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Department for Business, Innovation and Skills: Freezing the student loan repayment threshold

Executive Summary

This is a joint submission by Martin Lewis and MoneySavingExpert.com. We welcome the chance to reply to the Department for Business, Innovation and Skills' consultation on freezing the student loan repayment threshold.

This proposal would be a disgrace that should not happen in fair government. It is breaching the principle of no retrospective changes, which is an outrage.

At the moment the student loan system gets a bad press, many people don't like it and it's badly explained. But at least it does what it says it does on the tin. Whether people like the system or not, because it operates within its agreed rules, it is fair. This change takes it outside of its own rules, and so is fundamentally unfair.

Freezing the threshold will mean that this and all future governments will not be able to be trusted on student finance. The repercussions of this loss of trust are far-reaching.

Prospective students would lose faith in the information they are given. How could they be expected to make a decision they will be tied to for decades when promises made are broken and the system can be changed on the whim of a new government? This will particularly affect students from non-traditional university backgrounds.

Martin Lewis and MoneySavingExpert.com would no longer feel comfortable explaining to people how the student finance system works – if the Government will make retrospective changes we could no longer be sure that what we say is true.

Question 1: Please could you provide your views, stating reasons and providing supporting evidence, on;

Keeping the threshold of £21,000 the same for all post-2012 borrowers until April 2021

There are several reasons why we fundamentally disagree with this option and strongly urge the Government not to make changes to the terms of students' loans in this way.

It is a breach of trust – it is not what students were told

Repeatedly and unambiguously the public message was the threshold was always going to increase with earnings. On 3 November 2010, Universities Minister David Willetts declared to Parliament:

> *"We will increase the repayment threshold to £21,000, and will thereafter increase it periodically to reflect earnings… The Government is committed to the progressive nature of the repayment system"*[1]

Then on 8 December 2010, Secretary of State Vince Cable said in a Written Ministerial Statement to Parliament that the uprating will be *every year* – and reiterated the progressive character of the system:

> *Secondly, we have been keen to ensure that there is adequate protection for lower earning graduates in our new system. One critical component of this protection is the income threshold at which graduates start repaying, and the way that threshold is then uprated in future years. As announced on 3 November, that income threshold will be £21,000 as from 2016, compared with the current threshold of £15,000.* ***Our modelling to date has assumed that that threshold should be uprated every five years in line with earnings. In order to give better protection for those on lower incomes, we now propose that the uprating should instead be made every year. Around a quarter of graduates will be better off in this new, more progressive regime than under the current regime*** *[emphasis added].*[2]

The Government used Parliament as a vehicle to tell students about the raising of the threshold. Commitments of this stature create a bond of trust between the Government and students. This change is not what the Government told students, so it breaches this trust and is wrong.

This is a breach of trust – it is not what the Government informed trusted advice agencies to pass on to students

Martin Lewis, while Head of the Independent Taskforce on Student Finance Information (with members including NUS and UUK), repeatedly asked about the raising of the threshold for official publications – that were checked by the Government. The same is true for other organisations. Martin Lewis' and these organisations' reputations were engaged in doing this work.

Information repeatedly, consistently and unambiguously came back from official members of the Ministry stating the uprating would come in April 2017 and annually thereafter. School leavers received this information through media organisations, including MoneySavingExpert.com, and it should be honoured.

MoneySavingExpert.com has produced a detailed guide on student finance to explain the system to students and their parents. This Student Loans Mythbusting guide has had 1,321,035 unique page views since June 2011 and is updated every year.

If retrospective changes are introduced, we would not be able to continue to provide information on this subject. We would not be able to rely on Government messages, and could not expect students to do so. A retrospective change represents a reputational risk for both the Government and all who try to impartially communicate their messages.

[1] https://www.gov.uk/government/speeches/statement-on-higher-education-funding-and-student-finance--2

[2] http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101208/wmstext/101208m0001.htm

It will undermine the credibility of the student finance system

The reputation of how the student finance system works is poor, and there are brand problems because of widespread disagreement with it and public misunderstanding of how the system operates. However, it is important to understand that the system has remained credible. While people do not like what it does, it has always done what it says on the tin.

While a Government is free to change student finance for future university starters, it should never make negative retrospective change. Retrospective changes haven't happened before and shouldn't happen now – this outrageous change undermines the credibility of the student finance system.

If loans can be detrimentally altered for current students, future school leavers will lose faith in the reliability of the system. They will doubt that the terms they sign up to will be the terms that they are tied to for years to come. While many people do not like what the student loan system does, it has always done what it says it will do. This change is a break in that line of credibility.

Undermined credibility will deter those from non-traditional university backgrounds

This is a massively damaging step – it is the final straw for many students and parents from non-traditional university backgrounds. They will question whether they can trust a system where retrospective changes can be made, and therefore question whether their prospective students should go to university. Progress made in widening access to university could easily be reversed by loss of credibility in the student loan system.

Undermined credibility will mean trusted agencies retrench from explaining student finance

Trusted agencies played a huge role in communicating and explaining the complex, confusing, and unpopular student finance system. They did this because students deserve to know and be able to understand all the facts when making decisions about their futures. Trusted agencies relied on Government information, which they had to trust was credible.

Undermining credibility in one aspect of student finance undermines the credibility of the whole system. Trusted agencies, including Martin Lewis and MoneySavingExpert.com, will retrench from explaining how the student finance system works because they will no longer be able to explain it to people with any degree of certainty.

What happens after five years?

A further important issue of trust is what happens after five years. These student loans will be repaid for up to 30 years. Students need to know the terms of their loans will not be negatively changed during this time in order to have faith in the system. A "five year freeze" with no explanation of what will happen after is expressly unfair.

This is a regressive change

The consultation paper claims:

> *"People will repay their loans more quickly, with those [who] would have paid off otherwise paying less interest and hence incurring less overall cost."*

The example graduate in the consultation paper who starts earning £21,000 would make £6,100 *more* repayments than under the current policy. At the other end of the scale, the example graduate whose earnings start at £50,000 will pay back £200 *less* than under the current policy.

Although the previous and current Governments have touted "progressive" student loans policy, this is a regressive change – the highest earners will pay less while lower earners will end up paying more than under the current policy.

But even this 'benefit' for higher earners is already available: people can already choose to pay their loans off faster, and so with less interest, if they want to.

Forcing lower earners to pay more changes both the detail and the character of the system that they signed up to. While any detrimental change to terms is unacceptable, it is equally worrying that a regressive change is being adopted, and what this might mean for future Government policy.

The Government has said it should not make detrimental changes

In 2013 when the Government sold off the remaining part of the mortgage-style student loan book, Government Minister David Willetts stated that the sale should not result in detriment for students and there would be no retrospective changes. He said:

> *"Borrowers will remain protected and there will be no change to their terms and conditions, including the calculation of interest rates for loans."*[3]

We therefore need to question why the current Government thinks it is acceptable to change the *threshold* aspect of student loans to students' detriment. If the Government has elsewhere advertised its intention to provide borrower protection and promised not to change T&Cs, why is it not holding itself to those standards across the board? It is wrong to set one rule for one group of graduates and another for another.

Companies can't change T&Cs after agreeing to a contract

Companies would not be allowed to make this change to their loan conditions. While the Government did leave itself legal wriggle room to make this change, that type of wriggle room would not stand up in the corporate environment under FCA regulations.

The FCA says that a contract term may be unfair if a company can "change the terms of the contract, without transparently setting out the circumstances in which they may do so" or "bind you to hidden terms".[4] The FCA, and previously the FSA, have forced many unfair terms to be changed or removed, as demonstrated by the considerable unfair contract terms library on its website[5].

The Government thinks it has left itself wriggle room to make this change, but in our view that wriggle room would not stand up in FCA regulation. Again, we do not think it is fair to allow the Government to give itself one rule for one and another for another.

> *Our MoneySavingExpert.com users agree. One told us…*
>
> *"No they shouldn't be allowed to change the T&Cs of a loan retrospectively, they don't allow banks to do that so why should a Government."*

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[3] https://www.gov.uk/government/news/sale-of-mortgage-style-student-loan-book-completed
[4] https://small-firms.fca.org.uk/unfair-contract-terms?field_fcasf_sector=221&field_fcasf_page_category=unset
[5] https://small-firms.fca.org.uk/unfair-contract-terms/unfair-contract-terms-library?field_fcasf_sector=unset&field_fcasf_page_category=unset

Mortgage Exit Administration Fees

A prominent example of unfair contracts is Mortgage Exit Administration Fees (MEAFs). In 2007, banks were told by the regulator that they must justify increasing their Mortgage Exit Fees. They cost around £60 in 1997 but by 2007 some had climbed to nearly £300. Lenders' excuse was that contract clauses allowed them to "vary the fee over time". The FSA said that as this was done without the consumer agreeing, so it fell foul of unfair contract laws. Most lenders simply agreed to refund customers the difference – thousands of customers got a refund.

Consumer Rights Act

Parliament recently passed the Consumer Rights Act (CRA), which updated the Unfair Terms in Consumer Contracts Regulations. The provisions of the Act came into force on 1 October 2015 and, in relation to unfair terms:

- Made clearer that terms must be transparent
- Made clearer that terms must be prominent
- Expanded the 'grey list' of list of terms that may be unfair

As the Competition and Markets Authority (CMA) explains, terms may be unfair under the CRA if they could lead to a "business arbitrarily varying terms after they have been agreed, for instance so as to… raise the price."[6]

The CMA also says that:

> *A right of variation is likely to be at risk of being considered unfair depending on:*
> *(a) its breadth – the extent of the changes that it allows, and particularly changes that are exclusively in the interest of the trader;*
> *(b) its transparency – how far it can result in changes that are unexpected to and unforeseeable by the consumer; and*
> *(c) the vulnerability of the consumer – in particular, whether consumers can realistically escape the impact of the changes by cancelling the contract.*[7]

The Government is seeking to make this change to student loans despite recent legislation to codify, clarify and boost consumer rights. Government should not hold itself to any lesser standards than it expects of others and it should not implement changes that break its own statutory legislation.

Figures given to students must be reliable

This change has a big impact on student finance. All the figures behind the explanations of what will happen to university students are based on the promised uprating. Students should not have to make up the difference, just because the government at the time got its sums wrong.

The consultation paper states:

> *Updated forecasts based on the OBR's latest projections for the macro-economy show the proportion of borrowers liable to repay when the £21,000 threshold takes effect in April 2016 is lower than was expected when the policy was initially introduced.* ***The threshold is therefore higher in real terms than was originally intended,*** *[emphasis added] which increases the long-term costs of the higher education system to the tax payer.*

[6] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450410/Unfair_Terms_Explained.pdf
[7] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450440/Unfair_Terms_Main_Guidance.pdf

It's important that projected costs are as accurate as possible, but when they turn out to be off the mark, it is not acceptable to retrospectively change the conditions students made their decision to study based upon. The rising threshold was agreed with students from 2012 onwards and should be honoured.

Projections are by their nature not an exact science – the reality will be different. It appears the Department for Business was already prepared for variance; in its annual report 2013-14, it says:

> *"If real earnings growth was 0.5 percentage points lower than assumed in every year, this would lead to a reduction in the value of the loan book of approximately £1.2 billion."*

It also acknowledged that:

> *"With the higher minimum earnings threshold of £21,000 for post-reform loans, the sensitivity to changes in earnings forecasts is greater than with pre-reform loans, as proportionately lower earners will fall below or around the threshold"*[8]

It is wrong that despite its own awareness of the impact changes in earnings forecasts would have, the Government intends to pass on this impact to students and thus retrospectively mislead them. The Government should be prepared to take on these costs.

In its 2014 Forecast Evaluation Report, the OBR acknowledged that earnings growth had been much weaker than projected. A few months later, in April 2015, commentator Andrew McGettigan asked the then Universities Minister Greg Clark:

> *"Will the Department for Business, Innovation and Skills have to change the terms for existing borrowers of student loans to balance its budget after 2015? Does your party commit to protecting borrowers' conditions?"*

In response, although the relevance of data he referred to has since been questioned, Clark argued that the system is "robustly sustainable":

> *"The strength of our system is that it is robustly sustainable – as the OECD has confirmed – without any changes in terms being needed."*[9]

It was already known that earnings growth had been weaker than projected when the Minister made this statement. Therefore, it does not make sense to later use weaker than projected earnings growth to argue that the system is unsustainable, yet this is exactly what the Government has done.

There's a broader point about projections when used as the basis for Government calculations, regardless of forecast errors. The Department for Business should have prepared for and accept variance. It is the responsibility of Government – not graduates – to make up any shortfall.

It's worth remembering that graduates contribute to the success of the economy in many ways – not just through their loan repayments. As Greg Clark also stated in March 2015:

> *"undergraduate degrees boost earnings; contribute to higher employment; provide a well-educated and trained labour force that attracts employers; and increases tax revenues for the Exchequer"*[10]

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[8] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329057/BIS_annual_report_and_accounts_2013_-_2014.pdf

[9] Andrew McGettigan blog, 24 April 2015, http://andrewmcgettigan.org/2015/04/24/robustly-sustainable/

[10] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416243/BIS-15-185-consultation-on-support-for-postgraduate-study.pdf

Through their contribution to the productivity of the economy and increased tax revenues for the Exchequer, graduates will already be contributing to reducing the national debt for years to come.

Parents may choose to pay themselves rather than see their children take loans out

While the responsibility to repay isn't the parents', but the graduates', many parents still feel it is their job to fund their child through university and prevent them from getting into debt.

Without trust in the system, reliability of figures or certainty about future T&Cs, many parents could choose to pay for their child's university education themselves rather than see their children taking on student loans. Some parents already risk financial peril by doing this.

This would further undermine the progressive character of the system, as it would usually be the better off who can afford to opt out.

For borrowers starting in September 2016 (and subsequent intakes), from April 2020 keeping the threshold at the same level as existing borrowers for a further five years

This option is in line with the principle that Governments do not retrospectively change loan conditions. We would not support freezing the cap for future students – as it would be detrimental to the majority of them – but we would not protest it.

While in general we believe that increasing the threshold is the best move, as other changes are retrospective, the terms for new borrowers are a political decision for the Government.

While many may not like this proposal, it would not be unfair on those who have already taken out loans under the current system. This proposal would also not undermine as much credibility in the system, as students would be able to rely on the terms of the loans they take out lasting for the life of their loans.

This option would also mean that trusted agencies, including MoneySavingExpert.com and Martin Lewis, could still rely on Government information about student loans, and so would still be able to communicate the system to prospective students and their parents.

If the Government does take this route, it must avoid a repeat of this debacle in future. Students deserve a loan that they can rely on. All student loan T&Cs should be guaranteed for the life of the loan, protected from the whim of the government of the day.

Allowing the threshold to rise by earnings

This is the only option that is truly acceptable as this is what people had a legitimate expectation would happen when they took out these loans. It does not detrimentally impact existing students; it is what they have already agreed to.

This is the right principle

This option honours the Written Ministerial Statement to Parliament. Government communications of this weight must be reliable; they are not to be chopped and changed once citizens have made decisions on them that *they* will be tied to for decades. Student loans are a two-way partnership between the Government and the student; each must honour their side of the arrangement.

The Government is already following this principle for holders of mortgage-style student loans. When it sold their student loan book, it made clear that the T&Cs stayed the same. There have been huge problems associated with that sale – which we've campaigned on – but the principle that T&Cs are not changed retrospectively is the right one.

Trust will be maintained

Allowing the threshold to rise by earnings will see the Government keep its commitment to students. This will maintain the trust of both students and trusted advice agencies in the student loan system as a whole.

The progressive character of student loans will be retained

It will also not undermine the current progressive character of the student loan system, which recognises that those whose university education enables them to earn the most should pay the most.

Official figures will be accurate and reliable

Raising the threshold by average earnings shores up the figures which students have been told to count on. Going to university has financial implications for students' lives. This option means that students understood the system they have entered into and will be tied to for decades.

Question 2: What risks and impacts do you think holding the threshold at the same level for five years would have for;

Current students/ borrowers?

Retrospective changes as the Government proposes for 2012-2016 starters is something it should not allow itself to do. This would penalise current students for taking the Government at its word. It would mean most would be worse off and end up paying back more than they could reasonably have expected to. We would fundamentally protest it.

The highest earners will pay the debt off more quickly and so accrue less interest on it. As explained, this is a regressive change for current students.

Banks and other lenders can't treat their borrowers in this way, neither should the Government. Time and again we have seen financial services companies treating their customers badly with unfair terms. We've also seen many of these scandals found in the customers' favour, often with pay outs to the victims. The Government should not alter terms which would be unenforceable if a bank had tried to do it.

Macroeconomic projections differ from outcomes, but Government contractual commitments with its citizens need to be set in stone. It is the Government's job to manage any shortfall, just as the Government sets to gain when Government receipts are higher than projected. Students do not expect their repayments to be cut if earnings rise by more than the OBR projects.

Prospective students/ new borrowers?

Our primary concern is the mis-selling of loans to people who have already taken them out. Therefore, while we don't particularly like it, holding the threshold for new students is a decision that should be within the Government's purview.

However, just because this decision is within the Government's purview does not mean it would not be damaging. It will still undermine prospective students' trust in the system, which will have no long-term certainty. Future students' loss of trust will be even worse if the Government does retrospectively meddle with terms for existing students.

The message has always been that if someone wants to go to university, they can afford it. In our student loans guide, we say:

> *"It ISN'T a case of 'pay up or you can't go'. Once your application has been processed, tuition fees are automatically paid by the Student Loans Company."*

Yet future borrowers could lose all faith in the system and would need to make decisions based on the understanding that their own student loan terms and conditions are more likely to be altered to their detriment. The precedent will have been set.

Faced with uncertainty about what their student loans could morph into, students may feel that they can't afford to go to university. We have seen no evidence that there has been any proper assessment of how these proposals are likely to impact confidence in the system, and further research is needed in this area before any decisions are taken.

Employers of borrowers with loans?

The Government argues in favour of "minimising the number of loan thresholds" for employers to administer. This argument is too weak to be factored into this decision; there are already a number of differing student loans:

The various types of student loans…

Normally paid by Direct Debit

- Mortgage style (pre-1998)
  - Loans wiped at earlier of 25 years after repayments were due to start, or when you reach age 50
  - Loans wiped at age 60

Normally paid through employers' payroll

- "Income-contingent" loans
  - 1998-2005 loans wiped at age 65
  - 2006-2011 loans wiped 25 years from the first April of graduation. This change was introduced when student fees increased significantly, without altering the overall loan structure.
- New style "Income Contingent" type
  - 2012 loans wiped 30 years from the first April after graduation when graduates were first due to repay.
- Forthcoming income contingent postgraduate student loans, which will be paid back concurrently to undergraduate loans.

As the list above shows, it's become a tradition for Governments to overhaul the student loan system for new students. This leaves graduates of different years with different loan amounts, terms and conditions. It also means that employers are administering different student loans. Keeping the current system for existing students and creating a new one for future students would only mean a change in the tax code of future students, so would make no difference to payroll.

The list above also shows how in 2006 the Government made changes for new student loans within the existing loan structure. This proves that such a change is possible. If this Government decides to make a change which affects only new students, we will not protest this.

Question 4: Do you think the Government could mitigate the impact of the proposed change on borrowers?

No. It would not be possible to mitigate this change if made to all post-2012 borrowers. The impact is not just financial – but also one of trust. Policy should avoid detrimental treatment and damaging trust in the first place.

About MoneySavingExpert.com

MoneySavingExpert.com is the UK's biggest consumer website dedicated to saving people money on anything and everything by finding the best deals, beating the system and campaigning for financial justice. It's based on detailed journalistic research and cutting edge tools, and has one of the UK's top ten social networking communities.

During August 2015 the site had 15 million users visiting the site over 25 million times and looking at more than 63 million pages. Over 10 million people have opted to receive our free weekly email and more than 1.3 million users have registered on the forum.

About Martin Lewis

Martin Lewis is a broadcaster and journalist, the UK's most internet-searched man, Citizens Advice's Consumer Champion of the Year, and has spearheaded major financial justice campaigns including bank charges reclaiming (over 6 million template letters downloaded) and PPI reclaiming (over 5 million) and a successful large-scale campaign to get financial education in schools.

He also headed the Independent Taskforce on Student Finance Information, a group that aimed to help future students and parents in England tackle the myths and misunderstandings surrounding the changes to student finance in England.