



## *The Money Charity response to HMT on Breathing Space scheme (Jan 2019)*

The Money Charity is the UK's leading financial capability charity.

We believe that being on top of your money means you are more in control of your life, your finances and your debts, reducing stress and hardship. And that being on top of your money increases your wellbeing, helps you achieve your goals and live a happier more positive life as a result.

Our vision is for everyone to be on top of their money as a part of everyday life. So, we empower people across the UK to build the skills, knowledge, attitudes and behaviours, to make the most of their money throughout their lives.

We believe financially capable people are on top of and make the most of their money in five key areas:

- Planning (including budgeting)
- Saving
- Debt
- Financial services products
- Everyday money (including wages, cash, bank accounts)

*The* **MONEY** *Charity*

The Money Charity (TMC) welcomes the opportunity to comment on HMT's consultation on the proposed Breathing Space (BS) and Statutory Debt Repayment Plan (SDRP) scheme. In our view the proposed BS and SDRP will be a valuable reform of the debt management framework in England, Wales and Northern Ireland,<sup>1</sup> giving debtors greater opportunities to manage their way out of problem debt. This response begins with general remarks then answers the questions asked in the consultation document. Please note that on page 6 below we answer an additional question in relation to ongoing liabilities during the BS (paragraph 4.4 of the consultation document).

## **1. Context: debt management and financial education**

The Money Charity delivers financial education workshops to young people and adults, including to adults identified as being in marginal or vulnerable situations, many of whom have experienced income and budgeting challenges and some of whom have been in serious debt necessitating specialist advice and intervention from the debt advice sector. Our workshops cover the essentials of budgeting, personal financial planning and the prioritisation of expenditure. From this perspective, we have an understanding of debt-related experiences and the UK's social and institutional framework for managing debt and seeking outcomes favourable to personal financial viability. While we are not specialist debt advisers, we are in close contact with those who are and wish to help achieve improved arrangements for the management of problem debt. We support the idea of a Breathing Space and SDRP. Our views on the design details are set out below.

There is one thing we would like to see added to the scheme, which is to include financial education as part of the SDRP. Research shows that adults tend to learn best at 'teachable moments'.<sup>2</sup> Escaping from problem debt is one such moment and the opportunity should be taken, as far as possible, to enable participants to acquire the skills to keep their budgets in balance and plan for the long term beyond the completion of the SDRP. We return to this point in our answers to Questions 16 and 26.

## **2. Answers to Consultation questions**

### **The Breathing Space**

#### **Question 1**

**Do you agree with the eligibility criteria for entering a breathing space, including the 12 month period?**

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<sup>1</sup> Similar to the established scheme in Scotland.

<sup>2</sup> See for example Nathalie Spencer and Jeroen Nieboer 2015, *Wired for Imprudence*, RSA.

We agree with the first two proposed criteria: 'access debt advice' and 'be assessed as being in problem debt by a debt adviser'.

We are not convinced by the third criterion: 'not have been in a breathing space in the previous 12 months.' This is because the proposed breathing space is quite short (60 days) and there are reasons other than abuse that could lead to a person making more than one application in a given year (eg the loss of casual employment or intensification family care responsibilities). It should be possible for a registered debt adviser to spot non-genuine attempts to make use of a BS.

## **Question 2**

**Do you think there should be a formal mechanism to allow creditors to object to a debtor's entry into a breathing space, given the protections already outlined above? How could any such mechanism be best designed to minimise administrative burden?**

We do not think there should be a creditor objection mechanism, for two reasons: (1) the proposed 60 day breathing space is quite short, and (2) any one creditor will not have a full picture of the debtor's financial position, so will not have the information to mount a well-informed objection. The need for a BS is likely to arise from the cumulative effect of a number of different debts to different creditors. This can only be assessed by the individual themselves or by an adviser made fully aware of that person's financial position.

## **Question 3**

**Do you agree with the outline of the alternative access mechanism for individuals in mental health crisis care?**

Yes, there needs to be a mechanism for quickly implementing a BS for people experiencing an acute mental health crisis. We support the mechanism proposed.

## **Question 4**

**Although it will be important for a professional assessment to be made of an individual's condition, do you agree that other third parties (e.g. carers) be permitted to use that professional assessment to make a referral to a debt advice agency on an individual's behalf?**

Yes. In a mental health crisis, a person may not be capable of self-referring to a debt advice agency and it makes sense to allow an associated third party to communicate the results of the professional assessment.

## Question 5

**Do you agree with the proposed method of administering entrance into breathing space? Do you agree with the proposed role for the Insolvency Service? What kind of functionality should the Insolvency Service's notification mechanism include?**

We agree with the proposed method and functionality of administering entrance. We understand the rationale for proposing that the Insolvency Service be the administrator, and we have no objection to the Insolvency Service playing this role, but we ask whether HMT has considered giving this role to the new Single Financial Guidance Body (SFGB). As the SFGB is supposed to be the government's lead agency on debt and money advice, it might be appropriate to give the SFGB this central administrative role. It would raise the profile of the SFGB and help consolidate its leadership position.

We note that there are several organisations with potentially overlapping responsibilities in this area – FCA, Insolvency Service, SFGB – so it would be good to have clarity regarding their respective roles.

## Question 6

**Do you think there should be an oversight role to ensure creditor compliance with breathing space? If so, how should this oversight role operate?**

As we understand it, certain things will automatically happen once a BS is implemented. For example, a debt would become unenforceable during the BS, so the creditor would not be able to pursue it via court action. We would also expect existing regulators to monitor implementation of the BS. For example, for financial firms, we would expect the FCA to include compliance with the BS in its conduct of business handbook and to ensure as part of its regulatory activities that firms are complying.

If these measures prove insufficient, government could consider creating an explicit offence of breaching the terms of a breathing space, so that non-compliant creditors could be prosecuted on the basis of a complaint made by a debtor or their debt adviser.

## Question 7

**Do you think the register holding details of debtors in a breathing space should be fully public, accessible to relevant debt advice agencies and creditors or just accessible to the Insolvency Service?**

The register should not be public, for two reasons: (1) there is enough shame and embarrassment involved in being in problem debt without adding to it by being named in a public register. Public naming would be a deterrent to accessing the protection offered

by a BS. We feel strongly that the privacy of the debtor should be protected. (2) To reliably identify a person from a public register, too much personal information would have to be posted. This would be a breach of privacy.

One of the roles of the administrator is to notify all creditors that the debtor is covered by a BS, so there is no reason for a creditor to have to check a public register. The register should be accessible only to the administrator. Debt advice agencies should be able to access the details of those clients whose details they have entered.

Although it is not made explicit in the consultation paper, we assume that one of the purposes of the register is to flag up potential double entries, ie if someone tried to establish a breathing space with one agency when they had already set one up with another agency.

### **Question 8**

**Do you agree with the proposed approach for excluding certain debts from the protections of breathing space?**

No, we think all debts should be covered by the protection of a BS. This is not an insolvency procedure, nor is the debtor having their debts written off. They are simply being given relief for a relatively short period of time. There is therefore no reason to exclude any debts.

Were there to be significant exceptions, as proposed in the consultation paper, much of the weight of debt would still be felt during the BS, so the intention of having a 'breathing space' would be largely frustrated.

What is being discussed here is the treatment of debts accumulated prior to the Breathing Space, not the obligation to meet current commitments, for example the payment of maintenance during the period of the BS, so we do not see any reason for special exceptions.

### **Question 9**

**Do you think there are other debts, such as those in regulated credit agreements, or certain types of benefits, that should be excluded?**

No. The BS should cover all debts, including those arising from regulated credit agreements and benefit payments. It may well be these debts that have led to the problem debt situation from which the BS is designed to provide temporary relief.

## Question 10

**Do you agree with the treatment of sole traders in breathing space? In particular:**

- **Do you agree with the proposed eligibility criteria and protections for sole traders in breathing space?**

We agree that the BS protections should be extended to sole traders below the VAT registration threshold, for the reasons set out in the consultation document. As with personal debts, we think that all debts accumulated before the Breathing Space should be covered by the BS, so that it is a genuine 'breathing space' in which finances can be reorganised.

- **What would be the most appropriate way of distinguishing between business and personal debts for these purposes?**

Assuming the sole trader has correctly filled in their tax return (or their accountant has done it for them) a distinction will have been made between deductible business and non-deductible personal costs, including *pro rata*-ing where required. A similar proportion could be applied to business versus personal debts.

In reality, sole trader personal and business finances are often so intertwined,<sup>3</sup> it is likely that a sole trader in problem debt will need BS protection for both business and personal debts (eg their house mortgage may apply to both), so the distinction may not matter much in practice.

### **Extra question: treatment of ongoing liabilities (paragraph 4.4)**

We note that the consultation paper proposes that the debtor keeps paying their ongoing liabilities during the BS, for example their current energy bill, and that if they fail to pay this, the creditor will be allowed to take enforcement action, including requesting that the debtor be removed from the BS.

We agree that debtors should continue to pay their ongoing liabilities during the BS. However we note that it is possible for a debtor to experience a complete break in income during the BS, which would make this impossible in practice. For example, a person could lose their job and get caught by the Universal Credit waiting period. In such cases forbearance will be required.

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<sup>3</sup> See for example, Money Advice Trust 2018, *Taking Care of Business*. Available at: <http://www.moneyadvicetrust.org/researchpolicy/research/Documents/Money%20Advice%20Trust%2c%20Taking%20Care%20of%20Business%2c%20November%202018.pdf>

## **Question 11**

### **Do you agree with the proposed treatment of interest, fees and charges in breathing space?**

Yes, we agree that all interest, fees and charges on debts covered by the BS should be prevented. This is a vital part of making a breathing space a reality. Were interest, fees and charges to continue to accrue, the period in question would no longer be a breathing space.

The consultation paper refers non-judgmentally to 'interest, fees and charges', but with some debts and some creditors, these can be exploitative and unfair on the debtor. As HMT will be aware, the FCA has introduced a cap on credit costs for payday loans and is currently scrutinising other forms of high cost credit, including overdraft charges. It is the compounding of interest, fees and charges that sometimes leads to the problem debt situation in the first place.

We recommend that HMT encourages FCA to continue scrutinising and taking action against unacceptably high cost credit, including interest, fees and charges that are excessive and breach the social norms of fairness.

## **Question 12**

### **Do you agree with the treatment of collections recovery action during breathing space?**

#### **Contacting a debtor (paragraph 4.7)**

We don't see the case for permitting advertising during a BS. It seems counter-intuitive, if not aggravating, for a creditor to be pushing further services to someone who already has unpayable debts to that creditor. With regard to other 'business as usual' communications, care should be taken that these are not interpreted as recovery action. Communications should acknowledge the BS and reassure the debtor that the communication is routine only.

#### **Court action (4.8)**

We agree that court action should be suspended or not begun during the BS. In relation to not withdrawing existing applications (paragraph 4.8), we assume that what is meant is not that the existing application will proceed, but that the Court will suspend action on the application without requiring it to be formally withdrawn.

For a BS to work, all court actions need to be suspended or not initiated.

### **Further enforcement action (4.9)**

Again, we feel the principle to be applied is that all enforcement actions should stop, including attachments of earnings, in order to make the BS effective. We don't see any burden in stopping and starting attachments, as such changes can now be made quickly via online and electronic banking. Similarly, we don't see why it would be necessary to hide a BS from an employer when the employer would already know the employee was in a difficult financial situation, due to the attachment order. The employer might actually be relieved to know that an employee is covered by a BS, as a BS will reduce the mental pressure on the employee and enable them to concentrate better on their job.

### **Should any other forms of collections and recovery action be explicitly included in the protections? How can any practical issues arising from preventing these collections and recovery actions be best mitigated?**

The best way to proceed is to establish the principle that all forms of collections and recovery action be suspended or not commenced during the BS. As the BS is relatively short, this should not give rise to significant practical issues.

### **Question 13**

#### **How should creditor compliance with the scheme be monitored?**

See our response to Question 6.

### **Question 14**

#### **Do you agree with the proposed length of breathing space? Do you have any other comments on the operation of the check?**

From discussions with our colleagues in the debt advice sector we believe the proposed 60 day BS is still short, given the number of things that need to happen during the BS to get a person into a financially manageable situation. We understand that some forms of debt solution take on average significantly more than 100 days to put in place.<sup>4</sup> We suggest that HMT look at the possibility of extending the period further, for example to three or four months, with the aim of enabling most debtors to reach a debt solution within the BS.

We are opposed to having a formal check half way through the BS (paragraph 4.12) as the design of a debt solution will necessitate more or less continuous communication between the debt advice agency and the debtor during the period of the BS. Were the

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<sup>4</sup> Information provided by StepChange.



breathing space longer (eg a year) we agree that formal check-points would be appropriate, but not for a period as short as the one proposed.

If the debtor were to break off cooperation during the BS, the debt advice agency would have the option of withdrawing the protection of the BS after giving the debtor appropriate notice and opportunity to re-engage.

#### **Question 15**

**Do you consider that this protection is appropriate for individuals in mental health crisis? Should there be any further protections for individuals who have accessed breathing space in this way?**

Yes, we agree that if treatment for a mental health crisis is still under way at the end of the BS, protection should be extended for the duration of the treatment. There is no point hounding someone who is not in a state to respond and, indeed, this would be likely to make their condition worse and reduce the chances of recovering the debt.

#### **Statutory Debt Repayment Plans (SDRPs)**

#### **Question 16**

**Do you agree with the eligibility criteria for entering a plan? In particular, do you agree that plans lasting for a maximum of ten years is an appropriate timeframe for debt repayment?**

We agree with the eligibility criteria proposed in section 6.0 of the consultation document, but would like to see a further criterion: willingness to undertake appropriate financial education when approaching the end of the SDRP. Debt advice (paragraph 6.1) is essential, but is not the same as broader financial education, which includes goal setting and the means to achieve financial and life aspirations. At the end of a SDRP, a person will have more disposable income, giving them the capacity to reach more of their goals, but also exposing them to risk. Broader financial education at this point, we believe, is a vital part of financial rehabilitation and will help set a person up for the next stage of their life.

Regarding the ten year limit, after discussion with our debt advice colleagues, we believe this should be interpreted as a guide rather than a fixed limit, as there can be variation around completing debt repayment plans. If people's financial situation improves, terms can also be shortened. Indeed, if a person improves their prospects through, for example, finding work or a better paid job, they may be very keen to shorten the term and exit their debts early.

On the other hand, if some flexibility is needed at the upper end, this should also be permissible.

### **Question 17**

**Do you agree with the proposed criteria for creditors to object to the plan? Are there any other criteria you feel would be appropriate?**

To avoid litigious delays to SDRPs, we suggest that the criteria be kept as tight as possible, with a focus on the feasibility of payment, given a person's financial capacity, rather than on the size of the debt.

The goal should be to establish a reasonable debt-exit plan in relation to a person's financial capacity, not to keep a person in a state of penury and debt servitude for the duration of the plan.

Should a person's financial situation improve significantly in the course of the plan, it is fair for some of their additional resources to be applied to paying off their debts. However, the plan should permit them to keep a reasonable part of their increased income, in order to incentivise further advance.

### **Question 18**

**Do you agree with the design of the proposed fair and reasonable test?**

Further to our answer to Question 17, creditors should not just be able to object, but should have to provide a reason for objecting, ie that the plan provides for payments that are unfairly low in relation to the debtor's financial capacity. The simple fact that payments are low should not be enough to sustain an objection, because the scale of payments will be related to the aggregate debt and the debtor's ability to pay.

**In particular:**

**Do you agree that 14 days is an appropriate timeframe for creditors to object to a proposed plan?**

This seems OK, though HMT may wish to clarify whether this is 'days' or 'working days.'

**Following an Insolvency Service decision that a plan is fair and reasonable, do you think that creditors and debtors should be able to make any further objection if they feel the Insolvency Service's decision is incorrect? If so, how should an objection mechanism work to minimise disruption and administrative burden for parties involved in the plan?**

No, or this could go round in circles forever. Should an extreme case arise, there is already a complaints mechanism for decisions made by the Insolvency Service, plus a potential appeal to an Ombudsman.

### **Question 19**

**Do you agree with the debts included within a plan? Should any other debts be excluded, or excludable on request?**

As with our answers to Questions 8 and 9, we believe that all debts should be included within the plan. SDRPs are not insolvency solutions, so insolvency exclusions are not appropriate in this case. Excluding certain debts in effect gives priority to the excluded debts and may lead to debtors' income being applied mainly to servicing these debts, reducing the rate of repayment under the SDRP. This is likely to aggravate creditors covered by the SDRP and lead to objections.

It is better to include all debts and make sure that the SDRP allows the debtor to make progress in a balanced way. If the aggregate debt in relation to a debtor's resources is too high, then it may be necessary for the debtor to transition to an alternative debt solution.

### **Question 20**

**Do you agree with the proposed treatment of interest, fees and charges within the plan?**

Yes.

As noted in our answer to Question 11, we believe there needs to be a broader review of interest, fees and charges as these are sometimes set at unfair rates and can themselves be the cause or trigger for a personal debt crisis.

We recommend that HMT encourages FCA to continue scrutinising and taking action against unacceptably high cost credit, including interest, fees and charges that are excessive and breach the social norms of fairness.

### **Question 21**

**Do you agree with the proposed protections within a plan? Are there any unintended consequences that could arise from providing these protections to debtors?**

Yes, we agree that all punitive and recovery action should stop. The purpose of an SDRP is to bring about an orderly exit from debt, which would be contradicted by the pursuit of punitive and recovery actions.

#### **Question 22**

**How do you think creditor compliance with the scheme's protections can be best monitored? Should creditors who fail to comply face any additional sanction?**

As noted in our answers to Questions 6 and 13, as we understand it, certain things will automatically happen once an SDRP is implemented. For example, the creditor will not be able to pursue debts covered by the SDRP via court action. We would also expect existing regulators to monitor implementation of SDRPs. For example, for financial firms, we would expect the FCA to include compliance in its conduct of business handbook and to ensure as part of its regulatory activities that firms are complying.

If these measures prove insufficient, government could consider creating an explicit offence of breaching the protections given by an SDRP, so that non-compliant creditors could be prosecuted on the basis of a complaint made by a debtor or their debt adviser.

#### **Question 23**

**Do you agree that some debts should be prioritised for repayments within the plan? If so, do you agree with the debts that the government proposes to prioritise, and the method of prioritisation?**

Yes, the proposed prioritisation matches the guidance given by ourselves in financial education workshops and, as we understand it, the advice given to individual debtors by debt advice agencies.

#### **Question 24**

**Do you agree with the two key plan flexibilities outlined? Should the plan offer any other flexibility that would help to make them sustainable over time?**

Yes, we agree with the flexibilities proposed in paragraph 7.6 (annual review and possibility of a payment break in the case of a severe but temporary financial shock.)

#### **Question 25**

**Do you have any specific comments about how these flexibilities should work? In particular, how do you think a severe, temporary, financial shock should be defined?**

It is hard to write definitions that cover all potential circumstances. We suggest a wording that focuses on the intention of the provision, eg “A shock that significantly affects the ability of the debtor to meet the terms of the plan, but from which there is a reasonable likelihood the debtor will be able to recover.”

#### **Question 26**

##### **Do you agree with the requirements for continued eligibility for the plan?**

We agree with the eligibility requirements set out in the consultation document (paragraph 7.9) but would like to add a further requirement: that the plan participant undertakes appropriate financial education toward the end of the SDRP. As noted in our answer to Question 16, it is important that people in problem debt not only exit from their debts, but gain the skills of long-term personal financial management, including a positive approach to achieving life goals, which are likely to include skills acquisition and income growth as well expenditure control and savings. We find in our workshops that it is the focus on life goals that is the most engaging aspect of financial education, and the aspect that is most likely to motivate change.

#### **Question 27**

##### **Should the plan’s funding mechanism system be based on taking a share of creditors’ monthly repayments?**

It is not quite made explicit in the consultation document, but we assume the intention of paragraph 8.3 is that the ultimate incidence of the fees falls on the creditors. This is how the Fair Share system that funds StepChange works and this seems right to us.

#### **Question 28**

##### **How should payment distribution in the plan be done? Should it be offered by an individual’s debt advice agency, if they have appropriate handling client money permissions, or by the Insolvency Service, or is there any other model that the government should consider?**

Current practice involves debt advice agencies distributing the monies arising from the plans they set up and we think this should continue. We disagree with the option of transferring payment distribution to a central agency.

#### **Question 29**

##### **Do you have views on how a breathing space and plan should be reflected on a debtor’s credit file?**

It seems unavoidable to us that a BS will be reflected in a debtor's credit file, but the fact that a person is pursuing a structured response through a BS or SDRP should have a less negative effect on their credit rating than if they were in problem debt in an unstructured way.

**Question 30**

**Do you agree with the proposed territorial scope of the scheme?**

The Money Charity is active in Northern Ireland as well as in England and Wales and we agree that it would be desirable for the BS and SDRP to extend to Northern Ireland.

(end)