



HM Treasury

# Debt respite scheme (breathing space):

Guidance on mental health crisis breathing space

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# Chapter 1

## Introduction

### What is a mental health crisis breathing space?

- 1.1 Breathing space is a debt respite scheme.<sup>1</sup> It provides protections for people who are resident in England and Wales who are in problem debt. The protections include pausing enforcement action and contact from creditors and freezing interest and charges on their debts. A standard breathing space is available to anyone in problem debt who accesses debt advice and meets the eligibility criteria and conditions.
- 1.2 It may be very difficult to engage with debt advice while receiving mental health crisis treatment, but problem debt and mental health problems are often linked. The Government therefore committed to develop an alternative route to access the protections for people receiving mental health crisis treatment, so that they do not have to access debt advice first.
- 1.3 If an Approved Mental Health Professional (AMHP) certifies that a person is receiving mental health crisis treatment, this evidence can be used by a debt advice provider to initiate a mental health crisis breathing space (MHCBS).
- 1.4 The MHCBS has some stronger protections than a standard breathing space. For example, the MHCBS lasts as long as a person's mental health crisis treatment, plus 30 days (no matter how long the crisis treatment lasts).
- 1.5 The MHCBS will help to create time and space for a person to get the treatment they need, without having to worry about their debts growing or their creditors contacting them during their treatment.
- 1.6 The AMHP does not need to know anything about a person's debts to complete the evidence form. Their role is to decide if someone is receiving mental health crisis treatment and certify this. The AMHP, or a specified list of other people involved in a person's care, can then submit the evidence form to a debt adviser.
- 1.7 A debt advice provider will receive the form and try to establish (as far as possible) which debts the individual has, and which are eligible for the scheme, before including them in a MHCBS.

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<sup>1</sup> The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 [www.legislation.gov.uk/uksi/2020/1311/made/data.pdf](http://www.legislation.gov.uk/uksi/2020/1311/made/data.pdf)

## Purpose of this guidance

- 1.8 This guidance is intended to help AMHPs and other mental health and care professionals understand how a MHCBS can help the people they support, and how they can help those people to access the MHCBS.
- 1.9 Leaders of local authorities and NHS, independent or voluntary sector organisations may use this guidance to consider their own related policies and procedures.

## Who is this guidance for?

- 1.10 This guidance is primarily aimed at health and care professionals who may be asked to provide evidence for a MHCBS application or to deal with requests from debt advice providers related to a MHCBS, including:
- AMHPs
  - care co-ordinators
  - mental health nurses and other relevant specialist nurses
  - social workers
  - independent mental health or mental capacity advocates
  - relevant person's representatives
  - approved mental capacity professionals
  - appropriate persons
- 1.11 This guidance may also be helpful to leaders of local authorities and NHS, independent or voluntary sector organisations, as well as debt advisers, individuals and their carers who wish to understand the MHCBS and how it will work.
- 1.12 More detailed breathing space guidance for creditors and debt advice providers (including on the MHCBS and actions they will need to take) is available at [www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance](http://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance).

## The role of approved mental health professionals

- 1.13 AMHPs are the professional group required to provide evidence that an individual is receiving mental health crisis treatment. This evidence will be used by debt advisers to check a person's eligibility for the MHCBS. AMHPs are highly qualified and experienced mental health professionals trained to undertake assessments of people in mental health crisis and for the purposes of the Mental Health Act 1983.
- 1.14 The MHCBS offers very substantial protections for people who are in debt and receiving mental health crisis treatment. Those protections, in turn, have significant costs and implications for creditors that must only be applied when necessary and appropriate.
- 1.15 AMHPs' professional expertise in assessing individuals with the most serious mental health conditions and their understanding of the applicable

legislation, determinants of mental health and appropriate therapies for mental health crisis is crucial. The expertise of the AMHP allows the debt advice provider receiving the evidence form to trust that the person is receiving mental health crisis treatment without further research or assessment. It is also necessary for a clearly identifiable group with relevant expertise and robust professional standards to be given specific statutory powers. This role will be kept under review.

- 1.16 Doctors, including GPs, cannot provide this evidence. However, as is the case for mental health assessments, doctors and other professionals and service providers will be able to refer someone to an AMHP for this purpose. Other professionals can support the AMHP in this role.
- 1.17 It is also possible for carers, advocates and other representatives to support the AMHP (see Carers, advocates and representatives).
- 1.18 The Government recognises the demanding role that AMHPs are already fulfilling. HM Treasury has supported an expansion of the AMHP role to provide evidence that a person is receiving mental health crisis treatment. HM Treasury and the Ministry for Housing, Communities and Local Government have worked with the Local Government Association and the Association of Directors of Adult Social Services to ensure that AMHPs are able to support the scheme.

## Carers, advocates and representatives

- 1.19 A person's carer, advocate or representative can be involved in the process of applying for a MHCBS. They can:
- request that an AMHP complete the evidence form
  - assist the AMHP in completing the evidence form by providing information about the person or their debts
  - take responsibility for sending the completed evidence form to a debt adviser
  - provide information about any additional debts to the debt adviser, after the MHCBS has started
  - liaise with the debt adviser on the person's behalf
- 1.20 However, they may not:
- act on the individual's behalf if the individual has mental capacity and has objected to them acting in this way or making decisions on their behalf
  - require an AMHP to complete the evidence form if the AMHP does not consider that the person is receiving mental health crisis treatment
  - act as the nominated point of contact

## Data protection

- 1.21 The UK General Data Protection Regulation (UK GDPR) and Data Protection Act 2018 (DPA) apply to the processing of personal data, including special category data (e.g. data concerning health), for the purposes of the MHCBS.



AMHPs' employers are the data controllers in respect of any personal data processed by the AMHPs and these employers are responsible for compliance with data protection legislation.

- 1.22 This will include, among other things: having a lawful basis for the processing under Article 6 of the UK GDPR and, for special category data, satisfying one of the conditions in Article 9; and ensuring that relevant documents, including privacy notices, cover the relevant processing activities.
- 1.23 As explained in Chapter 3 of this guidance, the AMHP (or the professional making a referral to the AMHP) will need to seek consent to share their patient's confidential information in the scheme. This is because the AMHP (or other professional) has a duty of confidentiality to their patient, which is a separate requirement to the data protection obligations in the UK GDPR and DPA.
- 1.24 More information about data protection obligations can be found in the ICO guidance here: <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/> .

# Chapter 2

## Eligibility for mental health crisis breathing space

### Receiving mental health crisis treatment

- 2.1 A person may be eligible for a MHCBS if they are resident in England and Wales and receiving mental health crisis treatment (including if that treatment has already started).
- 2.2 Provided an AMHP is satisfied that the person meets one of the three criteria set out below, the AMHP can complete the evidence form to certify this.
- 2.3 For these purposes, “receiving mental health crisis treatment” means that the individual:
- has been detained in hospital for assessment or treatment (including under part 3 of the Mental Health Act 1983);
  - has been removed to a place of safety by a police constable; or
  - is receiving any other crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service in relation to a mental disorder of a serious nature. Such a disorder should be of equivalent severity to a mental disorder requiring the individual’s detention in hospital under the Mental Health Act 1983 or their removal by the police to a place of safety, but where the treatment can be provided without the debtor being assessed, removed or detained without their consent (Kaye v Lees [2023] EWHC 152).

When confirming a client’s eligibility, the AMHP must be satisfied that the statutory definition of mental health crisis treatment is met and is informed on the basis of the availability of supporting evidence (e.g this could include the most recent assessment and care plan documentation and/or associated records). An assessment under the Mental Health Act 1983 is not required for the AMHP to decide whether the individual’s mental disorder meets the required level of severity. For further information about this see

<https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance-on-mental-health-crisis-breathing-space/mental-health-crisis-breathing-space-guidance-changes-following-2023-high-court-judgments>

- 2.4 A “specialist mental health service” means a mental health service provided by a crisis home treatment team, a liaison mental health team, a community mental health team or any other specialist mental health crisis service that the AMHP considers appropriate.
- 2.5 A “mental disorder of a serious nature” means any mental health problem, disorder or disability of the mind which the AMHP considers to be of a severity which justifies (or could justify) the individual’s detention in a hospital

setting or removal to a place of safety under the Mental Health Act 1983, or cases of equivalent severity where the individual's circumstances do not necessarily warrant such detention or removal (*Kaye v Lees* [2023] EWHC 152). Individuals receiving crisis treatment in the community or as informal patients (i.e. those receiving voluntary inpatient treatment in a mental health or psychiatric hospital) may still be eligible for a mental health crisis breathing space if they meet the definition of mental health crisis treatment set out in paragraph 2.3

- 2.6 Although an AMHP may be asked to complete an evidence form, the AMHP is not under any statutory duty to complete a form, and there are no circumstances in which an AMHP can be required to complete an evidence form by anyone else. It is the AMHP's judgement that is of paramount importance.
- 2.7 The relevant legislation does not set out the steps an AMHP should follow before completing an evidence form. They may carry out an assessment in person or remotely or rely on evidence provided to them by another professional about a person in that professional's care. It is not necessary for an AMHP also to have carried out a Mental Health Act assessment in relation to the individual, although they may consider whether to complete an evidence form when they do such an assessment.
- 2.8 If the AMHP is satisfied that the person is receiving mental health crisis treatment, the evidence form should be completed, including details of the AMHP and a nominated point of contact (see Chapter 3: Evidence of mental health crisis treatment).
- 2.9 The AMHP does not need to know or provide any specific details of the person's debts in the evidence form, but it is very helpful for them to include any information they do have.
- 2.10 Once the evidence form has been received, the AMHP generally has no further role at this point in the process. If they are the nominated point of contact for the individual, the debt adviser will contact them periodically to check that the individual is still receiving mental health crisis treatment. If the debt adviser comes into possession of information which gives rise to a reason to doubt whether an individual is receiving crisis treatment under the breathing space regulations, the AMHP may also be contacted (even if they are not the nominated point of contact) and asked to confirm details regarding the individual's continuing eligibility for a mental health crisis breathing space.
- 2.11 It is also likely that the non-AMHP nominated point of contact for the individual (care coordinators and mental health nurses) will contact the AMHP to confirm the individual's continuing eligibility for mental health crisis breathing space as part of the 30-day interval checks.

## How to help someone who is not receiving mental health crisis treatment

- 2.12 If a person is not receiving mental health crisis treatment, they are not eligible for a MHCBS. This includes where mental health crisis treatment has not started, or where that treatment has ended.
- 2.13 If a person is not receiving mental health crisis treatment, an AMHP cannot

lawfully complete an evidence form for them.

- 2.14 People in these circumstances may still be able to access the main Breathing Space scheme and its protections by seeking debt advice.
- 2.15 Many debt advice providers are experienced in helping people with mental health issues. A list of free debt advice providers is available at [www.moneyadviceservice.org.uk/en/tools/debt-advice-locator](http://www.moneyadviceservice.org.uk/en/tools/debt-advice-locator).

# Chapter 3

## Evidence of mental health crisis treatment

- 3.1 This section of the guidance is for AMHPs, who will complete the *Evidence of Mental Health Crisis Treatment* form available online at [<http://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance-on-mental-health-crisis-breathing-space>]. The form is in five sections, explained in detail below.
- 3.2 You may decide to complete the form because you consider that an individual you are supporting is worried about, or is struggling with, problem debts.
- 3.3 You might also be asked to complete the form by someone else. This could be an individual or someone acting on their behalf who wishes to make an application for a MHCBS, or another health or care professional who is asking you to do this for someone they are supporting.
- 3.4 Where someone else has asked you to complete the form, they should provide you with accurate, relevant information to help you complete it.
- 3.5 The individual's personal information will be used by a debt advice provider to process an application for a MHCBS.

### Do I need the individual's consent to share their data?

- 3.6 Yes. Your duty of confidentiality to the individual applies here. You (or the professional who is making a referral to you) should ask the individual if they are content to share their details with you, and with the other organisations in the scheme.
- 3.7 The statement in the box below can be used to explain the scheme and its effects to the individual.

#### Asking for consent to share information

*"You are receiving mental health crisis treatment, and you may be struggling with problem debt. With your permission, I can complete a form to be sent to a debt adviser on your behalf to ask for a mental health crisis breathing space for you. Having a breathing space should stop you being contacted by someone you owe money to or being charged fees and interest on your debts while you are receiving crisis treatment. The breathing space will last for 30 days after your crisis treatment ends.*

*A debt adviser will share the information I provide in the form with other organisations, including the breathing space scheme administrator, your creditors and their agents. This needs to happen for them to establish your financial situation and make sure your creditors know you are protected by the scheme. Your creditors will be notified that you are in a mental health crisis breathing space, but they will not be given any specific information about your condition or your treatment. The debt adviser will also be able to contact you later, to offer you help to manage your debts. Are you happy for me to share your details with a debt adviser to see whether you are eligible for a mental health crisis breathing space?"*

*"If you want to go ahead, but are worried that your creditors may be violent, we can ask the debt adviser not to share your address with your creditors. Do you want the debt adviser to consider this?"*

- 3.8 If the person has capacity to make this decision:
- you must seek their consent for you to share their personal information with a third party before completing and passing on the form. This is to ensure you aren't at risk of breaching your duty of confidentiality to the individual.
  - if they do not want a breathing space, or do not consent to you sharing their information, do not take any further action. A MHCBS cannot be put in place for the person unless they agree to share their information.
- 3.9 If the person lacks capacity to make this decision:
- you may seek consent from someone the individual has previously indicated can make decisions on their behalf (e.g. a person with Lasting Power of Attorney under the Mental Capacity Act, a deputy appointed by the court of protection, or an appointee), if that is appropriate.
  - in the absence of someone who can consent on the individual's behalf, you can disclose information on their behalf, once you have conducted a 'best interests' assessment.
  - in all cases where the individual lacks capacity for consent, you must record in your own records why you believe the person does not have the capacity to make a decision on their own behalf; and that they are unlikely to regain capacity by the time a decision needs to be taken; and the reasons why disclosure of confidential patient information is in their best interests (e.g. to protect them from serious physical or psychological harm).
- 3.10 Annex A provides an explanation of the MHCBS and further information on how personal information needs to be shared for the purposes of the scheme. You should provide this information to individuals if you judge that it is appropriate to do so. You can also give them a copy of the evidence form, once you have completed it.

## Section 1: Information about the individual

- 3.11 For a debt adviser to process an application for a MHCBS, they need certain information about the individual. This must include the person's name, address and date of birth.
- 3.12 Please take care with this section of the form. The debt adviser may be unable to put a MHCBS in place unless the information provided is accurate and sufficient to identify the individual.
- 3.13 You can also include an email or mobile number for the person. This is to make sure that a debt adviser can make contact at the end of their MHCBS, to offer them support and advice.
- 3.14 If you or the individual is worried about disclosing their address to their creditors because they, or someone they live with, might be at risk of violence, you can use this section of the form to indicate that their address should be withheld from the Insolvency Service register.

## Section 2: Evidence of mental health crisis treatment

- 3.15 You will complete this section to certify that, in your professional judgement as an AMHP, the individual is receiving mental health crisis treatment.
- 3.16 You should sign and date the form to confirm that there is appropriate consent in place to share confidential personal information.
- 3.17 You will need to provide your details, including an email address and telephone number, and the name of the local authority you are approved by.
- 3.18 As set out in chapter 2, receiving mental health crisis treatment means that the individual:
- has been detained in hospital for assessment or treatment (including under part 3 of the Mental Health Act 1983);
  - has been removed to a place of safety by a police constable; or
  - is receiving any other crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service in relation to a mental disorder of a serious nature, which the AMHP considers to be of equivalent severity to a mental disorder requiring the individual's detention in a hospital setting or removal to a place of safety under the Mental Health Act 1983 (but where the treatment can be provided without the debtor being removed or detained without their consent).
- 3.19 A "specialist mental health service" means a mental health service provided by a crisis home treatment team, a liaison mental health team, a community mental health team or any other specialist mental health crisis service that you consider appropriate.
- 3.20 A "mental disorder of a serious nature" means any mental health problem, disorder or disability of the mind that you consider to be of a severity which justifies (or could justify) the individual's detention in a hospital setting or removal to a place of safety under the Mental Health Act 1983, or cases of equivalent severity where the individual's treatment can be provided without the debtor being removed or detained without their consent (Kaye v Lees [2023] EWHC 152). An assessment under the Mental Health Act is not required for you to decide whether

the individual's mental disorder meets the required level of severity.

### Section 3: Nominating a point of contact

- 3.21 You need to provide details, including an email address and telephone number, for a nominated point of contact.
- 3.22 You must nominate someone likely to have ongoing involvement in the individual's crisis care for this important role.
- 3.23 The regulations require that the nominated point of contact must either be an AMHP (you or someone else); a care co-ordinator; or a mental health nurse. You cannot provide details of anyone else, even if they are involved in the individual's care.
- 3.24 If a care co-ordinator has been appointed under the Care Programme Approach (or, in Wales, the Mental Health Measure), then they should be the nominated point of contact.
- 3.25 The nominated point of contact will:
- be notified by email when the MHCBS starts
  - respond to requests for information from the debt adviser (e.g. if there is a problem with the evidence form or delay in starting the MHCBS)
  - be contacted by the debt adviser to:
    - check that the person's crisis treatment is ongoing
    - establish when that treatment ends
    - provide them with a notification that the MHCBS has ended
- 3.26 If the debt adviser is unable to contact the nominated point of contact, the assumption will be that the person named in the form is no longer receiving mental health crisis treatment, and their MHCBS will end 30 days from the date on which the debt adviser failed to receive a response.

### Section 4: Providing additional information (optional)

- 3.27 You do not need to have a conversation about finances with the individual or their carer, or provide any information about the person's income and debts in order for the debt adviser to process their application for a MHCBS. But if you (or the person making a referral to you for this purpose) have any of this information it is helpful to include it.
- 3.28 The debt adviser will need to verify that the person has at least one qualifying debt and try to assess whether the person is unable, or unlikely to be able, to repay some or all of their debts. They will try to establish this by carrying out a credit reference agency search using the information about the individual that you provide in Section 1 of the form. That credit reference agency search will be a soft search and should not negatively affect the person's credit rating.
- 3.29 Not all debts are recorded by credit reference agencies. Debts to local government, tax or benefit debts may not be visible to the debt adviser. By providing all the information you have about the person's debts, you help to make sure that all creditors are notified of the person's MHCBS as early as



possible and apply the protections.

- 3.30 If the person also has business debts, you can include any information you have about them. Some of them may qualify for the scheme.
- 3.31 Do not worry if you only have partial information about a debt, or if the person (or their carer) cannot be specific about their income or the amounts they may owe. You are not required to verify this additional information and should simply include any information that is available to you.

## Section 5: Passing on the evidence form

- 3.32 Once you have completed the evidence form, it must be sent to a debt adviser. The evidence form explains how to do this, using a dedicated online service provided by the Money and Pensions Service at <http://www.maps.org.uk/mhcbs>. There is no charge for this service.
- 3.33 You can submit the evidence form yourself. Alternatively, once you have completed it, the relevant regulations also allow the individual, their carer, care co-ordinators, mental health nurses, social workers, independent mental health or mental capacity advocates, relevant person's representatives, approved mental capacity professionals or appropriate persons to submit the form. This is permitted in order to limit the administrative burden of the scheme on AMHPs wherever possible.
- 3.34 As the evidence form will contain sensitive personal information, it should always be handled in a manner that ensures appropriate security.
- 3.35 The evidence form should be sent to a debt adviser as soon as possible. Delay will mean that enforcement activity continues, and interest, fees and charges on the person's debts continue to grow while they are receiving crisis treatment.
- 3.36 A debt adviser will receive the form and carry out eligibility checks. If the individual is eligible for a MHCBS, the debt adviser will provide the relevant information to the Insolvency Service, the breathing space scheme administrator. The Insolvency Service will enter the individual's details onto a private register that they maintain for this purpose and send notifications to the nominated point of contact and the individual's creditors. The MHCBS will start on the following business day. It cannot be backdated.
- 3.37 The debt adviser will also contact the individual to confirm the actions that they are taking on the individual's behalf and how they will protect the individual's information.

# Chapter 4

## During a mental health crisis breathing space

### Protections

- 4.1 Creditors must not contact the person about their debts, and enforcement activity stops for the duration of their crisis treatment. Most interest, fees and charges on the debt should also stop.
- 4.2 Most debts are likely to qualify for inclusion, including (but not limited to) credit cards, store cards, personal loans, pay day loans, and arrears on utility bills.
- 4.3 Government debts such as tax and benefit debts are all likely to qualify, although Universal Credit advances and third-party deductions from Universal Credit are not included in the scheme at present, and there are some other specific exclusions (e.g. child maintenance, court fines).
- 4.4 A list of excluded debts is available in section 4.10 of the scheme guidance for money advisers, available at: [www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-money-advisers](http://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-money-advisers).

### Checking mental health crisis treatment is continuing

- 4.5 Between 20 and 30 days after the MHCBS starts, the debt adviser will attempt to contact the nominated point of contact. This is to check that the person's mental health crisis treatment is continuing.
- 4.6 If the person is still in crisis treatment, the nominated point of contact should tell the debt adviser this. They generally do not need to provide any other information about the person's case or their condition. They just need to confirm that the individual is receiving mental health crisis treatment. The debt adviser will make contact again within 20-30 days and repeat this contact for the duration of the person's crisis treatment. If the debt adviser comes into possession of information which gives rise to a reason to doubt whether an individual is receiving crisis treatment, the nominated point of contact may be asked to confirm details regarding the individual's continuing eligibility for a mental health crisis breathing space.
- 4.7 If the person is no longer in crisis treatment, the nominated point of contact should tell the debt adviser this. The debt adviser will remove the person from the Insolvency Service's register and the person's MHCBS will end after 30 days.

### If the person has other debts

- 4.8 The debt adviser's checks should help to ensure that most of a person's debts are identified and included in their MHCBS. Some debts are excluded

by law.

- 4.9 If new information about the person's debts comes to light during their MHCBS, these debts can be added and the same protections will apply. The nominated point of contact (or a carer or other representative) can provide this information directly to the debt adviser.
- 4.10 The debt adviser will check that the new debt qualifies before notifying the Insolvency Service about it. The Insolvency Service will notify the creditor, who should then apply the protections for the remaining duration of the MHCBS.

### If creditor action continues

- 4.11 The MHCBS should mean that creditors do not contact the person about their debts, and that enforcement activity stops for the duration of their crisis treatment, plus 30 days. The debts protected in the MHCBS should not increase (i.e. no new interest, fees or charges should be added).
- 4.12 The individual may still be contacted about their other bills and liabilities as they fall due. If they can continue to pay these bills, they should do so. A MHCBS is not a payment holiday.
- 4.13 If the individual or anyone else believes that a creditor is not applying the protections, the debt adviser can be notified directly. They will take action to remind the creditor of their obligations during a MHCBS and, where appropriate, may inform the Insolvency Service or other relevant authorities or regulatory bodies about the creditor's conduct.

### If the individual wants to know more about how their personal information has been shared

- 4.14 The diagram provided in Annex A may be helpful in explaining how the MHCBS works.
- 4.15 It is necessary to share personal information in order to identify as many of the individual's debts as possible, to make their creditors aware that the MHCBS is in place, and to ensure that those creditors can apply the protections.
- 4.16 The individual has a right to know about the way their personal information has been shared. If the individual is seeking more detailed privacy information, the AMHP or nominated point of contact should advise them that:
- The local authority, NHS trust or other organisation that employs the AMHP and/or nominated point of contact will have a privacy notice that should have been made available to the individual as part of their treatment. This privacy notice should clearly explain their use of the individual's data.
  - The debt advice provider (named in the notification sent to the nominated point of contact) will contact the individual to explain, among other things, how they will protect the person's data. They will also be able to help the individual if they want to know more about how their personal data is shared for the purposes of the MHCBS, including with creditors, their agents and credit reference agencies.

- The Insolvency Service, the scheme administrator, also provides a privacy notice online at:  
<https://www.gov.uk/government/organisations/insolvency-service/about/personal-information-charter>.
- Further information about data protection rights for individuals can be found on the Information Commissioners' Office website at:  
<https://ico.org.uk/your-data-matters/>.

## If the individual wants to complain

- 4.17 In providing evidence that a person is receiving mental health crisis treatment, the AMHP is not taking a decision about whether a MHCBS is appropriate for the individual or whether a MHCBS should be put in place. They are providing a certification of mental health crisis treatment, supported by their professional expertise. For this reason, complaints about the MHCBS should not be directed to the AMHP or to their employer.
- 4.18 If the individual is unhappy about any aspect of their MHCBS, there are several options for them:
- if the individual does not want the MHCBS to continue, they can request that it ends early by contacting the debt advice provider directly (the nominated point of contact will receive the debt advice provider's contact details). The debt advice provider will be able to cancel the MHCBS.
  - if the individual is unhappy about decisions the debt advice provider has made about their MHCBS, they can complain directly to the debt advice provider. If they remain unsatisfied with the response, they can complain to the Financial Ombudsman Service via their website at <https://www.financial-ombudsman.org.uk/consumers/how-to-complain>.
  - if the individual is unhappy about the way their personal information has been handled, they should first complain directly to the relevant organisation. If they remain unsatisfied, they have a right to raise their concerns with the Information Commissioner's Office via their website at <https://ico.org.uk/make-a-complaint/your-personal-information-concerns/>.
  - if the individual wishes to change their debt advice provider, they can be referred to another debt advice provider. The debt advice provider will be able to manage this if it is requested.
- 4.19 However, if the individual is unhappy about decisions that an AMHP or any other health or care professional has made about their care or their treatment, they are still able to complain using existing procedures.

## If the individual dies

- 4.20 In the unfortunate event that the individual dies during a MHCBS, the nominated point of contact should inform the debt advice provider. The MHCBS will end on the following day. The Insolvency Service will update the register and send a notification to all creditors. The individual's next of kin will still need to contact creditors directly, in the usual way.

# Chapter 5

## Ending a mental health breathing space

### Discharge from mental health crisis treatment

- 5.1 When the individual's mental health crisis treatment ends, the nominated point of contact should inform the debt adviser. The debt adviser will inform the Insolvency Service, who will update their register, and the MHCBS will end 30 days later. The nominated point of contact will receive a notification that this has happened.
- 5.2 If the nominated point of contact does not inform the debt adviser until after the individual's crisis treatment has ended, the debt adviser will ask for the date when the treatment ended. The MHCBS will end 30 days from that date.
- 5.3 If the nominated point of contact does not respond to the debt adviser's attempts to contact them, the debt adviser will record this. The MHCBS will end 30 days after the date of the debt adviser's last request.
- 5.4 The individual's details will remain on the Insolvency Service's private register for 15 months, before being deleted.
- 5.5 The debt adviser should try to help the individual access debt advice once their MHCBS ends, in order to help them to manage their debts in a sustainable way.
- 5.6 If the individual does engage with debt advice, they may be eligible for a standard breathing space. That would offer them a further 60 days of protection from creditor action, creating even more time for them to consider their options and find a sustainable way forward for their debts.

### Cancellation

#### By the individual

- 5.7 The individual can ask the debt adviser to cancel their MHCBS if they do not want it to continue (see paragraph 4.19).

#### By the debt adviser

- 5.8 A debt adviser can cancel a MHCBS where they consider that an evidence from contains inaccurate, misleading or fraudulent information.
- 5.9 Creditors can request a review of a MHCBS within 20 days on specific grounds set out in regulation 17. A debt adviser can cancel a MHCBS if they conduct a review at the creditor's request and find that the MHCBS either unfairly prejudices a creditor's interests, or that there has been an error in the application that would mean

the MHCBS is invalid (e.g. a person did not meet certain eligibility criteria, or had sufficient funds to pay their debts).

- 5.10 If the creditor has reason to believe that the debtor is not receiving mental health crisis treatment, they may be able to request such a review on grounds of material irregularity (i.e. on grounds that the debtor did not meet the relevant eligibility criteria when the application for the moratorium was made).

If a creditor gives the debt advice provider cause to doubt the debtor's eligibility, whether in a request for a review of the moratorium under regulation 17 or otherwise, the debt advice provider should consider whether it would be appropriate to seek clarification, further information or confirmation from the AMHP, to ensure that their declaration via the evidence form has been given on a sound basis. The AMHP should properly engage with the specific issue that has caused the debt adviser to doubt the debtor's eligibility for mental health crisis breathing space and ensure that the relevant statutory test (set out in regulation 28) is met. For further information regarding the Court's interpretation of that definition in *Kaye v Lees* [2023] EWHC 152, see <https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance-on-mental-health-crisis-breathing-space/mental-health-crisis-breathing-space-guidance-changes-following-2023-high-court-judgments>.

- 5.11 If the debt adviser does consider that a creditor's objection is valid, and it is necessary to cancel the MHCBS in respect of some or all of the breathing space debts, they will inform the Insolvency Service, who will notify the nominated point of contact and relevant creditors.

#### By the court

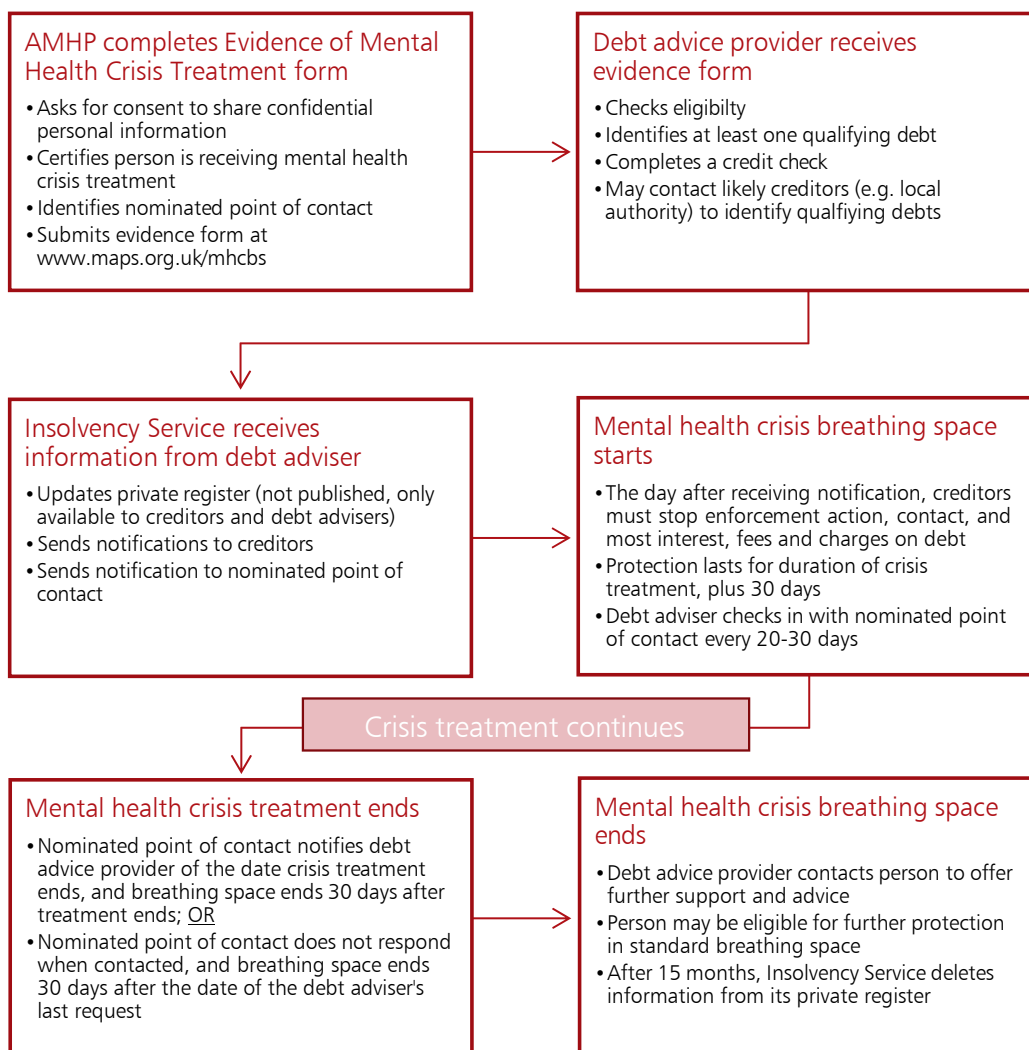
- 5.12 If the debt adviser does not cancel the MHCBS, and the creditor remains unhappy with the debt adviser's decision, the creditor can also ask a court to review whether a MHCBS should be cancelled, on the same grounds (unfair prejudice or material irregularity).
- 5.13 If the court decides to cancel the MHCBS in respect of some, or all, of the breathing space debts, they will inform the Insolvency Service, who will notify the nominated point of contact and relevant creditors.

# Annex A

## Mental health crisis breathing space: Information for individuals

A mental health crisis breathing space will help stop you being chased or charged fees and interest on your debts for as long as you are receiving crisis treatment, and for 30 days after your treatment ends. The aim is to create time and space for you to get the treatment you need, without having to worry about your debts growing or your creditors contacting you during your treatment.

### How the mental health crisis breathing space works



## How your personal information is shared

You will be asked if you consent to the sharing of your personal information. This is because healthcare professionals have a duty of confidentiality to you, their patient. This requirement is a separate requirement from the data protection obligations in the UK General Data Protection Regulation and Data Protection Act 2018.

The breathing space regulations and data protection legislation require all the organisations involved in the scheme to protect your personal information.

Once an evidence form is completed by an Approved Mental Health Professional (AMHP), it should be shared with a debt adviser using the dedicated online service provided by the Money and Pensions Service at <http://www.maps.org.uk/mhcbs>.

The debt adviser will share your information with other relevant organisations, including the Insolvency Service (as the breathing space scheme administrator), your creditors and their agents, and credit reference agencies in order to establish your financial situation and make sure your creditors know you are protected. The debt adviser will also contact you to tell you what they are doing on your behalf, and to tell you about how they will protect your personal information.

Your creditors will know that you are in a mental health crisis breathing space but will not be given any specific information about your condition or your treatment.

The debt adviser will try to contact you after your treatment ends, to offer you help to manage your debts. In some circumstances, you may be eligible for a further breathing space and the debt adviser can help you with this.

These organisations cannot provide a mental health crisis breathing space for you without having access to your personal information.

The Insolvency Service will tell your nominated point of contact when your mental health crisis breathing space starts and finishes. The Insolvency Service publishes a privacy notice online at: <https://www.gov.uk/government/organisations/insolvency-service/about/personal-information-charter>.

You have a right to know how your personal information has been shared in the scheme. If you want to know more about this, your nominated point of contact or your debt adviser can answer your questions and direct you to the relevant privacy notices.

More information about your data protection rights can be found on the Information Commissioners' Office website at: <https://ico.org.uk/your-data-matters/>.



HM Treasury contacts

This document can be downloaded from [www.gov.uk](http://www.gov.uk)

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