

The Debt Respite Scheme and its implications for creditors

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This is a new piece of legislation that is designed to give those in debt "breathing space" from their creditors. The legislation applies to individuals in debt and not businesses. There are two strands to the proposed legislation - "standard breathing space" and "mental health crisis breathing space".

Standard breathing space

Standard breathing space is available to any individual with a problem debt and could legally protect them from any creditor action for up to 60 days. The protection includes pausing any court proceedings, enforcement action and contact from creditors. It also incorporates freezing most interest and charges on their debts.

To obtain standard breathing space, a debtor will be required to approach a Debt Advice Provider, someone who is authorised by the Financial Conduct Authority to offer debt counselling, or their local authority if they provide debt advice service to residents.

There are certain criteria a debtor will need to meet for standard breathing space, although the threshold appears low. The eligibility requirements are:

- you are an individual (as opposed to a business)
- you have a debt
- you live or usually reside in England or Wales
- you do not have a debt relief order, an individual voluntary arrangement, an interim order, or are an undischarged bankrupt at the time of the application, and
- you must not already have had standard breathing space in the last 12 months prior to applying.

The debt advisor must also be satisfied that the individual cannot, or is unlikely to be able to, repay all or some of their debt and breathing space is appropriate for the individual.

Mental health crisis breathing space

Mental health crisis breathing space is similar to standard breathing space save for two differences. Firstly, a debtor must meet an additional requirement of receiving mental health crisis treatment - an approved mental health professional needs to certify that the debtor is receiving mental health crisis treatment. The second difference is that the "breathing space" continues until 30 days after the mental health crisis treatment stops. The length of the treatment does not affect this period.

Excluded debts

All personal debts and liabilities are qualifying debts, with the exception of the following:

- Secured debts
- Debts incurred from fraud or fraudulent breach of trust
- Liabilities to pay fines imposed by a court for an offence
- Obligations from a confiscation order
- Child maintenance or obligations under an order made in family court proceedings
- A crisis or budgeting loan from the social fund
- Student loans
- Damages they need to pay for death or personal injury caused to someone else
- Advance payments of Universal Credit
- Council tax liabilities that have not yet fallen due

Appealing against breathing space

A creditor can make an application to end breathing space if they believe, or have evidence to suggest, the debtor has assets that could be sold off to satisfy the debt. The first point of action should be to contact the Debt Advice Provider acting on behalf of the debtor. If that does not yield results then an application to the court can be made. However, creditors will want to consider if it is economical to make an application given the standard breathing space only prevents action for up to 60 days.

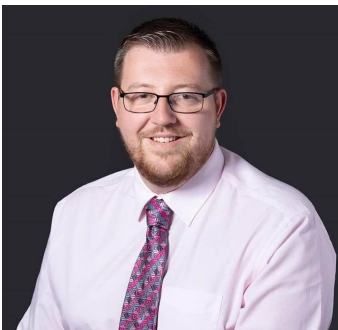
What does this mean for creditors?

The legislation will prevent creditors from chasing or taking action, be that litigation, bankruptcy petitions or enforcement action, to recover debt whilst the debtor has the benefit of “breathing space”. If limitation for pursuing a debt falls within the “breathing space” then limitation will be extended for a period of 8 weeks after the “breathing space” ends.

It is unclear at this stage how frequently this new legislation will be used by debtors when it comes into force but we anticipate it might become the stock response from problem debtors when creditors seek repayment of debts. It will also be interesting to see what checks are conducted by Debt Advice Providers and how thorough they will be as to the individual’s capability to pay a debt before granting breathing space.

Clients and creditors should keep a careful eye on debtors who may use the breathing space as an opportunity to conceal or dissipate any assets they may have that they haven’t disclosed to a Debt Advice Provider. Performing your own checks on a debtor’s assets before pursuing a debt may therefore be advisable.

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