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Breathing space scheme: consultation on a policy proposal

Response from StepChange Debt Charity

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Summary

StepChange Debt Charity is the largest specialist debt advice charity helping people across the UK. We provide free debt advice to people over the telephone and online. In 2017, over 620,000 people contacted us for help and support with their problem debt. In the first half of 2018 alone, this figure was over 326,000 people.

Having campaigned for the introduction of breathing space and statutory debt repayment plans (SDRPs), we are delighted to see HM Treasury moving forward with implementation of these schemes which, if designed and implemented effectively, could have a significant positive impact on people in problem debt.

We welcome the opportunity to respond to this consultation. In our response, we draw on our experience of administering Debt Management Plans (DMPs) and the Debt Arrangement Scheme (DAS) in Scotland. In 2018, for example, we set up over 40,000 DMPs and over 1,100 Debt Payment Programmes (DPPs).

Our full answers to the consultation questions are included below. Key points in our response include the following:

- We **warmly welcome the protections proposed** for breathing space and the statutory debt repayment plan, including stopping interest, fees and charges and preventing enforcement action. This level of protection is essential in creating an effective breathing space and in incentivising people to seek debt advice. Nearly all (96%) of our Scottish DAS clients said that the most important feature of DAS was the knowledge that their debt would not grow, and being able to repay the debt in a manageable way. 81% of our clients said it made their debt easier to pay and 78% said that they were less stressed as a result.¹ (Questions 11 and 20)
- We **strongly welcome the fact that the schemes will protect against a range of collections, recovery and enforcement action**, as we know from our clients that this can be particularly distressing for people. However, for the scheme to be fully effective, these **protections must include stopping all deductions from benefits to repay debt and stopping existing attachments of earnings orders**; as these can be set at unaffordable repayment rates that can cause hardship and make debt problems worse. (Questions 12 and 21)
- We **welcome the intention to include all debts to national and local government** – this must be unambiguous in the final scheme design. (Questions 8 and 9)
- **We strongly believe that any register must not be public.** Having a public register puts people at significant risk of being targeted by inappropriate marketing, or other exploitative practices. We also do not believe there is any need or rationale for a public register. A register that authorised

¹ Survey of 1,496 Scottish clients who had a DPP approved between January 2014 and December 2016

creditors, the court service and debt advisors could access to check whether someone is under the protections of breathing space would be sufficient. (Question 7)

- We welcome the extension of the proposed length of breathing space to 60 days, following the initial Conservative Manifesto commitment to a 6 week breathing space scheme. However, **there is still a significant risk that, for some people, the breathing space period will end before a debt solution is set-up**, leading to a lapse in protection. We therefore recommend there should be flexibility for a debt advisor to trigger an extension period in exceptional circumstances. (Question 14)
- We are concerned that the **30-day check in the breathing space scheme could be resource intensive, difficult to administer and largely unnecessary**. We therefore propose that, instead of a specific 30 day check being required, **there should be an assumption that the individual is continuing to comply, unless the debt advice agency actively has reason to believe they are not**. (Question 14)
- In addition, we believe the **ongoing liabilities eligibility requirement for breathing space needs to be reconsidered to reflect the circumstances of people seeking advice** and the time required to complete and adjust to a new budget. (Questions 1 and 14)
- With regards to the administration of breathing space, HM Treasury and the Insolvency Service must work closely with debt advice agencies to design a system that **builds on existing infrastructure and reduces manual effort and duplication**. The Sector Transformation Programme (STP), for example, includes plans for the development of central hub, which may negate the need for a separate breathing space portal. (Question 5)
- Doing so will help reduce the additional costs of delivering breathing space, however any version of breathing space is likely to add additional pressure on capacity within the debt advice sector – particularly if, as expected, it incentivises more people to seek debt advice. **There needs to be greater clarity about how any additional costs are expected to be met by the sector**, situated in the wider discussion on the future funding of free debt advice. (Question 5)
- **The 10-year ‘appropriate timeframe’ for a statutory plan should be a guide, rather than a firm cut-off, to avoid excluding people who need longer to pay (where this is fair and reasonable)**. Discretion should also be shown where the initial plan proposed is longer than ten years, but the debtor reasonably expects their circumstances to improve during the lifetime of the plan, enabling them to increase their level of repayment and reduce the overall term. (Question 16)
- There would also be merit in **exploring options for a ‘low-start’ plan, based on the current voluntary solution of ‘Token Payment Plans’**. This would be for people who have very little or no surplus income available to put towards their debts, but who expect to have a change of circumstances within 12 months which will increase the money available for repayments. This means an insolvency solution is unlikely to be suitable for them at the time they seek advice. Under a ‘low-start’ plan, small repayments (for example £1 a month) would be made to each

creditor to show a commitment to repay debts, until the time at which repayments can be increased and a full plan commenced. These plans could be reviewed after 12 months and people would be re-advised of their options if the expected change of circumstances had not occurred. (Question 16)

- Whilst we recognise the need for an objection process of SDRPs, we believe the criteria for objections must be clearly and tightly defined. This draws on learnings from Scottish DAS, where excessive resource is expended on fair and reasonable tests for plans which are then approved anyway. We also **recommend increasing the percentage of creditor objections needed to trigger a fair and reasonable test to 51% by debt value** so that a minority of creditors cannot delay a plan the majority agree to. (Question 18)
- In terms of payment distribution, we believe the most appropriate option is for this to be done by debt advice agencies. **Given there is already significant infrastructure and capacity in the sector to deliver payment distribution, we do not believe it would be efficient or effective to set up a new infrastructure run by the Insolvency Service to perform this function.** For example, StepChange currently acts as payment distributor for almost 200,000 active DMPs. (Question 28)
- We welcome the acknowledgement that all those who receive payments through SDRPs should contribute through funding. However, **the proposed payment level of 8% of an individual's repayments would represent a funding cut to StepChange.** (Question 27)
- Instead, we recommend that **decisions about the funding and administration of breathing space and SDRPs are taken in the context of wider discussions about the development and future funding of the free-to-client debt advice sector.** This would include joining up with work being led by the Single Financial Guidance Body (SFGB) on debt advice funding, to consider how the funding of statutory debt repayment plans sits within the wider funding requirements for advice and other debt solutions. (Question 27)
- We look forward to continuing to engage with the Government and other relevant bodies as the schemes move towards implementation.

Responses to consultation questions

Question 1: Do you agree with the eligibility criteria for entering breathing space, including the 12 month period?

1. Overall the eligibility criteria strikes an appropriate balance, enabling those in problem debt to access the protections of breathing space, while also providing appropriate safeguards on the use of the scheme.

2. Where the consultation states that an individual must ‘access debt advice’ and ‘be assessed as being in problem debt by a debt advisor’ to be eligible for breathing space, this must include people who are provided with advice via online tools from regulated debt advice agencies. People are increasingly seeking debt advice online (61.5% of advice sessions provided by StepChange in the first half of 2018 were online)², and the Wyman Review indicated that the sector needed to move to an even greater proportion of advice delivered online to be able to meet the demand for advice. Given this, it will be vital that people are able to access breathing space via online routes provided by regulated debt advice agencies, without the requirement to speak to a specific debt advisor on the phone or face to face where this is not necessary.
3. The consultation states that ‘the government expects debtors to be approved for the scheme if they are assessed as having a realistic chance of entering a debt solution, but require some time to properly assess the best option for them’. We would highlight here the importance of ensuring that ‘debt solution’ is defined to include assisted self-help options, such as when people are supported to negotiate with their creditors themselves to set-up repayment plans, or are given an income-maximisation recommendation (for example, to claim a benefit they are entitled to, and then to come back for further advice based on their new level of income). This is to ensure that those who might not be preparing for a statutory debt solution but are taking steps to get their finances on track in other ways can still access the protections of breathing space.
4. While we understand the rationale for limiting the number of times someone can enter breathing space to one per year, there may be some exceptional circumstances in which people have a genuine need for a second period of breathing space within a 12-month timeframe – for example if they suffer a further income shock which means the original advice or solution needs to be changed. This may particularly be the case for people in insecure work or experiencing changes to their benefits (such as migrating to Universal Credit). In these circumstances, there could be a case for allowing an exception to the 12-month rule, based on the recommendation of a regulated debt advice provider. Requiring a repeat application to come from a regulated debt advice agency will help protect against abuse and an option for creditors to object to a repeat application (which would go to the fair and reasonable test) could be built into the repeat application process.
5. In relation to ongoing eligibility for breathing space, we have some concerns about the requirement for people to continue paying their ongoing liabilities to creditors for whom they are protected under breathing space. We recognise the importance of paying ongoing liabilities and will always stress this to our clients, as this is a key part of the budget creation process. Indeed, we have previously acknowledged that, for a longer breathing space – say 12 months – an ongoing liabilities condition would be needed. However, in a shorter breathing space of 60 days the ongoing liabilities condition could be problematic:

² StepChange Debt Charity (2018) *Statistics mid-year update – personal debt in the UK January – June 2018*

- The breathing space proposed by the Treasury is designed to protect people whilst they seek advice, and developing a detailed and considered budget which enables them to pay their ongoing liabilities is part of this advice. This means people may not complete this budget counselling process until some way through their breathing space period, and a debt advice organisation may not be aware of someone's ability to pay ongoing liabilities until this point when the budget is completed.
 - Furthermore, it is reasonable to expect that people need some time to adjust to their revised budget, and to reset their income and expenditure cycle, even after receiving their budget. This may take at least 30 days, and up to 60, depending on when the budget counselling is received.
 - Furthermore, as part of the advice process some people will receive an income maximisation recommendation, for example to claim a certain benefit. This process of claiming extra income may well take longer than 30 days (where the breathing space check is due to take place) and, in some cases, longer than 60 days too. People may find it hard to pay their ongoing liabilities until they receive this income. The Pre-Action Protocol for Possession Claims by Social Landlords provides a potentially important precedent here, stating that possession proceedings should not be started against an individual with continuing rent arrears where they are waiting on a decision on a benefit claim.³
6. The key point in all these instances is that someone's new budget – and with it, their ability to pay all their ongoing liabilities – may not settle down until the breathing space period has almost ended. Including an ongoing liabilities requirement in a breathing space that is 60 days long could therefore exclude a significant amount of people who should otherwise be eligible for the scheme (in that they are seeking debt advice, seeking to stabilise their finances and moving towards a debt solution).

Question 2: Do you think there should be a formal mechanism to allow creditors to object to a debtor's entry into a breathing space, given the protections already outlined above? How could any such mechanism be best designed to minimise administrative burden?

7. We recognise the importance of guarding against abuse of breathing space and stopping vexatious attempts to enter the scheme. However, we believe the scheme as proposed – particularly the fact that entry must be through a regulated debt advice agency – will be sufficient to guard against this. Adding a further formal objection mechanism on top of this would likely be unnecessary, add extra burdens to debt advisors, debtors and creditors, slow down the process of someone getting into the much needed protection of the scheme, and could also reduce the incentive for people to seek debt advice.

³ Ministry of Justice, *Pre-Action Protocol for Possession Claims by Social Landlords*.

Question 3: Do you agree with the outline of the alternative access mechanism for individuals in mental health crisis care?

8. StepChange supported the campaign for a 'Recovery Space' element of breathing space, led by the Money and Mental Health Policy Institute, to help those in mental health crisis care. We are therefore pleased to see this included in the proposals through the alternative access mechanism.
 9. It is welcome that the protections under this aspect of the scheme will last as long as someone is receiving crisis care, reflecting the limited capability of people in these circumstances to engage with debt advice and the significant financial impact that receiving crisis care can have on an individual.
 10. To ensure this aspect of the scheme is effective, further work is needed to establish exactly how the mental health access mechanism will work. Based on our initial discussions with Money and Mental Health Policy Institute, there are a number of points we would make with regard to how the scheme should work.
 11. Firstly, the mechanism needs to be designed carefully to ensure that it works well for all involved, not least for those in mental health crisis care. Given the pressures on mental health professionals, the process for referring people to breathing space will need to be as simple as possible and should not require them to carry out detailed assessments of people's situations.
 12. Furthermore, there are important issues around consent which will need to be built into any design. Consent should always be sought, however in some cases it will not be possible to secure this or an individual may lack the capacity to make a decision. This may require mental health professionals to make a decision in the service user's best interests over whether to trigger breathing space.
 13. This also creates an issue that the debt advisors administering the referral will need to have a clear understanding of the rules around consent and the legal basis for decisions made on behalf of people lacking capacity. This will require a high level of specialist knowledge amongst advisors. There may therefore be a case for a specific 'hub' or 'unit' situated within one organisation, linking debt advice and mental health support, which would deal with all applications to breathing space under the alternative access mechanism. This unit would then also be able to liaise with the relevant mental health professionals to offer debt advice, or more general money guidance, following an individual's release from mental health crisis care. It will be important that people are directed to this financial help following their discharge from mental health crisis care, given the impact this is likely to have had on their finances (even with the protections of breathing space).
 14. The idea of having one single recovery space 'unit' would be in line with the Money Advice Service's intention, as set out in their *Evidence review for debt advice commissioning*, to design services for groups with specific needs within the indebted population, such as those with mental health problems.
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15. With all this in mind, we recommend that the Treasury continue working with mental health charities, debt advice organisations, creditors and the Single Financial Guidance Body to develop the alternative access mechanism.

Question 4: Although it will be important for a professional assessment to be made of an individual's condition, do you agree that other third parties (e.g. carers) be permitted to use that professional assessment to make a referral to a debt advice agency on an individual's behalf?

16. It may be appropriate for a carer, or other third party, to make a referral to debt advice for breathing space, but only where the carer has the explicit consent of the individual to do so or where there is a pre-existing legal basis for a third party to do so (e.g. Power of Attorney or Deputyship).

17. Where there is not explicit consent, then the referral should be made by a mental health professional, under a duty to act in an individual's best interests.

18. Here we would reiterate the point made in response to the question above about the importance of making the referral process for mental health professionals as simple and easy to administer as possible.

Question 5: Do you agree with the proposed method of administering entrance into breathing space? Do you agree with the proposed role for the Insolvency Service? What kind of functionality should the Insolvency Service's notification mechanism include?

19. As we have highlighted previously, we believe that debt advice is the most appropriate "gateway" to accessing Breathing Space, and it is welcome that the proposals set this out clearly. As a debt advice provider we commit to ensuring our systems and processes are robust, so that we can assess people's eligibility accurately and administer the new framework reliably, building on the important, trusting relationships we already have with creditors.

20. Whilst we welcome this role for debt advice, and stand ready to play our part, we are clear that the administration of breathing space must be as efficient as possible, to enable those who need it to enter into the protections quickly and to minimise the burden on debt advice agencies, enabling them to help as many people as possible.

21. For this reason, in finalising the administration of the scheme, we would urge HM Treasury to work closely with the Insolvency Service and debt advice agencies to design a system that builds on existing infrastructure and processes, reduces manual effort and avoids duplication. For example, the consultation implies that debt advice agencies may need to manually input data into an Insolvency Service portal to apply for breathing space for a debtor. However, doing so for each

individual debtor who requires breathing space would cumulatively add up to a significant time and resource requirement for a charity such as StepChange. We estimate that, if we were required to manually enter data into an Insolvency Service portal, this would require at a minimum the resource of at least 4.8 full-time staff. This would either have to be met by increasing expenditure or by re-allocating resource, which would in turn reduce the number of people we could provide debt advice to by at least 2,600 people.⁴

22. As the consultation states, one of the Government's policy goals for the breathing space scheme is to encourage more people who could benefit from it to take up debt advice. We think that breathing space offers the right incentives for this to happen, as a result of the freeze on enforcement action, interest and charges that it will provide. It will therefore be essential that the sector is properly funded and resourced to deal with this increase in demand.
23. Any additional administrative burdens created within the breathing space administration will add to the resource required to deliver it, and therefore the overall cost to debt advice agencies. Where debt solutions have been implemented without a clear understanding of the costs and reciprocal funding to cover these, debt advice providers will struggle to meet demand over time. This is something we see acutely with Debt Relief Orders (DROs), where the funding we receive per DRO is considerably less than the cost of administering them. We therefore end up using cross-subsidisation from other income sources (such as Fair Share Contributions for DMPs) to cover these costs, which is unsustainable over the long-term. There are important lessons to be learnt here for breathing space, particularly the need to be clear about how any additional costs are expected to be met by the sector.
24. It is also vital that the Treasury consider all possible options to streamline the process, and to make use of existing sector infrastructure to administer breathing space. The Sector Transformation Programme (STP), for example, includes plans for the development of central hub, which may negate the need for a separate portal. In this instance, the Insolvency Service could become an information taker from the hub rather than a portal administrator. We would recommend that the introduction of breathing space and statutory debt repayment plans forms an important part of the STP's work, with leadership from HM Treasury to ensure timely and coordinated implementation. A specific practical implementation working group, linked to the STP, for example, could be set up following the closure of this consultation, to support this.
25. Finally, as mentioned earlier in our response, given the increasing number of people receiving debt advice via online tools, it is vital that debtors using this method can also benefit from swift entry into breathing space. This will require the system to be built in such a way that means online clients can quickly and easily apply for breathing space without needing to contact an advisor face to face or over the phone. In these instances, individuals may be responsible for completing the application for

⁴ This calculation is based on 2019 volume predictions, and assumes that 75% of clients advised apply for breathing space.

breathing space themselves (rather than a debt advisor), however this would only be able to take place once an online debt advice session had shown this to be the appropriate option for the client, based on the eligibility criteria for the scheme.

26. We would be pleased to work with HM Treasury, the Insolvency Service and others to further develop how the above suggestions can work in practice, building on existing best practice within the sector.

Question 6: Do you think there should be an oversight role to ensure creditor compliance with breathing space? If so, how should this oversight role operate?

27. For breathing space and statutory plans be effective, it will be vital that there is a clear oversight function and a route for people under the protections of the schemes to highlight where a creditor is not complying.
28. Regulators will need to play a role here; ensuring compliance with the scheme and reflecting this in their rules, supervision and enforcement regimes. Creditors should be required to report instances of non-compliance to the relevant regulator (such as the FCA, Ofgem or Ofwat) who would publish regular records of this. Local and national government should also be compelled to publish data on any non-compliance in relation to debts owed to them. The relevant ombudsman (such as the Financial Ombudsman Service, Ombudsman Services: Energy and the Local Government Ombudsman) should also publish data on any complaints they receive regarding non-compliance with the schemes.
29. For those creditors without a clear, single regulator (e.g. local and national government), more consideration needs to be given to how to ensure compliance with the scheme.
30. Specific acts of non-compliance could have specific penalties or repercussions. For example, if a creditor proceeds with court action against someone under the protections of breathing space (such as by issuing a money claim), the existence of breathing space should be considered an absolute defence, and any claim or application should be struck out. It will be important here that the Courts Service receives information about those under the protection of breathing space so that they can check claims against this, and block action where needed.
31. There may be an option to make clear that breaching the breathing space protections would constitute a breach of a statutory duty, meaning an individual could launch a civil claim for damages.
32. The Consumer Protection from Unfair Trading Regulations protect consumers against aggressive practices from businesses. If pursuing someone under the protections of breathing space for debts were constituted an aggressive practice under these regulations, then this could be constituted an offence, and lead to sanctions against creditors. However, this would only apply to some debts, and may not cover public sector creditors. Here, there may be a need to consider whether the

Administration of Justice Act 1970 contain any provisions that may constitute a similar offence for public sector creditors. Alternatively, and given the complexity of these existing legal provisions, it may be easier or more appropriate to create a specific, appropriate legal sanction relating to a breach of the breathing space protection covering all creditors.

Question 7: Do you think the register holding details of debtors in a breathing space should be fully public, accessible to relevant debt advice agencies and creditors or just accessible to the Insolvency Service?

33. We strongly believe that any register must not be public. Having a public register puts people at significant risk of being targeted by inappropriate marketing, or other exploitative practices. The current Individual Insolvency Register (IIR) provides a significant amount of information about multiple people on the register, including their full name, address and date of birth, simply by entering a surname or part-surname. For example, searching by surname “Smith” produces 4398 individuals’ results, revealing their full personal details. This highlights how easy it is to access and potentially exploit this sensitive information.
34. The risk of an individual being targeted by inappropriate marketing or other exploitative practices is particularly concerning given that many people on the register may be vulnerable in some way. Similarly, given that people receiving breathing space through the mental health crisis care mechanism would presumably need to be included on the register, it would be entirely inappropriate for these details to be public.
35. Furthermore, our experience of DAS in Scotland is that the existence of a public register is significant in putting people off accessing a DPP. It is likely that a similar effect would be seen if there was a public register for breathing space. Recent research by the Money Advice Service revealed that 5% of UK adults in a relationship said their partner was completely unaware of their debts, with a further 29% not admitting the full extent of their debt.⁵ 47% said close friends were not aware of their debt issues.⁶ People in these situations are likely to be wary of entering a scheme with a public register. A public register could therefore undermine the government’s welcome intention to use breathing space to encourage more people to seek debt advice.
36. Finally, we also do not believe there is any need for the register to be public. A register that authorises access to creditors and the court service to check whether someone is under the protections of breathing space, and for debt advisors to check if needed, to confirm an individual had not had a breathing space in the past 12 months, would be sufficient. Existing communication channels between advice agencies and creditors can also be utilised, and credit reference agencies

⁵ Money Advice Service (2018), Available: <https://www.moneyadviceservice.org.uk/en/corporate/press-release--96-billion-of-debt-hidden-from-friends-and-family>

⁶ Ibid

could also play a role in distributing information about those under the protections of breathing space.

Question 8: Do you agree with the proposed approach for excluding certain debts from the protections of breathing space?

37. As StepChange has previously highlighted, if breathing space and statutory debt repayment plans are to be successful, it is essential that all debts to national and local government are included in the protections. We welcome the indication in the consultation that these will be included, however this must be completely unambiguous. As the consultation itself highlights (in section 4.1) the policy intent of both breathing space and statutory debt plans can only be achieved where as many of an individual's debts as possible are included in the protection. We also welcome that the Treasury Select Committee has highlighted the importance of all debts to national and local government being included in the schemes, stating that 'the Committee can only offer its support for the scheme if its scope is expanded accordingly [to include government debts]'. Here, we would also highlight the modelling we presented in our response to the Call for Evidence, that the government would see considerable annual cost benefits in debt collection if DWP, HMRC and Council Tax debt were included in the breathing space scheme.⁷
38. We note that the consultation proposes some specific debts would be excluded, based on those currently excluded from personal insolvency solutions. However, we would question whether this is appropriate given that neither breathing space nor statutory debt repayment plans are insolvency solutions. Whilst we can understand there may be some rationale for excluding these debts from insolvency solutions, such as to ensure criminal fines are still paid, this argument does not extend to breathing space or statutory debt repayment plans – where someone is stabilising their situation and then repaying their debts. Many of these debts, such as criminal fines, can have strong enforcement attached to them and it can be difficult to negotiate affordable repayment plans. Allowing this to continue even when someone is in breathing space or on a statutory debt repayment plan could severely undermine the protections offered by the scheme and put the financial recovery of vulnerable people at risk. We would therefore strongly argue that these debts should be included in the protections.
39. If any debts (such as criminal fines) do remain excluded under the final scheme design then, at the very least, these creditors should have to give consideration to whether the repayments they expect during that time are affordable and be prepared to renegotiate them to a lower amount where necessary.

⁷ StepChange Debt Charity (2017) *Response to breathing space call for evidence*, Available: https://www.stepchange.org/Portals/0/img/policy-research/StepChange_Debt_Charity_response_Breathing_Space_call_for_evidence.pdf

Question 9: Do you think there are other debts, such as those in regulated credit agreements, or certain types of benefits, that should be excluded?

40. No – as we have highlighted above, we believe that the success of the scheme is dependent on as many debts as possible being included in the breathing space period.

Question 10: Do you agree with the treatment of sole traders in breathing space? In particular:

- Do you agree with the proposed eligibility criteria and protections for sole traders in breathing space?
- What would be the most appropriate way of distinguishing between business and personal debts for these purposes?

41. As the consultation recognises, for small, unincorporated sole traders there is often an overlap between personal and business debts. We therefore welcome that the protections of breathing space will also apply to the business debts of sole traders.

42. In considering how this will work in practice, we have liaised with colleagues at Business Debtline and, as a result, would highlight the following points:

43. Overall, using the VAT registration threshold as the criteria for business debt inclusion seems appropriate. However, we would note here the importance of ensuring that this is workable in practice for both debt advisers and sole traders: for example, in practice it may be more appropriate for a debt advisor to ask if someone is currently VAT registered with HMRC, rather than asking sole traders to calculate what their VAT taxable turnover was in the last 12 months.

44. In addition, we would highlight that the proposed eligibility criteria for business debts should be considered a separate criterion on top of the main breathing space eligibility criteria. By this we mean that personal debts will always be covered by the protections (where eligibility for breathing space is met) regardless of someone's eligibility for their business debts to be covered too.

45. Of course, this may then present challenges in relation to distinguishing between business and personal debts. Research by Business Debtline has previously highlighted that some sole traders and small businesses may use personal borrowing to cover business costs.⁸ Given this, the only practical way of distinguishing between the two may be an objective test regarding the type of debt or credit product involved, and whether it was intended as business or personal credit (regardless of how it was then used).

⁸ Money Advice Trust (2018) *Taking care of business: Eight key challenges facing small business owners*

46. Finally, whilst we fully support the inclusion of business debts for sole traders in the scheme, it is possible that, for some debts owed to suppliers, applying the protections of the scheme could have a knock-on negative consequence for another sole trader. This might be the case where one sole trader owes another. Although this is likely to only apply to a small proportion of debts involved, we believe there would be merit in allowing a sole trader creditor to object to the inclusion of a debt owed to them, where they can show that it would cause them personal financial hardship. This process could be adjudicated on by the Insolvency Service.

Question 11: Do you agree with the proposed treatment of interest, fees and charges in breathing space?

47. Yes, we very much welcome the fact that all interest as well as fees and charges associated with defaults must be stopped under breathing space.

48. We understand this to mean that contractual interest would have to stop on all credit (including 'revolving credit' such as a credit card or overdraft), except that which is defined as an ongoing liability in section 4.4 of the consultation, where only default interest and charges would be stopped (such as in the case of mortgages). We expect that arrears on ongoing liabilities can be included at the point in which breathing space is entered, but that any further ongoing payments must be met from an individual's budget. Clarification on these points would be welcome and we would highlight the importance of ensuring the regulations for the scheme are carefully designed so it is absolutely clear how the rules around stopping interest will apply.

Treatment of hire purchase debts

49. We would also highlight here that some consideration may need to be given to the categorisation of hire purchase (HP) (and related conditional sale) agreements as an ongoing liability.

- The consultation is unclear on how the statutory protections in breathing space and the statutory debt repayment plan would apply to HP and conditional sale agreements, in particular where lenders seek to enforce summary repossession of goods where less than a third of the total price has been paid.
- It is not clear whether HP and conditional sale agreements would continue to be classed as ongoing liabilities in situations where the borrower had returned goods or the lender had repossessed the goods. Careful drafting of the regulations may be needed to ensure lenders are not able to enforce against what would be, at that stage, an unsecured debt.
- Hire purchase and conditional sale agreements will generally be regulated by the Consumer Credit Act 1974. This legislation includes provisions (the 'time order' provisions in S129-S130 and related S135 and S136) allowing consumers to ask for extended 'time to pay', which may include more time to make payments falling due in the future. Supplemental provisions would allow the court to amend contractual terms such as the regular repayment (the ongoing liability) where this is just between the parties. However, applying to the court for these protections can be difficult and expensive for consumers, suggesting that some flexibility might be built into the statutory

debt repayment plan to acknowledge this. Here we would point out that hire purchase agreements might be used to fund a number of different goods purchases, such as Rent to Own agreements, where it may be fair and reasonable for the borrower to pay below contractual payments for a time.

- The current definition of hire purchase and/ or secured loans in the consultation may also cover loans secured by bill of sale ('logbook loans') where, again, it may be fair and reasonable for a borrower to make reduced payments for a time. There is currently little consumer protection against creditors taking action to recover goods secured by such loans. Including these as an 'ongoing liabilities' risks leaving people open to experiencing strong enforcement and recovery practices.

The importance of stopping interest, fees and charges

50. We welcome that creditors will not be able to retrospectively charge interest or default fees and charges should an individual leave the protections early, or without entering a debt solution.
51. As we have previously highlighted, stopping interest and charges in these ways is critical to helping people in debt to stabilise their financial situation. With no relief from interest, charges and debt enforcement and collection fees, debts can spiral out of control: for 32% of StepChange clients who were set up on a DMP in October 2018, the value of their debt had increased between their first debt advice session and getting onto the DMP. For clients moving onto DPPs in Scotland the figure is 69%.⁹
52. When clients don't get protection from interest, fees and charges, many have to use more credit to cope: 61% of our clients who were not offered protection from these additional debt charges went on to take out further credit to keep up with the extra costs added to their debts.¹⁰
53. However, 60% of StepChange clients who had interest, charges and enforcement action frozen by creditors said that their financial situation began to stabilise. None of those that did not get this help from creditors said their finances had stabilised.¹¹
54. There is also evidence that stopping interest, charges and fees is critical in encouraging people to seek debt advice earlier, and therefore to achieving the government's policy intent. 76% of our clients said they would have sought debt advice earlier if they knew it would result in creditors stopping interest, charges and other debt collection and enforcement costs.¹² Getting people into debt advice is not just beneficial for the individual, but for creditors too. A social return on investment study of StepChange Debt Charity clients estimated a £750 per client benefit to creditors where debt advice

⁹ Analysis of StepChange data – clients set up on a debt solution in October 2018.

¹⁰ StepChange Debt Charity (2015) Safe Harbours

¹¹ Ibid

¹² Based on a poll of 1,300 StepChange Debt Charity clients in 2014

supported clients to repay their debts at an affordable rate.¹³ Specialist debt advice has also been shown to deliver an estimated £239 extra in debt repayments to social landlords per tenant supported when compared against residents not receiving debt advice support.¹⁴

“our experience is that....giving people an option to pay a smaller amount [of their debt repayments] on average works better for us financially”¹⁵.

Question 12: Do you agree with the treatment of collections recovery action during breathing space? Should any other forms of collections and recovery action be explicitly included in the protections? How can any practical issues arising from preventing these collections and recovery actions be best mitigated?

55. We welcome the fact that the scheme will protect against a range of collections, recovery and enforcement action. As we highlighted in our answer to our previous question, this protection (combined with protection from interest, fees and charges) will be key in helping people to stabilise their financial situation: 60% of StepChange clients who had interest, charges and enforcement action frozen by creditors said that their financial situation began to stabilise. None of those that did not get this help from creditors said their finances had stabilised.¹⁶ Furthermore, stopping collections and chasing activity should reduce the need for people to seek further credit to keep creditors at bay, something we frequently see currently - 6 in 10 people (61%) who continued to face collections action and interest and charges borrowed more money as a result, getting deeper into debt.¹⁷

56. However, for the scheme to be truly effective, we believe there are some additional protections that need to be explicitly included in the scheme.

All deductions from benefits must be stopped under breathing space:

57. Whilst we recognise the importance of collecting debts owed to government, it is still important that this is done in an affordable way. It is therefore concerning that the consultation states that only ‘certain types’ of benefit deductions will be stopped as part of the protections. It should be made explicit that all existing benefit deductions will be stopped when someone is in breathing space and that no new deductions can be applied. This must include both deductions to repay government debts (such as benefit overpayments or Universal Credit Advances) and third party deductions taken on behalf of others, such as utility companies or landlords.

¹³ Baker Tilly & StepChange Debt Charity (2014) Transforming Lives: a review of the social impact of debt advice for UK individuals and families, evaluated using SROI

¹⁴ Evans G.& McAteer M, (2011) Does debt advice pay? A business case for social landlords. London: Financial Inclusion Centre

¹⁵ Financial service provider at StepChange Debt Charity Breathing Space roundtable, 9 February 2016

¹⁶ Based on a poll of 1,300 StepChange Debt Charity clients in 2014

¹⁷ StepChange Debt Charity client survey, 2014. Sample: 923 StepChange Debt Charity clients who came for advice in 2013. Fieldwork conducted June–July 2014.

58. In addition, deductions from benefits to repay debt have previously been justified on the basis that taking debt repayments in this way protects people from enforcement practices, such as being disconnected from their electricity or gas supply. However, since these will be prohibited under breathing space, it makes sense to stop the deductions during this period too.
59. StepChange has previously raised concerns about the affordability of deductions and the way in which they are applied – over 70% of StepChange clients who had a deduction from their benefit to repay debt said this had caused them hardship.¹⁸ In particular:
- 40% fell behind on other household bills
 - 20% had to use credit to pay essential household bills
 - 16% had to use high cost credit to make up a payment shortfall caused by deductions.¹⁹
60. Excluding any deductions from benefits from the protections risks undermining the whole purpose of the scheme in giving people time to deal with their debts holistically, and find a suitable way forward. It is important to remember that stopping deductions during the period of breathing space does not mean an individual will never repay those debts, it is simply a pause while they work out an affordable way to repay all their debts. We therefore hope that all deductions from benefits (new and existing) will be explicitly included in the protections.

Stopping existing attachments of earnings orders:

61. We do not agree with the government's proposal that existing attachments of earnings orders would not be stopped during breathing space.
62. As with deductions from benefits, attachments of earnings are particularly problematic because they take a fixed proportion of someone's income without taking account of whether this is affordable for an individual or not. Not stopping them could leave people unable to afford essentials (including their ongoing liabilities) and would undermine people's attempts to stabilise their finances. There could also be unintended consequences of excluding them, with creditors encouraged to seek earlier use of attachments of earnings orders as they would know these couldn't be stopped during breathing space.
63. The current methods for challenging both deductions from benefits and attachments of earnings orders are cumbersome and represent a significant barrier to people being able to negotiate affordable repayments. Excluding these from the protections of breathing space would mean advisors or clients would need to continue pursuing these routes separately, creating additional work that would not be necessary if they were stopped, as well as causing additional stress for the client.

¹⁸ Survey of 827 StepChange Debt Charity clients, December 2016.

¹⁹ Ibid

64. Furthermore, we would challenge the rationale given in the consultation that “some individuals may not want their employer to know that they are in a period of breathing space.” This is unlikely to apply to many individuals, given that the existence of an attachment of earnings means that their employer already knows they have a debt problem, and entering breathing space would be perceived by most employers as a positive step towards improving that individual’s finances.

Protections must transfer across if the debt is sold or passed to a debt collection agency:

65. It is possible that someone’s debt may be sold onto a debt purchaser, or passed to a debt collection agency, during the period of time they are in breathing space. Where this happens, it is vital that the protections of breathing space automatically transfer across to the debt purchaser or debt collection agency without the client having to re-notify them.

Stopping and preventing new statutory demands and bankruptcy petitions should be explicitly included in the protections:

66. There is no specific mention within the protections regarding the presentation of a statutory demand or bankruptcy petition in relation to debts. Whilst these may be covered under demands for payment and court actions, we would welcome this being made explicit.

Section 8 and section 21 evictions:

67. It is essential that both the breathing space and statutory plan include protections against section 8 evictions for rent arrears. It is therefore welcome that the consultation explicitly states that evictions due to unpaid debts under section 8 would be prohibited whilst someone is on a plan. However, it is not clear from the consultation whether this protection will also be included during breathing space: we believe it is essential that it is. Without this, it could lead to the un-intended consequence that landlords are incentivised to move quickly to use a section 8 notice during the breathing space period, to secure action before someone moves onto a plan or other debt solution.

68. However, there remains a significant risk that landlords will simply use section 21 notices to evict tenants under the protections of the schemes instead, as these are not protected against. We appreciate there would be significant challenges in including section 21 evictions in the scheme. However, we still believe there would be merit in considering whether there are any measures that could be put in place to limit the use of section 21 notices to evict people repaying rent arrears under the breathing space scheme, perhaps drawing on other examples of where conditions have been attached to the use of section 21 notices.

Question 13: How should creditor compliance with the scheme be monitored?

69. Please see our answer to question 6 above.

Question 14: Do you agree with the proposed length of breathing space? Do you have any other comments on the operation of the check?

Length of breathing space



70. We welcome the extension of the proposed length of breathing space to 60 days, following the initial Conservative Manifesto commitment to a 6 week breathing space scheme. However, our considerable experience as a debt solutions providers suggests that even a 60 day breathing space is unlikely to be long enough for some of our clients to enter a debt solution. As a result, we could see people experiencing a lapse in protection between breathing space finishing and a statutory solution being in place. Analysis of clients successfully set up on a DMP by StepChange in October 2018 found that over 1 in 5 (22%) took longer than 60 days.²⁰

71. As the table below demonstrates²¹, many other debt solutions have an average setup time of over 60 days, including debt payment programmes (DPP) in Scotland. In many instances, the length it takes is due to the length of processes imposed upon us by the rules of the schemes, such as DROs and DPPs. For some other solutions, such as DMPs the timeframe reflects the time clients take to collect and submit the relevant information and required paperwork.

Debt solution	% of clients where setup was longer than 60 days
Debt Management Plan (DMP)	22%
Debt Payment Plan (DPP)	97%
Debt Relief Order (DRO)	88%
Token Payment Plan (TPP)	33%
Voluntary Arrangement (VA)	100%

72. This means that, whilst some people will not need the full 60 day breathing space – as they will move onto a protected solution faster than this - some people are at risk of losing protection before a solution is set-up.

73. The proposed length of the scheme is also problematic for those who may need longer than 60 days to save enough to cover the fees for an insolvency solution. The bankruptcy fee and deposit is £680, for example, but only 3% of StepChange clients recommended bankruptcy in the first half of 2018 would be able to afford this fee by saving from their budget surplus within 60 days.²² The DRO fee is

²⁰ Analysis of StepChange data, based on clients set up on a solution in October 2018. Setup time is measured from date of first debt advice session.

²¹ Ibid

²² Of 3,188 individuals recommended bankruptcy, only 107 could afford the fees within 60 days. Ability to afford was determined by taking the amount of money in an individual's monthly surplus (i.e. money left after essential expenditure has been deducted from income) and comparing this over 2 months to the cost of the fees. Based on clients advised January – June 2018.

£90, yet only 1.5% of clients recommended a DRO in the first half of 2018 could afford the fee within 60 days.²³

74. However, when we consider a longer period, we see that more people are able to afford the fees. For example, 13% of people recommended for a DRO and 12% of people recommended for bankruptcy could afford the fees if they saved their surplus for 6 months.²⁴ This highlights how the proportion of people in problem debt receiving adequate protection is dependent on the length of breathing space offered.
75. Given the above evidence, there is a significant risk that people could fall out of breathing space before a debt solution is set-up, or before they have had time to save up the fees needed to enter an insolvency solution. Any gap in protection could risk people falling back into problems under pressure from creditors and see their debt escalating at a time when they are preparing to address it. In Scotland, for example, we have seen cases of creditors exploiting this gap in protection, by using the six-week moratorium period to prepare so they can immediately start action once the moratorium lapses (as this often occurs before a solution is set-up). In designing the scheme for England and Wales, it is vital that lessons are taken from this to prevent it happening here too.
76. If the scheme is to be 60 days in length, we recommend there should at least be flexibility for a debt advisor to recommend an extension period, whether this is because a repayment plan, or other debt solution, is being arranged but needs more time to be finalised or the person in debt needs more time to find fees for insolvency solutions.

30 day check

77. We are concerned that the 30 day check, as proposed, could be highly problematic. There are a number of reasons for this: the check is likely to be resource intensive for debt advice agencies, directing precious resource away from the frontline; it would be difficult to administer; and is likely to be unnecessary. We therefore recommend that, instead of a proactive check at 30 days, an assumption is made that an individual is continuing to comply with the requirements of breathing space unless the debt advice agency actively has reason to believe they have disengaged. This may well take longer than 30 days to establish. For example, under our current processes, once someone has selected a solution, we send out the relevant paperwork for them to complete and return. If this is not initially received, we follow up with a communication on day 10, and then day 30. If we hear nothing by day 40, we send a non-proceed letter. However, if someone later re-engages with us, we will pick-up the case again, re-advising where needed to ensure a solution is still appropriate.
78. As this shows, an agency would already know whether or not an individual was engaging, and responding to their requests for information, and we already conduct follow-up communications with clients who have been debt advised but not returned paperwork. A separate, specific check is

²³ As above. Of 11,863 clients recommended a DRO, only 179 could afford the fees within 60 days.

²⁴ Based on clients advised January – June 2018.

therefore unnecessary. Whilst we recognise that the proposal is based on existing successful practice from FCA-regulated consumer credit firms, this was based on the fact that these firms wanted to check someone had sought debt advice and was engaging with this process, before giving another 30 days of protection. However, given the proposed administration of breathing space (application via regulated debt advice agencies), this will no longer be required since someone would only be able to access the protections once they have sought advice, and from then on the agency would know already whether they are continuing to engage or not.

79. Requiring debt advice agencies to undertake the 30-day check could also create significant additional burdens. Assuming the check requires StepChange to undertake a five-minute phone call with all telephone and online clients who take up breathing space, we estimate this would require at a minimum around 14.8 FTE staff to complete.²⁵ This would either have to be met by increasing expenditure or by re-allocating resource, which would in turn reduce the number of people we could provide debt advice to by over 8,000 clients.²⁶
80. There are also practical considerations regarding how the check would work, for example, what would happen if someone failed to respond to the check? This could lead to people having vital protections removed simply because they missed a phone call or letter. In this respect, it could also unnecessarily distract both the debt advice agency and the individual from the main task of getting a debt solution set-up.
81. Finally, chasing someone mid-way through the breathing space period and threatening to take such support away fundamentally undermines the role of breathing space in giving people time to adjust to their new budget and to stabilise their finances.
82. We therefore propose that, instead of a specific 30 day check being required, there should be an assumption that the individual is continuing to comply, unless the debt advice agency actively has reason to believe they are not. This would be a more efficient and effective method for overseeing breathing space for debtors, advice agencies and creditors.

Question 15: Do you consider that this protection is appropriate for individuals in mental health crisis? Should there be any further protections for individuals who have accessed breathing space in this way?

83. As we highlighted in our responses to questions 11 and 12, we believe the plan offers important protections that will make a significant difference to people in debt, including those in mental health crisis. However, we need to ensure that all those in mental health crisis who access breathing space can receive the full benefits of this protection.

²⁵ This calculation is based on 2019 volume predictions, and assumes that 75% of clients advised apply for breathing space.

²⁶ Ibid

84. As with the wider breathing space, we would highlight the problematic nature of the ongoing liabilities requirement (see question 1 for more information). This is particularly likely to impact upon people in mental health crisis care, who may be unable to engage with debt advice or keep up with their essential bills during their treatment. People may find it hard to engage in financial management, apply for benefits, or speak with their providers during this period of crisis. Even where someone has the money to pay their bills, unless they had previously set up direct debits or granted a third party access to their accounts, they may practically be unable to pay them. This eligibility requirement must therefore be removed.
85. Secondly, we would make a specific point around timeframes for the mental health alternative access mechanism. It is very welcome that the mental health alternative access breathing space will last for as long as someone is in crisis care. However, where someone is in crisis care for fewer than 60 days, the breathing space should still last for this full 60 day period. This is to ensure people are not disadvantaged at this point, in comparison to the wider breathing space, and also to give people discharged from care time to engage with debt advice and seek help with their finances. We would also note here that individuals finishing the mental health breathing space may then need a referral to debt advice. In these circumstances, where individuals then engage with debt advice post crisis care, the individual may then need to enter a 60-day breathing space period. The two 'spaces' have different (but overlapping) purposes, and should be capable of joining seamlessly.

Question 16: Do you agree with the eligibility criteria for entering a plan? In particular, do you agree that plans lasting for a maximum of ten years is an appropriate timeframe for debt repayment?

86. Whilst we largely agree with the eligibility criteria for entering a plan, we would raise some recommendations with regards to the 'appropriate timeframe' criteria.

10 years should not be a completely rigid boundary

87. Firstly, we would recommend that the proposed maximum term of ten years is a guide, rather than a firm cut-off, as cases that fall just above this will inevitably occur. Of the 653 StepChange clients where a DPP was approved during 2017, around 23% (152) had a term in excess of 10 years – highlighting that creditors will accept plans that are longer than 10 years. Where someone has a proposed plan length of over 10 years, and creditors object to this, the length of the plan could be considered as part of the fair and reasonable test, leaving the Insolvency Service to decide whether it is still an 'appropriate timeframe'.

Circumstances where initial plan is longer than ten years, but with reasonable expectation of reduction of term

88. There are likely to be circumstances where, for some people, the initial plan proposed is longer than ten years, but the debtor reasonably expects their circumstances to improve during the lifetime of the plan, which will enable them to increase their repayments and reduce the timeframe to within ten

years of the start date. This could be the case, for example, where someone is expecting to gain new employment or additional hours, pay off a mortgage, or return to work following maternity leave. This may also apply where people are initially paying priority debts at a high rate (because they have been prioritised), but when these are paid off a higher surplus will go towards non-priority debts, enabling them to be paid off within a 10-year term, even if this may not be the case based on the initial repayment amounts.

89. In these instances, we would expect plans to be approved even where they are initially over the 10-year 'appropriate timeframe' and for any creditor objections to be dealt with through the fair and reasonable test. This would draw on the experience of discretionary conditions, which can be used in DPPs to indicate where a client's initial contributions are low, but a change is expected which will then increase repayments and reduce the overall term of the plan.

'Low-start' payments for those with very low surplus income levels

90. Currently, there are some people who have very little or no surplus income available to put towards their debts, however they expect to have a change of circumstances within 12 months which will increase the money available for repayments. This means an insolvency solution is unlikely to be suitable. Currently, these people may be placed on Token Payment Plans (TPPs). This is where people make a 'token' monthly payment (for example £1 to each creditor) to signal their intention to repay their debts when their circumstances allow. A review is conducted when an individual's circumstances change, or at 12 months – whichever is earliest. Where someone's surplus has increased, they can move to a full repayment plan (usually in the form of a Debt Management Plan (DMP)). Where the expected change of circumstance has not occurred, the individual will be re-advised of their options.

91. However, as with a DMP, the TPP is a voluntary solution and does not offer any statutory protection. We therefore recommend that the statutory debt repayment plan includes provisions for a 'low-start' plan option – based on how TPPs currently work.

92. For some people, offering a 'low start' plan may also help guard against the issue we raised in our answer to question 14, regarding the potential for some to lose protection when breathing space ends before people have been able to stabilise their situation or get a suitable long-term solution set-up. Existing evidence from administering TPPs shows these can be a valuable lifeline in enabling people time to stabilise and improve their finances in order to enable them to repay their debts: Around 44% of our token payment plan (TPP) clients who had income solely from benefits at the beginning of their plan were in a position to begin making debt repayments after 12 months.²⁷

93. Previous analysis work of StepChange clients on TPPs has also shown that giving people this time to allow for a change of circumstances can be very effective: At review (between 6 months and one year after advice), at least a quarter of TPP clients had either completed the plan, settled their debt,

²⁷ StepChange Debt Charity data, 2016

were able to make payments to creditors directly or had been re-advised into another plan. For the other 75% we do not have such definite outcome data as these clients did not complete review. We can speculate that in some cases it will be because they no longer needed our help (monthly uplift in income may change debt advice need), in other cases circumstances may not have changed and debt problems won't have been resolved.²⁸

94. Our experience suggests that there is a need for such a 'low-start' option, but the group is relatively small in comparison to those in need of a statutory debt repayment plan, meaning this could be offered without a significant impact on the running of the scheme. In October 2018, for example, StepChange set up 435 TPPs in comparison to 2,129 Debt Management Plans.²⁹ We also do not think this should significantly impact on the returns seen by creditors, including government creditors. In our previous response to the Call for Evidence (available) we included modelling developed by London Economics showing that a 52 week breathing space scheme would deliver a cost benefit to government after ten years. Whilst we are not proposing a 52 week breathing space, but a period of up to 52 weeks where someone is contributing 'token' payments, we would expect the impacts to be similar.

95. As with the other proposals above, creditors would retain a safeguard through the usual objection process, with the proposal going to fair and reasonable where the threshold for objections is met.

Question 17: Do you agree with the proposed criteria for creditors to object to the plan? Are there any other criteria you feel would be appropriate?

96. While we recognise the need for some opportunities for objections within the scheme, we believe these must be clearly and tightly defined. Overall, we welcome the proposals in the consultation regarding the grounds for objection. However, we would highlight again the importance of reducing the opportunities for blanket or frivolous objections, which would create unnecessary cost and resource implications for debt advisors and for the Insolvency Service conducting fair and reasonable tests on plans that are then approved anyway. These can also be frustrating to other creditors, meaning they have to wait longer to receive their money, and for debtors who have to wait longer to pay off their debts.

97. Evidence from Scotland – where the criteria for objection are not currently tightly defined and any creditor can object for any reason - shows that around 97% of Debt Payment Plans (DPPs) that go to the fair and reasonable test are assessed as being fair and reasonable anyway.³⁰

98. Having to resubmit plans and evidence for fair and reasonable tests also takes up precious resource from debt advice agencies, reducing the ability to help other people in problem debt. Under Scottish

²⁸ StepChange data, based on clients starting a TPP between January – June 2014.

²⁹ Internal StepChange data.

³⁰ Based on the 880 StepChange DPP cases that were sent to fair and reasonable test in 2017.

DAS, when a case is sent to a fair and reasonable test, a significant amount of work can be generated for the money advisor, including: downloading the report, understanding the reason for referral to fair and reasonable test, checking the case details and the information supplied by creditors, contacting the client, seeking new information, uploading information, adding notes to the case file, submitting information to the AiB and challenging comments made by the creditors in their objection. In total, this can add around 2-3 hours of advisor time.

99. We would therefore make some recommendations for how the current proposal around creditor objections could be improved:

1. Grounds for objection must be clearly and tightly defined to prevent blanket or frivolous objections

100. For example, the proposed level of payments to creditors should only be a reasonable objection ground when the client's expenditure falls outside of the Standard Financial Statement (SFS) 'trigger figures', which are a widely accepted measure for determining the level of affordable debt repayments. Not only will this help minimise disruptions, but additionally evidence from financial services providers shows plans developed based on the Standard Financial Statement are less likely to be broken and that their debt collection rates rise.³¹ If a creditor objects on the basis of expenditure, then any explanations given on the SFS as to why expenditure exceeds what might be considered a 'normal' amount should be taken into account by the Insolvency Service when conducting a fair and reasonable test. For example, where someone has a health condition or disability which means they face higher daily costs.

101. Secondly, the 'period over which the plan will operate' should only be considered as a possible ground for objection where a plan is over the ten years 'reasonable timeframe'.

2. A majority of creditors must object to a plan in order to trigger a fair and reasonable test

102. In Scotland, where an objection from just one creditor can trigger the fair and reasonable test, we have seen around 75% of our cases going to the fair and reasonable test. In recognition of the excessive burdens this creates, especially given the high level of upheld plans, the AiB are currently consulting on introducing a % threshold of debt value of objecting creditors before it triggers a fair and reasonable test.

103. This level of fair and reasonable tests would be unsustainable for the numbers we would expect to see going onto statutory debt repayment plans in England and Wales, so it is welcome that the consultation attempts to put provision in place to keep creditor objections to a minimum. We would, however, recommend increasing the proportion of creditor objections needed to send a plan to the

³¹ Money Advice Service (2017) *Working collaboratively with debt advice agencies*

fair and reasonable test to 51% by value of debt. This is so that a minority of creditors (by debt value) cannot obstruct a plan that the majority agree to. This will help ensure that one creditor is not able to routinely object to all proposals put to them – as we have sometimes seen in the Scottish scheme – and that there are not delays in setting up plans that the majority of creditors support.

Question 18: Do you agree with the design of the proposed fair and reasonable test? In particular:

- Do you agree that 14 days is an appropriate timeframe for creditors to object to a proposed plan?
- Following an Insolvency Service decision that a plan is fair and reasonable, do you think that creditors and debtors should be able to make any further objection if they feel the Insolvency Service's decision is incorrect? If so, how should an objection mechanism work to minimise disruption and administrative burden for parties involved in the plan?

104. We agree that 14 days is an appropriate timeframe for creditor objections. This gives creditors time to object whilst ensuring that plans cannot be unreasonably delayed, enabling people to get on with repaying their debts as quickly as possible. It is also welcome that creditors will be presumed to consent to a plan unless they actively object to it.

105. It will also be important to ensure that the fair and reasonable test does not create extra burdens on advisors or automatically require additional work to be undertaken. Whilst debtors and advisors should have the option to respond to objections or add any information that may be relevant ahead of a fair and reasonable test taking place, this should be at the debtor and advisor's discretion.

106. As we highlighted in our response to question 17, we are concerned about the prospect of a single creditor being able to routinely object to suitable proposals. As we outlined above, having tightly defined grounds for objections, and increasing the proportion of objections required to send a plan to the fair and reasonable test, would help with this.

107. We also think it would be worthwhile to consider releasing regular data on the number of times creditors object to plans which then succeed in meeting the fair and reasonable test. This could be shared with industry regulators, who can help to hold the creditors they regulate to account, alongside the Insolvency Service.

108. With regards to further objections, we would highlight the importance of the Insolvency Service ensuring their initial fair and reasonable ruling is clear, with well-defined reasoning to minimise the need for any further objections to take place. It is also important that, where a plan is judged fair and

reasonable that there is no further delay so that the individual can begin repaying their debts, and creditors receive their money. This will also reduce potential administrative burdens on all involved.

109. It may be reasonable to have a process by which debtors and creditors could ask for second tier adjudication, but only on very tightly drawn grounds usual to appeals – for example that the adjudication is wrong in fact, in law or by the ‘Wednesbury’ unreasonableness test.

Question 19: Do you agree with the debts included within a plan? Should any other debts be excluded, or excludable on request?

110. In response to this question, we would repeat the points made in question 8 above about debts included in breathing space, which also apply to statutory debt repayment plans. In particular, all debts to local and national government must be explicitly included.

111. We would again challenge the proposed list of excluded debts included in the consultation. While these are excluded from personal insolvency solutions, such as bankruptcy, a statutory debt repayment plan is not an insolvency solution, it is a repayment plan, and must be distinguished as such. We would therefore strongly argue that these debts should be included within the statutory debt repayment plan.

112. As we have set out here and previously, we believe all debts should be included in a plan wherever possible. However, there is a case for allowing some debts to be *excludable* by a debtor where a creditor would still have recourse to enforcement or sanction even during the period of protection. For instance, in the case of rent arrears, if section 21 evictions sit outside of the protections. It is therefore welcome that rent arrears can be excluded at the debtor’s request when it is in their best interests. Where rent arrears are excluded from a statutory plan, provision needs to be made in an individual’s budget to enable repayments to be made outside of the plan.

113. Currently it is not clear whether Hire Purchase (HP) creditors would retain their right to repossess items on a HP agreement where there are arrears and less than a third of the total amount has been paid. If this will not be protected against under the statutory plan, then it may be necessary to allow debtors to exclude HP debts where this is in their best interests.

114. Whilst there may be arguments for other debts to be excludable because they need to be repaid at a faster rate, we would argue that an appropriate prioritisation system within plans should mitigate the need for this. We deal with this further in our response to question 23.

Question 20: Do you agree with the proposed treatment of interest, fees and charges within the plan?

115. Yes, we agree with the proposed treatment of interest, fees and charges within the plan and welcome this comprehensive level of protection. The Scottish DPP provides evidence of why this

protection is so important: The freeze on interest, fees and charges gives them clarity on the amount of debt to be repaid and provides a clear incentive for getting advice. It also ensures that all the money they pay back goes towards paying their debt instead of seeing it escalate.³² Nearly all (96%) of our Scottish DAS clients said that the most important feature of DAS was the knowledge that their debt would not grow, and being able to repay the debt in a manageable way. 81% of our clients said it made their debt easier to pay and 78% said that they were less stressed as a result.³³

Question 21: Do you agree with the proposed protections within a plan? Are there any unintended consequences that could arise from providing these protections to debtors?

116. We welcome the strong protections proposed for the plan. As we highlighted in our response to question 12, we are disappointed that existing attachments of earnings orders are not stopped during breathing space, so it is welcome that these will be under the plan.
117. However, we would also repeat the point we made in response to question 12 above regarding deductions from benefits. The consultation states that ‘certain types’ of benefit reductions will be stopped once a plan begins. This needs to be extended to include *all* types of benefit reductions to repay debt, to ensure that there is no risk of unaffordable deductions remaining in place and undermining an individual’s attempts to repay their debt sustainably. As we highlighted in question 12, the primary issue with deductions is that they are set at a fixed rate for everybody, regardless of their affordability to the individual. Allowing these to continue would undermine the fundamental purpose of the statutory debt repayment plan – to provide an affordable repayment plan for people in debt.
118. However, the method of deducting repayments at source is less problematic, but only where this is done based on an affordable repayment rate for the individual. Therefore, if the government wished, they could retain the ability to deduct part of an individual’s statutory plan monthly payment from benefits. For example, an individual with five different debts has set-up a statutory debt repayment plan, which has determined the affordable, monthly repayments to be made to each creditor based on their budget. This includes a £20 monthly repayment to the Department for Work and Pensions (DWP) to repay a benefit overpayment. If the client consented then the DWP could deduct this repayment at source from the individual’s benefit – as the key thing here is that the amount has been determined, based on an agreed process, to be affordable for the individual.
119. Finally, we would reiterate the point made in our answer to question 12 that it should be made explicit that creditors cannot present statutory demands or bankruptcy petitions whilst someone is on a plan.

³² StepChange Debt Charity Scotland (2017) The Debt Arrangement Scheme Survey 2017

³³ Survey of 1,496 Scottish clients who had a DPP approved between January 2014 and December 2016

Question 22: How do you think creditor compliance with the scheme's protections can be best monitored? Should creditors who fail to comply face any additional sanction?

120. Please see our response to question 6, discussing the monitoring of creditor compliance with breathing space. We would suggest a similar system should exist for statutory debt repayment plans too.

Question 23: Do you agree that some debts should be prioritised for repayments within the plan? If so, do you agree with the debts that the government proposes to prioritise, and the method of prioritisation?

121. Yes, we agree that there should be a system for prioritising repayments of certain debts within the plan. The fact that the DPP in Scotland does not include this provision has been one of the issues with the scheme, with some people choosing a voluntary DMP over a DPP because they are concerned they will not be able to repay their rent arrears quickly enough through a DPP, and have previously been unable to exclude this from their DPP if they wished. It is therefore welcome that the government intend to allow some form of prioritisation within the England and Wales scheme. It is better to have more debts included in the scheme, and therefore subject to the protections of it, and to allow these to be prioritised for faster re-payment than to exclude debts entirely and mean people receive no protection at all on these debts.

122. Currently, debt advice practice prioritises debt repayments based on a combination of the enforcement options and sanctions available to the creditor and whether the goods or services in question are essential. However, under statutory debt repayment plans the threat of these enforcement options and sanctions (bar eviction for private tenants where a landlord uses the Section 21 process) is removed – for example, an energy company is not allowed to disconnect someone or install a pre-payment meter. With this in mind, prioritisation becomes less important.

123. However, we agree with the government's view, as highlighted in the consultation, that some debts should still be repaid faster in case an individual falls out of a plan early. To ensure consistency, the Treasury should clearly define which debts may need to be prioritised and why. This would need to include debts for which a creditor retains recourse to enforcement outside of the protections of breathing space (rent and potentially hire purchase debt) and those where the sanctions would be severe if an individual fell out of a plan without completing their repayments (such as mortgage arrears, energy bills and council tax). There may also be an argument that some debts should be repaid as a priority because they are debts to the public purse – such as benefit debts or other tax debts.

124. One option for prioritising these debts within a plan would be the proposal in the consultation for each creditor to receive a minimum payment of 5% of a debtor's total monthly plan payment, with any leftover money being distributed towards priority creditors. However, it is not clear how this

would work when an individual had more than 20 debts. Whilst this is only likely to affect a small number of cases (1.4% of DMPs set up by StepChange between Jan – Oct 2018 had more than 20 debts), there will be instances of it and it is not clear what would happen here.

125. Another option might include setting some criteria for prioritised debts repayments: for example, that mortgage arrears need to be cleared in the timeframe of the mortgage (if this is less than the length of the plan). We would be happy to work with the Treasury and others to further develop the most appropriate prioritisation process for statutory plans.

126. Finally, we would highlight the importance of ensuring that the creditor objection process is designed in such a way that priority creditors can't simply reject a plan on the basis of a repayment being too low when it is clear the debtor is paying all they can (based on their budget / standard financial statement) and following the prioritisation criteria.

Question 24: Do you agree with the two key plan flexibilities outlined? Should the plan offer any other flexibility that would help to make them sustainable over time?

127. Having suitable flexibility within plans is key to ensuring that they are sustainable and therefore work well for both debtors and creditors. For example, many creditors will prefer to keep someone on plan, even where this means having some flexibility for a payment break or variation in repayments, than for someone to drop out of a plan and stop paying altogether. The AiB have identified in Scotland that a lack of suitable flexibility is one factor 'limiting DAS reaching its full potential' and it is important that this is learnt from when designing the scheme in England and Wales.

128. We welcome the inclusion of an option for payment breaks and the ability to vary repayments at annual review, or to request reviews at other times where circumstances change.

129. However, we are concerned that this may not by itself be the right type of flexibility to ensure that plans are fully sustainable over time. While offering up to 6-month payment holidays may be suitable in some cases, these can be administratively complex and time-consuming to establish, and could require high levels of evidence to secure. They may also not meet the needs for flexibility that the majority of plan payers may require.

130. So, in addition to 6 month payment breaks, we would propose the inclusion of more flexible, shorter-term such as the ability to vary a payment for one or two months without having to produce evidence and without the creditor being able to object. This should be available as needed throughout the plan; although we understand that creditors may want a safeguard in place to stop this flexibility being abused, if someone has to apply for a payment break or variation through a debt advice agency then these safeguards would be in place through this route. This would align with proposals

currently being consulted on in DAS in Scotland, to enable money advisors to approve short-term crisis payment breaks, with no requirement to seek creditor assent.³⁴

Question 25: Do you have any specific comments about how these flexibilities should work? In particular, how do you think a severe, temporary, financial shock should be defined?

131. As we have highlighted in our response to question 24 above, for the flexibilities offered to be effective, they need to be able to be implemented quickly and not have undue evidence requirements attached to them. We would therefore suggest the definition of 'severe, temporary financial shocks' should be anything that means an individual cannot meet their current repayment levels. This would reflect the varied range of circumstances people can experience.
132. As we mentioned above, since a request for a payment break would have to go through a debt advice agency, they would be best placed to deem whether this was right for an individual and to safeguard against abuse of these. To ensure consistency across different debt advice agencies to implementing this flexibility, agencies could work together to determine a common procedure and guidelines for this.
133. The advisor would also be able to determine whether a change of circumstance was likely to be temporary (requiring a payment break or short-term variation of repayments) or permanent (in which case a longer term change in repayment levels may be required, or a full debt advice session to see whether a plan was still the most suitable option for an individual).
134. This would be in line with current best practice when reviewing a client's DMP, where advisors assess clients' circumstances in this way. For example, if a client hits certain 'triggers' then a review of their eligibility/ suitability for other solutions will be considered. However, where a change in income or expenditure is less severe, the advisor will look at options within the DMP, such as changing the level of repayments.

Objections to variations

135. When considering creditor objections to variations, there is much that can be learnt from the experience in Scotland. Previously, variations to a DPP had an onerous objection policy, where any variation could go to a fair and reasonable test, even where the change was beneficial to the creditor (i.e. it increased repayments and therefore reduced the overall length of the plan). Creditors had to proactively consent to variations, rather than consent being presumed where no objection is made.
136. As the AiB themselves have recognised, this has created unnecessary bureaucracy and delays,³⁵ with the majority of variations being approved anyway - in Scotland, StepChange completed 1,008

³⁴ AiB (2018) *Building a Better Debt Arrangement Scheme 2018 Consultation*

³⁵ AiB (2018) *Building a better debt arrangement scheme 2018 consultation*

variations of DPP repayments in 2017 and only 40 were rejected (4%). This suggests there is only a very limited need for creditor objections to variations.

137. As a result, the AiB is currently consulting on changes to the variation approval process so that:
- Any variation which is beneficial to creditors (i.e. reducing the duration of the DPP) will automatically be approved, which no option for creditors to object.
 - Creditors will be deemed to have consented to the variation unless they actively object within a certain time period.
 - The process for approving variations will be aligned with the process for approving plans (i.e. a certain % of creditors will have to object for the variation to go to fair and reasonable).
138. Based on this learning from Scotland, we would recommend that, in terms of approving variations:
- Any variation which is beneficial to creditors is automatically approved.
 - Any variation which reduces the payments should automatically be approved if the expenditure is still within Standard Financial Statement limits, other eligibility criteria is met, and an SDRP is still in the best interests of the client (as judged by the regulated debt advisor).
 - To trigger a fair and reasonable test on a variation that does not meet either of the above criteria, a majority of creditors (51%) must actively object.

Question 26: Do you agree with the requirements for continued eligibility for the plan?

139. Overall, we largely agree with the requirements for continued eligibility for the plan. However, we would highlight the need for some discretion around the one month's notice to comply.
140. Currently, at StepChange, we would not close a client's plan until they have missed 3 consecutive payments or 4 payments in 12 months. This is in recognition of the importance of trying to re-establish a plan where it is still in the client's best interests. A client would receive a letter after each missed payment reminding them of their repayments and asking them to make contact with us. These criteria may be more appropriate than the current proposal in the consultation.
141. With regard to the notice period, it is important to remember that someone may not immediately be able to resume making their payments because they have had a change to their financial circumstances. In this instance, the requirement should be on the individual to engage with debt advice as they may need a payment break, to change their repayments long-term or consider whether a plan is still the right solution for them at all. These would all have different implications and immediately removing someone from a plan would not be appropriate if they were suffering from a temporary income shock but could be expected to be able to resume repayments in the near future.
142. It is important to remember that having a payment break or reducing repayments is usually preferable for all involved to an individual falling off a plan completely. If someone falls off a plan then creditors receive no repayment whatsoever and may incur extra costs through having to re-start the collections process again. Giving someone a temporary reprieve from repayments to manage an

unexpected cost – such as the boiler or fridge breaking down – is also preferable to that individual having to use high cost credit to meet this need.

143. Ensuring the statutory plan reflects the reality of life is therefore vital. For example, we know that people are likely to face unexpected expenses across the course of a year that they have to meet – such as repairing a car or home or replacing broken household goods. Citizens Advice found that more than half (57%) of people said they had incurred an unexpected expense in the last year, and a quarter (27%) reported two or more unexpected expenses.³⁶ We know that building up savings can be difficult for people, even after receiving debt advice: StepChange analysis found that, even 15 months after receiving debt advice, 44% of clients surveyed said they would not be able to cover any amount of an unexpected bill without resorting to credit. Allowing someone a temporary break from repayment of their statutory plan to enable them to meet this cost would be beneficial to them resorting to credit.
144. Similarly, with a changing labour market and an increasing number of people experiencing fluctuating incomes, often on a monthly basis, it will be important that the SDRP allows sufficient flexibility to account for this. This will help ‘future-proof’ the SDRP and ensure it remains a debt solution that works for as many people as possible.
145. Where a problem faced by an individual is longer-term, an individual would need to engage with debt advice to establish the best way forward. During this time, it would be inappropriate for creditors to resume enforcement activity and the charging of interests and fees, as this could destabilise the individual’s financial situation further and undermine the progress they have made to date in repaying their debts. Therefore, whilst the individual may not be able to resume payments, they should remain protected for a reasonable period of time whilst they engage with debt advice to arrange a permanent change in repayments or an alternative debt solution.

Question 27: Should the plan’s funding mechanism system be based on taking a share of creditors’ monthly repayments?

146. Currently, around 80% of StepChange’s annual income comes from Fair Share contribution (FSC) donations from creditors. However, as the recent Wyman Review highlighted, not all those who benefit from debt advice currently fund it. We therefore welcome the acknowledgement in the consultation that all those who receive payments through statutory debt repayment plans should contribute through funding.
147. However, the proposed payment level of 8% of an individual’s repayments would represent a funding cut to StepChange, even after factoring in that a greater number of creditors would be paying than are currently.

³⁶ Citizens Advice (2018) Walking on thin ice: the cost of financial insecurity.

148. Currently, we invoice all those who receive payments through Debt Management Plans (DMPs) at 13%. However, when we factor in non- and part-payers, in practice we receive 10.6% in FSC for all payments we distribute through DMPs. Reducing this to 8% could lead to an eventual income fall of at least £7.5m (15% reduction in funding) - £11.3m (22% reduction in funding) – (The range of figures is dependent on whether VAT was chargeable or not and we would welcome clarity from the Treasury on this).³⁷
149. Here, it is important to highlight that the current FSC donations we receive do not just cover the cost of administering a DMP, but also cover the wider costs of providing advice and an element of cross-subsidisation to other solutions which are not currently adequately funded.
150. We would therefore highlight the importance of not taking decisions about statutory plan funding in isolation. Instead, we recommend that decisions about the funding and administration of breathing space and statutory debt repayment plans are taken in the context of the wider discussions about the development and future funding of the debt advice sector. This would include joining up with work being led by the SFGB on debt advice funding, to consider how the funding of statutory debt repayment plans sits within the wider funding requirements for advice and other debt solutions.
151. There are also other important initiatives, such as the Sector Transformation Programme (STP), which is looking at infrastructure, technological developments, co-operation and increases in efficiency. Given how important breathing space and statutory plans will be to this future sector operating model, it will be hard to take effective decisions about administration and funding requirements in isolation from this.
152. Considering the funding of statutory plans in this wider context will have several benefits. It will ensure that the funding of statutory plans is sustainable and supports the wider advice process. It may also mean the funding model is less open to future challenge as it will be clear from the start what the funding is intended to cover and how this fits with the wider funding settlement for free debt advice.
153. We appreciate that the Treasury will want to finalise the funding of the scheme as soon as possible, and we do not want to see the scheme delayed. Therefore, if the funding discussions were brought into the wider sector discussions, including on the STP then we believe it would be fair for the Treasury to set a timescale for funding and administration decisions relevant to breathing space and statutory plans to be taken. There is already some precedent for this in the relevant legislation, since the Treasury is required to ask the SFGB for advice on breathing space, for which they must report within a year. In this respect, the Treasury could keep the proposal on statutory funding of

³⁷ Internal StepChange analysis based on 59% of clients opting for a repayment plan solution choosing a statutory plan and 41% continuing to choose a voluntary DMP (based upon the proportion of each type of plan currently administered in Scotland).

statutory plans in reserve, but ideally look not to implement this outside of a broader funding settlement.

Question 28: How should payment distribution in the plan be done? Should it be offered by an individual's debt advice agency, if they have appropriate handling client money permissions, or by the Insolvency Service, or is there any other model that the government should consider?

154. We strongly believe the most appropriate system for payment distribution is for this to be done by an individual's debt advice agency. As the consultation highlights, this follows existing best practice for debt management plans and will ensure an efficient and effective system, whereby payment distribution is done by those who hold the relevant expertise and who have a relationship with the client already. We do not believe it would be appropriate or efficient for the Insolvency Service to perform payment distribution given the existing infrastructure and capacity that already exists amongst debt advice agencies to provide this. For example, at StepChange alone we currently acts as payment distributor for almost 200,000 active DMPs.

155. We agree with the Treasury's proposal set out in the consultation that the England and Wales model should differ from the Scottish model where only a small number of approved providers are commissioned by AiB to provide payment distribution. Instead, any debt advice agency with the appropriate FCA permissions to handle client money should be able to distribute their own plans.

156. Where a debt advice agency is not a payment distributor, they should pass their plans to another agency who is. This would build on current best practice within the free-to-client debt advice sector.

Question 29: Do you have views on how a breathing space and plan should be reflected on a debtor's credit file?

157. Evidence from our clients suggests that worries about damaging their credit records are a key reason why people do not seek debt advice earlier. It is therefore vital that consideration is given on how to mitigate these concerns when delivering the new statutory plan.

158. Creditors currently make decisions about how to report missed payments or agreements in default, once a person in debt breaches the terms of their original contract with their creditors. Creditors should also report payment arrangements in place and this can be 'flagged' on a person's credit file. It could be possible to introduce a breathing space and statutory debt management plan flag.

159. As the consultation acknowledges, this discussion should be situated in a wider conversation about how to improve the way in which debt repayment arrangements are flagged on credit files, with a view to these being viewed more positively than they may be now.

160. Technically, it is still possible that every monthly payment through a DMP may be flagged as a reduced payment on an individual's credit file. Since this then lasts six years, people may find the reduced payments on their credit file for six years from their *final* DMP monthly payment.
161. Whilst we know in reality that most creditors default accounts a few months after a DMP starts, beginning the six-year timeframe at this point, it does highlight a potential issue, since insolvency solutions such as IVAs or bankruptcy last on a credit file for six years from the *start* date of the solutions. This means people who repay their debts in full could end up with a worse credit history than those who receive debt write-off, which seems illogical.

Question 30: Do you agree with the proposed territorial scope of the scheme?

162. We welcome that the scheme will operate in England and Wales and StepChange would be happy to work with the Welsh government, alongside our work with the government in Westminster, to support the smooth implementation of the scheme there.
163. We also welcome the acknowledgement in the consultation response that the government will continue to work with the Department for Communities and the Department for the Economy in Northern Ireland to consider the introduction of a similar scheme there.
164. Given this work, and the ongoing work to improve the DAS scheme in Scotland, there may be merit in establishing a cross-national group to share experience across the four nations, to facilitate continued learning from DAS and to establish complementary data collection and performance analysis. This would be particularly useful for both creditors and debt advice agencies which operate across all jurisdictions.

