

Breathing Space Call for Evidence,
HM Treasury,
1 Horse Guard Road,
London,
SW1A 2HQ

16 January 2018

Dear Sir/Madam,

We appreciate the opportunity to respond to this consultation. The Association of British Credit Unions Limited (ABCUL) is the main trade association for credit unions in England, Scotland and Wales. Out of the 323 credit unions that choose to be a member of a trade association, around 65% choose to be a member of ABCUL.

Credit unions are not-for-profit, financial co-operatives owned and controlled by their members. They provide safe savings and affordable loans to a range of customers. The most recent Bank of England statistics show that the 210 credit unions in England and Wales are providing financial services to 816,384 people, holding more than £909 million in assets, with more than £510 million out on loan to members and £774 million held in deposits.

Credit unions' work to provide inclusive financial services has been valued by successive Governments. The sector's participation in the Growth Fund from 2006 – 2011 saw over 400,000 affordable loans made with funding from the Financial Inclusion Fund. Loans made under the fund saved recipients between £119 million and £135 million in interest payments that otherwise would have been made to high-cost lenders. The DWP has contracted ABCUL to lead a consortium of credit unions under the Credit Union Expansion Project, which is investing up to £38 million in the sector and aims to make significant steps towards sustainability.

The sector take a particular interest in matters of insolvency as, although credit unions as creditors do not necessarily experience a higher amount of insolvency cases as a percentage of their overall activity than other creditors, their structure means that they generally do not have the margins to 'soak up' losses in the same way that a bank or a high interest credit provider might. Indeed, legislation in place means that credit unions cannot generate income through means other than lending, and also sets a limit of what credit unions can charge in interest. This unique arrangement means that credit unions are automatically at disadvantage compared to most of the organisations they are competing with in the lending market.

However, credit unions largely see providing access to affordable credit an important part of their work and wish to continue to be able to lend to those who would otherwise have no access to credit. A number of organisations, including the Carnegie Trust and the Joseph Rowntree Foundation, have noted the important role the sector plays in ensuring that many people who are excluded from mainstream financial services can still access credit. It is therefore vital that the arrangements in place for when an individual finds themselves in financial difficulty are fair to everyone. We have a lot of knowledge of the Debt Arrangement Scheme and moratorium in place in Scotland, both as active members of the Accountant in Bankruptcy stakeholder forums, and also from the learning of our members based in Scotland, who have been working with these schemes for some years.

Overall, we would be disappointed by noting our disappointment that this consultation is so lacking in detail on what a new repayment scheme might involve. We are concerned that there is an expectation that a 'breathing space' is a solution

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in itself. There is no detail on what might differentiate a new statutory repayment scheme from the existing debt repayment options. Given the significant difficulties with the currently available solutions, we would like to see more consideration given to how to make this fairer and ensures more people have the opportunity to pay off their debts. We do not feel that a stand alone six week window is going to substantially improve any individual's finances, unless careful consideration is given to their long term arrangements.

Breathing Space

Firstly, we note that the equivalent in Scotland – the moratorium - is not widely used by those seeking debt solutions. We are concerned that the nature of this consultation suggests that a 'breathing space' is a solution in itself. In Scotland, the moratorium acts as a 'stopper' on recovery action, whilst the debtor seeks advice and commits to a long term solution that will enable them to repay their debts through a repayment scheme. There is far less emphasis on the freezing of charges and interest which, if an individual's financial situation is bad enough to be in a position to need a debt solution, is likely to have little impact on their overall situation. We feel that the point of any scheme needs to be to act as an incentive to seek advice and put in place a long term solution, rather than an interest payment holiday.

Question 4

In Scotland the moratorium aims to prevent creditor recovery, rather than freezing interest. Indeed, depending on the outcome of the moratorium, the interest is either subsequently reapplied (where no application for a debt solution is made), or is frozen and eventually written off from the date of an application for the Debt Arrangement Scheme or Protected Trust Deed being submitted.

Overall, we have no strong view on the loss of the interest and charges to credit unions over a 6 week window, but we note with concern the lack of consideration that appears to have been given to how this might practically be applied. If, for example, an individual successfully applies for a breathing space, but does not make a subsequent application for a debt solution, it would be a significant burden on credit unions to exclude one 6 week window when applying interest to the overall balance.

We would also note that, in the event that there is no positive outcome from the breathing space (ie. no application for a statutory debt solution is made during the 6 weeks), then creditors will be expected to forfeit interest despite the lack of an outcome – they will see no commitment to a repayment plan, and the debtor has not found a solution to their financial difficulties. We would also suggest that excluding interest and charges from one six week window will have no impact on their overall financial situation.

Finally, we would further draw your attention to potential difficulties in ensuring creditors were notified of the breathing space. If creditors were expected to remove interest, then it is important that the debtor's representatives make them aware of this. We have already raised with the Joint Insolvency Committee the frequency with which our members are simply not being contacted about applications which impact them. If the system is to function fairly, then creditors should only be bound by those agreements that they have received appropriate notification of.

We would therefore like to see any freezing of interest and charges linked to a positive outcome, rather than being a stand alone feature, which would be more manageable for creditors, and would also protect abuse of the system.

Question 5

We feel that any new scheme will need to be realistic about whether there will be enough resource to monitor any

individual's activities in relation to these points during a relatively short timeframe. As we have suggested elsewhere, making the benefits of a breathing space conditional on a positive outcome would be a better system.

If the Government plans to offer a protection against creditor recovery action during the breathing space then repayment obligations will be irrelevant.

Question 6

If a debtor makes an application for a debt solution within this period, then the interim conditions of that should override the breathing space (or, indeed, if the debtor finds another way to meet their financial obligations).

Question 8

Again, we would note that the relatively short timeframes involved in the breathing space, we wonder how this might be enforced in a way that is helpful. However, given our sector's need to lend responsibly then we agree then credit files should be an accurate reflection of an individual's financial situation, including their difficulties.

We note that the same question has not been presented in relation to the repayment plan, which we feel is more important. We agree that any statutory debt solution needs to be recorded, but we would like to see more consideration given to how the context of it can be reflected. Those who have signed up to a plan in which they have committed to repaying over 90% of their debts, should not be penalised in the same way as those who sign an IVA and repay only a fraction. This is both unfair and disincentivises those who want to 'do the right thing'. We are aware that the Accountant in Bankruptcy in Scotland has made representations to credit reference agencies about this, and we hope that that Government will also seek to engage them on this point.

Questions 10 - 12

Firstly, we would again draw your attention to the concern raised in relation to question 6. As a stand alone measure, implementing one 6 week interest free window would be practically difficult for credit unions.

Secondly, we would highlight the challenges for creditors in knowing when a member has been granted a breathing space, and monitoring the outcome of that. In Scotland, a public register records those who are subject to a moratorium, and credit unions are generally careful to consult that before commencing with recovery action. However, we would again note concerns about the insolvency sector's poor record in making creditors aware of debt solutions their customers are subject to.

Finally, we would note that, as small financial organisations that are subject to regulation on how much they can charge, there will be some inevitable loss of interest. As is set out in a previous answer, we feel that the loss of interest should be linked to an agreement on a repayment plan, to ensure it's beneficial for creditors in the long term.

Question 14

We feel such scheme would be beneficial for our members, as creditors, if:

- Less debtors entered IVAs and DMPs. We are increasingly growing concerned and that many people are finding themselves in the wrong debt solution. We hope that the scheme will incentivise people to seek quality advice to find the right solution for them.
- More people are encouraged to address their debt problems and agree a long term plan.

Question 17

We are unclear as to why it is being suggested that this might not be applied to the nations for which insolvency

remains reserved. Although we do not operate in Northern Ireland, for our Welsh members, we would appreciate clarity from the Government on whether the intention is that this will apply in Wales.

Statutory Repayment Plan

As outlined above, the lack of clarity on what is being consulted on makes it difficult to comment in any sort of detail. However, we would have following asks of any new scheme:

- That it is distinctive from existing plans – creditors are growing increasingly frustrated by the insolvency sector's abuse of existing debt solutions, which is not only hugely detrimental to creditors, but is also not acting in the interest of debtors who have sought advice in good faith.
- That the system sets strict limit on admin costs. Increasingly we are seeing the majority of the payments made by debtors being taken by IPs. In some examples the repayments would have covered the sums originally owed. In Scotland, the Debt Arrangement Scheme requires debtors to repay 100% of their debts, with a maximum of 10% being taken in admin fees.

Question 16

Although this is not the subject of this consultation, we have separately raised concerns about many Insolvency Practitioners advising those who seek advice. Our members are increasingly seeing individuals who have been advised to take up a statutory solution that is clearly inappropriate for them, with IPs usually being the many recipient of the sums being repaid. We hope more steps will be taken to address this.

Questions 19 - 22

Looking at the existing schemes, by far the biggest challenge for creditors is the scale of loss. As small financial institutions, subject to significant relation, credit unions do not have the margins to soak up loss in the same way as a bank might. As a sector we want everyone who needs help to have access to an appropriate solution, including debt relief where necessarily. However, we remain concerned that the biggest winner of the current arrangements is the insolvency sector, and not creditors or those who are in debt.

We are open-minded to a freeze on interest and charges, but feel that the system should include a required minimum repayment percentage, and a strict limit on admin costs. Overall, we feel that entry into a new scheme should be based on a commitment and an ability to pay at least most of the debt back. We do not feel that forcing debtors into an unsustainable scheme will be beneficial to anyone involved.

Question 23

Firstly, if no application is made and the breathing space expires, then the usual procedures should again apply in terms of recovery options for creditors.

However, as we have set out above, we also feel that creditors should be able to reapply the interest and charges that had been put on hold during the breathing space. This will ensure that the system has a build in protection against abuse by those who have no intention of committing to a long term repayment plan.

Question 26

If any creditors disagree with the plan then the body overseeing the system should be entitled to make a final decision based on a fair and reasonable test. The conditions for such test should be publically available, and subject to

stakeholder consultation to ensure transparency and fairness.

Question 30

We agree that there should be sanctions in place for abuse, and that the Government should take steps to publicise how to report abuse, be it by debtors or their insolvency representatives. We believe creditors feel that the system enables abuse to be tolerated, and so do not take steps to complain about it.

Question 31

As noted above, we would appreciate some clarity from the Government on whether it is its intention to include Wales in this scheme, as soon as possible

Question 33

We feel that this should be monitored according to the following metrics:

- Uptake, relative to other statutory debt plans, and number of successfully completed plans
- Sums returned to creditors, compared to sums paid to the insolvency sector.

We would be delighted to provide any further information should you require it.

Yours sincerely,



Matt Bland,
Head of Policy & Communications