



BREATHING SPACE: CONSULTATION

Issued 28 January 2019

ICAEW welcomes the opportunity to comment on the *Breathing space: Consultation* published by HM Treasury on 29 October 2018 a copy of which is available from this [link](#).

The proposal aims to encourage individuals to seek debt advice so it will be important that there are sufficient appropriately skilled advisors available. Insolvency Practitioners are among the best qualified to provide this advice, but the regulatory regime is not best designed to enable them to do so. If a new debt solution is to be introduced, it is important that the existing solutions are operating effectively and there are concerns about the volume IVA sector in that respect. Regulatory reform may be required to address these concerns and we would be happy to discuss this further.

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This response reflects consultation with ICAEW's Insolvency Committee which is a technical committee made up of Insolvency Practitioners working in large, medium and small practices. The Committee represents the views of ICAEW licence holders.

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MAJOR POINTS

1. We outlined our thoughts on a proposed breathing space regime in our response to the call for evidence (Rep 10/18). In light of the regime now proposed, we are raising a couple of general areas of concern rather than providing detailed comments on the specific questions raised.
2. The first is that, if the proposed regime is successful, it will lead to an increased demand for debt advice. Government should therefore do what it can to ensure that there are enough appropriately skilled advisors to provide that advice. Under the current regulatory regime many IPs are, in effect, excluded from providing debt advice despite being among the best qualified to do so, as explained in our Rep 10/18. While IPs might only meet a relatively small amount of the overall need, no source of appropriate advice should be disregarded. Therefore, as a matter of principle and regulatory coherence, government should address this by allowing IPs to provide debt advice generally without the need for FCA authorisation.
3. It is important that debtors who may use the breathing space to obtain advice ultimately benefit by entering into the most appropriate debt solution. Before new alternative solutions are introduced, government should satisfy itself that the current solutions are being used appropriately and produce the right outcomes for relevant debtors. This objective is not always met and our second area of concern relates to the possible reasons for this.
4. The FCA recently noted¹ its concern about poor standards in the 'debt packager' firms it regulates, including in relation to referrals for individual voluntary arrangements (IVAs).
5. As regards IVAs, recent reports of the Insolvency Service and R3 into the volume IVA sector highlighted a number of concerns. Efforts are being made by the Insolvency Service and recognised professional bodies (RPBs) (including ICAEW, although very few of our licensees act as IPs in this sector) to minimise the risks. However, we believe that the sector will continue to present challenges absent regulatory reform as it has evolved in ways that were not anticipated when the regulatory regime was developed. In particular, it may be necessary to regulate volume IVA providers at a legal entity level (rather than relying upon regulation of individual IPs, who may be employees below management seniority and with little security of tenure).
6. We would be happy to discuss these concerns with government including what regulatory changes might be required to address them.
7. As regards the proposed statutory debt repayment plan, the consultation document has not addressed the questions we raised in the earlier consultation and we are not in a position to comment in detail, but have a couple of general observations.
8. First, government should consider the relative attractiveness of one debt solution compared to another in a holistic way, mindful that debtors may seek to fit themselves into one solution for reasons that might not be obvious looking at any one solution in isolation. We understand, for instance, that individuals may prefer IVAs to bankruptcy simply because they perceive IVAs to be 'free' at the point of entry (whereas there is a fee for bankruptcy). The proposed new debt repayment plan is designed for debtors who can afford to repay their debts in full over a reasonable time and they may be particularly sensitive to the costs involved.
9. Secondly, the consultation raised the issue of apportionment of responsibility for administration or regulation of the regime between FCA and the Insolvency Service. We believe that moving responsibility for regulation of consumer debt to the FCA (from the OFT) has been beneficial and there may be merit in the FCA assuming responsibility for providers of the proposed new debt solution (along with its existing responsibilities for debt management plan providers). It will, however, be important that the FCA and the Insolvency Service work together to minimise the risk of regulatory gaps arising. In particular, where an individual's debts are not solely 'consumer' debts (as may be the case for sole proprietors and company directors), it is important that those involved (whether in giving advice on the

¹ FCA 'dear CEO' letter (October 2018)

best available debt solution, or in administering any solution) are appropriately skilled and experienced.

10. In that context, we note that IPs are required to pass Joint Insolvency Examination Board exams in individual and/or corporate insolvency. The syllabus requires an awareness of less formal means of dealing with debt as well as insolvency processes. The vast majority of our licensees are fully licensed (for personal and corporate insolvency) and therefore have knowledge of all insolvency procedures (including in relation to self-employed individuals and individuals in partnership with others). This is a strength, for instance where an indebted individual has business related assets and debts, is a director of a company or has given personal guarantees to a company. It may be that this breadth of expertise is not required for all consumer debt advice, but we suggest that all consumer debt advisors should at least be required to demonstrate a good understanding of the alternative insolvency and debt procedures available to individuals by passing a relevant exam. If the JEIB personal insolvency exam is regarded as too broad in scope or onerous for non-IPs, there may be alternatives (for instance, ICAEW offers a [certificate in insolvency](#)).
11. Finally, if government relies upon the not for profit sector to provide the proposed debt repayment plan services (including making payments to creditors), it will need to ensure that the sector is appropriately resourced and funded. If it is expecting the profit making private sector to provide the services, it will need to consider how the services will be provided to an appropriate standard at sufficiently low cost. There may well be lessons to be learned from the volume IVA sector in that respect (as well as from the experience of the FCA in relation to DMPs).Key points