Statutory Debt Repayment Plans: what do we know so far?

The statutory debt repayment plan (SDRP) is a new debt solution for England and Wales which promises to offer better protection for those clients who are able to repay their debts and don't require insolvency. It is still in early development, but has big implications for clients, debt advisers and advice agencies.

Michael Agboh-Davison reviews what we know, and don't know, so far and some of the concerns that advisers might have.

WHERE DID IT COME FROM?

A statutory breathing space and a debt repayment plan extending the same protections were proposed in a Private Members' Bill[1] sponsored by Kelly Tolhurst MP, and supported by StepChange and the Children's Society. This did not proceed past its first reading in June 2016, but the idea had cross-party support and featured in both main 2017 general election manifestos.[2] Following this, HM Treasury published a call for evidence in October 2017, with a response in June 2018.[3] A consultation was then issued in October 2018, with a response in June 2019 which included more detail about the proposed workings of both breathing space and the SDRP.[4]

The SDRP is expected to be operating by 1st May 2024, with final regulations laid before the end of 2022.[5] HM Treasury has stated that a further consultation is planned in the first quarter of 2022 prior to publishing draft regulations, though no date for this has been confirmed.

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The idea is not new. Part 5, Tribunals, Courts and Enforcement Act 2007 introduced DROs, but also included other measures which were never enacted. One of these, at Chapter 4, was a statutory 'debt management scheme' which had some similarities to the proposed SDRP.[6]

WHAT DOES IT LOOK LIKE?

Based on the 2019 consultation response, the SDRP is not simply "putting a statutory wrap around the support debt advice charities are already providing",[7] though some features of the SDRP do closely resemble a debt management plan (DMP):

- set up by debt advisers, with no insolvency practitioner involved;
- payments disbursed to creditors monthly;
- full debts repaid, with nothing written off;
- assets not taken into account;
- no minimum level of debt;
- some debts prioritised (housing, government, energy and hire purchase).

However, some features more closely resemble IVAs:

- statutory basis;
- interest and charges suspended;
- covers all debts apart from a fixed list of exclusions – those excluded from breathing space, plus, optionally, rent and mortgage arrears;
- no enforcement action permitted on debts included;
- approval by 75% of creditors by value required;
- some variations in payment require creditor agreement.

The SDRP also shares similarities with the Scottish Debt Arrangement Scheme (DAS) which is mentioned as an influence in the 2017 call for evidence and 2018 consultation. The DAS is a similar statutory repayment plan, approved by creditors and suspending interest, charges and enforcement. However, the DAS has features not repeated in the SDRP, such as composition (writing off remaining debt) after 12 years if over 70% has been repaid,[8] and it would be misleading to view the SDRP

1. Families with Children and Young People in Debt (Respite) Bill: tinyurl.com/QA62-SDRP24
2. Conservative 2017 manifesto: tinyurl.com/QA62-SDRP17 (p60); Labour 2017 manifesto: tinyurl.com/QA62-SDRP18 (p50)
3. October 2017 call for evidence: tinyurl.com/QA62-SDRP2; June 2018 repsonse: tinyurl.com/QA62-SDRP3
4. October 2018 consultation: tinyurl.com/QA62-SDRP4; June 2019 response: tinyurl.com/QA62-SDRP5
5. Baroness Morgan in Lords debate on the Financial Services Bill, 3rd March 2021: tinyurl.com/QA62-SDRP8; Lord True in the same debate, 24th March 2021: tinyurl.com/QA62-SDRP6
6. tinyurl.com/QA62-SDRP22
7. StepChange, 2018 breathing space call for evidence response: tinyurl.com/QA62-SDRP23 (p10)
8. Accountant In Bankruptcy 'DAS Debtor Information Booklet': tinyurl.com/QA62-SDRP7 (pp23-24)

as simply replicating the DAS in England and Wales.

WHO IS INVOLVED?

The SDRP process creates three distinct roles:

- A 'debt adviser' carries out most of the administration, including the initial interview and recommendation, ongoing queries, annual reviews, pursuing missed payments and closing the plan.
- A 'payment distributor' takes the client's regular payments and disburses them to creditors. This could be done by a debt advice provider if it has appropriate FCA authorisation to handle client funds, by a separate payment distributor, or by the Insolvency Service. The regulatory hurdles to handling money make this role impractical for smaller organisations, but it seems certain that existing DMP providers will offer this service.
- The Insolvency Service has an additional approval role, deciding whether a proposed SDRP is 'fair and reasonable' if more than 25% of creditors by value object.

WHO PAYS FOR IT?

The SDRP includes provision for agencies to receive fees based on the monthly payments. A new s7(4A)(c) Financial Guidance and Claims Act 2018 allows for regulations to include:[9]

"c) provision for an amount payable in respect of a debt in accordance with a repayment plan -

(i) to be payable instead towards the costs of operating the repayment plan, other repayment plans or the debt respite scheme, and

(ii) to be treated, so far as paid towards those costs, as permanently reducing a debt to which the plan applies".

So, part of the repayments made through the SDRP will be retained for fees, but must still be treated by the creditor as if it had been paid off the debt. This system is similar to the fair-share DMP funding model used by StepChange and PayPlan, but with some crucial differences:

- SDRP funding is on a statutory rather than a voluntary basis.
- Fair-share funding is almost all from consumer credit lenders and collection agencies. Priority creditors such as local authorities, which form an increasing portion of client debts, do not pay fair-share.
- SDRP fees are proposed to be lower than current DMP funding.[10] The debt advice provider receives 8% of a client's payments, the payment distributor receives 1% and the Insolvency Service receives 1%. This means total fees of 10%, of which a debt advice provider may receive 8% or 9% depending on whether it also handles the client's payments.

This model has advantages over IVA fees. If a client's SDRP fails in its early stages, payments made into the plan will still be paid in full towards the debt, unlike the front-loaded fee structure of an IVA which means early failed arrangements see little or nothing paid to creditors.

WHAT MIGHT CONCERN ADVISERS?

We don't know much beyond the consultation response which is now over two years old. There are important questions to be confirmed, and based on Breathing Space, there may be concerns from advisers about how the SDRP will affect their role.

1: How will it change the adviser-client relationship?

Some advisers expressed concern about Breathing Space altering the adviser-client relationship. This is because the adviser must monitor client behaviour, for example whether they have borrowed money or paid 'ongoing liabilities', and must decide whether to end the Breathing Space on this basis.[11] This has been described as 'policing' client behaviour,[12] and will also be a feature of the SDRP.

However, the SDRP extends these responsibilities because the debt adviser must also send reminders and cancel the SDRP if they miss payments.[13] This has been described as turning 'the debt adviser into a debt collector'.[14] Managing arrears is everyday work for DMP or IVA providers, but will be anathema to many advisers who may feel this crosses a professional red line.

2: Will linking solution to agency income influence recommendations?

At the proposed rates, an SDRP of £100 a month would generate £96 a year in income for the debt advice provider and £12 for the payment distributor. Citizens Advice noted that this fee structure risks creating an incentive to target clients with high surplus income or large debts.[15]

A debt adviser cannot recommend an option based on the income it generates, but is there a risk of this behaviour from unscrupulous commercial providers? Or could the income have a subtler influence on adviser decisions? This seems unlikely – after all, the £10 paid to

9. Inserted with effect from 29th June 2021 by s35 Financial Services Act 2021: tinyurl.com/QA62-SDRP9
10. tinyurl.com/QA62-SDRP5 (para 6.19, p41)
11. Regs 16(2) and 27(5) The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020: tinyurl.com/QA62-SDRP13
12. We Are Debt Advisers (2020) 'Let's Create A Better Breathing Space': tinyurl.com/QA62-SDRP14 (p7)
13. tinyurl.com/QA62-SDRP5 (paras 5.61-5.63, p37)
14. Ordinary Resolution 'Expressing Concern over the Development of Debt Advice' agreed at the IMA 2020 AGM
15. Citizens Advice, 2019 Breathing Space consultation repsonse: tinyurl.com/QA62-SDRP21 (p37)

the competent authority for each DRO is hardly an influence over adviser decisions. As with chasing client arrears, a link between solution and income is already a feature of DMP and IVA providers, but may cause discomfort for advisers elsewhere.

3: How will small agencies manage long-term client relationships?
The maximum length of a SDRP will be seven years, or ten years in “exceptional circumstances”, although it is unclear what these might be. This long-term relationship, with periodic reviews and ongoing contact, is out of step with many debt advice funding arrangements which are over much shorter terms, and raises practical questions. How do local agencies deal with clients moving in or out of their area? What happens to a client if an advice agency ceases providing debt advice, loses funding or closes altogether?

4: Are the proposed fees enough?
StepChange stated in 2019 that their voluntary 13% DMP fair-share contribution equates to 10.6% when accounting for creditors which don’t pay, so the 8% or 9% SDRP fees represents a reduction in income.[16] This does not account for extra SDRP fees from priority debts not included in existing DMPs, and pre-dates the pandemic fall in fair-share income so may no longer be accurate.[17] Commercial DMP provider fees are typically 18-20% charged to the client[18] so SDRP fees are an even larger drop in income for them.

In the Scottish DAS, fees previously totalled 10%, like the SDRP. However, from 4th November 2019, the DAS administration fee was increased from 8% to 20%[19] meaning the total fees are now 22%. StepChange’s submission to the Scottish government about DAS fees explained that 8% fees did not cover its administration costs, but 20% would.[20] If a large provider with economies of scale is uncertain whether fees are sufficient to cover operating costs, it seems unlikely that the fees will cover the costs of small agencies.

5: How will it affect demand for other debt solutions?
It seems likely that the SDRP will replace much of the current DMP market because of its far stronger protections. A DMP will remain suitable for some clients, for example:

- those who cannot repay debts within the SDRP’s maximum ten years, but are excluded from bankruptcy or a DRO on equity or employment grounds;
- those clients who can repay their debts within ten years but have failed the ‘fair and reasonable’ test following creditor objections, maybe because of assets.

The SDRP will cost less in fees than current DMPs, so it will be interesting to see how content creditors will remain to pay fair-share contributions. It will also be interesting to see how DMP providers deal with existing clients, as these will all need to transfer from a DMP to a SDRP where that is in their best interests.

The comparison with IVAs is more complex. If a client’s repayment term is more than the five or six year term of a straightforward IVA but less than ten years, both options would be available. The partial write-off of an IVA might make it a mathematically better option, but an SDRP may be preferable for clients with significant equity, or employment implications. It will be interesting to see if creditors adopt the same approach as they do for IVAs when voting on SDRP proposals, largely using third party agents like TDX.

Of course, for many debt advisers the growing number of clients with intractable deficit budgets means DMPs and IVAs are increasingly scarce, and SDRPs would be no different.

6: What are the consequences of the funding mechanism?
SDRP funding means all creditors included will pay the 10% fees, compared to current DMP funding where priority creditors such as local authorities and utility companies largely do not contribute, but still benefit from a client’s stabilised finances improving their chances of repayment. On a ‘polluter pays’ basis, the mandatory SDRP funding seems like a fairer way to spread the operating costs.

But this means that priority creditors used to getting their full debts repaid by DMP clients will now only get 90% back through the SDRP. Might this lead to reductions in forbearance elsewhere in these creditors’ collection processes?

7: How it will appear on a credit report?
The SDRP will be recorded on a register, but it is unclear if this will be public like the England and Wales insolvency register and the Scottish DAS register,[21] or restricted access like the Breathing Space register.

It is also unclear how SDRPs will appear on a credit report. Will they be specifically recorded, like bankruptcy or a DRO, or will they just show up as reduced payments, similar to a current DMP? Will the debts included be removed from the credit report six years from the

16. StepChange, 2019 Breathing Space consultation response: tinyurl.com/QA62-SDRP19 (para 148, p34)
17. Evidence of falling fair-share income: tinyurl.com/QA62-SDRP20
18. For example tinyurl.com/QA62-SDRP11 or tinyurl.com/QA62-SDRP12
19. Reg 4(6)(b) The Debt Arrangement Scheme (Scotland) Amendment Regulations 2019: tinyurl.com/QA62-SDRP15
20. Scottish Government Economy, Energy and Fair Work Committee (2019) ‘Debt Arrangement Scheme (Scotland) Amendment Regulations 2019 Submission from StepChange’: tinyurl.com/QA62-SDRP16 (p3)
21. tinyurl.com/QA62-SDRP25 and tinyurl.com/QA62-SDRP26

date the SDRP starts, similar to bankruptcy, or could they remain on longer depending on whether the creditor registers a default?

8: What about Northern Ireland?
As with the Breathing Space scheme, the June 2019 proposal confirms that the SDRP will only extend to England and Wales but an 'equivalent scheme' will be considered for Northern Ireland.[22] What this will be, and when it will appear are unknown. Given that the increased DRO monetary thresholds currently only apply to England and Wales, there is a risk that Northern Ireland might be left at a disadvantage compared to the rest of the UK in terms of debt solutions.

WHAT'S NEXT?

A lesson from the introduction of Breathing Space is that while the policy teams of large advice providers were involved from the outset, the details of the scheme and its potential effects were not widely publicised among advisers until the final version of the regulations in November 2020.

The SDRP will have a significant effect on debt advice provision and the daily work of advisers. The many frontline advisers who felt that their wisdom and experience went unheard in the development of Breathing Space should take the opportunity to respond to the SDRP consultation when it comes.

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22. tinyurl.com/QA62-SDRP5 (paras 6.26-6.27 p42)