements.

2.12 - There are scenarios where enforcement agents are involved and a payment plan is already in place. However, the payment plan may not have been based on the affordability or income of the debtor. A missed or partial payment could trigger a visit by an enforcement agent to take control of goods and have fees of £235 added to the debt. In such cases the benefits of protection in the SDRP outweigh the disruption that could be caused by changing the existing arrangement.

2.14 - While there are benefits in discretionarily excluding rent arrears from the plan, in some scenarios the better option would be for them to be included. There could be a strong push from a landlord insisting that a tenant excludes the debt from the plan as they will receive a higher amount outside the plan as there will be no costs deducted by the payment distributor. Some housing associations already put pressure on tenants telling them to exclude rent arrears from their DRO application. The guidance for the scheme should make clear that the discretion is on the part of the client, and landlords should not seek to influence this decision.

It should also be noted that excluding rent and mortgage arrears from SDRPs will have an implication on the funding for debt advice through the SDRP.

There are also ongoing liabilities like energy where the individual gets a tariff discount if they pay by direct debit. Further clarity would be needed whether payment of the arrears through SDRP impacts the ability to qualify for the discount.

Due to changes in circumstances, SDRP might no longer be the correct option for the individual and they might wish to end the plan and enter an insolvency solution after seeking advice . In such cases clarification would be needed as to whether the payments made under pre-existing arrangements outside of the plan would be deemed as preferencing by the Insolvency Service if they were paid at a rate higher than the creditor would have received inside the plan.

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

2.32 - From a payment distribution perspective CAP already pays relatively small debts over longer periods. Excluding these debts is therefore not required. There are some situations where it might be advantageous for the client to repay small debts more quickly if they are connected to a service that they would like to maintain. Examples of this could be where there is a small overdraft, or a small amount of arrears on a TV package, internet package, local vet payments or car mechanic payments. However, on the whole CAP does not consider it beneficial to preference small debts in this way.

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?

In 2021 CAP clients had an average of eleven debts and an average of two debts with a value less than £100. It is difficult to judge what would be the appropriate amount of debt to be considered as small as it is relative to the overall level of indebtedness. A small debt could be understood as up to £180 or £360 which is 1% or 2% of the average debt of a CAP client.

It should be optional to exclude small debts as the protections offered could still be beneficial to the client especially when a small amount of debt could still attract disproportionate creditor action or enforcement.

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?

There are a range of scenarios where additional debt could arise on ongoing liabilities. For example, energy bills might have been based on estimates due to a lack of meter readings or when water bills are metered and billed every six months. There could also be instances where direct debits are not updated correctly in line with consumption and result in arrears.

Unforeseen events could create additional debt. For example, if an individual was in a car accident with a hire purchase car where the insurance doesn't cover the remaining finance payments. Debts could also result from a termination of an existing contract e.g. withdrawing early from a phone or broadband contract.

The client could be a guarantor for a loan where the principal borrower stops making payments or goes through an insolvency solution, while the client is in the SDRP. This could result in the client, as a guarantor, being called on to make payments towards the debt. If a client is guarantor for a tenancy agreement there could be additional debt if the guarantee covers unpaid rent and damages and the tenant is unable to pay.

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Clients are still liable for bills when hospitalised but could miss payments resulting in arrears. They could also receive speeding fines or parking tickets during the course of the plan.

Benefit overpayments often occur due to administrative delays by government departments, or system or official error. The debt advice provider could be told there isn't an overpayment but find out several months later that a 'new debt' is generated by the department for a period prior to the request. For example, historic Tax Credit overpayments were often a result of DWP errors and the old tax credit system that was based on reconciling actual income with estimated income. These historic Tax Credit overpayments could begin to be recovered several years later than when they were originally made, when the debtor makes a UC claim for the first time. This could result in additional debt being discovered during a plan.

The debt advice provider should have the discretion to add these debts to the plan without the need for a formal variation, based on the circumstances in which they were incurred.

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

The use of the SFS is welcome, particularly because of the inclusion of savings within the guidelines for expenditure. Being able to build a savings buffer within a repayment plan is important to help increase clients' financial resilience, and improve the sustainability of the plan.

2.34 - Only 11% of CAP's DMPs have a repayment term of over five years, and 5% over seven and a half years. Therefore CAP agrees that it is reasonable to expect only a minority of SDRPs will have a repayment term of more than seven years.

However, these cases should not be described as 'exceptional circumstances'. For example, retired clients who own a property but have a relatively small amount of debt might find that a longer SDRP with composition could be ideal for their situation. Agreeing a longer plan length in reasonable situations does not necessarily result in poorer outcomes. CAP data finds these longer plans (over five years) actually have higher success rates than plans under five years.

The open call for evidence for the review of the personal insolvency framework has also identified three groups of debtors who may not have an appropriate debt solution available to them. They are people on low income but who own a family home with little or no equity, debtors who have been time-barred from certain options, and debtors who have negative budgets. Such edge cases should be resolved either through SDRP or through changes made through the personal insolvency review. It would therefore be helpful for the delivery of SDRP to be aligned to the personal insolvency review roadmap.

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Chapter 3

10. Do you agree with the proposed protections of the plan?

CAP welcomes the proposed protections, including protection from interest, charges and enforcement action. However, the regulations should provide for protections to begin from the notice of an intention to initiate a plan rather than being voluntarily applied by creditors during the development phase of the plan. This will protect clients from enforcement agent visits and escalation of cases to the next stage of enforcement during the development period.

While there is the option of using Breathing Space to gain some protection from enforcement, this creates a need for additional administration. It also excludes those ineligible for Breathing Space because they have been in a Breathing Space within the previous twelve months.

CAP welcomes the requirement for creditors to suspend pre-existing attachment of earnings orders for qualifying debts during a plan.

There are however no penalties to be imposed on creditors if they fail to comply with what is expected of them. While most creditors subject to industry regulators or under the jurisdiction of an ombudsman might be compliant, there should be an option of sanctioning any creditor who intentionally breaches the regulations.

Whilst the power to impose penalties on creditors might be limited by the original statute, CAP would suggest that HM Treasury consider including opportunities within the scheme to implement the following suggestions. Firstly, when a creditor commits a breach, the Insolvency Service can issue them a warning letter notifying them of the consequences of a further breach. Upon a further breach the Insolvency Service should have the option of withholding three months of disbursements to the creditor and requiring them to write-down the amount of debt by the amount they would have received. Further breaches could lead to longer suspensions of disbursement, or being listed on a register that the Insolvency Service shares with regulators. HM Treasury should ensure there are stronger powers to deal with repeat breaches. Having in-scheme sanctions is important because not all qualifying debt will be for creditors in regulated sectors.

In addition to the proposed protections, creditors should be unable to sell debts in a SDRP. Currently, in a DAS, debts can be sold and frequently the new creditor is not notified about the existing DPP. As a result, collections recommence and the client is caused distress.

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

Overall, CAP does not agree that the current SDRP proposals are flexible enough to achieve sustainable plans that proceed to completion. The success of a plan is almost entirely dependent on there being sufficient flexibility for clients who experience unexpected changes in circumstances. If SDRP is insufficientlyflexible then this will be a barrier to advising it over informal DMPs, leading to poor take-up. For example, in 2021 only 2.63% of all CAP clients in Scotland who were advised a repayment solution chose a Debt Payment Programme (DPP) under the Debt Arrangement Scheme (DAS). Clients often perceive having to work with two organisations, i.e. CAP and the payment distributor, as a barrier.

The number of payment breaks and variations, the request process and the penalty for missing payments needs to take into account the lived experience of people in poverty and with low income.

In most cases it is impossible to anticipate unforeseen circumstances and give 14 days notice before the payment is due. Missing a payment to find the money to deal with the emergency, for example for repairs to a broken boiler or burst pipe, might be quicker than applying for credit, or reduce the need for credit use. SDRP should be flexible enough for the client to be able to miss payments in the event of an emergency and they should be able to give less notice for missing a payment. SDRP should also allow for payment breaks to be given retrospectively at the advisor's discretion. For example, the client might be in hospital and miss a payment but the debt advisor may only become aware of this after the client is back home and able to correspond. Any arrears in payment caused by this type of scenario should not be counted as a breach of the plan, especially if the client is able to make up payments for some of the arrears.

CAP agrees that clients will need to access credit for emergency situations, for example where white goods have to be replaced or for home repairs.

The scheme guidance would need to be clear on what constitutes additional credit. For example, new hire purchase or car lease agreements that change the monthly repayments would enable clients to have a more reliable car or avoid the need to make a balloon payment. Similarly remortgaging a property to release funds for home improvement, a managed overdraft facility, increasing the credit limit on a credit card to get protections under Section 75 of the Consumer Credit Act or BNPL products could each be beneficial to allow during the plan in some circumstances.

The current proposal for SDRP only allows one payment break in a twelve month period, with the advisor being able to extend this to a maximum of two months. This is significantly less flexible than DAS. DAS allows a six month 'payment break' under certain circumstances including maternity, divorce, death of a partner and illness. This break can be taken multiple times as needed. Then, additionally, DAS allows a 'short term financial crisis payment break' of one month which can be used twice in twelve months.

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IVAs too are generally more flexible than the proposed SDRP, with three missed payments allowed in twelve months before the IVA fails.

For SDRP to be more effective than current DMPs, and for success rates to be high, SDRP will need to become considerably more flexible.

As well as the above concerns, the additional flexibility needed for vulnerable customers needs to be taken into account. CAP agrees with the FCA's recommendations from their occasional paper on Consumer Vulnerability, particularly:
'The research indicates that some financial products that involve long-term commitments are not designed to cope with the fact that people may face adverse circumstances; they do not reflect real life and match consumers' needs. Customers need products that are flexible enough to meet their needs when they face adverse events'. Additional support measures need to be included to provide flexibility for vulnerable consumers.

CAP is of the view that built-in flexibility is critical. SDRP should:
- Increase the number of allowable missed payments in twelve months to three.
- Allow additional flexibility for those facing significant life events.
- Provide additional flexibility for vulnerable clients.

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

CAP is of the view that to ensure the SDRP is flexible to changing circumstances over a potential five to ten year repayment period, there should be an option to temporarily reduce repayments to token payments of £1 to each creditor. 36% of CAP's DMP clients have had their plan put on 'hold' at one stage due to a temporary change in circumstances while a review into the suitability of the plan is conducted.

Token payments can prevent a plan from failing where the SDRP might still be the appropriate long term solution despite a temporary reduction in income. Debt advice providers should also be able to vary a plan and implement token payments while a client is actively looking for work or to allow for protections to continue. During this time the client can work with the debt advisor to identify a more appropriate solution like insolvency or asset sale if changes in circumstances mean repayment in a reasonable time period is no longer possible. This time period on token payments should be at least three months and no longer than six months.

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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?

It is not unreasonable for borrowers to disclose they are in a plan when applying for credit. However, it is not necessary for this to be a requirement on borrowers. Creditors should have processes in place to determine affordability and creditworthiness of potential borrowers. In the event that a borrower failed to disclose that they are in a SDRP, these processes would reasonably be expected to come to the same decision as if the plan was disclosed.

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

There should be clear rules and guidance for CRAs on how SDRPs should be reflected on credit files as credit scores are a key concern for people in financial difficulty. The listing of a SDRP on a credit file should not leave debtors in a worse position than they would otherwise be in, as defaults and other markers drop off the credit record. Ideally the SDRP should help to recover the credit file quicker as part of the financial rehabilitation offered through the plan. This would be a good incentive to encourage take-up of SDRPs in line with the policy intent, and would help people achieve their financial goals and build their long term financial wellbeing. HM Treasury should also seek to ensure that service providers, immigration processes and employers do not require a previous SDRP to be declared as a negative marker, so that there is no permanent impact on the debtor's ability to move forward.

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

For debtors to benefit from the benefits and protections of SDRP there should be flexibility around their changing circumstances whether foreseen or unforeseen. A lack of flexibility will seriously limit the solution from being advised as suitable, except when supporting those with a continuously stable income and stable circumstances. These individuals will probably not need all the protections of SDRP. For example they might be able to make offers that creditors would be happy with even in an informal DMP. At present IVAs also offer more flexibility than the proposals for the SDRP. Therefore, SDRPs need to be significantly more flexible to provide a viable addition to the debt solution landscape in England and Wales, and to see the desired take-up.

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Chapter 4

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?

CAP would agree with this approach to only list addresses linked to a plan debt. CAP currently requests for new clients to provide their full address history for the last six years to assist in completion of a credit check and determine which previous addresses are linked to a debt. However, only addresses that are needed by creditors to trace the client on their records should be required to be provided in the SDRP proposal.

17. 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?

Creditors should provide the reference numbers and debt balance as well as the originating creditor name and reference number if it is a purchased debt. If the additional debt is for a bill, then the creditor should provide the billing period it relates to and the address if it is different from the client's current address.

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?

CAP supports the approach to allocate payments via pro-rata and prioritise payments to priority debts, in line with the current approach employed in DMPs. The regulations and guidance should clearly state whether the pro-rata payment allocated to a qualifying debt in the plan would supersede any instalment amount ordered by the court. This is relevant where the court ordered amount is higher than the pro-rata allocation to the debt in a SDRP. There might also be payment agreements that are tied into a controlled goods agreement where the pro-rata allocation might be less than the existing agreement.

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

CAP's biggest concern is that priority creditors who are used to receiving higher allocations in DMPs might raise objections. This is a particular concern in cases where the amount of non-priority debt is higher than the amount of priority debt. Priority creditors may feel that non-priority creditors should be paid lower amounts. Analysis suggests that under the new methodology 37% of clients would pay less per month to priority creditors than in their current DMP (34% would pay about the same, and 29% more). While this is not necessarily inappropriate, this could have an impact on the level of creditor objections.

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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?

CAP is of the view that the SFS gives sufficient discretion to the advisor to account for where reasonable expenditure falls outside of the guideline figures. However, there are gaps in the SFS due to a lack of cultural understanding which can raise unjustified creditor challenges. For example when a client is sending money abroad to support dependants and family living apart. Any fair and reasonable tests on creditor challenges should take into account the additional costs faced by people with disabilities and people of colour.

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

CAP would agree that debtors should be provided with flexibility to make additional payments. They might receive a back payment of benefits,a lump sum as a gift or an inheritance that they want to use towards repaying their debts quicker. Often a family member might be willing to give a sum of money to enable the client to negotiate partial payments as full and final settlements. In such cases there should be flexibility in the plan to allow for full and final negotiations to enable the client to become debt free sooner, rather than requiring the additional payments to be distributed on a pro-rata basis to all creditors in the plan.

22. What information do you consider needs to be provided to creditors as part of a provisional plan?

CAP is of the view that creditors only need to be provided with sufficient information that would allow them to identify the client and all debts that the client might owe them.

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

CAP is of the view that the grounds for objection are sufficient and supports the proposal that the onus is on the creditor to provide supporting evidence whenever they submit an objection. The level of creditor objections should be kept under review. If there are a high number of creditor objections that are not upheld when the Insolvency Service conducts a fair and reasonable assessment, this should be escalated through a mechanism to enforce creditor compliance.

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24. Do you have any further comments on or concerns about the processes set out in this chapter for developing and initiating a plan?

CAP is of the view that the period of seven-calendar days given to debt advice providers to finalise and submit a provisional plan is insufficient and impractical in many circumstances where the debt advice provider is supporting a client with complex issues. CAP notes that the suggested period is a lot shorter than the 21 days given to creditors to find the account details.

The arbitrary cancelling of the notice of intention to initiate by the Insolvency Service if that seven day deadline is not met will lead to unnecessary administration to restart the process and will leave the client vulnerable to enforcement action in the meantime. Instead, advisors should be given 21 days to submit SDRP proposals.

When developing and submitting the provisional plans, the debt advice provider will have considered all available assets and savings and the appropriate use of these to repay debts. However, in a DMP, details of these assets are not shared with creditors. Sharing the details would likely increase the rates of unreasonable and unfair creditor objections to plans which propose to repay debts in a reasonable timeframe. Additionally, requiring details of assets to be shared with creditors in a SDRP would add an extra drawback when compared to the option for an informal DMP. This proposal should be changed to prevent the process of SDRP submission from being onerous and attracting unnecessary creditor objections.

4.34 - CAP is of the view that the 10% threshold for plan variations is arbitrary. When reassessing the suitability of a plan due to an increase in debt balance, the debt advice provider should be able to simply resubmit a proposal rather than it being cancelled or requiring a variation. This is discussed further in response to question 29. CAP proposes that the threshold amount should be increased to 25%. This reflects the fact that 27% of monthly payments made by CAP clients in a DMP were less than 75% of the monthly amount set in the DMP. Over the lifetime of a plan, 61% will have paid in less than 75% of the amount set in their financial statement at some point.

Chapter 5

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

The proposed mechanism for implementing a payment break is appropriate. The debt advice provider is well positioned to advise whether a break is suitable for the client given the client's circumstances, or if other actions need to be carried out. For example, there may be cases where the client requests a payment break, but in actuality the reasoning behind the request could highlight a greater issue, leading to an assessment as to the suitability of the solution for the client in the whole.

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However, though the mechanism appears appropriate, the payment break itself is not long enough (even with the option to extend it), and is less flexible than other solutions such as a DAS, which allows for a six month payment holiday. As stated previously, CAP is also concerned that the 14 day notice period debtors must give for a payment break is unreasonable, due to the inability to anticipate unforeseen circumstances.

Looking at CAP DMP clients who missed payments over a twelve month period from June 2021 onwards, there was an average of four missed payments per client. This suggests that a payment break of two months at one point throughout the year would not be adequate for those clients experiencing more turbulent circumstances. Missed payments do not necessarily mean that a repayment plan will not be successfully completed.

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

The creditor review process appears robust.

Concerning the fair and reasonable assessment of proposed changes, it would be helpful for debt advisors to be given greater transparency about how the Insolvency Service will make these decisions, and what criteria will be used to make these judgements. For example, it would be helpful for advisors to know in advance if the Insolvency Service will automatically reject a plan if it is only over the ten year six month limit by simply a few days. Greater clarity on how the Insolvency Service would make these judgements would reduce the volume of reviews, given that debt advisors would know in advance what sort of outcome they could expect.

In particular, CAP has concerns over scenarios where one creditor could constitute 25% of the debt value. 61% of CAP clients have a single creditor to which 25% or more of their total debt balance is owed. As a result, in the majority of scenarios, there is one creditor carrying a significant amount of sway should they challenge the plan. The proposals should be amended to require two or more creditors to object to the plan, as well as meeting the 25% threshold.

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?

Yes, the additional creditor review mechanism does appear to be adequate and robust enough for creditors. However it is appropriate to limit the creditor initiated reviews to one per twelve months, given the other circumstances under which a creditor can object to a plan.

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CAP has concerns over what constitutes a plan that unfairly prejudices the interests of a creditor. It would be helpful to have some guidance on this, as currently it could create a conflict of interest for debt advisors. Advisors could be put in a position where they have to defend the creditor's interests by cancelling the plan, even if it is not in the interest of the client to do so. It would be better for the Insolvency Service or an independent adjudicator to decide when a creditor's interests have been unfairly prejudiced rather than the debt advisor.

On average, CAP clients owe eleven different debts and so it is a concern how onerous this could prove for debt advisors if multiple creditors challenged plans at different stages of the year. This is disproportionate to the 120 days given to creditors at the outset of the plan to advise of balance difference, especially as replying to reviews will take a considerably greater amount of investigation and analysis. CAP proposes that the timeframe for responding to reviews is set in line with the Financial Ombudsman Service timeframes for complaints, which is a minimum of 35 days.

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

CAP welcomes the proposal for SDRP to have a private register. One of the recurring barriers to CAP clients accessing a bankruptcy solution is the public bankruptcy and insolvency register and the shame associated with being publicly identifiable as bankrupt. With SDRP having a private register, hopefully this will ease client's concerns over pursuing a SDRP.

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

One payment break is insufficient and inflexible, even with the opportunity to extend this to two payments or two months worth of payments. CAP clients struggle with a variety of additional complex needs that can impact their ability to maintain payments as part of a DMP at various points in any given year.

We are also concerned over the short window of time in which debt advisors must conduct reviews, and the number of reviews that could be required for CAP clients, as discussed in response to question 27.

CAP clients in a DMP have an average of six and a half financial statements created per year, with an average 13 financial statements over the lifetime of the DMP. Given the volume of payment variations exceeding 10% (32.5% of CAP DMP clients make payments exceeding 10% under the original agreed amount), we are concerned over the volume of work this creates for debt advisors, and the number of challenges we could expect to receive from creditors as a result.

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Whilst the proposed lower payment amount is being considered, the reduced payment should not be treated as a missed payment.

The variation process is one of the major pain points within DAS. Submitting explanations alongside variation requests and the 21 day period for creditors to respond, takes considerably more time than updating the SFS and issuing new offers to creditors in an informal DMP.

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?

The proposed grounds for mandatory and discretionary revocation are sufficiently robust. However, as discussed further in question 32, the escalation process involving both conditional and final warnings unreasonably limits debt advisor's use of discretion. In some cases the SDRP rules would require the debt advisor to take a more punitive approach than when assisting a client with an alternative debt solution such as a DMP.

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

The proposed approach appears reasonable given the listed grounds under which a discretionary revocation can be applied.

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

A greater level of flexibility and debt advisor discretion would be welcome here. The method proposed for limiting abuse of the revocation process appears to be unforgiving.

6.21 - There will be genuine scenarios where debtors' circumstances mean they could receive two final warnings for separate circumstances in a fairly short period of time. A final 'third strike' at any point in the remaining years of the plan, regardless of how well the debtor has done in recouping any missing payments, would be more punitive or dismissive of their current circumstances.

CAP does appreciate that there needs to be a hard stop in place and recommends that the third and final warning be increased to five over the lifetime of the plan. In addition, if the advisor deems that there is cause to prevent the revocation despite reaching five final warnings, this should be able to be referred to an adjudicated decision by the Insolvency Service.

6.22 - As highlighted above, two warning notices could be issued for completely different circumstances in a relatively short period of time. As such, a greater level of flexibility is needed to enable debt advisors to use their discretion over whether a third and final warning should automatically result in revocation.

CAP's existing concerns over the inflexibility of the payment break system are closely tied to issues relating to how quickly the revocation process escalates. It would be acceptable to have less provision for payment breaks if there was sufficient discretion for debt advisors to prevent revocation in light of extenuating circumstances, and vice versa.

As an example, if a debtor is suddenly hospitalised (and naturally unable to provide notice), it's not unreasonable for the debtor to need longer than a one month payment holiday (even after extension) and for the debtor to be unable to contact their debt advisor during this time. Also, it should not be assumed that a debtor who has been seriously ill in hospital can immediately return to full time work. They may still be signed off work for several weeks following their discharge from hospital. This will then cause any salary payment to continue fluctuating until a month after their return to work.

If payment holidays as part of SDRP were more flexible and allowed a greater level of understanding for debtors, it would result in fewer escalations of conditional notices and final warnings.

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

CAP has concerns with the proposals for a twelve month delay before debtors are able to make repeat applications for a SDRP, despite the exceptional circumstances provided. Given that SDRP is a repayment solution, we do not think there should be such stringent rules on reapplication as there are with Breathing Space.

We appreciate there could be concerns over abuse of the SDRP if debtors made multiple applications in one year, but given that debt advisors will act as gatekeepers to the process, we feel there will be genuine circumstances where reapplication to a SDRP within the twelve month period will be appropriate. The debt advice provider will likely have been involved in rectifying some of the circumstances that could have resulted in the original revocation.

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

CAP would welcome further clarity on what impact a SDRP will have on credit scores, especially where a revocation (discretionary or mandatory) has taken place.

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The current proposal for SDRP creates a high level of inflexibility which will impact the rate at which SDRPs are successfully completed without revocation. The limited access to payment breaks and red lines in the missed payment process will increase failure rates and the need for debtors to seek additional solutions (e.g. insolvency) after investing many years into a SDRP.

Looking at the DAS solution, it was designed to increase the chance of success through the mechanism of composition. If a debtor has been paying into their DAS for 12 years and has paid 70% of their included debts, the remainder is cleared and the DAS completed. This protects the debtor, advisor and creditors from negative consequences of a long DAS that gets to the end without completing or from needing a second DAS.

Another statutory mechanism, Time Orders, allow the court to reduce the total amount owed on the debt alongside stopping further interest and charges. This mechanism allows the debtor and creditor to have a finite plan that is much more likely to deal with the debt.

IVAs also have a clear mechanism for agreeing what proportion of the debt will be repaid. The IVA then ends at a fixed point with any remaining debt being cleared on completion.

Administration Orders are another similar solution for debtors repaying their debts successfully over a finite period of time. Here the debtor can apply for composition and the court can allow the debts to be cleared after a certain number of payments have been paid.

The principle of composition has been in place across the sector for many years. Including composition within SDRP has the potential to make it a much more viable solution. Bringing the benefits of composition into SDRP will increase the success rates of SDRPs and also address the problems of repeat SDRPs or the need for second solutions when a SDRP ends with debts remaining.

Including the benefits of composition in SDRP may be the biggest factor influencing its success and CAP strongly urges that composition is included.

Chapter 7

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

CAP agrees that the three key elements - of advice, payment distribution, and scheme administration - should be funded from within the SDRP so that the SDRP is essentially self-funding. It is therefore encouraging to see in 7.4 that the total percentage allocated to run the scheme, and the three distinct elements within the scheme, will be kept under review to ensure they remain appropriate.

We are glad to see that the Government acknowledges the funding rates for advice

providers within the SDRP differ, both to that used in the DAS in Scotland and to those of existing Fair Share schemes. We would agree that the larger eligible population for the SDRP scheme in England and Wales should mean that the scheme can be funded at a lower rate than 22% in Scotland. However, we remain concerned that the proposed design of the SDRP is not flexible enough to meet the needs of a sufficient number of clients and limited takeup of SDRP might make the HM Treasury aims of a largely self funded scheme unviable.

With regards to the proposed rates being lower than those of existing Fair Share schemes, the broader range of organisations paying leads to a slightly increased level of income according to our early modelling, due to funding being administered through the distributor deducting at source from all debts within the SDRP. However, this does not take into account the increased administration costs of a new, overly bureaucratic solution which would quickly erode any slightly increased income. Nor does it take into account the risks to our existing Fair Share funding arrangements for continuing informal DMPs. It is a concern that the SDRP funding arrangements could have an anchoring effect. If existing Fair Share funders were to equalise Fair Share payment rates for DMPs and SDRPs there would be a significant reduction in CAP's overall income. As CAP are not participating in the MaPS lot one (national advice) or lot two (regional advice) commissioning rounds, there would be no direct way of replacing that lost income, potentially limiting the number of new clients CAP's service can help and affecting the service to existing clients.

The opportunity to share information about funder behaviour with Treasury officials throughout the review period would be welcome. We would also welcome a commitment that HM Treasury will work with CAP to ensure that the introduction of a new debt solution to the market with new funding mechanics does not lead to a disruption to CAP's income. Alternatively, replacement funding could be made available as CAP and other debt advice organisations adjust to the new rates and funder behaviour.

The funding of debt advice has been under review for some time by the Money & Pensions Service (MaPS), with an announcement due on three of the four lots in September. This will be after this consultation has closed but before the draft regulations are to be laid. A further commissioning round for regional debt advice, including community based face-to-face services, remains in development after being withdrawn earlier in 2022. It will be of vital importance for officials to re-engage with the advice sector on HM Treasury's proposed approach to funding once MaPS commissioning decisions have been communicated. The outcome of this could affect the response of other organisations to this question. HM Treasury should engage with all advice providers on this question once the MaPS commissioning announcement has been made and not only those organisations who are awarded tenders. The whole ecosystem of advice, intra-agency referrals and provision of debt solutions may be affected by that funding decision. It should also be noted that the consequences of MaPS commission funding decisions may still affect agencies like our own that receive little or no funding from this source.

It should also be noted that the funding mechanism in DAS, which operates in the same way as proposed in the SDRP, causes some problems. Conflict can arise with creditors who do not pay down the debt by the full 'repayment' but only by the amount received. This is a key issue and an escalation route will be needed for clients and advisors to address this, especially with unregulated types of debts such as unpaid invoices.

Furthermore, in light of the significant technical costs that will be incurred in the advice sector from making system changes for SDRP delivery, HM Treasury should consider increasing the funding rate in SDRP to 20% for the first two years after implementation. This would enable recouping of development and implementation costs in the advice sector as the current 9% figure is intended only to cover ongoing running costs.

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

7.7 - There appears to be some potential overlap between the functionality of the electronic system proposed to administer SDRPs and the DRO hubs being developed as part of lot four commissioning by MaPS. It would be beneficial to all involved if the functionality of the SDRP system and DRO hubs were to continue to be aligned wherever possible. This would save time and costs in implementation.

7.8 - It is vital that the Insolvency Service engages with all stakeholders to determine how the system and register should function. CAP has not as yet been contacted in this regard, and we understand a large number of other advice providers who would be impacted by this are in the same position. Treasury officials should ensure that the Insolvency Service's stakeholder engagement plans are urgently reviewed to ensure they are suitable. They should not rely solely on the technical stakeholder details from the Breathing Space portal.

In addition, the Insolvency Service should commit to a deadline for publishing the technical specifications for the register and the system. The implementation timeline for CAP, as with most organisations, will be based on the time from these details being published rather than simply on the SDRP draft regulations.

Finally, in designing the SDRP system and register, the Insolvency Service must learn from issues raised with the Breathing Space portal. For example, the portal is not built so that the Breathing Space register is automatically checked when an advisor adds a new client's details. Instead these checks must be done separately. An automatic check functionality should be built into the SDRP register and system as it will save a huge amount of time.

7.9 and 7.12 -The Government intends for the system to share plan related information between debt advice providers and creditors, supporting the timely exchange of information. However, it is not clear from the statement in the consultation that this exchange of information is intended to be two-way. CAP understands this to be the intent, and would recommend that Treasury officials clarify this at the earliest opportunity. This functionality would ensure that creditors and debt advice providers can work together to meet the timescales proposed in this consultation. Early clarity would also build confidence in the future delivery of technical solutions compared to the rollout of Breathing Space. There was a difference in understanding between the policy intent for Breathing Space and its associated portal and the actual commitments made by the Insolvency Service. This led to the portal technically meeting the minimum requirements laid by HM Treasury, but undershooting the functionality requested by advice providers and creditors to enable the smoothest possible functioning of the Breathing Space scheme.

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There is also a potential mismatch between the intention stated in 7.9 and the access stated in 7.12, where debtors will also have access to the register. Enabling debtors to view the progress of their own plans within the register would be a valuable feature. Building it in this way could increase client empowerment and also reduce low value administrative contact with advice agencies for checking balances or plan progress. CAP would welcome further clarity on the functionality for the system and register as it will add value for all parties and will be a sensible investment in the success of the SDRP scheme.

7.13 - CAP welcomes the intention to make transition from Breathing Space onto SDRP as smooth as possible, minimising impacts upon advice providers and creditors and leading to better outcomes for debtors. It is important to ensure that there are no policy mismatches between Breathing Space and SDRP if this is to be successful rather than solely focussing on the technical challenge around API connectivity. For example, qualifying debts and rules around statute barred debts need to be aligned if debtors are to realise the benefits of this seamless transition.

7.14 - CAP agrees with the concept of fair and reasonable assessments and the suggested factors that the Insolvency Service would take into consideration. It would be very helpful if debt advice providers could be given the creditor/s' reasons for objection so that they can respond to queries from the Insolvency Service effectively.

7.15 - CAP agrees that the Insolvency Service should have discretion when making assessments. The experience of advisors is that decisions made by the DRO unit when client circumstances change show that the Insolvency Service are skilled in considering the different experiences of problem debt for individuals. CAP agrees that the framework mentioned in 7.18 should be published and would propose that this framework should itself be consulted upon.

CAP would propose that the 25% of creditors by value that can trigger a fair and reasonable assessment is amended to include a requirement that the 25% of debts must include more than one creditor. Since the proportion of creditors objecting to the SDRP is already a consideration that the Insolvency Service may take into account, we suggest that including it in the initial consideration could save valuable time and resources. This would guard against individual creditors with large outstanding balances and cultural or procedural biases against debtor relief or support from creating delays and driving up administrative costs.

CAP agrees that creditors must provide evidence to support any objection they make to plans or to variations.

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

CAP broadly agrees with the approach taken to payment distribution. This is subject to the terms and conditions for accessing the system and reporting requirements in Payment Distributor/Debt Advisor agreements not being overly onerous and being based on existing guidelines and best practices.

The proposed approach to oversight of payment distribution - where payment

distribution by firms is overseen by FCA rules and distribution by the Insolvency Service is overseen by its board and governance - seems sensible and proportionate.

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

Payment details should be visible to the payment distributor at the earliest opportunity so that payments can be made in a timely manner. Ideally, they would be available within the SDRP system before the first payments are due to be disbursed. It is important that debtors would not be penalised in the event that individual creditors fail to register payment details in a timely manner. Payment distributors will need guidance as to what to do with disbursements that are unable to be made due to absent or erroneous payment details for any individual creditors.

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

The proposed funding mechanism within the SDRP works differently to that currently in use for Fair Share on DMPs. This will contribute to the systems and process changes required during the implementation period, and introduce added complexity as both systems are expected to still be needed to run in parallel.

However, there are benefits from making net repayments, having kept back the funding contribution at source. Deducting creditor funding at source increases the advice provider's confidence in receiving funding from sectors that currently contribute little or nothing to the costs of providing free debt advice. CAP also understands that there are a wide range of creditors wrestling with the technical implications of receiving payments net of their contribution but needing to adjust balances to reflect the gross value. On balance, it seems that the deduction of creditor contributions before distribution is most likely to lead to the revenue necessary to operate the scheme. However, the complexities it will cause for creditors and the costs it will cause for advice providers should be very carefully considered. Any alternative proposed will need to solve issues for both sectors - in particular, a simpler system for creditors to implement must be accompanied by sufficient funding for the advice providers.

Chapter 8

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

CAP are supportive of the proposed changes to the 2020 regulations. The changes proposed in 8.7 will help to increase the protections available to clients participating in the scheme.

The changes proposed to debtors served with possession proceedings are welcome, although we would ask to consider protections against Section 21 evictions too. While these are often referred to as "no fault evictions", in some circumstances they can be used where there are rent arrears that do not yet reach levels to enable proceedings to

be triggered on other grounds. Debtors who are at risk of eviction for any reason while in a debt crisis should have the benefit of some protection in order to address their situation with advice. While the current framework does not allow for distinction of Section 21 possession claims linked to arrears, HM Treasury should commit to reviewing this position after any changes from the upcoming Renters Reform Bill.

8.12 - The amended definition of debt advice provider regarding local authorities in 8.12 is not entirely clear. It would be concerning if the effect of this clarification was to lead to local authorities not granting Breathing Space on debts except where debtors were using local authority provided debt advice. Debtors should be free to choose where they seek advice and should not experience different outcomes from creditors based on this.

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?

Part (a)

1. Most CAP clients appear to be eligible under the general eligibility criteria for Breathing Space. However, it would be helpful for the scheme to be rolled out in Northern Ireland so that more clients can become eligible.

As of April 2022, only 11 of the 172 applications made by CAP for Breathing Space were the result of a client directly asking for Breathing Space. All other applications were made based on a debt advisor's recommendation. It seems that the initial awareness campaigns run by the Government and other organisations have either not been sufficient or have been ineffectively targeted. As increasing public awareness of free debt help is one of the key aspects of the policy intent behind both Breathing Space and the SDRP, the Government should think again about how to increase public awareness of the benefits of accessing free debt advice.

There is a significant administrative burden to CAP in running the Breathing Space scheme. If this was eased then it is likely we would be able to make more applications for clients. At the moment it takes between 15 and 60 additional minutes to prepare an application for a client on top of the existing debt advice process.

Part (b)

The Breathing Space protections are not long enough and should be extended to 90 days. It is a concern that the Breathing Space protections do not give clients enough time to access a debt solution. Only 8.1% of CAP clients became debt free during the 60 day moratorium (as of end of April 2022). Most of the clients CAP supports on Breathing Space are insolvent (67.4%) so for these clients, there is a significant gap between their Breathing Space ending and them being able to benefit from the protections of a DRO or Bankruptcy. Therefore, there is a risk of enforcement action continuing for clients, for whom the solution to their debt situation is clearly insolvency and any further collection action is inappropriate and wasted.

The fact that Universal Credit Advances and Third Party deductions are not included in the scheme is a significant shortfall. Many of the clients CAP supports on Breathing

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Space are insolvent (67.4%) and are likely to have deficit budgets. If these debts were included then it would improve the sustainability of clients' budgets

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?

It would be helpful if creditors could update their own balances on the system to increase efficiency. Two-way communication between advisors and creditors within the system should also be added, to streamline communications, which currently has to take place outside of the system where further replies are needed and takes up a lot of time for debt advice support teams.

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

Further to the answer in question 41, CAP believes that an extension to the length of protections should be considered. This would be an appropriate response to the lessons learned from Breathing Space in its first year of operation and to the current cost of living crisis. An extension, even to 90 days, would lead to more clients reaching the beginning of their debt solution and the accompanying protections during the Breathing Space. This would be a relatively minor change to the scheme with potentially life changing impacts for those in problem debt.

Chapter 9

Question 44: For those eligible for both a SDRP and a DMP, would you expect to still recommend a DMP in any circumstances? If yes, what proportion of those eligible for both solutions would you expect to still recommend a DMP?

For those eligible for both a SDRP and a DMP, the major factor that would result in a DMP being recommended would be concern about the stability of the client's circumstances and any relevant external factors like the cost of living crisis that could change the amounts paid to creditors. Typically many recipients of CAP's Debt Help live in challenging and changeable life situations, meaning that it can be difficult to say with certainty that a household's income and expenditure will remain consistent for the duration of a SDRP. For example, someone on a zero-hours contract will have variable income month-to-month and therefore a SDRP in the proposed form would seem less flexible than a DMP. As a result, the risk of the SDRP failing due to the lack of flexibility provided through payment holidays, missed payments, and the process to obtain a variation, would result in DMPs being the preferred solution.

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In Scotland where DAS is available as a statutory repayment solution, only 2.63% of CAP clients on a repayment route in 2021 chose to pursue a DAS with the remaining 97% opting to enter a DMP. This is despite improvements to DAS which mean it now offers significantly more access to payment holidays.

FCA regulation also requires debt advisors to provide clients with the full list of debt solutions available to them, and therefore perceptions of the SDRP and client choice will also play a role. The role of creditor voting and fair and reasonable tests will be a major factor here, as clients typically seek to avoid the uncertainty of whether a solution will be accepted when choosing their route forward. If a client is presented with the similar realities of creditor voting for both SDRP and IVA, clients may be predisposed to choose an IVA for its flexibility, and having a less than 100% repayment. The consequences of IVAs are lesser than bankruptcy or DROs, and therefore the gains from entering a SDRP rather than IVA and avoiding the negative consequences of this form of insolvency solution will be marginal.

There is potential for a statutory arrangement to be less appealing for a creditor to accept than a DMP because of the mandatory funding mechanism it would place on them. It would mean a requirement to follow strict rules around enforcement and financial contributions to debt advice may also be more expensive than current agreements. There is also a possibility that some advisors might not recommend a SDRP over a DMP if the financial benefit to them as an organisation was greater from a DMP.

A question to be raised is around the difference between a SDRP and an IVA when it comes to terminating a plan early. The process to close down a contribution-based IVA can take several months and is difficult to navigate, often delaying other solutions such as bankruptcy. It would be CAP's preference for SDRPs to not suffer the same flaw. A client may then be able to rapidly switch onto a DMP or insolvency solution if their circumstances change significantly.

Question 45: Would you recommend SDRPs to those who would otherwise enter insolvency (e.g. DRO, bankruptcy, IVA)? If yes, what proportion of those clients would you instead expect to recommend a SDRP?

On the whole, CAP does not anticipate the provision of SDRPs to shift clients out of insolvency solutions. The current proposals for SDRP do not add a significantly new option into the debt solution mix outside of what is already provided through IVAs and DMPs.

DMPs and IVAs both have the potential to be more flexible than the proposed SDRP. IVAs also provide a clearer shorter term for repayments over SDRP and there is a greater likelihood of the debts being cleared even if circumstances change. The main benefit of SDRPs to clients is for those who have a very stable income and expenditure, are particularly concerned about enforcement action and are averse to any form of insolvency.

CAP expects this subset of clients to be small. Clients who pursue insolvency do not have the disposable income that would be required to repay their debts within the timeframe expected in a SDRP or a DMP.

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One of the main considerations an advisor would make in this situation would be the comparative impact on the client's personal circumstances. For someone entering into insolvency, there is the possibility of the Insolvency Service mandating an Income Payment Arrangement over a set period. Were this timescale to exceed the length of a SDRP, it would be reasonable to suggest the latter option. However, if a debtor could go through insolvency and be clear of debts rapidly and with minimal detriment, then it is likely this would be the preferred option. A SDRP is more likely to be appealing in cases where someone was precluded from insolvency for a particular reason.

Question 46: Would you recommend SDRPs to those who are currently not recommended either a DMP or an insolvency solution (e.g. those entering into informal solutions)? If yes, what proportion of those clients would you instead expect to recommend a SDRP?

CAP Debt Help clients that are not able to progress with a DMP or insolvency are supported by the Resolutions team. Typically this is because there might be an issue to be resolved before a debt solution option becomes viable or can be assessed as the most appropriate solution. The most common reason for needing complex support is due to awaiting an anticipated change of circumstances that would have a material impact on their debt solution. Other reasons include expecting capital from a house sale or inheritance, access to stocks or shares, or missing key pieces of information that are not readily available. In these cases, it is highly unlikely that a SDRP could be entered into without the outstanding issue being resolved first.

However, if SDRPs include a mechanism for token payments for an initial period, they would support this group of clients by providing protections until the funds are released to clear their debts in full, or an expected increase in income takes place to facilitate repayment.

Question 47: For each of the above, why would you expect to recommend or not recommend a SDRP over the alternative solution (DMP, insolvency or informal solution)?

It is clear that no two situations will be identical, so the answer for each case will be nuanced and unique. In providing debt advice, an advisor must always take the debtor's full circumstances into account. As per previous answers, the typical CAP client circumstances are generally in a state of flux or at least unlikely to stay stable for seven to ten years. In these situations it is therefore likely that a DMP or insolvency would be recommended as it provides more flexibility.

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Question 48: Is the assumption that the SDRP caseload will be reduced by 50%, 30% and 10% in its first three years respectively due to a period of transition a reasonable estimate? How long would you expect the scheme to take to reach a steady state and what impact would you expect this transition phase to have on the scheme?

This transition period makes the assumption that the advice given to a client in all situations would be clear cut. In many cases this is simply not possible, and as mentioned previously no two cases are likely to be the same. Under FCA guidance, CAP must provide information on all of the options available when providing advice and sometimes the client could be eligible for multiple solutions.

In 2021, 3.23% of cases provided with debt advice by CAP advisors chose a DMP over a more recommended option. Given this is a relatively small figure it stands to reason that SDRP may not receive a significant uptake when there are potentially more preferable options available.

As highlighted already, the changeable nature of a typical CAP client's situation means that we would expect a reasonable amount of ongoing administration to still be required, with annual reviews of income and varying life events to navigate. CAP's model allows clients to be supported through their entire debt solution until debt free. Assuming SDRP is administered in the same way, then it is difficult to see there being a large cost reduction over time due to the requirement to provide ongoing support for debtors undertaking a longer term SDRP.

Question 49: What proportion of an individual's debt would you expect to be repaid in a successful SDRP? How frequently would you expect voluntary debt write off to occur and to what degree?

CAP would suggest that the SDRP could follow a similar approach to DAS, which allows all remaining debts to be written off when 70% has been repaid and a full twelve years of payments have been made. In the case of SDRP a shorter timeframe would be preferable; a limit of ten years would align with the proposed timescales on repayment plans.

It is important to recognise that voluntary write-off can and will happen in other circumstances throughout the term of a DMP. For example, in cases where the debtor has a terminal illness the creditor can apply compassionate write-offs to debt balances. CAP would therefore prefer flexibility to be built into the design of any potential write-off element of the SDRP. This would be particularly applicable in the case of severe vulnerability, terminal illness or exceptional personal tragedy. Such flexibility and terms could be set by the Insolvency Service to ensure consistency and compassion in extenuating circumstances.

There are potential instances where a debt balance would be so small that pro-rata repayments are minimal and creditors may decide to write-off the debt with the administration costs they would expect to incur to process these payments. However, this is expected to be rare.

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Question 50: If you expect the level of repayment to be different in SDRPs compared to DMPs, what impact would you expect that to have on your clients in SDRPs?

It is understood that calculations for SDRP repayment plans will be created via the Standard Financial Statement, so it would stand to reason that there would be little significant change to the way the actual income and expenditure is calculated. The key area of difference for CAP may be in the classification of certain debt types; it could be difficult to determine the impact on debts owed to friends and family at this stage and how those would be accounted for.

Based on CAP's latest annual report, clients supported with debt help have an average split of priority and non-priority debt of around 38% to 62%. The most common forms of priority debt tend to be Council Tax and energy arrears. However, 23% of CAP clients will have water arrears, which CAP generally treats as a priority debt. Adjusting this to be treated as a non-priority debt under a SDRP would have an impact on a number of repayment plans, possibly reducing repayment rates.

However, on the whole, while there may be some slight differences to how repayments are proportioned under a SDRP compared to a DMP, this is not anticipated to have an impact on the overall repayment term.

Question 51: For those who do not complete their DMP and subsequently enter another solution, to what degree is their repayment reduced, if at all?

Data to answer this question is not available. However, on average, only 0.15% of CAP's active DMPs are transferred to insolvency each week. While this is not a large figure in itself, over time this shows that there will be an ongoing requirement for some individuals to move between solutions. In 2021, this equated to 8% of DMP cases transferring to an insolvency option.

To-date in 2022, an average of 4% of active DMPs per month end up closing as the client is no longer making the required payments (as of July 2022). Anecdotal evidence suggests that the majority of DMPs will fail earlier in the journey rather than in the later stages of the repayment term. For those that do fail later, it is typically due to a severe and unexpected change of life circumstances.

Question 52: Is it reasonable to assume that the benefit to a debtor from a debt repayment solution is proportionate to the amount of repayment that the solution delivers? For instance, would a SDRP that yields 50% repayment be half as beneficial to a debtor as one that yields full repayment?

The outcome of debt solutions are critical for debtors. A failed IVA, DMP or SDRP can have had years of investment from the client, advisor and creditors. Where the eventual outcome after years of repayment is that the debtor needs to pursue a DRO or bankruptcy, the benefit of the years of repayment may be seen as marginal, or worse, as

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it delayed a more reliable solution, prolonged the period of debt, and impacted the client's credit score.

The benefit to the debtor is threefold. Firstly, there is a relief of anxiety from having their debts under control. Secondly, a burden is lifted from having their repayments and correspondence with creditors managed on their behalf. Thirdly, there is the resulting debt relief when a debtor becomes debt free. Therefore it is not as simple as proportioning the benefit of a SDRP as a set percentage of the repayment of their total debt.

The overall benefit to the debtor would be dependent on the final outcome. A form of SDRP that does not yield full repayment of debt balances would seem less appealing than a plan that would clear the full amount owed. However, there are other benefits to an individual going through a repayment solution. In particular it is worth noting the emotional rehabilitation and the potential budgeting skills developed from this experience.

Case study: Lorraine
Lorraine got into debt when her marriage broke down. Payments and debts quickly began to spiral, and she sought help through CAP's money education course before entering into a debt management plan. As circumstances shifted over time, she had to make adjustments along the journey before becoming debt free in May 2022. She said that repaying her debts gave her much more confidence to deal with future challenges by herself.

"We have been paying everything back over the years. When situations have changed and things have got a bit tight we have been able to have things adjusted accordingly and we also had annual reviews. I knew it was just a phone call or email to get hold of help if I needed it."

Question 53: How beneficial to your clients do you expect the protections of the SDRP to be?

The main benefits that CAP clients would receive from a SDRP are the statutory protections from enforcement and the freezing of interest and charges on all debts. CAP has negotiated with many banks and collections companies and has arrangements established so that interest and charges will be stopped once creditors are informed that CAP is involved. This is a voluntary agreement from creditors, so SDRP protections would enforce those more stringently and across all creditors.

The second benefit to CAP clients would be relating to government debt collection, assuming that all debts are included under the umbrella of a SDRP. It is often noted that the approach government departments take towards the collection of arrears can be particularly aggressive or unjust. If these departments were forced to align their processes with the consumer credit sector it would bring strong benefit to clients through increased forbearance and affordability of debt repayments.

Unfortunately, CAP feels that the proposed SDRP plans may be too inflexible to provide other benefits in line with DMPs. This is also compared to a DAS in Scotland, which has

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greater flexibility as well as debt composition which includes write-offs of debt balances as part of the process.

Question 54: How much would you expect it to cost to familiarise yourself with the scheme, and to train debt advice providers within your agency?

It is difficult to provide figures relating to the implementation and ongoing costs of administering SDRPs from an advisor training perspective, without knowing the potential impact on wider systems and processes.

Question 55: If you expect to develop and implement new systems to administer SDRPs, can you estimate what the upfront and ongoing costs of this might be?

Again, it is difficult to provide figures relating to the technical implementation and ongoing costs of administering SDRPs without full scoping of the processes and technical specifications. The project would require a number of skilled developers working on adapting existing legacy code in existing systems. This carries a high risk to consistency and quality of service to existing clients. Development would need to be done whilst ensuring that these systems could continue to meet ongoing requirements.

Initial scoping anticipates that development for the SDRP would take two years to complete, at considerable extra cost. CAP's existing developers would not be able to achieve this within the timescales for deployment and external resources would have to be procured to meet the proposed implementation periods, incurring a higher cost for delivery. Additionally this would be further impacted by delayed provision of the full guidance, technical specifications and API information, which is needed to fully scope the system changes needed for the processes that SDRP impacts and requires. These costs are still considerable for preparing systems for giving advice in respect to the SDRP, not just to support payment distribution.

To justify this investment, there needs to be sufficient anticipated take-up of the SDRP. If the current take-up of DAS is suggestive of the take-up of the SDRP, this condition would not be met.

Question 56: Would you expect the ongoing administration costs of SDRPs to be higher than that of DMPs? How much would you expect it to cost to set up and maintain a SDRP?

It is anticipated that SDRP would have a significantly higher ongoing administration cost compared to DMPs due to the additional processes such as fair and reasonable tests, variations and creditor objections. While the journey is not substantially different to that of a DMP, the extra administrative process and liaison with the Insolvency Service will increase the time taken to administer these parts of the client journey. It is anticipated that the number of touchpoints between the client and CAP would be increased as a result.

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In addition, there will be higher costs associated with operating two parallel systems for informal DMPs and SDRPs.

Question 57: Would you expect to act as a payment distributor for SDRPs you administer? If so, what additional systems or administrative costs do you anticipate as a result?

The 18 month implementation period proposed in this consultation is too short for CAP to make the changes necessary to enable both SDRP advice and administration, and an additional mechanism of payment distribution. If there is no flexibility on the implementation period, then CAP would be unable to prioritise the activities needed to continue to act as a payment distributor for SDRPs it administers. Even with flexibility on the implementation period, if the SDRP itself is not made more flexible, then the predicted low take up of the solution would make development financially unsustainable.

Question 58: Would you expect the SDRP to have any further impacts, positive or negative, on those with protected characteristics that have not been identified by the impact assessment?

According to the FCA's guidance on designing products and services, '*Firms should consider how characteristics of vulnerability present in their target market or customer base may affect their customers' needs over time. Standard services with little flexibility can prevent consumers from engaging with or using them.*' We would question whether the proposed SDRP will satisfy this criteria, due to the lack of flexibility to adapt the processes and structures to the needs of individuals in vulnerable circumstances. While protected characteristics do not specifically refer to individuals in vulnerable circumstances, there is enough overlap to question whether FCA-regulated firms could then be at risk of breaking their guidance if the SDRP was introduced in its current form.

Furthermore, the proposed SDRP procedures assume a tight turnaround for advisors to obtain information, produce a solution and issue this to creditors. For some, particularly those in difficult situations, a rapid turnaround is rarely possible. Examples of this might be for those with English as a second language or for those with limitations on sight or hearing who require someone to be available to support them. With the obligations placed on individuals by the SDRP, this could present a significant barrier for them in reporting changes in circumstances or ensuring that their full indebtedness is clarified prior to the SDRP being recommended.

Question 59: Do you agree with the assumption that the impacts of Covid-19 on consumer debt levels and on debt advice demand will have receded by the time the SDRP launches? If not, which impacts do you expect to remain and to what degree?

CAP does not agree that there will be an expected reduction in demand on debt advice by the time SDRP launches. Historically, CAP's data shows that the majority of households affected by problem debt will not seek help as soon as they require it. Data

from CAP's 2022 Client Report shows that 25% of those supported by CAP's debt help had waited three years or more to seek help. Covid-19 related financial difficulties - debts, arrears, changes to working practices or job losses - will still be a feature of a significant number of peoples' lives until 2024.

If SDRP is implemented in 2024 as proposed, it would not be delivered into a steady state debt advice sector. Instead, this would be delivered into a sector still dealing with the ramifications of the pandemic, while at the same time addressing the further impacts of rising inflation in 2022 that is predicted to last well into 2023, with particular impacts upon energy bills, food costs, fuel costs and travel costs.

While this situation might seem one in which a new debt solution with increased protections for debtors could be sensible, the current design of the SDRP does not give the levels of flexibility required for most clients affected by these issues to enter into. The aftermath of the pandemic and the challenges of the cost of living crisis have deeply impacted personal finances. This means that fewer households have a steady state of income, expenditure and debt levels, which the proposed SDRP relies upon.

In addition to the impact of Covid-19, there remains the issue of recent energy price volatility and high inflation on household finances. Given energy prices are not expected to reduce over the next twelve months, this creates a harsh and lasting environment for household budgets. It should be noted that these problems were not immediately anticipated and therefore it is possible there will be further financial complications in the intervening period before implementation.

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About Christians Against Poverty (CAP)

Christians Against Poverty (CAP) is a Christian charity tackling poverty in communities across the UK through free debt help and local community groups. CAP provides award-winning free debt help through local churches. Each church's CAP Debt Centre offers emotional and practical support, while our head office team in Bradford provides bespoke debt advice and a plan to help people get out of debt.

CAP also offers community groups dedicated to tackling poverty at the root. These are run through local churches, and cover topics such as interview skills, applying for a job and writing a CV, how to budget, making money go further and key life skills.

Requests for further information

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