

# FRU Policy and Procedure for Payment Plans



## Index

- General Introduction
- Principles
- Responsibility for payment plan proposals
- Dealing with initial enquiries for payment
- Information required to support payment plan proposals
- Additional / Supporting Information
- Assessment of the proposal
- Rejecting payment plan proposals
- Accepting payment plan proposals
- Conditions of payment plans
- Payment methods
- Case management
- Late payments
- Payment plan satisfied

## General Introduction

Payment plans are a cost-effective means of enabling the Information Commissioner to collect monetary penalties and fines issued for serious contraventions of the DPA 2018 and PECR. When granted, they allow organisations and individuals who cannot pay in full by the due date, to make payment(s) over an affordable period.

Payment plans are based upon the organisation or individual's ability to pay, which must be balanced by the ICO's over-riding requirement to collect the money due under the penalty or fine.

A payment plan may comprise a single deferred payment or a series of staged payments over a period of weeks, months, or years. Payment promises, whereby an organisation/individual is late in paying and advises of a date when they can pay is not a payment plan. In the absence of a payment plan being agreed, the FRU will advise the organisation or individual that enforcement action will continue irrespective of the promise made by the debtor to pay.

## Principles

Payment plans are at the absolute discretion of the Commissioner, or person with delegated authority, and subject to the below principles:

- The Early Payment Discount is not available, as the penalty is not being discharged within the 28 days allowable.
- Payment plans should be considered and agreed on a case-by-case basis.
- The onus is on the debtor to satisfy the ICO that payment of the penalty in full will cause hardship.
- A payment plan will only be agreed where the Commissioner, or person with delegated authority, is satisfied that the organisation or individual cannot pay the full penalty or fine amount by the due date.
- The payment plan period is as short as possible, and generally should not be extended beyond 24 months.
- Organisations and individuals' requests for payment plans should contain the optimum payment proposals but also be genuinely affordable (fit, fair and feasible).
- If the financial circumstances of the organisation or individual improve then they should advise the Commissioner in order to increase their payments or settle the debt in full.
- Missed payments, repeated late payments, or evidence of further contraventions, may result in the cancellation of the payment plan and action taken to recover the remaining penalty amount.
- These principles are applied to all debtors; however the processes are modified based upon the risk and size of liability.

As noted above, the Commissioner reserves the right to withdraw payment plans if:

- The organisation or individual defaults on the payment plan.

- The organisation or individual has withheld or provided false or incomplete information.
- Information or intelligence is subsequently received that doesn't support the need for a payment plan.

### **Responsibility for payment plan proposals**

All payment plan proposals will be administered by the Financial Recovery Unit (FRU). These will be assessed by the LRO and reviewed by the FRU TM, before referral to the delegated authority for consideration and authorisation.

### **Dealing with initial enquiries for payment**

Some debtors may submit payment plan proposals in an attempt to delay enforcement action being taken. The FRU should therefore establish whether, so far as we are able, the organisation or individual is offering a genuine proposal.

In response to an initial enquiry about a payment plan the LRO should update the FRU TM and arrange to call the debtor as soon as is practicable. Direct telephone contact is the preferred method of contact. However, an individual's requirements should always be considered particularly in respect of reasonable adjustments that may be required to aid communication.

LROs should ensure that a third-party authority form has been received if required.

These calls allow for the:

- The opportunity to remind about the provision of the EDP, and this is not available under payment plans.
- LRO to explain the principles of ICO payment plans and the financial information that will be required to support any proposal.
- LRO to obtain further information about the trading activity and circumstances of the debtor. This information could be relevant to any subsequent proposal or recovery proceedings.

Emails or letters should then be sent to the debtor to confirm the details of the call and any further actions to be followed, including the submission of financial information as per the below section. The payment overdue letter should also be sent in accordance with the FRU KPI. This ensures that formal recovery action is not delayed should it subsequently be required.

A principle of the penalty regime is not to cause undue financial hardship to an 'otherwise responsible person'. However, the underlying objective of the Commissioner's penalty regime is that it acts as an effective sanction and a deterrent to future non-compliance.

Debtors who want to make payment but don't currently have the means to do so are defined as those who can't pay. This may include debtors that have available funds but, if they were to pay the debt in full at once, they would have insufficient cash flow remaining to continue trading and/or paying other creditors. However, payments such as director's loan accounts should not be given preference over the debt to the Commissioner.

The FRU should always advise the debtor that an initial upfront payment is required. This shows the debtor's intent is sincere and serious. We should advise that any payment can be made in advance of a proposal being formally accepted and is done so on a without prejudice basis. The amount of the initial payment is for the debtor to propose but ideally, we should be aiming to achieve an initial payment of 10-15% of the total debt.

### **Information required to support payment plan proposals**

The organisation must provide full, frank, and timely disclosure of verifiable financial information.

The LRO should set out in writing, the supporting financial information and documents that are required. Clear deadlines must be set and agreed by the FRU for the organisation and individual to provide the required supporting information. The LRO should make it clear to the debtor that debt recovery action will commence in the absence of sufficient information or a viable proposal.

The FRU must make sure sufficient and verifiable information has been obtained to establish:

- why the debtor cannot pay.
- how they intend to pay the debt.
- how they have calculated the affordability of their proposals.

The types and volume of information may vary according to the particular case but are likely to include:

#### Organisations (corporate)

- Business asset and liability questionnaire
- Bank statements for all bank accounts held (last 6 months – subject to what may have previously been provided at Representations stage)
- Full accounts since last statutory accounts filed at Companies House
- Current management accounts (which may include cash flow forecasts and balance sheets)
- Details of any secured charges or loans (mortgages, Covid Business Interruption Loans, Bounce Back Loans etc.)
- Details of any other payment plans ie. HMRC.
- Other information which the debtor wishes to provide in support of their request

#### Individuals

- Individual debts and assets declaration
- Bank statements for all bank accounts held (last 6 months – subject to what may have previously been provided at Representations stage)
- Details of any other payment plans ie. HMRC.
- Relevant personal circumstances
- Other information which the debtor wishes to provide in support of their request

### **Additional / Supporting Information**

The FRU may require further in-depth conversations with the debtor and additional documentary evidence to support their proposal.

### **Assessment of the proposal**

A financial assessment should be undertaken by the FRU to establish the organisation or individual's means and ability to pay. The assessment should be provided to the Commissioner, or person with delegated authority, in order for them to make a reasonable and informed decision.

Where necessary, the FRU should refer the proposal and financial information to the Economic Analysis Department (EAD) for their assessment on the proposal. Cases that are likely to require input from the EAD may involve:

- Those with a complex structure
- Of a significant size (deemed large as per notification requirements)
- Where there may be an Economic Impact to be considered

- In novel cases where there is no conventional turnover e.g. charities, Unions, Gov Departments etc.

In these cases, the FRU remain responsible for completing and submitting the full proposal to the delegated authority.

The financial assessment may reveal that a debtor could make payment but is either refusing to pay or is requesting an unreasonably long time to make payments. In these circumstances, the Commissioner may reject the offer of any payment plan or provide an opportunity for a counterproposal from the debtor.

### **Rejecting payment plan proposals**

Payment plan requests that do not meet the required conditions will be rejected. The FRU can advise this by telephone but should also confirm that the proposals have been rejected in writing. The reasons why the proposals have been rejected should be clearly explained as set out by the delegate authority. [CMP Payment Plan rejected template letter](#)

The individual or organisation will be also advised what the next course of enforcement action may entail should payment in full not be made immediately. It should also make it clear that this does not prevent the individual or organisation from making payments in the meantime and that these will be accepted without prejudice.

### **Accepting payment plan proposals**

The FRU can advise a debtor that a payment plan has been authorised. The payment plan should also be confirmed in writing detailing the agreed payment instalments and conditions of the payment plan. [CMP Payment Plan accepted letter](#)

### **Conditions of payment plans**

The Commissioner will cancel the payment plan if:

- The organisation/individual is subsequently found to have either been dishonest or has not provided full disclosure about their need for a payment plan and their ability to pay in full.
- Payment(s) are repeatedly late and/or missed.
- There is evidence of further breaches of information rights or consumer protection legislation.

Further conditions include:

- The debtor must inform the FRU of any change in their circumstances and their ability to pay. Payment plans will be cancelled if the debtor has the ability to clear the debt in full
- In certain cases, the FRU may recommend that specific conditions are attached to the payment plan (ie setting out review periods for lengthier payment plans)
- All conditions attached to the payment plan will be issued to the debtor by the FRU.

Exceptionally if the debtor contacts us before the due date of payment and advises that they cannot pay we can consider amending the arrangement. These requests must be referred to the FRU TM.

Any requests for payment holidays must be referred to the relevant delegated authority for consideration and authorisation.

### **Payment methods**

The preferred method of immediate payment is either by BACS or CHAPS. Payment by Direct Debit is not an option.

The FRU should confirm the amount, dates, and method of payment in writing.

The FRU must ensure that that the debtor is aware of the correct reference to use and that they make payment to the correct ICO account.

Finance will advise the FRU of all payments received.

### **Case Management**

The LRO is responsible for the following actions.

Crimson:

Details of all correspondence with the debtor should be logged in Crimson as per the SoPs. Where payment plans are authorised, the following should also be recorded:

- date payment plan was agreed
- total debt included in the arrangement, and details of the instalment amounts and dates

Confirmation of the receipt of each payment plan instalment must be logged on the Crimson case.

SharePoint:

- All correspondence filed on the relevant SharePoint case.

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- Confirmation of the receipt of each payment plan instalment from Finance must be logged on the Crimson case.
- A payment plan spreadsheet must also be set up in the FRU payment plan library in order to record details of the payment schedule and monies received. This spreadsheet will be used in the event a statement of account is subsequently requested by the debtor.

### FRU calendar:

- The FRU calendar should be updated with details of the recurring payment instalments and the designated LRO will be responsible for monitoring the receipt of each instalment.

### FRU master tracker:

- The FRU team manager will ensure that the main page of the FRU Master Tracker is updated.
- The LRO is responsible for updating the payment plan tab of the Master Tracker.

### Finance and LSRE:

- The LRO must forward details of the payment plan to Finance
- Where appropriate, the LRO should also update LSRE.

## **Late payments**

The designated Lead Recovery Officer will call the debtor as soon as possible to chase payment. A late payment letter should also be issued in order to confirm the ICO's position. [Payment Plan Letter template - overdue payment 1](#)

The debtor will have seven days to resume payments. If the instalment is still outstanding then the [Payment Plan Letter template - overdue payment 2](#) should be issued.

If payment is ultimately not received, then the plan will be in default and a payment plan cancellation letter will be issued. [CMP Payment Plan cancelled template letter](#)

## **Payment plan satisfied**

Once all payment instalments have been received and cleared, the FRU will issue a letter to the organisation or individual confirming payment in full and the closure of the case. [CMP Paid In Full Letter Template](#)



**Version control**

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