Review of the personal insolvency framework

CAP's written response to The Insolvency Service consultation call for evidence

July 2022

always hope.

Content

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Summary

Christians Against Poverty (CAP) welcomes the review of the personal insolvency framework as an important step to updating and improving the personal insolvency options available in England and Wales. Each year personal insolvency options provide thousands of people with hope and a way out of debt which they would otherwise be unable to resolve. However, CAP has concerns around the accessibility, suitability and sustainability of the current framework and welcomes the opportunity to input into the reforms that are needed.

Key points:

- More reliable information needs to be available for the public to enable all to be aware of the free debt advice and support, and the personal insolvency options, that are available. The Insolvency Service needs to take responsibility for providing this information and, as part of this, also take an active approach to address the stigma associated with personal insolvency.
- The cost of applying for a personal insolvency option is currently a barrier for many people, preventing them from being able to access the solution they need. This includes bankruptcy and Debt Relief Orders (DROs). This financial barrier should be removed for people with low incomes.
- Reforms are needed to challenge bad practice in the Individual Voluntary Arrangement (IVA) sector to address issues around unregulated advertising, fee charging structures and the difficulties getting in touch with a Trustee to terminate an IVA at volume firms.
- The system needs to be altered to enable clients to have more certainty upfront on how their assets will be treated,especially treatment of vehicles and family homes. This would support the advice process and allow clients to make an informed decision about which debt solution is best for them.
- The rigidity of the current eligibility criteria is a barrier that prevents people from moving between the different personal insolvency solutions as their circumstances change or new information comes to light during the insolvency process. This

restricts people's ability to access the most suitable debt solution for their circumstances. Enabling the debt advice sector to have increased autonomy over the options that they recommend for clients, and making the process of transferring between options easier, would enable the sector to better serve the needs of their clients.

- The ethos of 'can pay, will pay' and the concept of labelling people based on the categories of 'honest/unfortunate and dishonest/reckless debtor' fail to recognise people's unique life situations, and risks judging people rather than being sensitive, supportive and professional for all clients.

- The concept of a 'fresh start' should be an important underpinning ethos for the system, and is not currently being received by all in practice. As it stands, market, societal and financial barriers remain beyond people's journey through a personal insolvency option. This includes negative impacts from the use of a public register and impact on credit files.

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Questions

Chapter 5.1 – The underlying purpose of the framework

Question 1: What should be the fundamental purpose of the personal insolvency framework? Does the current framework meet that purpose?

CAP broadly agrees that the purpose statement of the Insolvency Service to 'help to deliver economic confidence by supporting those in financial distress, tackling financial wrongdoing and maximising returns to creditors'[1] encompasses the main purposes of the insolvency system and the balance that needs to be struck between its objectives.

However, the societal benefit of the insolvency system is under-represented and it is important that economic confidence is understood in the broadest sense. The impacts of financial distress on society are wide reaching and bring significant social cost. Economic confidence is also served by enabling individuals to be productive members of society and the economy, and the insolvency system should take into account its impacts on a broad range of economic factors, including individuals, large businesses and entrepreneurs.

Moving beyond the fundamental purpose of the personal insolvency process, CAP also has concerns around the way this purpose is achieved in practice. In many ways, people do not experience the relief from financial distress that is suggested in the insolvency system's purpose statement. Fundamentally, the policies and processes within the insolvency system do not articulate when it is reasonable to give debt relief, but rely on the use of eligibility criteria. It is right that the insolvency system has checks and balances that tackle wrongdoing and prevent abuse of the system, but at present the wrong levers are relied upon in the current method of implementation. This undermines economic confidence and prevents the relief of financial distress as intended. This is exacerbated where individuals are effectively blacklisted – because of a previous insolvency – from products and services

[1] Insolvency Service, *About us*, available at gov.uk/government/organisations/insolvency-service/about

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essential for inclusion in society, for example: bank accounts, phone contracts and pay-monthly insurance premiums.

In particular CAP is concerned about:

1. The long-lasting, and in some cases permanent, consequences of becoming insolvent for an individual.
2. The use of insolvency as means of enforcement without clear definition of the situations in which the system should be punitive.
3. The lack of fairness within the system, which prioritises the interests of creditors, and ignores the holistic impacts on the debtor.
4. The upfront costs faced by debtors which many are unable to pay and which block their ability to access debt relief.

CAP acknowledges that the Insolvency Service cannot remove all upfront barriers and implications, and that there should be penalties for those who abuse the system, including criminalising fraud. However, the framework should not prevent people from entering the system because of unnecessarily high fees, uncertainty or fear, and should instead focus on its aim to 'help to deliver economic confidence by supporting those in financial distress'.[2]

Question 2: If 'fresh start' and 'can pay, will pay' are the right objectives for the personal insolvency regime, does the current framework get the balance right?

Providing a fresh start is important as it enables the personal insolvency process to support people to move beyond their debts to a better place of personal economic confidence. As StepChange, The Money Advice Service, Europe Economics, and This Matter has highlighted, the provision of a fresh start through bankruptcy benefits not only the

[2] Insolvency Service, *About us, available at* gov.uk/government/organisations/insolvency-service/about

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individual's economic situation, but also has benefits to society at large.[3] [4] [5] Thus, in theory, when people are freed from the traps of debt they are able to engage with the economy in a more sustainable way. Sadly, however, this is no longer the case. CAP is seeing an increasing number of clients who leave the personal insolvency process with broken budgets. Over the last three months, 48% of CAP clients have had deficit budgets, with the typical amount needed to make the budget balance standing at £239 per month.[6] People with broken budgets or those on unsustainably low incomes are unable to truly experience a fresh start as they remain trapped by the financial restrictions of poverty, despite reaching a point where they are debt free through the use of a personal insolvency process.

Another factor that is preventing people from receiving a fresh start is that, for some clients, debts remain after they have gone through a personal insolvency process. Only listed debts clear in a DRO, with omitted debts not clearing through the process. These clients continue to face additional strain that prevents them from receiving a 'fresh start'. Additionally old-style Social Fund loans, do not clear in an insolvency despite the new budgeting loans being qualifying debts. These historic equivalent debts should also bought into the qualifying criteria, as well as court fines and debts considered to be fraudulent which do not clear in an insolvency and can continue to put financial strain on households unable to afford repayments to these types of debts either.

Delays to receiving adequate support can also raise issues. There is often a delay for deductions to be stopped from prepayment meters and benefits, which is partly due to the time it takes for the backroom administration to be done by creditors. Delays are often also experienced in bankruptcy processes because the Official Receiver has up to six weeks to send out notifications to creditors. Where creditors do not action these notifications quickly, it becomes difficult to challenge any ongoing deductions because it relies on proof from the client rather than being able to check the Insolvency Register. Thus there needs to be a broadening of the categories of debt write-offs and support in place if delays occur, to enable people to have a genuine fresh start.

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[3] This Matter, *The benefit of bankruptcy to society*, available at thismatter.com/money/credit/bankruptcy/benefit-of-bankruptcy-to-society.htm

[4] The Money Advice Service and Europe Economics (2021) *The Economic Impact of Debt Advice*, available at moneyandpensionsservice.org.uk/wp-content/uploads/2021/03/economic-impact-of-debt-advice-summary.pdf

[5] StepChange (2014) *Transforming Lives: A review of the social impacts of debt advice for UK individuals and families*, available at stepchange.org/Portals/0/documents/media/reports/Transforming_lives_exec.pdf

[6] July-September 2022

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One CAP client with learning disabilities who cannot read or write went through a DRO in 2018 and is now preparing to make another bankruptcy application, four years later. The client's distress from enforcement activity was lifted through the DRO but her household budget remained unsustainable. She had a Social Fund loan that did not clear in the DRO and £30 continues to be deducted from their Universal Credit. Every month they receive £570, but their one-bedroom property costs £572 a month to rent. As a result, they have been forced straight back into arrears on their rent, Council Tax and utility bills.

Another CAP client who had a DRO approved continued to have repayments (for rent arrears of £60 a month) deducted from their benefits for the next six months. This meant that they needed emergency food aid despite being officially debt free. The client was also unable to afford the bus fare to travel to the Access Course the Jobcentre had arranged for him. It took many attempts by the client and their Council Support Worker to get the erroneous deductions stopped, and the additional payments have not been refunded.

In addition to broken budgets and remaining debts, legislations and market driven factors also play a role in preventing people from receiving a fresh start. In our 2019 report, *Unlocking a new start*, CAP found that three quarters of our insolvency clients were in an unsustainable financial position where expenditure outweighed their income, even if they were only spending on absolute essentials. This was after their debt liabilities were reduced.[7]

Factors such as the impact that going through an insolvency process has on someone's credit score mean that they are not offered a fresh start in practice, but instead remain trapped by the impact of their past debt. Credit scores are a key consideration within the structures of court systems and wider society, due to their use in determining someone's access to essentials, such as the ability to pay for car insurance in monthly instalments or secure a private rented tenancy. Therefore, a process such as a DRO is not enabling people to rebuild their financial wellbeing.

[7] CAP (2019), *Unlocking a new start: Why insolvency alone cannot provide a new start for people in severe financial crisis*, available at capuk.org/unlockinganewstartpdf

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The ethos which underpins the insolvency system at present that those who 'can pay will pay' is nowhere near as nuanced as the purpose statement, and is perhaps more revealing as to the current priorities within the framework. The ethos of 'can pay, will pay' supports the use of insolvency as an enforcement mechanism, and CAP does not believe this is or should be the primary purpose of the system. Additionally, the punitive use of insolvency does not sit well with the aim of 'supporting those in financial distress'. 'Can pay will pay' is not the right ethos to apply to the whole of the insolvency system, which by nature supports individuals who cannot pay, at least in full.

The 'can pay, will pay' ethos also does not say anything about how those who cannot pay should be treated by the system. There is a growing group of debtors who simply do not have the income, assets or capacity to pay that need greater consideration and support through the personal insolvency process. An additional problematic element of this statement is the lack of framework around how the amount someone should be required to pay should be decided.

The ethos of 'can pay, will pay' which informs the rigid criterias for eligibility of different insolvency solutions is also problematic alongside the idea of a 'fresh start'. Some people can end up paying into a solution that is not well suited to their long term needs or due to a change of circumstances need to move to a different personal insolvency solution further down the line. Instead of being able to convert the solution someone is in process with to a more suitable option to achieve the 'fresh start' ethos, the restrictions on making sure those who 'can pay, will pay' means that individuals face starting at the beginning and paying new insolvency fees. Thus causing the individual distress, financial penalty and adding to the length of the process for all involved.

In conclusion, providing a fresh start is key for individuals and the wider economy, yet in practice this is currently not being achieved effectively. Alongside this,, the 'can pay, will pay' ethos reveals the harsh judgement that some people face when the whole nuance of their situation is not considered within the rigid framework of the current system. The lack of balance between the 'fresh start' and 'can pay, will pay' ethos needs to be considered. Alongside this, consideration must be given to the ever increasing amount of people who simply cannot afford to pay. Currently, they are not given a 'fresh start' due to deficit budgets and market restrictions that they will still face after becoming debt free.

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Question 3: Please provide any evidence to show how well the objectives of ‘fresh start’ and ‘can pay, will pay’ are being met.

The provision of pathways out of debt has a life changing impact. CAP would like to first recognise, acknowledge, and thank the Insolvency Service for enabling our clients to break free from the traps of problem debt.

In order to understand the experiences and views of advisors across the free debt advice sector, CAP was involved in conducting a joint survey alongside other debt advice charities, looking at the current insolvency framework and options.[8] Advisors were generally positive about the effectiveness of the regime in ‘providing a fresh start’, with 72% saying the current regime was effective or very effective in delivering this.

However, there are a number of reasons why people are not able to receive the fresh start that they were promised. These reasons include: market and financial factors that can keep people trapped in destitution, anxiety formed by the public record of their debt process, and the potential for further consequences to arise.

Firstly, people who become debt free often still have a budget that is too small to live on. As a result, they are at risk of being pulled back into debt from just the basic costs of living. Low income remains the most common reason for CAP clients’ debt (it was the primary reason for 17% of new CAP clients’ debt crisis in 2021).[9] More than a quarter (29%) of households surveyed by the Office for National Statistics in early 2022 felt they would not be able to afford an unexpected but necessary expense of £850, with adults on the lowest incomes amongst those most likely to feel this way.[10] With almost nine in ten CAP clients (85%) receiving an annual income below the national average according to our latest client survey, there is an undeniable link between low income and unmanageable debt.

[8] The survey was conducted jointly by: The Money Advice Trust, StepChange Debt Charity, Citizens Advice, Christians Against Poverty, the Institute of Money Advisers, Advice UK and Community Money Advice between 11 July and 31 August 2022. In total, there were 565 responses to the survey from advisors across the debt advice sector.

[9] CAP UK (2022), *Client report*, available at: capuk.org/clientreport

[10] Office for National Statistics (2022), *Impact of increased cost of living on adults across Great Britain: November 2021 to March 2022.*

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To add further restrictions to people's tight budgets, our society as it stands is based heavily on credit scores. As a result, even when someone has gone through a personal insolvency process, they will not receive a 'fresh start in practice due to the consequences that this will have on their ability to take out a loan to start a business, get a good mortgage rate to buy a house, or pay monthly instalments for car insurance premiums that they cannot afford to pay upfront annually.

Secondly, due to the public record of their personal insolvency process, people are faced with ongoing worry which continues after the supposed fresh start'. People have been known to not be accepted for jobs, or have been unable to get social housing as a result of this practice, making it an extremely limiting factor. This concern will be covered in more detail in question six.

Thirdly, in practice, people may not receive a fresh start due to the potential for consequences further down the line. One such consequence is being forced to pay debts that were missed during the initial inventory part of the DRO process, and therefore were not included in the DRO application. Despite best efforts to provide full details of debts owed, including using credit reports, it can be difficult for clients to include every debt in the inventory. One reason for this is that clients are frequently only notified of benefit and tax credit overpayments several years after incurring the debt. These debts, therefore, often come to light during the DRO moratorium, when it is too late to include them retrospectively. These debts can be very large, too – often several thousands of pounds – and as a result, the client may need to apply for bankruptcy shortly after completing the DRO or face many years of repayments.

Additionally, people are often examined and scrutinised further by the DWP, who will look into whether these debts were accumulated in a fraudulent way, after receiving notification of an insolvency being granted. This results in people going through a potentially disproportionate examination after their personal insolvency. CAP understands the necessity of fraud reviews; however, this is a limiting factor that prevents the objective of a 'fresh start' from being achieved because they end up being treated differently long term.

The 'can pay, will pay' objective is also not being met in the way it was perhaps intended in practice, with less than half (only 45%) of debt advisors surveyed voting that the current

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regime is effective or very effective at delivering on the objective to ensure 'those who can pay, will pay'.[11]

People on low income and with low-equity assets do not always have the most appropriate debt solution available to them. These people either must risk their assets in bankruptcy or may select an IVA which they struggle to maintain payments to. This is particularly problematic for people with low incomes who have a modest family home they wish to protect. There is a need for a new solution or reforms to an existing solution to better cater for this group.

Additionally, the debt advice sector needs to be given the flexibility and framework to advise clients about the likely decisions taken by the Official Receiver. It is a problem currently that certainty cannot be given to clients ahead of submitting their application, even if the Official Receive may be likely to allow the client to keep the asset in bankruptcy, this is often a risk the client is not willing to take.

CAP would encourage a definition of the current objectives that is broader and more nuanced. CAP suggests that social inclusion, improved emotional wellbeing and an ability to move forward while financially healthy are key factors to consider in this new definition.[12]

Question 4: Please explain whether there should be different objectives for different personal insolvency procedures.

CAP identifies that the overall objectives should not be different, but that the varied functions currently pinned to different options need to be transformed. Both a single solution approach or separate solutions would work, as long as there is a route to appropriate and proportionate debt relief for all. The overarching objective should be to provide a route to debt relief for people in financial distress who are unable to meet their liabilities in full. This needs to include: affordable debt relief for people on low incomes, investigations only where the return for creditors is likely great enough that they are

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[11] Joint survey of 565 debt advisors carried out between 11 July and 31 August 2022 by Money Advice Trust, StepChange Debt Charity, Citizens Advice, Christians Against Poverty, the Institute of Money Advisers, Advice UK and Community Money Advice.

[12] CAP (2019), .*Unlocking a new start: Why insolvency alone cannot provide a new start for people in severe financial crisis*. Available at capuk.org/unlockinganewstartpdf

warranted, and the option to agree a schedule of repayments to protect an important asset such as a family home and agree a degree of debt writeoff.

The introduction of the Statutory Debt Repayment Plan (SDRP) may call into question the objective of the IVA if composition is built into the proposals as some are calling for, and the Insolvency Service should keep any decisions under review subject to the final design of the SDRP scheme.

Another key aspect to note is that despite bankruptcy and DROs sharing the objective to support someone to become debt free, they are currently very different processes. The amount of time someone has to wait before they are able to go through the process again differs greatly. Additionally, the bankruptcy process clears all debts, whereas the DRO process will only clear debts listed, and does not enable retrospective debts to be added if found after the application is submitted. As a result, it would be beneficial for both clients and the debt advice sector if the DRO process was altered to allow missed debts to be added retrospectively. This would minimise the pressure on both clients and creditors, plus reduce the need for multiple debt solutions should all debts not be listed early enough.

Question 5: Please consider whether there should be different options for trading and consumer debtors. If so, how would the features differ?

Currently it can be difficult for organisations such as CAP to distinguish fully between 'trading' and 'consumer' debts where someone had a failed business and is personally liable for debts from the business. While CAP does not provide advice to people who have active self-employment or businesses, CAP does support individuals with personal debt issues that may include debts from these activities after the businesses are rolled up, and need personal insolvency solutions to be available to assist clients in these situations. Thus differentiation between trading and consumer debt solutions need to recognise this challenge and provide guidance to support debt advice organisations from navigating situations of combined debt.

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Question 6: How effective are the current safeguards (public records, public registers, restrictions and sanctions on debtors) at protecting the integrity of the personal insolvency framework?

CAP acknowledges that there is a risk that some people may abuse the personal insolvency mechanism; however, at present the current 'safeguards' are having a knock-on impact on all who go through personal insolvency. Instead of these safeguards working as a deterrent and a punishment for those who misuse the system, they are penalising everyone as it can feal humiliating and judgmental to be publicly 'shamed'. Publicly documenting those who go through personal insolvency solutions causes unnecessary pain to all those involved, leading to people feeling anxious about who will find out, publicly 'shaming' them and feeding into a narrative of judgement and stigma around bankruptcy.

Instead, technology advancements have now created alternatives which provide enough protection to the integrity of the personal insolvency framework. For instance, credit scoring now allows for lenders to make creditworthiness decisions without the need for a public insolvency register, and the quasi-private register introduced for Breathing Space sets a precedent for only those with a legitimate interest to have access to a register. CAP recommends that the Insolvency Service looks to extend a quasi-private register used as part of the Breathing Space scheme across all personal insolvency solutions. This way, those with legitimate interest can check the register, but people's personal information is not kept in the public domain.

Another positive outcome of the Breathing Space private register is the protection it provides to vulnerable clients. Vulnerable clients may be at higher risk of their information being misused or abused if is publicly available, with people at risk of violence and domestic abuse in particular danger. Providing a quick and easy way to shield key personal information about vulnerable clients from the public domain will keep them safe and reduce the risks they face. This must be a priority. The Person At Risk of Violence (PARV) process which is currently used to conceal someone's address when applying for an insolvency is a court process, which is both trauma-inducing and not fit for purpose. Breathing Space permits any advisor who is notified that the client needs their address withholding to carry out this process. This function should be available within all insolvency solutions, and the PARV process removed.

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Official and unofficial sanctions around personal insolvency solutions also play a role in penalising all involved and preventing a 'fresh start' from being achieved. Legal sanctions and market sanctions, such as the impacts that having been through a debt solution option has on someone's ability to rent, buy a property or pay for car insurance in monthly instalments, cause restrictions to an individual and impact their ability to break free from the cycles of debt and poverty.

Personal insolvency can also cause issues for an individual's immigration status and employment opportunities. Although CAP acknowledges that this is not due to Insolvency Service policies, CAP would welcome efforts from the Insolvency Service to bring clarity on the 'fresh start' that should be available and improve guidance from bodies about the extent of risk insolvency presents to immigration and employment activities. For instance, currently the Home Office advises a bankruptcy can impact the assessment of someone's 'good character' but it is not clear if and when this is the case.

Question 7: To what extent does the current enforcement regime (BROs/DRROs and criminal sanctions) adequately achieve the aims of deterring future misconduct (both individual and general) and protecting the public?

CAP clients, and in likelihood the general population, often hold misinformation about the current legal enforcement and criminalisation that surrounds personal insolvency solutions. It is a positive step that insolvency is no longer a court process. However, some people still hold assumptions around the need to go to court or prison due to their debts, despite them not being at risk of fraud or misusing the system. Worry and anxiety particularly surround bankruptcy which still holds a taboo-like presence for some. The Insolvency Service needs to take an active role in informing the public of how and when enforcement regimes are used and what the purpose of these is. This will help reassure people of the safe, free pathway that many can go through to become debt free.

When there is a legitimate concern around someone's use of the Insolvency Service, a current enforcement regime that CAP has engaged with is to postpone their discharge date. This process prevents them from immediately getting credit whilst their situation is being

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looked into further. In this way, the public are being protected and any alleged misconduct is able to be investigated.

It is key for the Insolvency Service to acknowledge that the current enforcement regimes such as DRROs do have knock-on impacts which can both protect and hinder society. One such impact is that they may reduce someone's ability to enter employment, which has the potential to cause personal hardship and economic disadvantages.

The current limit only enables a person to go through a DRO once every six years. Just under one in ten (9%) of CAP's bankruptcy clients only fail to qualify for a DRO because they have already accessed a DRO within the last six years.[13] On average, just under four years has elapsed, and the average debt balance is substantially lower. CAP clients in need of bankruptcy have debts of £28,139 on average, whereas for clients who return within six years of a DRO and need a bankruptcy, it is £7,418. This penalises people for trying to sort their debts sooner, which is then causing debt to continue to build up instead of being resolved and offered a fresh start.

The proportion of bankruptcy clients who have been through a DRO in the last six years who report low income as the primary reason for their debt is also notable.[14] Just over a third (35%) report low income as the main cause of their debt problems, compared to 20% of all CAP clients on a bankruptcy route. However, many have faced new life events which significantly impacted their finances – most notably a mental health crisis (22%), a long-term illness (9%), unemployment (7%) or relationship breakdown (7%). This is not surprising considering that, on average, CAP clients face three additional difficulties, on top of their debt problems, which put them at risk of being in vulnerable circumstances.[15]

These are dynamic situations that do not end once debt relief has been provided, and debt free clients often continue to face obstacle after obstacle. Thus the impact of not allowing DROs more than once every six years does not prevent problem debt recurring more frequently and forces people into bankruptcy who cannot afford the fee and whose

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[13] CAP (2021) *Simplify the solution: A look at the roadblocks that prevent access to debt relief and proposals for the Debt Relief Order (DRO). Available at capuk.org/assets/documents/other-reports/Simplify-the-Solution.pdf*

[14] For clients with a previous DRO, the reason for debt has been taken from their second CAP Plan (recorded at the beginning of their bankruptcy application process).

[15] CAP (2019) *Stacked Against: Revealing the breadth and depth of vulnerability and the overwhelming nature of multiple complex needs. Available at capuk.org/assets/documents/other-reports/Stacked-against.pdf*

situations do not warrant the cost of providing the solution. The six year limit on applying for a subsequent DRO should be reduced to three years.

Question 8: How, if at all, should the personal insolvency framework distinguish between honest/unfortunate and dishonest/reckless debtors?

In response to questions around distinguishing between honest and unfortunate, and dishonest and reckless debtors, is the concern of what qualifies a person to make that judgement. It is impossible to fully understand what another person has been through or is going through, and as a result, no one can make this black and white judgement around the complexities of human life and decision making on behalf of someone else.

CAP believes that the system should not make such moral judgements. As a result, CAP aims to treat every client fairly and without judgement, helping them to deal with their current situation without casting blame. CAP aims to practise an attitude of remaining sensitive to people's needs, seeing them as a whole person rather than just their situation, and CAP encourages others in the sector to do the same.

It is proper for criminal intent to be considered in criminal justice processes. But as insolvency is no longer a court process, it should be limited to making pragmatic and fair assessments of what can and should be repaid or recouped from available assets, without being punitive.

Now, as the cost of living crisis deepens, there must be an effort to support people rather than judge them. In August 2022, CAP commissioned a YouGov Poll of a nationally representative sample of 2,270 people. The aim of this was to identify the impact of increasing costs on the number of people being pulled into debt in the UK.[16]

The findings revealed that 19% (10 million people) are struggling to keep up financially with rising costs.[17] Some people are being pulled into debt having been on the edge prior to

[16] More information and data about CAP's polling can be found at medium.com/christians-against-poverty/new-polling-released-today-the-stark-statistics-behind-this-cost-of-living-crisis-2c53e343ae3d

[17] Population figures have been calculated using ONS mid-year UK population estimates for 2020 of 52,890,044.

these rising costs. For others, this sudden plunge into debt will have come as a shock, having been facing a steady financial situation before this time. 16% of the population (8.5 million people) have been finding finances difficult only in the past couple of months (since June/July), whereas 15% (7.9 million people) have been struggling financially since 2021 or before. 42% of UK adults (22.2 million people) have already borrowed money this year.[18] These findings highlight the importance of acknowledging situational drivers of debt, rather than seeking to label anyone as 'honest/unfortunate' or 'dishonest/reckless''.

CAP expects increases in the demand for debt advice as a consequence of the positions people are being pulled into through the cost of living crisis. Now more than ever, it is key that the sector remains non-judgemental and treats each client with a respectful and fair service as they journey towards becoming debt free, whether they are new to financial insecurity or whether they have been on the edge for many years.

Question 9: Are there any features of other regimes that would be beneficial to consider for England and Wales, and how effective are these features? For example, debt counselling and rehabilitation programmes.

There is a system in Scotland whereby clients are asked to take part in financial education post-bankruptcy. The Insolvency Service should seek evidence on the engagement and impact of this in Scotland, and whether this is delivering what is intended. If the Insolvency Service considered rolling this out as a concept across England and Wales, CAP would like to highlight some key cautions that need to be considered:

- 13% of CAP clients report problems with budgeting as the primary reason for their debt problems. However, the top reason is low income (20%) and many people face difficulty due to an income shock rather than a lack of skills and confidence.[19]

[18] 13% of UK adults (6.9 million people) reported having fallen behind with the following household bills and still owe money this year. Top of the list was energy bills (6%), water bills (4%), Council Tax (4%) and rent payments (3%).
By breaking this down there are trends, such as: 30% of the lowest income adults (receiving less than £15,000 a year) are behind with household bills compared with 9% of the highest income adults (receiving more than £100,000 a year).
[19] Christians Against Poverty (2021) *Client Report 2021: Our story. Available at capuk.org/assets/documents/client-reports/Client-report-2021.pdf*

Improvements to clients' income level and wellbeing would therefore have more impact than targeting their skill or capacity.[20]

- A person's journey into debt is often a consequence of lack of resources or sudden life events, rather than being a measure of a financial competence. Therefore, if not done in the right way, a state-enforced financial education scheme as part of the personal insolvency pathway could feel judgemental for individuals and increase societal stigma around debt being the fault of the individual.

- An additional concern with adding extra elements to the personal insolvency process is that the sector is already struggling with capacity. There would be risks if debt advisors were forced to take on more elements on top of what is already a heavy workload. This is not to say that CAP would not support the option for people to engage with financial education if they wished, but this should come as an offer and not a requirement, and should be offered during the process rather than afterwards. Evidence shows that integrating financial education within the initial debt advice is effective at improving financial capability.[21]

- To make this viable and sustainable, additional financial support and training would need to be provided to fully equip the debt advice sector.

CAP has seen the benefits of providing a triage service to enable clients to be able to receive the support that they need most. Through good relationships with other organisations in the sector, in addition to the money management courses, Life Skills groups and Job Clubs that CAP runs through over 853 churches across the UK, CAP is able to signpost people to additional support alongside debt help. Therefore, as highlighted above, CAP would welcome people being supported holistically, but suggest that this is done as an optional extra and run either through the financial education sector or through a better resourced debt support sector.

[20] CAP UK (2021), *Shipshape or sinking ship? Problem debt's impact on financial and mental wellbeing*, available at bynder.capuk.org/m/1e7f4a9c8c9e8ae5/original/Shipshape-or-sinking-ship.pdf
[21] Money and Pension Service (2020) *Improving financial wellbeing through the debt advice journey*, available at moneyandpensionsservice.org.uk/wp-content/uploads/2020/11/Improving-financial-wellbeing-through-the-debt-advice-journey-report-Nov-2020.pdf

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Chapter 5.2 – Fees, funding and costs

Question 10: Who should bear the costs of entering and administering personal insolvency procedures?

As insolvency is a public good, the fee should not be entirely borne by the individual. The cost paid by an individual should reflect the complexity of the case and the person's ability to pay which ties into the ethos of 'can pay, will pay'. Creditors and those with surplus income and assets should contribute more to the costs of funding the system as a whole, whereas individuals with deficit budgets should face no upfront cost when applying for an insolvency solution. Instead, a means-tested or sliding scale of payment would seem more appropriate or, as Scotland does, removing the fee for people in receipt of means-tested benefits.[22]

From a debt advice sector perspective, it is also important to highlight the extreme differences between costs of entering and administrating procedures. The financial support that the organisation receives is not in line with the time taken to support the client through the whole process to becoming debt free. CAP would recommend that the Insolvency Service considers the options of increasing the threshold of assets and other barriers that are currently in place. This would enable more people to be supported by a debt advice organisation through a DRO process,making the journey to becoming debt free easier, quicker and cheaper for all involved.

People can end up paying very high costs to enter a personal insolvency route. This can be particularly the case for people who fall outside the DRO criteria. For example, couples who both need to go through an insolvency route, who may be limited to bankruptcy as they fall outside of the DRO criteria, for example by having marginally more debt despite having just a small income and a very small amount of assets. In this situation households in problem debt on a very low income face a fee in excess of £1,200 to become insolvency.

The DRO threshold increases in May 2021 had a big impact, but these were not future proofed by building in regular review points and are set arbitrarily. CAP would encourage the Insolvency Service thresholds to be pegged to data of the time, and remain flexible as

[22] Citizens Advice Scotland. *Bankruptcy in Scotland*, available at citizensadvice.org.uk/scotland/debt-and-money/help-with-debt/what-options-are-there-for-dealing-with-debt/bankruptcy-in-scotland/

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inflation and costs rise. This is particularly important regarding the vehicle asset limit as the value of used cars has increased dramatically in the past year and CAP is seeing clients excluded from DRO because of a modest value car which can no longer be replaced with a reliable cheaper model.

Another concern in this area is payment options for the insolvency fee. Bankruptcy is unaffordable for many but even the £90 upfront fee to enter a DRO is too much for a high number of CAP clients. Although for both processes there are options for people to pay in instalments, clients are not protected from collection activity until the last payment is made. This puts people in a vulnerable position, and the continued pressure and stress from creditor contact and enforcement activity risks the client not being able to complete the payments and secure the debt relief they need. Instead, much like Individual Voluntary Arrangements (IVA), providing a moratorium period would provide the support, reassurance and much-needed protection over clients as they try to meet these costs.

An option going forward would be to remove the fees to enter all of the procedures, and to retrieve some of these costs back on a means-tested basis based on the assets and disposable income that people have. In recognition of the social and economic benefits of providing a fresh start from debt, there is also a case for Government funding for insolvency solutions to support provision for people who do not have available resources to pay fees or contributions. If this was not carried out across the board, removing the fee from the bankruptcy process would be a positive start to ensure that the fee is not a barrier for people to access this option. Removing fees would have a life changing impact on some of the clients that come to CAP and other debt organisations. This alteration would open up insolvency options rather than creating a barrier that prevents people from accessing the support that they need. It would instead provide access to freedom and a fresh start.

Question 11: How should the costs of entering and administering personal insolvency procedures be paid and structured between the different parties?

Currently the costs of entering and administering personal insolvency procedures are not working for many clients or the debt advice sector.

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For many people, the upfront cost of insolvency is unaffordable and paying in instalments does not work because they have little or no surplus income each month. Because of continued debt collection pressures, no protections are given until the final instalment is made. The large differences in the upfront cost of the solutions (DROs (£90), IVAs (£0) and bankruptcy (£680)) makes this particularly problematic and can distort decisions about the right solution to apply for, especially for IVAs versus bankruptcy.

With clients struggling to afford to pay the upfront costs to enter the different personal insolvency processes, charities are increasingly having to step in and provide support. However, the cost of the administration of the process is also not currently lining up.

At present, the administrative costs of the debt advice organisation are not sufficiently covered by Fair Share contributions, as this is only provided on Debt Management Plans. Currently there is no provision for any insolvency related costs within the existing Fair Share model, despite the significant cost incurred by CAP and other debt organisations in administering insolvency solutions.

Supporting clients to access bankruptcy is the most cost intensive solution CAP provides, even compared to a multi-year DMP, with support for fees a regular occurrence. Consideration needs to be made of the alternative ways of structuring financial support for debt advice from industry, such as Fair Share that is more in line with the administrative costs associated.

There are a variety of ways that ensuring that costs are in line with a client's capacity to pay could be effectively administered. CAP would favour an advisor-led approach.

Intermediaries are trusted to assess if a DRO is appropriate and therefore the debt advice sector should also be trusted to judge fee remission eligibility. This would also allow the sector to give important certainty to clients during the application process about the costs they will be required to pay. However, there should be a fair and clear framework about how the fee remission framework applies across all clients, regardless of advisor.

This alteration would have to come alongside increased regulation in the IVA sector. CAP is concerned by the impacts of the structure of IVA fees and how these are front-loaded.

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Currently, the lack of regulations in this area means that clients can be put in a vulnerable position: if they are not able to complete the IVA, they may have it terminated after a year or two without having made any repayments to their creditors. This leaves the client in exactly the same position despite the solution not working for them. The fees should be evenly distributed throughout the solution.

Question 12: What options are available to debtors and creditors who are unable to afford the cost of bankruptcy, IVA or a DRO?

Currently, personal insolvency solutions are not affordable for all who need them, creating a barrier for people to break free from debt. Charities such as CAP have to dig into their own funds to help support these clients to access the debt solution that they need, although most are unable to provide this level of support.

So far in 2022, CAP has prepared 185 bankruptcy applications for clients in England and Wales. Out of these applications, 67 clients (36%) needed a bursary from CAP towards their fee. This has cost the charity £18,596.83. In 2021, CAP's in-house bursary fund paid out £44,973.26 towards client bankruptcy fees.

In addition to the help from the bursary fund, CAP also employs a grants team to help clients get external funding towards their fees. Out of the 1,330 clients who went through insolvency with CAP in 2021, the team supported 408 of them with their fees (40%). In 2021, the grants team raised a total of £103,135.67 to help clients access a DRO or bankruptcy (£82,194.16 for bankruptcy and £20,941.51 for DROs).

CAP has been supporting a couple to apply for bankruptcy after they were victims of fraud. The only reason they cannot have a DRO is because their debt balance is higher than £30,000. They have no assets and their total household income is just over £1,100 per month. After their bills are paid they only have £30 per week for food.

This couple were unable to afford their bankruptcy fees so needed help from CAP to access a grant or bursary. CAP gave £680 to Mr X for his bankruptcy fees, providing the full fee. CAP helped Ms X to get £430 from a charitable grant for women in financial

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difficulty and funded the remaining £250 from our insolvency bursary. Without this support the clients would not have been able to access insolvency to clear their combined debt balance of over £87,000.

Without charity and cross-subsidies, clients such as this would not be able to break free from debt. This should not be the case.

Question 13: What are the main consequential costs of the different insolvency procedures?

One of the main consequential costs of the insolvency procedures is actually the emotional costs that are involved. CAP acknowledges that the impact of financial insecurity is not just a money problem but also a concern for people's mental wellbeing. Debt often goes hand-in-hand with mental health problems, acting as both a symptom and a cause.[23]

In CAP's 2021 report, *Shipshape or sinking ship?*, CAP identified the impact of problem debt on financial and mental wellbeing, with 30% of CAP clients interviewed rarely or never feeling relaxed.[24] Unsurprisingly, people in problem debt also have lower wellbeing scores on average than the UK population.[25] Using the Warwick-Edinburgh Mental Well-Being Scale which focuses on seven elements for mental wellbeing (optimism, useful, relaxed, dealing with problems well, thinking clearly, feeling close to people, and being able to make up your mind) there was a very strong correlation between clients in debt and lower mental wellbeing scores, in comparison to the rest of the UK population.[26]

[23] Money and Mental Health Policy Institute (2016), *Money on your mind*.
[24] CAP UK (2021), *Shipshape or sinking ship? Problem debt's impact on financial and mental wellbeing*, available at bynder.capuk.org/m/1e7f4a9c8c9e8ae5/original/Shipshape-or-sinking-ship.pdf
[25] CAP UK (2021), Shipshape or sinking ship? Problem debt's impact on financial and mental wellbeing, available at bynder.capuk.org/m/1e7f4a9c8c9e8ae5/original/Shipshape-or-sinking-ship.pdf
[26] CAP UK (2021), *Shipshape or sinking ship? Problem debt's impact on financial and mental wellbeing*, available at bynder.capuk.org/m/1e7f4a9c8c9e8ae5/original/Shipshape-or-sinking-ship.pdf

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Despite pressures on people in debt, debt advice has a positive effect on financial and mental wellbeing.[27] Debt advice helps people attain financial security in the present and feel able to achieve their goals in the future.

To make the journey more positive, CAP works hard to ensure that the process is supportive and personalised through the provision of free community-based and person-centred debt advice. CAP Debt Advisors and local community Debt Coaches are trained to understand the challenges people may face and support clients through the process. However, this leads to higher consequential administrative and service provision costs for organisations such as CAP who provide a level of support needed by people in vulnerable circumstances.

There are also negative consequential financial costs that individuals face during and after their journey to becoming debt free through insolvency in particular. For example, going through a personal insolvency process can impact someone's ability to access a bank account, get a phone contract, receive social housing or even sometimes get a job.

This is a real problem for clients, because some banks have in their terms and conditions that those with undischarged bankruptcies are not eligible for even basic bank accounts. This causes clients to see their bank accounts closed with immediate effect, which in turn leads to problems with benefit payments and accessing the money they need for bills. It is often then difficult for clients to open a new account with a different bank due to the requirement for credit checks. Some processes are constructed in a way that clients are required to fail an application for a current account before they can have a basic bank account. This is stressful and humiliating for the person. Even where this is not part of the bank's policies, bank staff often also try to upsell people to a current account despite someone explicitly requesting a basic bank account to avoid these issues. All of these have an impact on the individual's finances, carry a risk of causing further emotional hardship, and reduce a person's ability to receive the fresh start that they were promised.

[27] CAP UK (2021), *Shipshape or sinking ship? Problem debt's impact on financial and mental wellbeing*, available at bynder.capuk.org/m/1e7f4a9c8c9e8ae5/original/Shipshape-or-sinking-ship.pdf

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Question 14: How can we reduce the stigma of insolvency to both encourage early action by those in financial difficulty and to support a 'fresh start' from debt relief?

Unfortunately, problem debt currently has a particular stigma and shame attached to it that leaves people feeling trapped, isolated, unable to sleep at night and considering suicide as their only way out.[28] This stigma surrounding problem debt and mental health holds people back from seeking debt help, meaning people often wait until they hit crisis point before seeking support.[29] Over half of CAP clients wait more than a year before seeking help and one in four wait for over three years.[30] Past negative experiences of 'officials' can also act as a barrier to accessing money advice from those associated with the sector due to a lack of understanding of the free support that is available and fear of repercussions.

People can have misconceptions and concerns around the impact that seeking help with debt issues or going through bankruptcy will have on their credit files. This can result in people not seeking support, or not disclosing the full extent of their situation. Paid advertising for debt help by corporate companies has been known to mimic free advice services and further spread misinformation and detract from sources of free independent advice. As a result, when people are facing debt, more information needs to be available about the free, non-judgemental and FCA-authorised sources of debt advice.

Recognition needs to be made of past negative experiences that are feeding into the narrative, as well as existing societal and cultural stigmas, and misinformed perceptions that people have about the process. CAP Debt Advisors find that bankruptcy in particular holds negative connotations in many clients' minds, which prevents some from wanting to pursue this pathway.

As a result, the Insolvency Service needs to actively change the narrative around the personal insolvency process and the benefits that it can provide. This needs to be targeted at three aspects: those in debt considering personal insolvency routes, those who are now

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[28] CAP UK (2022), *Inquiry on poverty and stigma in Scotland*, available at https://capuk.org/news-and-blog/inquiry-on-poverty-and-stigma-in-scotland
[29] CAP UK (2022), *Inquiry on poverty and stigma in Scotland*, available at https://capuk.org/news-and-blog/inquiry-on-poverty-and-stigma-in-scotland
[30] CAP UK (2022), *Client report: On the edge*, available at: capuk.org/clientreport

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debt free but need to feel free to experience a fresh start, and; society more broadly to prevent negative attitudes towards people who are in or have journeyed out of debt.

Removing the use of public registers would be a helpful start to reduce the worry and stigma that people face. This would help to challenge the concept of people feeling 'named and shamed'.

Question 15: Please provide any evidence to show whether consequential costs serve a useful purpose or whether they produce unintended consequences for different stakeholder groups.

Current consequential costs include emotional distress, societal judgement, personal financial impacts, market-based limitations, and job consequences. These factors are holding people back from journeying to becoming debt free through a personal insolvency route. People are being left in the grip of debt and destitution because of fear of the alternative.

These consequential costs particularly affect those who are vulnerable. Examples of the disproportionate impacts are:

- The emotional turmoil that societal stigma surrounding personal insolvency has on someone who struggles with mental health issues;
- Personal financial strain for people who are on low incomes;
- The challenge of engaging with the economic market for someone who faces digital exclusion;
- Extra barriers that people with disabilities face to enter the job market, in addition to restrictions due to their past personal insolvency process.

Rather than going into detail on each stakeholder group that is affected by the consequential costs of the personal insolvency process, CAP wishes to highlight that the impacts are often negative, and feed into the challenges that vulnerable groups in our society already face.

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always hope.

Creditors and service providers as a stakeholder group play a key role in consequential costs that people experience. A previous insolvency does not mean people will be unable to keep to contractual obligations moving forwards. CAP questions the evidence basis for excluded people from paid monthly insurance premiums and basic bank accounts on the basis of a previous insolvency. 93% of CAP clients have a positive relationship with their bank which could be built on as a foundational way to develop the relationship that clients can have with their finances going forward if enabled to do so. [31]

CAP wishes to highlight that each client's case is different, but as it stands, the personal insolvency process is not achieving its aim to provide a fresh start to those who need it. This is particularly the case for people who are vulnerable and need the system to acknowledge and support their needs rather than penalise them for a situation that they have been forced into.

Chapter 5.3 – The current insolvency procedures and how they are working

Question 16: Do you believe the current insolvency procedures are working as intended? Please provide any evidence you have.

Currently the range of insolvency solutions available do not serve all client groups and some people remain in a bankruptcy option despite this being disproportionate to their cases' simplicity. The system has evolved gradually, and it is important to look at how the solutions work together to provide a comprehensive and aligned system. The creation of the DRO created a much needed alternative to bankruptcy for people without assets and surplus income. However, some groups still remain in bankruptcy because there is no alternative, even though the bankruptcy process and upfront cost is disproportionate to their situation. The groups who are currently under-served are:

[31] CAP (2016) *The freedom report: The importance of debt advice in building financial capability and resilience to stay free of problem debt.* Available at capuk.org/assets/documents/other-reports/The-freedom-report.pdf

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- Low-income debtors without assets, but with debt balances higher than £30,000, where the low complexity of their cases does not warrant bankruptcy investigations and the upfront fee is unaffordable.[32]
- Low-income debtors with a family home but low equity, where IVA payments are unaffordable but there are no returns available for creditors from releasing the assets in bankruptcy (and the Official Receiver's costs may not be covered).

The boundaries between the personal insolvency solutions are at present rigid and cause issues for clients that do not fit the criteria. When more information comes to light during the application process, or circumstances change while they are in a solution (and the person is no longer eligible for a particular solution) there is no way to move them easily into the insolvency solution that is now most appropriate for them.

For example, someone in an IVA who may have already repaid a significant amount of the debt but who loses their job three years into repaying may be left in a position where their IVA fails. It would be beneficial to be able to move clients such as these into bankruptcy with a facility of the remaining debt to be dealt with, instead of leaving them needing to seek advice again and start applications from scratch. This would also be useful in cases where a client has submitted a DRO application but a change in circumstances during the moratorium means they no longer meet the criteria and the DRO is revoked. Being able to passport through to bankruptcy at this point would be beneficial. The introduction of the SDRP also makes this important to build into the wider system which will increasingly have people needing to move from statutory repayment solutions to insolvency when circumstances change substantially during the course of the solution.

Currently less than three in ten (27%) advisors think it is easy for someone to transfer to another debt solution where their initial solution fails.[33] Providing more flexible boundaries between the solutions would enable the debt advisors to make informed decisions about the best process for the client, and be able to more easily move the client between the options if their client's situation suddenly changes without the process needing to be started again. One way that this could occur would be to create a single point of entry in the form of a portal which would enable frictionless movement between the options.

[32] CAP defines complexity as dependent on the level of income and assets a debtor has.
[33] Joint survey of 565 debt advisors carried out between 11 July and 31 August 2022 by Money Advice Trust, StepChange Debt Charity, Citizens Advice, Christians Against Poverty, the Institute of Money Advisers, Advice UK and Community Money Advice.

When examining the issues more broadly, it becomes apparent that factors such as insufficient income , whether via work or the social security system, can keep households in problem debt as people have to borrow to cover the costs of everyday essentials such as food and fuel. If people do not have sufficient incomes to match the rise in living costs then they are very likely to end up back in debt, even with the best efforts of the debt advice sector and good budgeting. Consequently, some debt support is providing a plaster on an endlessly open wound as households can quickly fall back into problem debt after going through a debt solution. A growing number of people are being pushed back into problem debt and may need to access another debt solution in the not too distant future. This can come with the fear of judgement and the belief that help will not be provided a second time. To try and address this issue, CAP would welcome measures to prevent those on low incomes from repeatedly experiencing problem debt, including increasing the debt limit and the disposable income rate, amongst other changes.

CAP would however like to highlight that, for many, the journey to becoming debt free is a positive one and provides them with hope and a brighter future. For that, CAP would like to thank the Insolvency Service for their role in remaining open to developing the personal insolvency process over time, enabling more people to experience the freedom that being released from the grip of debt can provide. With these suggested changes, CAP hopes yet more people will be able to once more experience life without the chains of worry and financial hardship.

Question 17: How well do those in financial distress navigate the current regime and could this be improved? Please provide evidence to support your answer.

When people are faced with debt, barriers can exist at every stage of the journey for getting support for problem debt.

Seeking help for problem debt remains a hard first step for many. Polling carried out by CAP found that 52% of clients delayed seeking debt help as they ‘did not know where to

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get help'.[34] This issue is further exacerbated by a lack of access to good quality and reliable information about sources of advice and the support they are entitled to, and paid advertising by fee-charging debt management companies and IVA providers which do not inform those in financial distress about all of the options that are available to them. Only a third (35%) of debt advisors think current regulations safeguard against bad advice and ensure people end up in the most suitable solution.[35]

CAP is concerned that insolvency practitioners are not subject to the same level of scrutiny and regulation for advice giving as FCA regulated debt advisors are. CAP welcomes the changes made to SIP 3.2 but believes that they should be dual authorised by their Responsible Professional Body (RPB) and the FCA, or that the proposed new single regulator for Insolvency Practitioners takes on this function and drives up standards. There is also a fundamental issue with IPs by law having to give impartial advice. Being impartial to both the interests of the creditor and debtor is different to independent advice. Therefore, the debt advice sector and the training and regulations within it is better placed to advise more straightforwardly what is in the best interests of the client.

Navigating the current regime is also particularly challenging for people in financial distress who also suffer from additional needs. Factors such as digital exclusion, mental health challenges, learning disabilities, and limited literacy and numeracy skills can make navigating the current regime challenging. Only around a third (35%) of debt advisors think that client journeys to insolvency solutions are consistent and accessible.[36] CAP works in a holistic way with head office staff in addition to frontline staff, to enable people to receive in-person support from a local Debt Coach and befriender. However, this approach is not carried out across the sector.

When people do reach out for support with their debt, the cost associated with personal insolvency routes causes another challenge for people in financial distress. Financial barriers to accessing debt relief need to be addressed. This includes removing the insolvency fees or ensuring there is sufficient support available for those who are currently prevented from accessing this pathway due to this fee.

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[34] CAP UK (2022), *Client report*, available at capuk.org/clientreport.

[35] The survey was conducted jointly by the Money Advice Trust, StepChange Debt Charity, Citizens Advice, Christians Against Poverty, the Institute of Money Advisers, Advice UK and Community Money Advice.

[36] The survey was conducted jointly by the Money Advice Trust, StepChange Debt Charity, Citizens Advice, Christians Against Poverty, the Institute of Money Advisers, Advice UK and Community Money Advice.

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CAP helped a client suffering from multiple heart and lung diseases as well as mental health problems apply for a DRO. This discharged £947 of non-priority debt but they were still liable for a £2,260 benefit overpayment viewed to be fraudulent and a £73 Social Fund loan. The deductions for these two debts were £150 a month which was equivalent to half of their income from Jobseeker's Allowance. After paying minimal household bills the client could only afford to spend £40 a month on food, clothing, household maintenance and everything else, and therefore continued to use the foodbank after going through insolvency.

Individuals entering into a DRO are expected not to have made disproportionately high repayments to any particular creditor. The intention is that when the individual enters the insolvency, no creditor should be in a better position than the others because of preferential treatment. Preferencing is mainly determined on the basis that the individual chose to preference, and there are allowances for payments that were made because the creditor applied pressure. However, while an Official Receiver will consider whether preferencing has occurred in a bankruptcy, a DRO application is typically automatically rejected where potential preferencing is flagged on the application. More discretion needs to be applied, and clear guidance issued on what constitutes preferencing and must be reported.

A client approached CAP for help after struggling to live on a low income. He had only a small amount of debt totalling £700 but was unable to afford a repayment plan. He had recently had a back-payment from work and had repaid a £400 debt to his mother. This meant it had to be declared on his DRO application that he had preferenced a creditor. As a result, the DRO was rejected, and he lost the non-refundable £90 fee he had already paid. Gary needed to make a bankruptcy application for consideration by the Official Receiver, but he could not afford to pay the bankruptcy fee of £680, which was almost as much as the debt he owed.

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Question 18: Are the current personal insolvency procedures the right products to service the needs of both debtors and creditors today or are new procedure(s) needed to serve debtors and creditors better?

CAP sees the solutions that we have today as broadly the right ones, but they need reforms to make sure they are accessible and fit for purpose. That does not necessarily need to be done through creating a whole new set of solutions, but there are some gaps as acknowledged in the consultation document, and we would welcome new solutions being developed to meet these needs.

Looking at the current personal insolvency landscape as a whole, CAP would like to suggest a move towards reducing the hard barriers between each solution. Through trusting the debt advice sector and the expertise within it, CAP would recommend that debt advisors should be able to decide which personal insolvency product is right for the client if they are a marginal case, for example, choosing between bankruptcy and a DRO if the client has assets that are close to the borders between the two.

Looking specifically at personal insolvency products, IVAs are beneficial if used in the right context but there needs to be reform of both the product and the regulatory structure. IVAs now account for a substantial part of the insolvency system and technology has changed how they are marketed and delivered. It is difficult to find trusted information about them and IVAs are not generally accessed through general debt advice channels but through direct marketing. This means there is a high risk of mis-selling. A deep dive is needed to assess where these problems stem from, but CAP believes it is both reforms of the regulatory structure of IPs and a reform of the product themselves that is needed.

The SDRP could be used to remove the need for IVA by creating a route to composition within the SDRP. However, this may not be appropriate because the SDRP is a repayment solution, not an insolvency one, and does not investigate people's assets. This could also simply push the same problems into a new market. Creation of a new solution would instead address the root causes of the problem and provide a more suitable tool for people who cannot afford IVA payments but have an asset they want to protect by providing a way to secure an asset over a long period of time when living on a restricted budget. This could, for example, allow for a long-term agreement to be made that takes into account the wider impacts of losing the family home, where the equity position is reviewed in a specified number of years.

Question 19: How well do the existing insolvency procedures work for sole traders and partnerships? Please provide any evidence you may have.

No comments provided.

Question 20: How could the personal insolvency framework be improved for sole traders and partnerships?

No comments provided.

Question 21: What evidence do you have of the number of IVAs/Partnership Voluntary Arrangements which relate to sole traders and partnerships?

No comments provided.

Question 22: What are the main factors which influence an individual's decision to enter a particular procedure?

Barriers to accessing debt support as a whole and then entering a particular procedure can include: lack of awareness of the support available, emotions attached to seeking support and societal stigma, accessibility challenges and digital exclusion.

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45% of CAP Debt Help clients did not know where to get help with problem debt.[37] This percentage only reflects those who then found out about the support available through CAP, which suggests that the percentage within the UK population as a whole may be higher.

Paid advertising for IVA providers also plays a role of providing misinformation and misleading people who are not aware of the free options available. This is particularly concerning for those who are not familiar with digital searching and those who experience mental ill-health, who are particularly vulnerable to misinformation and mistrust around money advice. Over half of advisors surveyed (52%) said they often or very often speak to people who have either a failed or unsuitable IVA, with a further 32% saying they sometimes do.[38] 68% of advisors said they often or very often saw clients choose an IVA based on claims made in advertisements, and 72% of advisors said they often or very often saw that a client had not been given advice about alternative debt options.[39] As a result, providing access and information about more long-term debt and financial advice from free FCA-regulated debt advice organisations such as CAP, Citizens Advice and StepChange should be provided alongside debt write-off where appropriate.

Even when people do find out where to access support, and discover the options available to them, another significant barrier to accessing an insolvency solution is a lack of certainty ahead of making an application. The Insolvency Service gives limited information to help advisors advise individuals about the implications of different insolvency solutions in each client's case. This erodes trust between clients and debt advisors, and has a knock-on effect on the relationship between the client and Insolvency Service once they are in touch with the Official Receiver directly. In particular, being unable to give a reasonable idea about how assets will be treated in bankruptcy, especially a vehicle, means people do not apply when they need to because they rely on their car for work or caring responsibilities.

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[37] Christians Against Poverty (2021), *Client report: On the edge*, available at: capuk.org/assets/documents/client-reports/Client-report-2021.pdf

[38] Joint survey of 565 debt advisors carried out between 11 July and 31 August 2022 by Money Advice Trust, StepChange Debt Charity, Citizens Advice, Christians Against Poverty, the Institute of Money Advisers, Advice UK and Community Money Advice.

[39] Joint survey of 565 debt advisors carried out between 11 July and 31 August 2022 by Money Advice Trust, StepChange Debt Charity, Citizens Advice, Christians Against Poverty, the Institute of Money Advisers, Advice UK and Community Money Advice.

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More certainty about the likely outcome would help people choose between an IVA and bankruptcy. This could be done through an adjudication process like that operated by the Financial Ombudsman Service, or a digital tool. More certainty is needed for clients ahead of application about how income and assets will be treated in different solutions.

Finally, even with increased information provided about the different personal insolvency options, an individual's decision to enter a particular procedure will be predominantly informed by their personal situation and the upfront costs that each option route entails, until these barriers are reduced.

Question 23: How could an individual's decision to enter a particular procedure be better informed?

People's initial views of the options they have available to them are influenced by the information that they are exposed to from the media, social media, internet, and also the experiences of their friends, family and those they know that may have previously gone through personal insolvency. These impressions can be altered with access to new information, but it is important to acknowledge that these judgments are often entrenched and may continue to influence an individual's decision.

As a result, there needs to be recognition of the importance of altering the information that people in the general public are exposed to prior to them needing support. This way, people may be better informed of the options available to them if and when the time comes to go through a personal insolvency route, and be more aware of the advantages and disadvantages. This will help them choose between which procedure to enter.

The Insolvency Service should take on the responsibility of ensuring that accurate and reliable information is accessible for all. As StepChange, The Money Advice Service and Europe Economics have highlighted, there are social, mental health and economic benefits of personal insolvency processes on individuals and the wider society.[40] [41] Therefore,

[40] The Money Advice Service and Europe Economics (2021) *The Economic Impact of Debt Advice*, available at moneyandpensionsservice.org.uk/wp-content/uploads/2021/03/economic-impact-of-debt-advice-summary.pdf
[41] StepChange (2014) *Transforming Lives: A review of the social impacts of debt advice for UK individuals and families,* available at stepchange.org/Portals/0/documents/media/reports/Transforming_lives_exec.pdf

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increasing awareness of the options available would bring benefits in the short and longer term.

This should include not only raising awareness of the options available, but also addressing the misleading information that is being provided by fee-paying IVA providers. Paid adverts by IVA providers need to be regulated to ensure that they also inform clients of the free options that are available from other providers, so people can make informed decisions about the route they wish to take out of debt.

When clients do choose to be supported on their journey to becoming debt free with an organisation such as CAP, the debt advice sector is skilled at supporting clients to choose the personal insolvency procedure that is right for them. CAP ensures that clients are supported in this decision by carrying out multi-layer support. CAP has a team of Debt Advisors, located in our Bradford-based head office, who go through a person's situation, developing an understanding of the debts they have accumulated and the assets they have. From this information, the Debt Advisors make a recommendation of the procedure that they view would have the greatest benefits.

The second element that CAP also has, however, is more unusual in the debt advice sector. CAP has a network of hundreds of Debt Coaches and befrienders located across the UK. Clients are visited in their home by someone who can be there to answer questions and offer emotional support as they make their decision based on the CAP Debt Advisor's recommendation.

CAP has seen the benefits that this method can provide, and would recommend that the Insolvency Service looks to increase funding in the debt advice sector to resource this to continue, and for more organisations to carry out this multi-level approach to enable clients to be well informed and well supported when they make their decision.

Question 24: What evidence do you have of the impact that a public register has on an individual's decision to choose a particular insolvency route?

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CAP Debt Advisors have voiced their concerns about the impacts that the public register has on influencing people's decisions about going through personal insolvency. They have spoken to clients who have voiced their personal concerns and anxieties surrounding the use of a public register and the impacts that this could have on them going forward. CAP Debt Advisors have particularly seen this to be a sadly well-founded concern for vulnerable clients who could be put at greater risk due to being listed on the public register. Although CAP is able to reassure some clients of unfounded concerns and put measures in place where genuine risk could occur, what is more of a worry is that there may be many clients who are not coming forward and voicing this concern.

Question 25: What impact does professional debt advice have on debtors when choosing a personal insolvency solution? Please provide evidence to support your answer.

Currently, the different personal insolvency procedures are very varied in time, cost and support that is required. The debt advice sector plays a crucial role in helping people make decisions and apply for insolvency solutions. Debt advice providers are key to supporting clients to see their situation with clarity and to be informed of the options that they have available to them. This support and advice frees clients from situations that they may otherwise feel trapped in, and instead shows them that there is hope and a way forward.

However, this debt advice is currently not required for people to go through processes such as a bankruptcy, despite the implications this may have to someone's assets. At present, only DROs require someone to have received debt advice as part of the application process, but CAP believes this should be the case for all solutions and that people should begiven independent advice so that insolvency is only pursued when appropriate. A single gateway approach through the debt advice sector would enable people to be supported to make the right decision for them. Doing this alongside reducing the restrictions and administrative burden of moving between the different personal insolvency procedures if someone's situation changes wouldenable people to be better supported on the journey to becoming debt free.

Of course, this change would incur more administrative resources and increase the burden of responsibility placed on the shoulders of the debt advice sector, and increased debt

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advice funding would need to be provided to make this possible.[42] However, the debt advice sector should not take on a full intermediary and administrative role for the other solutions, as this is made possible because the DRO process is administratively-heavy but the complexity of cases is low. Most bankruptcies and IVAs have greater levels of complexity, due to surplus income and assets and therefore should be processed by an Official Receiver or qualified and regulated Insolvency Practitioner (IP).

Placing the debt advice sector as the gatekeeper to insolvency solutions places the Standard Financial Statement as a central tool to be used in the insolvency system. The Insolvency Service may want to take a more active role in the governance of the SFS as a result, and consider how this is used to assess who 'can pay' and how much it is reasonable for them to pay, and how the guideline figures are set.

CAP provides person-centred information and support through the combination of head office-based Debt Advisors and locally based Debt Coaches and befrienders, ensuring people are well informed and well supported. This multi-layer approach enables CAP to provide clients with holistic support. In addition, CAP works closely and builds collaborative practices with other organisations in the sector to enable the best support to be provided. As a result, 85% of CAP clients would recommend CAP to someone they know.[43] However, at present the sector receives limited funding, making this person-centred support hard to maintain. If the sector received more funding, then organisations such as CAP would be able to continue and build on the support they are able to offer.

Question 26: Please explain any other barriers to entry to personal insolvency which are not included in this call for evidence, highlighting any particular groups that are affected.

It is key to reiterate the challenges that the affordability of solutions plays in acting as a barrier preventing people from entering personal insolvency solutions. The inability to pay fees upfront and the varying costs of the personal insolvency options reduces the capacity for all to have equal access to becoming debt free.

[42] In addition to the debt advice sector, financial advisors or specialised solicitors should be able to perform this function for high net-worth cases.
[43] CAP UK, *Client report* (2022) available at: capuk.org/clientreport

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Another barrier that can occur is the challenges faced by people who are currently going through the immigration process. Having an immigration status reduces the options available to clients and leaves them exposed to the traps of financial insecurity. At present, The Home Office guidance cites bankruptcy as one of the factors that can count against someone's good character. This can create a barrier for people applying for insolvency solutions for fear of their application for indefinite leave to remain or citizenship being denied. In practice it may have no impact, but this is not a risk people are able to take. The same is true for employment. Certain professional bodies will say that bankruptcy may result in someone no longer being able to perform their job, but most of the time it is uncertain whether this will happen.

In addition to barriers that prevent people from accessing the personal insolvency solutions that are right for them is the lack of reliable information provided by fee-paying IVA providers. The currently limited regulations of this sector are leaving clients vulnerable to misinformation and misguidance around the costs and options associated with becoming debt free. The Insolvency Service needs to play a role in increasing the regulations of this sector, tackling misinformation and proactively providing information about the free and FCA-regulated debt advice that is available.

Question 27: How could the personal insolvency framework be improved, for example, to make access easier or movement between procedures easier? Please provide evidence to support your answer.

At present, the balance of power in the insolvency system benefits creditors more than debtors. The interests of debtors needs to take greater precedence. Not all lending is beneficial and the insolvency system is not primarily a means of enforcement, therefore the power of the debtor should be increased to match that of creditors.

In particular, the system of creditor voting within IVAs is broken, as most use voting agents and do not vote based on a review of whether the proposal is sustainable. Creditors should not be able to vote someone out of a solution that is right for them. CAP does agree that creditors should have a right to express that they would prefer to realise an asset rather

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than receive repayments, but on balance it may be reasonable for the individual to be allowed to protect the assets under the IVA proposal made. A more neutral arbitrator should make a fair and reasonable decision in these instances, and the Insolvency Service could fulfil this role like the AiB does in the Debt Arrangement Scheme.

There also needs to be a change in creditor attitude towards insolvency, where creditors take a more supportive and joined-up approach to insolvency as part of their work to support debt advice outcomes. Part of the problem with creditors still chasing for debts post-insolvency is that notifications are dealt with by back-office administrative teams that are not part of collection teams. If creditors brought insolvency processes into teams that work with debt advice and took a view that insolvency is a good customer outcome, this would improve the client journey. Deductions from prepayment meters and benefits often continue after the insolvency is granted, and improvements are needed to the process of notifications to ensure these stop in a timely manner. This would ensure better outcomes for individuals as well as increased fairness for creditors.

Reducing the rigid barriers between each personal insolvency procedure would help enable people to journey between the procedures as circumstances change, without this leading to increased financial losses and additional administrative challenges for all involved. This change would need to come hand in hand with increased trust being given to the debt advice sector. The sector should be enabled to provide the best support for clients through guidance rather than rigid restrictions that leave some clients vulnerable to be caught without a choice between two procedures.

CAP wishes to also re-highlight the lack of a fresh start that many clients experience. Past clients have experienced a lifetime of consequences having gone through a personal insolvency process such as a bankruptcy. This has been explained as akin to a ‘criminal record’ and has seen clients experience market-based restrictions as well as negative impacts on relationships and social judgement.

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Chapters 5.4 – The international perspective

Question 28: Which elements of other national regimes could improve the personal insolvency framework in England and Wales?

The personal Insolvency options in Scotland offer increased accessibility of support for debtors which enable people to journey towards becoming debt free with more ease and reassurance. Differences such as reduced fees and removing fees for personal insolvency procedures for people in receipt of means-tested benefits reduces the exclusive nature of fees as a barrier to breaking free from debt.

Applying these changes to the framework in England and Wales would enable these benefits to be accessible for people across three regions of the UK, creating a more joined up approach to personal insolvency. Although the accessibility of the Scottish system is improved, it should be recognised that the Scottish system does still experience some of the same issues discussed in this consultation response, especially in relation to Protected Trust Deeds.

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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 to help people overcome unemployment and provide financial education, all with community and holistic support at their core. CAP's services are completely free and available to all regardless of age, gender, sexual orientation, faith or background.

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