

Debt Relief Orders: Consultation on changes to the monetary eligibility criteria

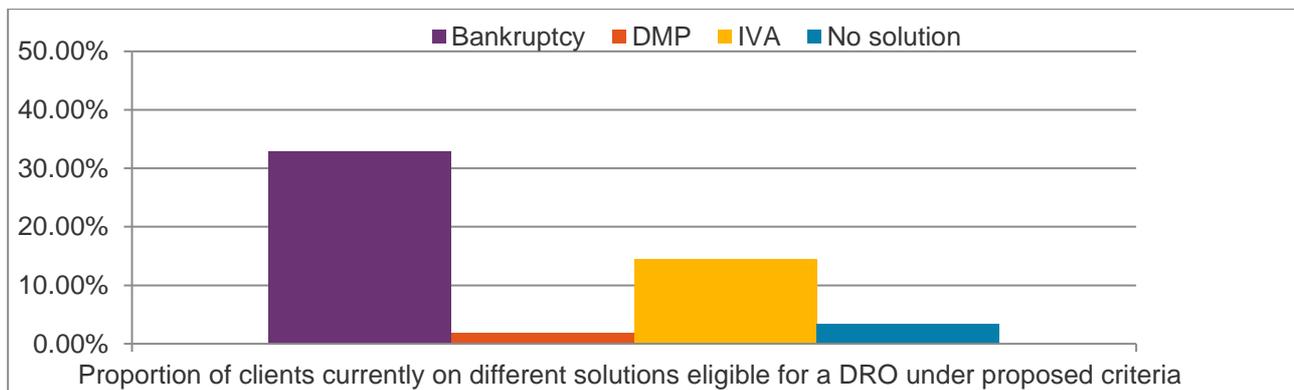
StepChange Debt Charity response

StepChange Debt Charity London Office
Floor 3, 27 Queen Anne's Gate, London SW1H 9BU
Policy Contact: Ed McDonagh
Email: ed.mcdonagh@stepchange.org

1. Do you agree that changes to the eligibility criteria for DROs are necessary? Please state your reasons.

Yes, we agree that changes to the eligibility criteria for DROs are necessary and welcome the Insolvency Service’s (IS) proposals. DROs were introduced in 2009 and have proved a valuable solution for those unable to afford bankruptcy. DROs have also benefited the IS by offering an insolvency solution with lower administrative costs than bankruptcy in cases where individuals have minimal income or assets and bankruptcy would lead to limited returns for creditors.

6,131 StepChange clients opted for a DRO last year. However, the eligibility criteria haven’t been reassessed since 2015. Our modelling suggests the proposed changes will result in a 28% increase in the number of DROs we deliver. The changes will have a significant impact on the choices for clients, particularly those who have previously had to opt for expensive bankruptcy proceedings or, not being able to afford the bankruptcy fees, been denied the debt solution they needed.

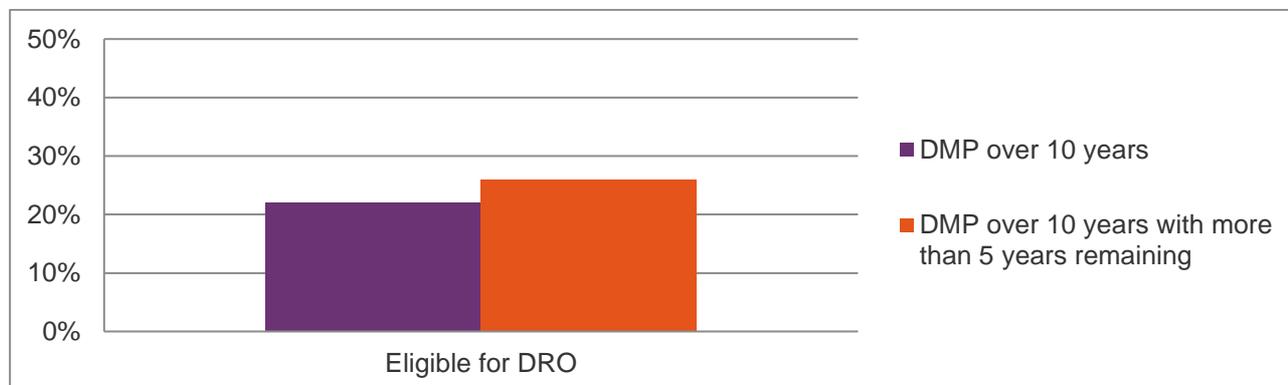


32.8% of clients who opted for bankruptcy would be eligible for a DRO under the proposed changes. Given the challenges of raising the fee for bankruptcy for clients with a low income this will be hugely beneficial. For individuals with limited disposable income the bankruptcy fee of £680 can be prohibitive to the point of making the option unavailable. With a surplus of £51 it would take someone over a year to raise this fee. Even at £101 it would take someone over 6 months to raise the fee during which time costs and enforcement action on their debts are likely to be escalating.

Budget surplus	Months taken to save for bankruptcy fee
£51	13.3
£101	6.15

The changes will also widen the offer for clients who currently opt for repayment solutions. 14.5% who chose an IVA would be eligible while 1.8% of DMP clients would have the option of a DRO. The proportion of clients standing to benefit from the changes rises considerably among those who are currently on extremely long repayment plans. For clients who have been on an DMP for over 10 years, 22% would be eligible for a DRO under the new criteria. This rises to 26% for those who have been on a DMP for over 10 years and still have over 5 years remaining. For many of these clients

opting for a DMP will have been a decision based on a strong desire to repay their debts, a decision that may not change even with different options available. However, the option of a more affordable insolvency option will be attractive for some of these individuals.



Coronavirus is set to cause an increase in the number of people in debt and the debt solution landscape needs to adjust to cater for the increased need. The FCA found that 38% of people have seen their financial situation worsen since March.¹ We estimate that 5.6m people have accumulated over £10bn of debt and arrears since the start of the pandemic.² 26% of UK adults now have low financial resilience while 30% expect their income to fall over the next six months.³ When temporary coronavirus support and protections end sometime this year, the impact of pandemic will push many households into severe difficulty and it’s vital they have viable solutions available to them.

The current DRO eligibility criteria, in combination with the inaccessibility of other solutions, often leaves people without a solution to their debt problems. The Money Advice and Pensions Service (MaPS) are predicting an additional 3 million people needing debt advice because of the pandemic.⁴ It’s vital that the debt solution landscape responds to this increased demand so that individuals can access solutions to resolve problems and hardship arising from the pandemic.

2. Do you agree with the proposed increases to the debt (to £30,000), asset (to £2,000) and surplus income (to £100) levels? If not what do you think they should be? Please state your reasons.

We agree with the proposed changes to the debt and surplus limit. We also agree with the increased asset limit but would like to see a similar increase in the vehicle limit and the exclusion of mobility vehicles from this cap.

Low income individuals who have minimal cash struggle to afford bankruptcy while the costs of administering this solution are much higher than a DRO and result in little benefit for all involved. The

¹ FCA (2021), [Financial Lives 2020 Survey: the impact of coronavirus](#)

² StepChange (2020), [Tackling the Coronavirus Personal Debt Crisis](#)

³ FCA (2021), [Financial Lives 2020 Survey: the impact of coronavirus](#)

⁴ Money & Pensions Service (2020), [Extra £38m in support of debt support in England in the wake of coronavirus](#)

proposed changes are well pitched to improve accessibility of DROs for these individuals without drawing in those who would otherwise be suitable for a bankruptcy which justified the costs of administration to the IS.

Debt limit

Raising the debt limit to £30,000 is a positive step towards re-aligning DROs more accurately with the debt profile of those on low incomes and minimal assets, giving a safer option to a large proportion of individuals who currently have no debt solution options. It will also reduce time and costs associated with the Official Receiver in bankruptcy doing investigations into individuals with no assets. The Insolvency Service (IS) may even consider raising the debt limit further.

Over the last 5 years we've seen increased levels of debt and arrears among our clients. Both unsecured debt and household arrears have markedly increased while the proportion of clients with a negative budget has remained stubbornly stuck at around a third of clients.⁵

Client characteristic	Average total or proportion	Change since 2015
Unsecured debt level	£14,129	+7%
Household arrears	£2,137	+14%
Negative budget	30%	+1%

Even just applying inflation to the current DRO debt limit of £20,000 since 2015 would increase it to £22,600. Over the same period household debt, particularly debt on household bills like council tax has increased dramatically. The DRO eligibility criteria need to change to reflect this shifting debt profile. Looking at our clients from last year, 4.1% met the current eligibility criteria in terms of income and assets but had debts above £20,000. For this group of clients, bankruptcy remains unaffordable while other solutions like Debt Management Plans (DMPs) or Individual Voluntary Arrangements (IVAs) may not be a safe and suitable alternative. Two thirds of these clients currently end up without a debt solution. The current budget limit is excluding this group, the very people the solution was originally intended to help.

Our modelling suggests that 2,272 more clients per 100,000 we see will be eligible for a DRO (a 28% increase) with a debt limit of £30,000. This grows to a 32% increase if the debt limit was raised to £50,000. Although the IS has stated that there are diminishing returns in terms of individuals who would be able to access a DRO at higher levels, access to a DRO would be invaluable for these individuals currently locked out of an appropriate solution.

Budget surplus

We also support the increased budget surplus limit. The bulk of clients who would be eligible for a DRO under the new criteria currently opt for bankruptcy or have no solution available to them. The

⁵ StepChange (2019), [Statistics Yearbook 2019](#)

fee for this solution is prohibitively expensive for those with such a small budget surplus. For those with large debts considering a repayment option, a budget surplus of less than £100 would often mean a long and unstable repayment schedule. The change also has potentially positive benefits on the decisioning process of volume IVA providers.

As previously stated, the £680 fee for bankruptcy would take up the entire £51 surplus of someone unable to access a DRO under the current criteria for over a year. In Scotland, there has been recognition of how unattainable this is for people on low incomes. There, the fee for full administration bankruptcies has been reduced from £200 to £150 and the fee will be waived for those in receipt of benefits.⁶ While the bankruptcy fee remains so high in England and Wales, adjustments to the DRO criteria are essential for those with low budget surpluses. Nearly a third of our clients who currently opt for bankruptcy would now be eligible for a DRO under these criteria. Currently, these individuals go through costly bankruptcy proceedings which also put an expensive administrative burden on the IS. Given the fact they have such limited income and almost no assets, putting these individuals through bankruptcy is of little benefit to anyone – creditors, individuals in debt or the IS.

For others with large debts opting for a repayment solution, a £100 surplus is a much more reasonable level at which people can be expected to make some repayments to their debts. Over the last 5 years we have seen steadily increasing incomes among our clients, but the average budget surplus has remained relatively steady. In 2019 the average client surplus was £89 compared to £83 in 2015. 30% of our clients have a negative budget with the average deficit being £375.⁷ The average unsecured debt of clients we saw in 2019 was £14,129 while the average clients also had £2,137 of arrears.⁸

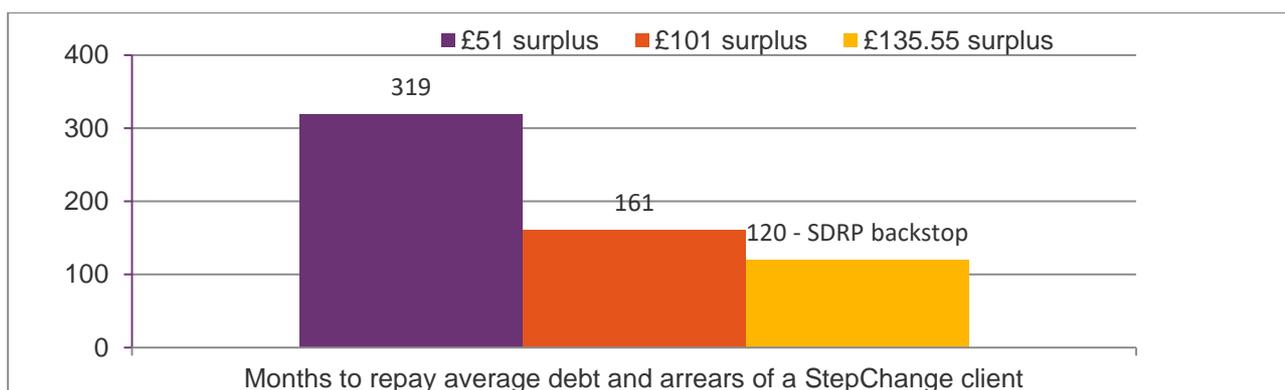
Even without considering interest, fees and charges, an individual with £51 disposable income would take decades to repay this level of debt if they spent all their money after essentials on repayment. The repayment schedule of someone with a £101 surplus is still over 10 years but cuts repayment time in half. HM Treasury's Breathing Space scheme includes a 10 year backstop for Statutory Debt Repayment Plans whereby this solution is deemed inappropriate if the repayment schedule exceeds 10 years.⁹ A surplus of £135.55 per month would be needed to pay off the combined average debt and arrears (£16,266) faced by our clients. So even under the proposed changes there will be some misalignment between insolvency and statutory repayment solutions and the DRO surplus limit will be on the tougher side.

⁶ Accountancy in Bankruptcy (2021), [Insolvency Service](#)

⁷ StepChange (2019), [Statistics Yearbook 2019](#)

⁸ StepChange (2019), [Statistics Yearbook 2019](#)

⁹ HM Treasury (2019), [Breathing space scheme: consultation on a policy proposal](#)



We also think the change in budget surplus limit could have knock on impacts in the IVA market to the benefit of consumers. Although wider regulatory change is urgently needed to tackle mis-selling of this debt solution, increasing the budget surplus will make it harder for volume IVA providers to justify recommending an IVA to those on low incomes for whom this solution is risky. The most recent IVA outcomes statistics published last year demonstrate the growing problem of IVAs failing well before their term, leaving consumers lumbered with the cost of fees and charges without much reduction in their level of debts. The three-year failure rate relating to 2016 registrations, of 25.1%, is the highest since 2009.¹⁰ The three-year failure rate for IVAs registered by StepChange in 2015 was just under 10% in 2018. While we’re not suggesting we have the lowest failure rate in the market, as a relatively large provider (1.9% of the market) it’s evident that some firms are wrongly advising clients to take an IVA. Currently we use an £80 surplus to trigger consideration for an IVA but evidence suggests that elsewhere in the market lower triggers are used. The Insolvency Service conducted a review of IVA regulation and found several areas of concern which changes to the DRO criteria could address. The review found instances where income and expenditure had been manipulated to get an IVA approved with people in debt being steered towards an IVA and away from other more appropriate solutions without proper consideration of affordability.¹¹ Raising the surplus for DRO eligibility to £100 will reduce the potential harm arising from these practices by raising the minimum surplus at which some IVA providers are recommending this solution and moving those with a high chance of IVA failure out of scope for this solution.

Asset limit

We also support the increased asset limit. Most clients we recommend for DROs have no assets and are therefore unaffected by the current limit. Less than 1% of clients were ineligible for a DRO on account of the current asset limit alone. For creditors, it’s unlikely that they benefit much from assets of £2,000 after the costs of realising this are covered. In Scotland, the total asset limit for Minimal Asset Process (MAP) was raised to £2,000 in 2018 and the Accountant in Bankruptcy’s is conducting a further review of this demonstrating that a £2,000 limit in England and Wales would seem a minimum appropriate level.¹²

¹⁰ The Insolvency Service (2020), [Individual Voluntary Arrangements Outcomes and Providers, 2019](#)

¹¹ The Insolvency Service (2018), [Review of the monitoring and regulation of insolvency practitioners](#)

¹² Scottish Government (2019), [Scottish Government Consultation: Changes introduced by Bankruptcy and Debt Advice \(Scotland\) Act 2014](#)

We strongly recommend that the IS looks again at the vehicle limit and increases this to at least the same level as the asset limit. While less likely to have excessive assets it's common for individuals to have a vehicle worth over the current cap of £1,000. As with the asset limit, the chances of creditors benefiting from a vehicle of this value is low. Intermediaries' guidance requires cars to be valued according to Parkers Guide, the costs related to discharging the vehicle mean this price is unlikely to be realised and so in reality the money returned from vehicles around this limit will be very low. For individuals, a vehicle which is often essential for them to travel to work or for their work itself a £1,000 limit is restrictive. We find that clients are nervous to downgrade to a car worth less than this because of the cost of repairs and maintenance required on the kind of cars available for less than £1,000. We would like to see the asset limit changes mirrored with this vehicle limit, raising it to £2,000. Again, in Scotland there is a more generous limit of £3,000 for a car on top of the total asset limit which more accurately reflects vehicle costs at current prices. We would also like to see mobility scooters and other vehicles required for disabled people excluded from this vehicle limit. The Equalities Act 2010 protects people with protected characteristics by prohibiting unfair treatment in the provisions of services. It's unfair for these individuals to be penalised in the DRO process for having vehicles which they require.

3. Do the proposed changes strike the right balance between ensuring that the most vulnerable individuals are able to access low cost debt relief at the same time protecting the interests of creditors by maintaining the 'can pay, will pay' ethos? Would these levels of assets lead to a return to creditors in another debt relief solution? Please state your reasons.

We think the proposals do strike the right balance on these principles of consumer and creditor interests in debt relief. The current surplus of £50 cuts many people off with debts below the current debt limit and leaves them with limited options. The fee for bankruptcy is a significant barrier while a repayment solution on debts of £19,999 would take 32 years to repay with a surplus of £51. Managing repayments for this length of time would be a challenge for anyone let alone those with such little disposable income.

Only 34% of our clients are employed full time. 34% are unemployed and a further 1 in 5 (19%) work part time roles.¹³ This can mean their income is unstable, changing from month to month. Unemployment is forecast to increase further in the first half of 2021 and has already caused significant challenges to the self-employed and those on zero hour or agency contracts. For these groups, even though they may be able to make some contribution to repaying their debts the outlook is extremely uncertain and the chance of repayment plans failing is high. In these cases, the potential for harm to consumers is considerable while returns to creditors are not guaranteed. We think the

¹³ StepChange (2019), [Statistics Yearbook 2019](#)

proposals are well pitched to mitigate these risks for individuals' while not compromising the initial intent of DROs by bringing those for whom repayment is eminently feasible into scope.

4. Do you think that Government should aim to implement and commence any changes to the monetary limits for DROs to coincide with the introduction of breathing space in 2021? Please state your reasons.

The proposed changes will change the prospects for thousands of individuals currently unable to access a suitable debt solution and resolve their debt problems. We're keen to see people benefit from these changes as soon as feasibly possible. The introduction of Breathing Space is another moment which we hope will greatly improve the prospects of those struggling to stay on top of their debts. Synchronising these changes will give more people accessing Breathing Space the option of a debt solution at the end of the 60 days respite which has the potential to make both Breathing Space and the DRO changes more successful.

However, we would be keen to emphasise the challenges this poses to our operations in the current climate. We already struggle with the volume of DROs given the resources required to process these applications and the lack of funding available while preparations for Breathing Space require significant resources. However, if the IS can respond rapidly with conclusions from this consultation, we still support implementation in May.

In the future we would like much more foresight of potential changes. The DRO criteria haven't been changed for over 5 years and this has led to the increasing inaccessibility this consultation is seeking to address. We would like to see regular reviews of the criteria every 3 years with dates for potential changes established well in advance. The SFS is reviewed annually to ensure it accurately reflects budgets and this principle should be replicated with DROs. This would mean in future our operations team would be able to properly plan for changes as well as ensuring eligibility criteria better tracked prices and any shifts in the nature and scale of debts people face.

5. Do you think there are any other impacts that should be considered? Please state your reasons.

The cost of DROs for both individuals in debt and advice agencies require urgent attention. The £90 fee is a barrier to many seeking to access a DRO. 30% of StepChange clients have a negative budget with an average deficit of over £350. Our DRO advisers regular complete applications with clients before it then takes them 4-5 months to raise the fee. In the Woolard Review, the FCA acknowledged these problems suggesting there should be an effort to work with government on the provision of an emergency fund to cover the cost of the DRO application fee for people who cannot afford it. This could be delivered through debt advice providers acting as DRO administrators or the fee itself could be amended, waived, or reduced.¹⁴

¹⁴ FCA (2020), [The Woolard Review - A review of change and innovation in the unsecured credit market](#)

These changes would be invaluable for those struggling to afford DROs. However, they will pose challenges to the funding arrangement for advice agencies. The proposed changes in this consultation will mean an additional 15,500 individuals will be eligible for a DRO. Modelling conducted internally suggests we will see an additional 2,272 clients per 100,000 opting for a DRO every year. Given the additional intermediary costs that this will incur, these changes will mean a funding cut that will impact on our ability to help other clients seeking advice. At current volumes MaPS funding only covers around two thirds of the costs of a DRO. While we support these changes and believe there is a strong public policy case for widening the eligibility criteria the Government needs to consider how delivery costs will be met. Debt advice agencies are absorbing costs of Breathing space without funding, they cannot do so for DROs too.

Another change which we would be keen to see to the DRO process which would also have cost saving benefits is on how debts missed off the application are treated. It's not uncommon for creditors or individuals to miss debts during the application process. Government agencies are particularly bad at missing debts during the initial application phase. Legacy debts in the HMRC system which are passed onto DWP to be collected through Universal Credit deductions are often missed. In the current system if these debts are not included in the original DRO application they still need to be repaid. In bankruptcy debts can still be added after the application has been finalised unless they are excluded debts.¹⁵ This is also the case in Breathing Space where the regulations state that where a creditor finds an additional debt while an individual is subject to Breathing Space protections these protections will also be applied to this debt.¹⁶ We do not see why the same principle shouldn't apply in a DRO.

In cases where they push an individual over the debt limit this can lead to the DRO being revoked. In these cases, considerable resource will have been wasted without resolving an individual's debt problems. We would like to see some discretion allowed here where missed debts that push an individual only marginally over the limit don't lead to revocation, pushing individuals out of a solution while the costs of administration still fall on intermediaries. A 10% margin above the debt limit in which discretion could be applied to assess whether the missed debt was a genuine mistake or creditor error without automatic revocation would be welcome and reasonable.

Finally, we welcome this review of the DRO eligibility criteria and would like it to be a first step towards a wide-ranging review of debt and insolvency solutions. The current landscape leaves too many people facing impossible choices or being pushed down inappropriate routes.¹⁷ The fee and costs of bankruptcy make this solution inaccessible for many while there remains considerable stigma associated with it which is another barrier for people. We welcome the prominence given to addressing problems with IVA lead generators in the recent FCA Woolard Review and want to see more urgent action to stop these firms. We also look forward to a response from the Insolvency

¹⁵ Insolvency Act 1986, [Section 382](#)

¹⁶ The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020, [Part 1, paragraph 14](#)

¹⁷ Money Advice Trust (2020), [Debt options in the new normal: Improving debt options and the insolvency regime in the wake of the Covid-19 outbreak](#)

Service to the outstanding call for input on regulation of volume IVA providers, as we believe a better regulatory framework is needed.

Breathing Space will be followed by the introduction of a new Statutory Debt Repayment Plan (SDRP) but the implementation timetable for this solution is still not clear. The Insolvency Service should work with government to review the current landscape as has happened in Scotland. The FCA's Woolard Review was clear on the need for collaboration between authorities to remove barriers for those on low incomes and create a coherent and consistent vision of the debt solution market.¹⁸ This review should look to ensure that debt solutions and insolvency options are coordinated so there are no gaps and that everyone in debt has an suitable way out of the difficulties they face.

¹⁸ FCA (2021), [The Woolard Review - A review of change and innovation in the unsecured credit market](#)