



HM Treasury

Breathing space scheme: call for evidence response

June 2018



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ISBN 978-1-912225-87-3 PU2175

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Chapter 1

Introduction

Background

- 1.1 The implementation of a breathing space scheme was a 2017 manifesto commitment. Such a scheme would have two elements: a breathing space period and a statutory debt repayment plan.
- 1.2 A breathing space period would give someone in serious problem debt the right to legal protections from their creditors for up to six weeks, in order to receive debt advice and enter into a sustainable debt solution.
- 1.3 A statutory debt repayment plan (SDRP) would enable those with unmanageable debts to enter into an agreement to pay their debts to a realistic timeframe. Individuals entering an SDRP would receive legal protections from creditor action during their plan.
- 1.4 The government is committed to implementing this scheme as soon as is practicable, and intends to lay regulations to establish the scheme during 2019. As the Economic Secretary to the Treasury confirmed during the passage of the Financial Guidance and Claims Act, the government will provide a suitable alternative access mechanism to the scheme for those receiving NHS treatment for a mental health crisis.
- 1.5 The government published a Call for Evidence to gain further insight about how best to design, implement, administer and monitor a breathing space scheme on 24 October 2017.
- 1.6 The Call for Evidence ran for 12 weeks, closing on 16 January 2018. This document is a summary of the responses received to the Call for Evidence.

Breathing space and problem debt

- 1.7 The government has already acted to help prevent individuals from falling into problem debt, firstly by ensuring borrowers are well protected when taking out consumer credit.
- 1.8 The government transformed the regulation of consumer credit activity through transferring the regulation of consumer credit to the Financial Conduct Authority (FCA).
- 1.9 FCA rules mandate consumer credit firms to only lend money to people when the firm has a reasonable expectation that a customer can afford to repay the debt. FCA regulated firms must also comply with a high-level principle to treat customers fairly.

- 1.10 At the same time, the government has acted to ensure the public have access to support to make good financial decisions. The government is creating the new Single Financial Guidance Body (SFGB) through the Financial Guidance and Claims Act. The SFGB will provide help and guidance to consumers on all financial matters. The SFGB will also have a statutory duty to improve the public's financial capability.
- 1.11 However, despite this preventative action, the government recognises the importance of putting in place effective safety nets for those who fall into problem debt. This includes ensuring a sufficient supply of debt advice and the availability of appropriate debt solutions.
- 1.12 To support the provision of high quality debt advice, the government-commissioned Money Advice Service (MAS) spent just under £49m in 2016-17 to provide over 440,000 debt advice sessions, and, this year, MAS' debt advice budget has increased to over £56m.
- 1.13 The introduction of a breathing space and a statutory debt repayment plan will support this work by providing additional protection to consumers who are most in need, and encourage the earlier uptake of debt advice.

Chapter 2

Summary of responses

- 2.1 The government received over 80 unique responses to the Call for Evidence from a wide variety of stakeholders. Respondents included trade bodies, debt charities, local authorities, and the wider debt management sector.

Children's Society campaign

- 2.2 The government also received around 1,200 pro-forma responses based on a campaign from the Children's Society. Some respondents using this pro-forma response also added a personal message explaining why they felt the government's proposals were important. Some added their personal experiences of problem debt.
- 2.3 The five key points made in the pro forma response were:
- that six weeks of breathing space is helpful, but there must be no gap in protection between the breathing space and an individual's debt solution
 - that eligibility for a breathing space should be flexible, and based on an affordability assessment
 - for all debts to be included in the scheme, with certain debts prioritised for repayment
 - for there to be flexibility in how the statutory debt repayment plan is administered
 - for the scheme to maximise support for families with children
- 2.4 The government notes the significant support for the points raised in the Children's Society's campaign.

Other responses

- 2.5 The remainder of this response focuses on the individual submissions received to the Call for Evidence outside of the Children's Society campaign.
- 2.6 Responses submitted outside of the Children's Society campaign were structured in varied ways. Some responses provided an overview of the respondent's views, rather than replying to every question. Others answered every question asked in the Call for Evidence.

Chapter 3

Responses by theme

Section one: Breathing space

Theme one: Access to a breathing space

3.1 The first set of questions in the Call for Evidence focussed on how an individual would access a breathing space.

Entry into a breathing space

3.2 Most respondents felt that an individual should have to seek debt advice before entering a breathing space.

3.3 Indeed, it was commonly noted that requiring someone to access debt advice before entering a breathing space could act as an important safeguard against abuse of the scheme.

3.4 However, some respondents noted that there were certain, unique cases where mandating individuals to seek debt advice to be eligible for a breathing space could be inappropriate. Individuals experiencing mental health crises were highlighted as an example. As noted earlier in this document, the Economic Secretary to the Treasury has confirmed that individuals in receipt of NHS treatment for a mental health crisis will be provided with an appropriate mechanism to access the scheme.

3.5 There were different views on what was required during initial contact with a debt adviser. It was often noted that a debt adviser completing an assessment of someone's finances would be important to ensure that a breathing space was appropriate for an individual. Some respondents also noted that this process was important to ensure that a debt adviser had enough knowledge of an individual's debts to ensure all relevant creditors could be contacted if an individual entered a breathing space.

3.6 However, others argued that needing to complete too detailed an initial discussion with a debt adviser could prevent individuals from accessing the scheme at a point of immediate need.

3.7 Some respondents argued that, alongside requiring an individual to access a breathing space, using a set of defined characteristics to determine eligibility for a breathing space could reduce the potential for abuse of the scheme.

3.8 However, concerns were raised about this approach, saying it was too inflexible given the complexity and variety of experiences of individuals struggling with debt. Indeed, many respondents proposed that there should

be an element of discretion in determining eligibility for a breathing space. Most respondents argued that this discretion should be exercised by a regulated debt adviser.

- 3.9 Most respondents felt that individuals should not be required to have already taken steps to manage their debts – beyond seeking debt advice – to be eligible for a breathing space.
- 3.10 Most respondents noted that there should be restrictions on individuals being eligible for a breathing space more than once over a short period. Some thought that this restriction could follow the 12 months required between triggering moratoriums in the Scottish Debt Arrangement Scheme.

Continuing eligibility and exit

- 3.11 Most respondents felt that an individual should continue to engage with debt advice during a breathing space period to maintain eligibility for the protections it offers. However, some respondents noted that some vulnerable individuals could find it challenging to access debt advice during a breathing space, and asked for flexibility on this requirement.
- 3.12 Most respondents thought that people should make repayments towards their debts if they were capable of doing so.
- 3.13 Most respondents felt that a breathing space could end early, especially if an appropriate debt solution were agreed. However, some of these respondents emphasised the importance of maintaining breathing space protections between the end of a breathing space period and entry into a debt solution.

Theme two: Breathing space protections

- 3.14 The second set of questions discussed the protections offered during a breathing space.

Debts included in a breathing space

- 3.15 Respondents broadly thought that all of an individual's debts should be included in a breathing space, with some exceptions commonly noted. These proposed exceptions included sensitive debts such as child maintenance payments or debts owed to family or friends, as well as debts that were incurred because of fraudulent behaviour. Some also felt that debts currently excluded from bankruptcy, such as criminal fines, could be excluded from a breathing space.
- 3.16 Some respondents disagreed with this approach and argued for more debts – often owed to organisations in their sector – to be excluded.
- 3.17 A number of respondents argued that debts owed at the outset of a breathing space that were not initially identified should be eligible for inclusion in an individual's breathing space when they became apparent.
- 3.18 There was less consensus on whether new debts arising during a breathing space period should be included within a breathing space.

Interest, fees and charges

- 3.19 There was a divergence of views regarding the freezing of interest, fees and charges during a breathing space.
- 3.20 A number of respondents supported a freeze on interest, fees and charges during a breathing space, noting that a freeze could enhance the attractiveness of a breathing space. Some respondents also suggested that a freeze would mean very vulnerable consumers' debts did not become even less manageable over the course of a breathing space period.
- 3.21 However, a number of respondents argued that a freeze on interest, fees and charges accruing would be inappropriate. In particular, these respondents often suggested that a freeze on interest would be inappropriate given the cost and burden of administering such a freeze.

Theme three: Administration of a breathing space

- 3.22 Another set of questions focussed on how to administer a breathing space.

Credit referencing

- 3.23 Most respondents felt that a breathing space should be entered on a person's credit file.
- 3.24 However, there were concerns that a breathing space simply being presented as a missed payment on a credit file could reduce the attractiveness of the scheme. This was because of the significant adverse impact that entering a breathing space would have on an individual's credit rating.
- 3.25 Some respondents therefore suggested that an appropriate reporting mechanism should be developed to reflect that an individual was positively dealing with their debts and to limit the impact on their credit file.

Administrative structures

- 3.26 There were a wide variety of structures considered for the administration of breathing space.
- 3.27 Although there were suggestions that breathing space could be complex to administer, respondents noted that it was important that the scheme was simple to use and understand for a debtor. A number of respondents therefore argued that a debt adviser should be a debtor's clear, single point of contact for their whole journey through a breathing space.
- 3.28 There was less agreement on how creditors should be informed that an individual had entered a breathing space. Respondents suggested that the point of contact for creditors could be an oversight agency, an automated online portal, or a debt adviser.
- 3.29 A number of respondents also suggested that it would be appropriate for an agency to oversee the process to ensure the system operated effectively. Some respondents suggested learning from the Scottish Debt Arrangement Scheme on this issue.

Adding value to existing structures and geographical scope

- 3.30 There were a variety of responses suggesting how the government could design the scheme to add value to existing support structures. Some respondents noted the need for sufficient capacity in the debt advice sector to meet demand, and some argued the scheme should be publicised effectively to ensure take up.
- 3.31 Most respondents felt that the benefits of a breathing space should be extended to Wales and Northern Ireland.

Section two: Statutory debt repayment plan

- 3.32 A statutory debt repayment plan (SDRP) would give those with unmanageable debts the ability to enter a plan to repay their debts to a more manageable timeframe.

Theme four: Access to an SDRP

- 3.33 The next set of questions focussed on how an individual could access an SDRP.

Entry into an SDRP

- 3.34 In line with how respondents thought individuals should access a breathing space, many respondents argued that debt advisers should determine whether an SDRP would be an appropriate debt solution for their clients. It was often felt this assessment should be aligned with current debt advice best practice.
- 3.35 Respondents often felt that an SDRP would be suitable for individuals not appropriately served by existing statutory debt solutions. Characteristics of these debtors included having some surplus income, and enough income to have realistic prospect of full repayment of their debts.
- 3.36 Some respondents also noted that an SDRP could be particularly suitable for individuals who had experienced a change in circumstances that led to them requiring debt advice and a resultant change in their debt payment schedule.
- 3.37 A number of respondents also stressed the importance of ensuring that the SDRP is open to all those who seek debt advice – and not just those who had previously entered a breathing space. Similarly, it was argued that a breathing space should be open to all those who could satisfy the eligibility criteria and not just those planning to enter a SDRP.

Creditor objection to a proposed SDRP

- 3.38 A number of respondents felt that a single creditor should not be allowed to reject a proposed SDRP. However, there was less consensus on the criteria for how a plan could be agreed where there were multiple creditor objections.
- 3.39 Some respondents suggested that a plan should not commence if a certain percentage of creditors objected to a plan.

- 3.40 Some respondents suggested that disputes could be resolved via a “fair and reasonable” test – which would require an oversight body to judge whether the design of a plan was appropriate.
- 3.41 If an SDRP could still not be agreed, most respondents suggested that creditors could resume collection activity. Some respondents suggested that an additional period of breathing space, or further signposting to debt advice, could be appropriate in these cases.

Continuing eligibility for an SDRP

- 3.42 Most respondents felt that an individual should keep up with agreed repayments for an SDRP to remain in place. A number of respondents also suggested other criteria that an individual should adhere to in order to remain eligible for an SDRP, such as continuing to engage with debt advice at set intervals of an SDRP.
- 3.43 Many respondents suggested that an SDRP should be flexible, and able to reflect changes in circumstance during an individual’s time in an SDRP.
- 3.44 Often, respondents suggested that there should be frequent reviews of an individual’s SDRP in order to assess that their SDRP and its level of payments were still suitable.

Failure of an SDRP

- 3.45 Most respondents felt there should be some form of further action if there were proven misconduct during an SDRP.
- 3.46 If an SDRP were to fail for whatever reason, a number of respondents suggested that creditors should be able to revert to their usual collection practices. Whilst most believed that interest, fees and charges should resume following the failure of a plan, there was less agreement whether these could be applied retrospectively.

Theme five: Protections of an SDRP

- 3.47 The next set of questions concerned the protections offered by an SDRP.
- 3.48 Most respondents felt that collection activity should be stopped, and interest, fees and charges frozen, during an SDRP.
- 3.49 Respondents generally thought that the same debts should be protected under an SDRP as under a breathing space. This meant that most respondents thought that all an individual’s debts – apart from some specific, often sensitive, debts such as child maintenance payments – should be included in an SDRP.
- 3.50 Some respondents noted that there could be a case for mortgage or rent arrears to be left out of a SDRP, given the potential for debtors to be evicted, or their tenancy not being renewed.
- 3.51 Many respondents felt that some debts, such as housing, tax, or benefit arrears should be prioritised for repayment, given the potential for serious detriment should these not be repaid if an SDRP failed. However, others argued that debts should be repaid on a pro-rata basis.

Theme six: Administration of an SDRP

- 3.52 Another set of questions concerned the administration of an SDRP.
- 3.53 A number of respondents suggested that the government should ensure that the scheme was administratively simple, especially for debtors. Most respondents suggested that a debt adviser should be the key point of contact for a debtor.
- 3.54 However, there was less consensus on how the scheme could be appropriately administered for creditors. Some respondents suggested that the government could learn from the arrangements for administering existing debt management plans.
- 3.55 Many respondents also noted the need for effective oversight of the scheme. There were varying views on what this oversight could look like. Some respondents noted that the government could learn from equivalent arrangements in the Scottish Debt Arrangement Scheme.
- 3.56 Almost all respondents felt the benefits of an SDRP should be extended to Wales and Northern Ireland where applicable.

Section three: Benefits and challenges of a breathing space and statutory debt repayment plan

- 3.57 Another set of questions concerned the benefits and challenges of a breathing space and SDRP.

Benefits of a breathing space

- 3.58 Many respondents felt that a breathing space could bring significant benefits to both creditors and debtors. Commonly, respondents suggested that breathing space could increase demand for debt advice, as well as incentivise people to take up debt advice earlier.
- 3.59 Alongside this, some respondents suggested that the time that a breathing space would give individuals to access debt advice and go into a suitable, effective plan could substantially increase returns to creditors.
- 3.60 A number of respondents also highlighted that a breathing space, allied with an effective debt repayment solution, could reduce worry and anxiety for people suffering with problem debt.

Challenges of a breathing space

- 3.61 Although most respondents suggested that the introduction of a breathing space would be broadly beneficial, it was highlighted that there could be challenges.
- 3.62 In particular, respondents often noted that IT changes required to adapt to the new procedures could be costly and have lengthy lead-in times. Alongside this, a number of respondents suggested that creditors needed to receive clear and timely notifications of an individual's entrance into a breathing space in order for them to know to stop collections activity. Some respondents also noted the challenge of ensuring that debt advice organisations had the resources to meet demand for debt advice.

- 3.63 Some respondents – mainly from debt charities and consumer groups – noted that six weeks was too short a period to effectively seek debt advice and enter into a sustainable debt solution for some individuals. These respondents often proposed that the government could make the scheme more flexible, and allow a debt adviser discretion to extend a breathing space for a set period.

Evaluating the success of a breathing space

- 3.64 Respondents suggested a number of ways to evaluate the success of a breathing space. Examples of methods suggested by respondents included monitoring the number of breathing spaces which were taken up or which lead to debt solutions, or the increase in the number of individuals accessing debt advice after the scheme is introduced.

Benefits of an SDRP

- 3.65 Respondents pointed out a number of potential benefits to an SDRP.
- 3.66 Some respondents noted that the sustainable repayments that would be offered under an SDRP could result in higher payments to creditors. A number of respondents also noted that the introduction of an SDRP could provide reliable payments to creditors, and reduce recovery costs.
- 3.67 Respondents also noted that the sustainable payments that an SDRP would offer could reduce anxiety and worry for individuals.

Challenges to an SDRP

- 3.68 Most respondents suggested that there could be administrative challenges to implementing an SDRP for creditors.
- 3.69 For example, respondents suggested that a challenge could be the effective communication to creditors that someone had entered an SDRP. Allied to this, some respondents highlighted the challenges of being notified of an individual's change in circumstances during an SDRP. Some respondents also suggested the introduction of an SDRP could put pressure on debt adviser resources.

Evaluating the success of an SDRP

- 3.70 A number of ways to monitor the success of an SDRP were suggested. These included measuring the number of SDRPs that stayed in place for the duration of a plan, the number of SDRPs that fail, and the amount of debt repaid under the scheme. Some respondents also noted that the government could learn from the evaluation methods of the Scottish Debt Arrangement Scheme.

Chapter 4

Government response

- 4.1 The government thanks all Call for Evidence respondents. The government will outline a policy proposal for consultation later this summer through which we will aim to design a scheme which is accessible, supportive and easy to administrate.
- 4.2 As outlined during the passage of the Financial Guidance and Claims Act, the government then intends to lay regulations to establish the scheme during 2019.

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