





The content

Debt Advice Handbook 15th edition

Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?

It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?

The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?

Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

Properties

Author(s):
CPAG

This content was last updated:
2025-06-26

Print publication date
Feb, 2024

Print ISBN
978 1 915324 11 5

5. Debt respite schemes

Breathing space scheme

Standard breathing space moratorium

Eligibility

Mental health crisis moratorium

The role of the debt adviser

Initiating a breathing space moratorium

Non-disclosure of client's address

Creditor request for review

Adviser's midway review

Creditor non-compliance

End of the moratorium

Statutory debt repayment plans

Breathing space scheme

Standard breathing space moratorium

Eligibility

Mental health crisis moratorium

The breathing space scheme is a debt respite scheme that aims to do one or more of the following, as required:

- protect indebted clients from further interest or charges accruing on their debts for a period specified in the scheme (known as the 'moratorium');
- protect clients from enforcement action by their creditors during that period;
- enable clients to get advice on available debt solutions and/or put an appropriate debt solution in place.

The scheme was introduced on 4 May 2021 under the Financial Guidance and Claims Act 2018. Those provisions are given effect to by the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (DRS Regs). These are supported by guidance for money advisers and creditors respectively, which is at gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance. This is currently the only version of the guidance published by the Insolvency Service and will always be the most up-to-date version. The breathing space topic page now provides the date of the latest update and includes a summary of that and previous updates. The *Guidance for money advisers* is a useful resource for any queries you may have about the scheme. If your query relates to any action being taken by a creditor who has been included in a breathing space, you should check to see if this is covered in the *Guidance for creditors* as you can then draw this to the creditor's attention which may, in turn, resolve the issue. Practical information and resources for debt advisers advising on breathing space and the mental health crisis moratorium is available online from Shelter's Specialist Debt Advice Service at england.shelter.org.uk/professional_resources/debt_advice/resources_for_debt_advisers/breathing_space_resources. The Insolvency Service administers the scheme.

This scheme marks a new departure in the role of the debt adviser. In addition to acting as 'gatekeeper' to the scheme (a role with which debt advisers have become familiar since the

introduction of debt relief orders (DROs) in 2009), a debt adviser is also required to take steps that have not traditionally been part of an adviser's role or of the adviser–client relationship. Such steps may include deciding whether a client's address should be disclosed to creditors, deciding the outcome of creditor objections and reviewing whether or not the breathing space moratorium should continue at the midway point. It may be advisable for your organisation to have processes in place for such decisions to be reviewed by another adviser or a supervisor as a matter of course.

The scheme is, in fact, two schemes:

- the breathing space moratorium (the standard breathing space); *and*
- the mental health crisis moratorium.

Both schemes have features in common but each scheme has some features that do not apply to the other scheme. ¹

¹ See P Godden, 'Breathing space', *Quarterly Account* 59, IMA and L Charlton, 'Breathing space - a guide for advisers', *Adviser* online, 8 March 2021

Standard breathing space moratorium

A standard breathing space is a moratorium that provides a client with legal protection from creditor action for up to 60 days. The protections include a pause on most enforcement action by, and client contact from, creditors and a freeze on most interest and charges that would otherwise have accrued on the debts included in the moratorium. The purpose of entering into a breathing space moratorium is to:

- give a client time to obtain debt advice if they have not already done so;
- consider the options for dealing with their debts; *and/or*
- put a debt solution in place.

To enter a standard breathing space moratorium, the client must first get advice from a debt adviser who is Financial Conduct Authority (FCA) authorised or who works either for a debt advice provider who is FCA authorised or for a local authority. A client can only set up a standard breathing space moratorium through a debt adviser approved as above. A debt advice provider must not charge a client a fee for setting up a moratorium. A moratorium must be reviewed by the adviser at the midway point (ie, between days 25 and 35) to assess whether it is appropriate for the moratorium to continue for the remainder of the 60-day period.

Effect and consequences of moratorium

On being notified by the Insolvency Service of the start of a breathing space moratorium, a creditor is required to stop applying interest, fees, penalties or charges in relation to any debt that has been notified to it as being included in the moratorium (known as 'moratorium debts') for the duration of the moratorium (although a person who is jointly liable for the debt with the client can still be charged interest and fees that accrue during the moratorium). If, because of an automated process, a creditor cannot stop these charges from continuing to accrue, the creditor may not require the client to pay these either during or after the end of the moratorium.

Creditors must also stop any enforcement action in relation to the recovery of a moratorium debt, including by any debt collector or other agent appointed by them to recover their debts, unless they obtain special permission from the court to take enforcement action. Prohibited enforcement in relation to a moratorium debt, including (unless the creditor has obtained the special permission of the court referred to above ¹) against a person who is jointly liable for a moratorium debt with the client (but *not* a guarantor of a moratorium debt) even if they have not entered into a breathing space moratorium themselves, includes:

- taking steps to collect a debt; ²
- taking steps to enforce a court order or judgment; ³
- enforcing any security held for the debt;
- obtaining a warrant or writ;
- obtaining a liability order;
- starting any action or legal proceedings (including bankruptcy proceedings);
- applying for a default judgment in a money claim;
- taking steps to install a pre-payment meter and using a pre-payment meter to take payments unless the client gave permission for it to be installed before the start of the moratorium;
- taking steps to disconnect a client's fuel supply;
- taking, or serving a notice to take, possession of the client's property for rent arrears. **Note:** that does not apply to other grounds for possession. ⁴

Enforcement also includes an enforcement agent (bailiff) taking control of, or selling, a client's goods unless the enforcement agent has removed them and secured them elsewhere before the start of the moratorium. In such a case, the goods may be sold during the moratorium and the costs of sale deducted from the proceeds. However, storage fees accrued during the moratorium cannot be charged either during or after the moratorium. In addition, an enforcement agent may not:

- give notice to the client about taking control of goods;

- visit the client's property to take control of goods;
- take control of goods.

Generally, neither a creditor nor their agent may contact a client regarding enforcement of a moratorium debt during a breathing space moratorium, including demanding payment, but may contact a client:

- for reasons not related to a moratorium debt – eg, ongoing liabilities or non-eligible debts;
- to respond to a query or complaint sent by the client;
- about any action or legal proceedings a court has allowed to continue during the moratorium;
- when this is required under the Consumer Credit Act 1974 – eg, notices of sums in arrears.

On being notified of a breathing space moratorium, a creditor must notify any court where an action is pending against the client that a breathing space moratorium is in force. HM Courts and Tribunals Service (HMCTS) has published guidance to creditors on their responsibilities under the scheme at gov.uk/guidance/debt-respite-breathing-space-scheme-creditors-responsibilities-to-the-court. For a standard breathing space, HMCTS says that any scheduled hearing relating to enforcement will be adjourned until at least 14 days after the end of the moratorium. Any scheduled eviction will be suspended until at least 14 days after the end of the moratorium (any application by the client to suspend the eviction will be dealt with after the end of the moratorium but before the date set for the eviction). In the case of a mental health crisis breathing space, the case will be reviewed by a judge once it has been adjourned (or, in the case of an eviction, suspended) for more than six months.

A court may give a creditor permission to take specific enforcement action against a client during a breathing space moratorium if the court considers that it:

- is reasonable to do so; *and*
- will not be detrimental to the client (**'detriment'** should be given its ordinary meaning and should be material – ie, something more than minimal ⁵); *or*
- will not significantly undermine the protections of the breathing space moratorium. ⁶

A new rule 60A of the Magistrates' Courts Rules 1981 enables councils to apply to a magistrates' court for permission to enforce council tax arrears. A new Practice Direction 70B has been added to the Civil Procedure Rules relating to applications to be made in the High Court and county court. Applications must be made on notice in Form N244C to the client, any joint debtor and the debt advice provider. HMCTS has published guidance on making applications to the court in relation to a breathing space moratorium at gov.uk/guidance/applying-to-the-court-as-a-creditor-of-a-debt-in-a-breathing-space.

The court must notify the client if any such order is made. Otherwise, any court notified of a

moratorium must stay any pending bankruptcy proceedings against the client during the period of the moratorium (nevertheless, this appears to be subject to the court's power to allow a creditor to continue with bankruptcy proceedings begun before the start of the moratorium period) ⁷ but may allow other proceedings about a moratorium debt to continue up until the point the court makes a judgment. ⁸ A creditor may enter judgment on the client's admission during a moratorium but may not enter judgment in default. Other than as above, the court must ensure that no enforcement action continues during the moratorium.

The following are not affected by a breathing space moratorium:

- a charging order made before the start of the moratorium (but a creditor cannot apply for an interim charging order made before the moratorium to be made final during the moratorium, and the client's time for responding to an interim charging order is suspended until the end of the breathing space; the creditor can neither apply for nor take steps to enforce an order for sale during the moratorium); ⁹
- an attachment of earnings order made before the start of the moratorium;
- a direct earnings attachment in which the DWP served the deduction notice before the start of the moratorium;
- third-party deductions made from the client's universal credit (UC) under regulation 60 of the The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013.

The DWP has confirmed that third-party deductions for ongoing liability for rent, utilities and water charges from legacy benefits or UC will continue during a moratorium even when the client has included arrears of these liabilities in a breathing space. According to the Insolvency Service, new third party deductions cannot be taken from UC during a breathing space moratorium without the permission of the court: see regs 7(7)(a) and 7(11) DRS Regs 2020. Third-party deductions from legacy benefits for debts included in a breathing space must be suspended (including debts owed to the DWP itself, but not debts incurred through fraud as these are non-eligible debts (see here)). The DWP has confirmed that deductions from both legacy benefits and UC for non-fraudulent benefit overpayments included in a breathing space should be suspended and you should contact debt management if this does not happen. However, as the DWP will not be contacted about debts owed to other creditors, creditors need to notify the DWP and request that deductions are paused during the moratorium and then request they are restarted at the end, if appropriate. **Note:** third-party deductions from UC for ongoing liabilities and arrears included in a moratorium (including council tax arrears) are not currently affected by a breathing space but this position is expected to change at some point.

Client's duties during moratorium

Clients must comply with certain requirements both before a breathing space moratorium is

initiated and during the moratorium itself. The client should be advised that they are required to:

- take reasonable care to provide you with accurate information; *and*
- not deliberately withhold relevant information.

Also advise the client that during the moratorium they are required to:

- inform you of any material changes in their circumstances or financial position; *and*
- make any payments due in relation to any ongoing liabilities (see below); *and*
- not obtain any additional credit either individually or jointly with another person that exceeds a total of £500 at any point (according to the guidance this would include an overdraft); *and*
- engage with you in a way that you consider to be appropriate – ie, cooperate in the process. 10

Paragraph 7.3 of the Insolvency Service's *Guidance for money advisers* states as follows:

Breathing space is not a payment holiday. While creditors cannot enforce a breathing space debt during the breathing space or charge fees on it, your client is still legally required to pay their debts and liabilities. During the breathing space clients should still continue to pay any debts and liabilities they owe and creditors can continue to accept these payments.

In advising clients, you should follow the usual debt advice process and, in particular, the importance of maintaining their priority payments, the consequences of not doing so as well as the consequences of not making contractual payments towards their non-priority creditors. However, the client should be advised that if those debts defined as ongoing liabilities are not paid, the continuation of the moratorium for the full 60 days could be at risk (see here).

An '**ongoing liability**' is defined as:

- a mortgage or secured loan secured on the client's primary residence;
- a lease, tenancy or occupation contract of the client's primary residence;
- an insurance agreement;
- any taxes, duties and national insurance contributions;
- local authority taxes – ie, council tax and non-domestic rates;
- water, sewerage, electricity, gas, heating oil or solid fuel bills.

The above does not include any arrears accrued prior to the start of the moratorium.

Note: if a client cannot pay all of their ongoing liabilities because they have a deficit budget, this does not prevent them from entering into a breathing space.

Elsewhere in paragraph 7.3, the Insolvency Service guidance suggests that, when there is a

controlled goods agreement in place with an enforcement agent in relation to a moratorium debt, the client should continue to make the agreed payments. Although no enforcement action may be taken during the moratorium, at the end of the moratorium any unpaid instalments can be treated by the enforcement agent as a breach of the repayment plan and, therefore, a default. (**Note:** if the 12-month time limit for the enforcement agent to take control of goods under the Taking Control of Goods Regulations 2013 expires during the moratorium, that period is extended by eight weeks from the end of the moratorium.) Similar considerations apply to rent or mortgage arrears subject to a suspended possession order included in a breathing space. While the landlord or mortgage lender could not take steps to enforce the suspended possession order during the moratorium, clients should be advised that not maintaining payments under that suspended possession order could lead to action for breach of the order once the moratorium ends. Paragraph 8.1 of the guidance confirms that once creditors have been notified of the end of the moratorium they can 'take any action to enforce their debt' and 'resume legal proceedings against your client regarding the debt'.

1 See, for example, *Brake v Guy & another* [2022] EWHC 2797 (Ch)

2 However, in *Carter v Davies* [2024] EWHC 1536 (Ch), where a bankruptcy order had been made in ignorance of a standard breathing space moratorium in respect of a creditor's petition issued before the start of the moratorium, although the High Court accepted that the petition should have been stayed under Reg 10(2)(a) DRS Regs and, therefore, the bankruptcy order should not have been made, it refused to allow an appeal seeking to annul that bankruptcy order on the ground that the court retained the discretion not to annul it. An argument that the bankruptcy order was null and void under Reg 7(12) DRS Regs was also dismissed: Reg 7(12) did not apply to Reg 10(2)(a). In *Seculink Ltd v Forbes* [2024] EWHC 3339 (Ch) the court held that no court permission was required to continue with existing proceedings to the point of a court order or judgment as this was not an enforcement step for the purpose of Reg 7(7) and was allowed under Reg 10(3). See paras 100 - 108.

3 In *Bluestone Mortgages v Stoute*, County Court at Canterbury, 04.03.24 (unreported), where the creditor had obtained a possession order on the ground of mortgage arrears and Mr S had entered a mental health crisis moratorium, the Court held that, although only the arrears were a moratorium debt, a warrant of possession was still enforcement 'in respect of' a moratorium debt. The arrears could not be separated from the capital element; it could not be argued that enforcement was only in respect of the non-eligible part of the debt. BM needed permission to enforce their possession order. Bluestone appealed the decision. The High Court dismissed the appeal. A possession order on the grounds of mortgage arrears could not be enforced during a breathing space moratorium without the permission of the court. This was a 'mixed judgment'. Although the mortgage debt was a non-eligible debt, the mortgage

arrears were a qualifying debt. The proceedings were, therefore, 'relating to or in consequence of non-payment of a moratorium debt' (reg 7(7)(f) DRS Regs 2020) [2025] EWHC 755 (Ch)

4 Reg 7(7) DRS Regs

5 See *Kaye v Lees* [2022] EWHC 3326 (KB), para 31

6 In *Yianni v Paliouras* [2024] EWHC 1301 (Ch) the creditors applied for permission to carry on with bankruptcy petitions issued before joint debtors applied for successive breathing space moratoria. The court accepted the creditor's submission that these provisions were not engaged because they related only to 'starting' legal proceedings and not the continuation of proceedings

7 See *Yianni v Paliouras* [2024] EWHC 1301 (Ch) discussed in the 'Caselaw and important decisions' section of Shelter's SDAS ebulletin, July 2024

8 However, in *Carter v Davies* [2024] EWHC 1536 (Ch), where a bankruptcy order had been made in ignorance of a standard breathing space moratorium in respect of a creditor's petition issued before the start of the moratorium, although the High Court accepted that the petition should have been stayed and, therefore, the bankruptcy order should not have been made, it refused to allow an appeal seeking to annul that bankruptcy order on the ground that the court retained the discretion not to annul it. An argument that the bankruptcy order was null and void under Reg 7(12) DRS Regs was also dismissed: Reg 7(12) did not apply to Reg 10(2)(a)

9 See *Lees v Kaye* [2022] EWHC 1151 (QB)

10 Reg 16 DRS Regs

Eligibility

To be eligible for a standard breathing space moratorium, a client must meet the following conditions:

- be an individual owing at least one qualifying debt to a creditor;
- live or usually reside in England or Wales;
- not have a DRO, individual voluntary arrangement, interim order or be an undischarged bankrupt; *and*
- not be subject to a breathing space moratorium (including a mental health crisis moratorium); if they have previously been subject to a standard breathing space moratorium, that moratorium must have ended more than 12 months ago. **Note:** if a client has previously entered into a standard breathing space moratorium which was cancelled, the client is still regarded as having been subject to it and so it must be taken into account for the purpose of this condition.

You can search the Breathing Space Register maintained by the Insolvency Service to establish whether the client has, or previously had, a breathing space moratorium. This information is held for 15 months after any moratorium ended. **Note:** the Insolvency Service's money adviser portal does not raise an alert if a client is entered into a breathing space moratorium who has already had a moratorium in the previous 12 months. The responsibility for checking client eligibility lies with you, the debt advice provider. The Insolvency Service does not actively check the register.

Qualifying debts

Any debts included in the breathing space moratorium as moratorium debts must be 'qualifying debts'. Most of a client's debts are likely to be qualifying debts – eg, non-priority credit debts, government debts such as tax and benefit overpayments, mortgage arrears, rent arrears, guaranteed loans (although the guarantor would need to apply for their own breathing space moratorium if eligible).

While some business debts are qualifying debts, they do not qualify if the client is VAT registered or is a partner in a business with another person and the debt relates solely to the business. According to paragraph 4.11 of the Insolvency Service's *Guidance for money advisers*, council tax liabilities that have not yet fallen due are not qualifying debts. The outstanding liability for the remainder of the year is not a qualifying debt unless the local authority has served a reminder notice on the client. Any council tax instalments that have already fallen due and have not been paid are a qualifying debt. Paragraph 4.10 of the guidance includes overdrafts in the non-exhaustive list of qualifying debts, but with no distinction between historic overdrafts and overdrafts currently in use. You should consider this issue with particular care, especially the need for clients to have a 'safe' bank account (see here). Penalty charge notices enforceable in the county court (see here) are qualifying debts and councils must not register them at the Traffic Enforcement Centre during a breathing space moratorium. Councils also must not apply for a warrant of control or allow enforcement of an existing warrant of control to continue during a moratorium without the permission of the county court (see here). TV licence arrears can be included but not ongoing payments. During breathing space, TV Licensing suspends mailings and visits, but not prosecutions, unless the client is engaging with the post-interview process following an earlier visit (see here).

In the case of joint debts, both parties are protected from enforcement action by a breathing space moratorium, even if only one applies (but a guarantor is not protected by a borrower's moratorium). However, it should be noted that, just as a creditor can apply to the court for special permission to enforce a debt against a client who has applied for a breathing space moratorium, the creditor can apply for permission to enforce a joint debt against a joint debtor (see here).

Excluded debts

The following debts cannot be included in a standard breathing space moratorium (**note:** the list includes debts that would be excluded debts in a bankruptcy or DRO but is actually a wider list):

- secured debts, including not only mortgages and secured loans but also hire purchase and conditional sale agreements (**note:** arrears of secured debts can be included); ¹
- debts incurred through fraud;
- fines;
- obligations under confiscation orders;
- obligations arising out of an order made in family court proceedings or child maintenance;
- crisis or budgeting loans from the social fund;
- student loans;
- a liability to pay damages for causing death or personal injuries;
- advance payments of UC;
- any liability for council tax or non-domestic rates that has not yet fallen due.

It has been held that, in ordinary language, a **'debt'** is a liquidated sum that is due and owing and that this is also its meaning for the purpose of the Debt Respite Scheme Regulations. It follows that a contingent liability is not a qualifying debt and so cannot be included in a moratorium. The existence of a moratorium does not prevent the creditor from taking steps to liquidate the debt during the moratorium, but it has also been held that such a debt cannot then be included in a moratorium as an 'additional debt' (see below) and so cannot have the protections a moratorium provides to a moratorium debt (see above). ²

Other conditions

Before initiating a standard breathing space moratorium, you need to be satisfied that:

- the client is unable, or is likely to be unable, to repay some or all of their debts as they fall due; *and*
- a breathing space moratorium would be appropriate.

In considering the appropriateness of a breathing space moratorium, the regulations require you to take into account the following, namely whether:

- the client has sufficient funds or income available to them to pay their debts as they fall due; *and*
- the client would benefit from entering into a debt solution; *and*
- the client would be eligible to enter into a debt solution either during the moratorium or as soon as possible after it ends; *and*
- a breathing space moratorium is necessary for you to assess which debt solution would be appropriate, to advise your client on an appropriate debt solution or to put a debt solution in place. ³

Also consider whether the client can access a debt solution immediately without needing a breathing space moratorium or whether any debt solution they currently have in place is the appropriate solution. Bear in mind that there is no discretion to exclude a qualifying debt from a moratorium.

1 The Court of Appeal has now upheld that decision. Whilst acknowledging that the reference to 'arrears' in Regs 5(4)(a) and 7(9) and the definition in Reg 2(1) are 'at the very least' ambiguous, the Court of Appeal held that the principal sum of secured debt - whether or not called in prior to the commencement of the moratorium - is non-eligible debt and thus neither a qualifying nor a moratorium debt: *Forbes v Interbay Funding, Forbes v Seculink Ltd* [2025] EWCA Civ 690. See, in particular, para 54

2 *Axnoller Events Ltd v Brake & another No.1* [2021] EWHC 1500 (ch), para 22; *Axnoller Events Ltd v Brake & another No.2* [2021] EWHC 2308 (Ch), paras 56-61

3 Reg 24(5) DRS Regs

Mental health crisis moratorium

A client receiving mental health crisis treatment can access a mental health crisis moratorium provided an Approved Mental Health Professional (AMHP) has certified that the client is receiving such treatment and provided they are otherwise eligible. AMHPs are mental health professionals approved by local authorities. The client's GP cannot provide the necessary evidence. The AMHP must provide the evidence on a prescribed form, which you should check to ensure it is valid and contains the required information. 'Mental health crisis treatment' is defined in the regulations. ¹

It is not necessary to offer advice to the client or someone who is representing them about whether a mental health crisis moratorium is suitable, but you may choose to do so.

The eligibility conditions for a mental health crisis moratorium or previous standard moratorium are the same as those for a standard moratorium (see here), except that a previous mental health crisis moratorium or standard moratorium is not a bar to initiating a new mental health crisis moratorium. The list of qualifying and excluded debts is the same as for a standard moratorium (see here and here).

Before initiating a mental health crisis moratorium, you must be satisfied that:

- the client is unable, or is unlikely to be able, to pay some or all of their debts as they fall due; *and*
- a mental health crisis moratorium would be appropriate; *and*

- an AMHP has provided evidence that the client is receiving mental health crisis treatment.

The regulations do not provide any additional criteria to be considered when assessing appropriateness other than whether the client has sufficient funds or income to pay their debts as they fall due.

The High Court has stated that the pro forma Evidence of Mental Health Crisis Treatment produced by HM Treasury for AMHPs to complete does not provide sufficient evidence that the client is in receipt of mental health crisis treatment in a case in which the creditor was challenging this as part of a review application. This was because section 2 of the pro forma contains merely an assertion to this effect but nothing the court could evaluate. Although it has not been suggested that debt advice providers should be assessing their clients' mental health, the courts seem to be saying that it is not sufficient for debt advice providers to confine themselves to obtaining the information in the completed pro forma; they should go further: '... it is essential that evidence that establishes whether a debtor is receiving mental health crisis treatment – ie, that one or other of the conditions in regulation 28(2) is met is clear, considered and reliable. This is especially so when the matter rests on the application of regulation 28(2)(e)... Although debt advice providers will not be in a position to second guess medical evidence, they must ensure the evidence they have is cogent'. ²

In a subsequent case, again involving the Kaye and Lees parties, the judge pointed out that the DRS Regs 2020 require a focus on 'mental health **crisis**': 'It follows that the fact that an individual has a long-standing mental health condition or is in receipt of regular mental health treatment in an acute or community setting will not usually be sufficient, of itself, to amount to evidence that the debtor is receiving mental health **crisis** treatment. ...Debt advice providers should thus ask themselves whether the evidence from the AMHP genuinely shows that the debtor is in mental health crisis as opposed to receiving regular or on-going treatment for a mental health condition'. ³

HM Treasury's *Guidance on mental health crisis breathing space* (MHCBS) (which you can view at tinyurl.com/4cjb5sak) is aimed at health and care professionals. It states that: 'It may be very difficult to engage with debt advice while receiving mental health crisis treatment' (paragraph 1.2). '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' (paragraph 1.5). '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' (paragraph 1.15).

In response to the decisions in *Kaye v Lees* (specifically the decision at [2023] EWHC 152 (KB)), HM Treasury published 'Mental Health Crisis Breathing Space Guidance Changes Following 2023 High Court Judgments' which you can view here: tinyurl.com/yxmbf4f7. It covers three main

issues.

- In considering whether the eligibility conditions have been met, if the information available (including any supporting evidence provided) gives reason to doubt that the client is receiving mental health crisis treatment (eg, if the debt advice provider has a 'legitimate and material' reason to suspect the client may not be receiving crisis treatment which meets the statutory definition) the debt advice provider should consider whether it would be appropriate to seek further information from the AMHP to ensure that their evidence (in particular the AMHP's declaration under regulation 29(3)(d) DRS Regs) has been given on a sound basis before accepting such evidence (regulation 29(2)(b) DRS Regs).
- In the context of seeking confirmation from the 'nominated point of contact' that the client is still receiving mental health crisis treatment (under regulation 33(1) DRS Regs) (see below), the debt advice provider should be satisfied that any evidence supplied to support that confirmation is 'cogent' – ie, that it has been given on a sound basis. Accordingly, if the available information gives reason to doubt the client is still receiving such treatment (eg, if the debt advice provider has a 'legitimate and material' reason to suspect the client may no longer be receiving crisis treatment which meets the statutory definition) the debt advice provider should consider whether it would be appropriate to seek further information from the nominated point of contact or the AMHP to ensure their confirmation has been given on a sound basis, before accepting it.
- The category of mental health crisis treatment described in regulation 28(2)(e) DRS Regs is to be read consistently with sub-paragraphs (a)–(d). Accordingly, regulation 28(2)(e) should be read as only capturing situations equivalent to those described in sub-paragraphs (a)–(d) but in which the treatment can be provided without the client being removed or detained without their consent.

Paragraph 4.8 of the *Guidance for money advisers* has been amended to state: 'Normally an AMHP's certification of crisis treatment in the evidence form is sufficient for you to start a mental health crisis breathing space with no further checks. If you have cause to doubt your client's eligibility for their mental health crisis breathing space (such as information provided by a creditor or another health care professional) you should consider seeking further clarification'. Similarly, a new sub-paragraph (3) has been added to paragraph 7.19 in relation to information provided by a creditor in support of an application for review which gives you cause to doubt your client's eligibility for a mental health crisis breathing space. It is for you to make the final assessment based on the information or evidence provided as to whether your client has a serious mental health condition and is receiving relevant treatment for it. Sub-paragraph (1) of paragraph 7.22 has been amended in relation to obtaining information from the nominated point of contact that the client's mental health crisis treatment is continuing. They should not normally have to give you any further information about your client's care or their condition unless you have cause to

question the information given to you by the nominated point of contact or your client's continuing eligibility.

The AMHP evidence form has been amended to certify that if the client's treatment falls within regulation 28(2)(e) DRS Regs that the AMHP has given due consideration to the definition of such mental health crisis treatment as described in the evidence form itself and the HM Treasury's *Guidance on mental health crisis breathing space* for AMHPs. That document itself has been amended to clarify the definition of mental health crisis treatment falling within regulation 28(2)(e) (paragraphs 3.18 and 3.20) and that they may be contacted by the debt advice provider concerning their evidence if the provider comes into possession of information which gives reason to doubt whether the client is (still) receiving mental health crisis treatment. This information may come from a creditor (paragraphs 2.10 and 5.10). Paragraphs 5.10 and 5.12 have been further amended to remove the references to a creditor being unable to challenge an AMHP's professional decision-making via the regulations 17 and 19 DRS Regs review route. It appears that the test is an 'objective' one (ie, evidence-based) rather than a 'subjective' one (ie, dependent simply on the AMHP's professional opinion). 4

Although regulation 29(3) DRS Regs provides that the evidence from the AMHP 'must include' certain matters, the only reference to evidence that the client is receiving mental health crisis treatment is in regulation 29(3)(d) which requires that the evidence provided by the AMHP must include: 'a declaration by the AMHP that the debtor is receiving mental health crisis treatment'. It is worth noting that debt advice providers are given no powers to require either the AMHP or nominated point of contact to respond to requests for information or to provide further evidence.

It is mandatory for you to obtain the client's credit reference report from at least one credit reference agency but you may wish to consider obtaining all three to ensure that as many of the client's qualifying debts as possible are included in the moratorium.

A mental health crisis moratorium is initiated in the same way as a standard moratorium – ie, electronically through the money adviser portal.

The Money and Pensions Service (MaPS) has funded specialist providers to take referrals for a mental health crisis moratorium from AMHPs as well as debt advice providers. MaPS also provides a single point of entry to the scheme, which can be accessed at maps.org.uk/mhcbs. In England, the service has been delivered in partnership by We Are Group (who actually receive the referrals), Toynbee Hall and Kaleidoscope since January 2025. In Wales, referrals are to Citizens Advice Cymru.

Creditors will receive notifications from the Insolvency Service in the same way. The client (or their representative) can request that the client's usual residential address is not disclosed (see [here](#)). Creditors' obligations are the same as for a standard moratorium (see [here](#)) and creditors can request you to carry out a review (see [here](#)) (the regulations require you to consult with the

client to the extent that it is possible to do so if you are considering agreeing to the creditor's request). The same restrictions on court proceedings in a standard breathing space moratorium, including taking or continuing with enforcement action, apply (see here).

A mental health crisis moratorium lasts for as long as the client is receiving mental health crisis treatment plus 30 days. There is no midway review (see here) in relation to a mental health crisis moratorium. Instead, you must request information from the client's nominated point of contact about their treatment. The **'nominated point of contact'** (whose details must be provided to the Insolvency Service when initiating the moratorium) is a person named in the AMHP's evidence form. They should be someone who has ongoing involvement in the client's crisis care. The nominated point of contact is the person who needs to respond to any requests from you for information, and they should proactively inform you when the client's mental health crisis treatment has ended.

Between 20 and 30 days after the moratorium started you should contact the nominated point of contact to check and obtain confirmation of whether the client's mental health crisis treatment is still continuing. The regulations do not provide for any time limit for the nominated point of contact to respond, so it would be appropriate for you to set a deadline when contacting them of, say, 14 days maximum. This request should be repeated every 20 to 30 days from the date of the last request for as long as your client's crisis treatment continues. **Note:** there is no requirement for the debt advice provider to carry out a midway review in the case of a mental health crisis moratorium.

However, the third decision involving the Kaye and Lees parties specifically approves the following statement concerning the role of the debt adviser from the previous decision: 'Where necessary they [the debt advice provider] must be prepared closely to assess the information available and seek clarification or further information as necessary, before concluding that the conditions for continuation of a mental health crisis moratorium are met'.⁵ There is no reference to obtaining and/or assessing information in this regulation. See above for a discussion of this issue.

Once the client is no longer receiving crisis treatment, you must update their record through the money adviser portal. The Insolvency Service will send notifications to creditors and the moratorium will end 30 days after the client's treatment ends. If the client's nominated point of contact does not respond to a request for information, you must update the client's record to this effect and the moratorium will end 30 days after your last request. Before taking this step, you may wish to send the nominated point of contact a reminder after your original deadline has expired, giving them a further seven days to respond and allowing adequate time before the next request for information is due to be made.

Note: there is no limit on the number of times a client can enter a mental health crisis

moratorium. A client who is no longer receiving mental health crisis treatment can still enter a standard breathing space moratorium if appropriate.

-
- 1 Reg 28 DRS Regs
 - 2 *Kaye v Lees* [2023] EWHC 152 (KB) at para 39
 - 3 *Kaye v Lees* [2023] EWHC 758 (KB), para 29
 - 4 *Guy & others v Brake & others* [2023] EWHC 1560 (Ch), para 25. See also M Lloyd, 'Caselaw update July 2023', *Adviser* online, 31 July 2023.
 - 5 See para 39 [2023] EWHC 152 (KB)

The role of the debt adviser

Initiating a breathing space moratorium

Non-disclosure of client's address

Creditor request for review

Adviser's midway review

Creditor non-compliance

In a concerning recent decision between the Kaye and Lees parties, the High Court has decided that debt advice providers have a quasi-judicial role and, therefore, must:

- have 'evidence' to show the client is receiving 'crisis' treatment when considering a mental health crisis moratorium (see here);
- consider whether a breathing space moratorium furthers the 'statutory purpose' in section 6(2) of the Financial Guidance and Claims Act 2018, namely 'that the debtor is genuinely proposing to use the time permitted to develop a realistic plan for repayment of some or all of the debts'. If the statutory purpose is not met, then a moratorium would not be appropriate;
- carry out a balancing exercise to assess whether an application unfairly prejudices a creditor who requests a review under regulation 17 DRS Regs 2020. ¹

The judge's interpretation of the 'statutory purpose' appears to be supported neither by the actual wording of section 6(2) nor by *Axnoller v Brake (No.2)*, ² which the judge cites, which quotes from HM Treasury policy proposals and the explanatory memorandum to the legislation that recognises the difficulties and challenges of effectively engaging with debt advice during a mental health crisis. In addition, at paragraph 45 the judge says: 'The difficulty with this argument [Mr Brake is using the moratorium in bad faith simply in order to put off any enforcement procedures as he does not appear to be obtaining any debt advice on debt restructuring etc] is that the whole

point of the mental health crisis eligibility for a moratorium is based on the assumption that a person suffering a mental health crisis is either unable or at least less able, by reason of the mental health problem itself, to engage with debt advice. What I would therefore need to see would be some evidence that Mr Brake's mental health has improved to an extent that it would be reasonable to expect him to be engaging with debt advice'.

Further, regulation 24(5) DRS Regs 2020 (which sets out the considerations for 'appropriateness' in relation to a standard breathing space) makes no reference to a 'debt repayment plan' only to a 'debt solution' which could involve no payment to creditors. Regulation 30(5) (which is the corresponding provision for a mental health crisis breathing space) makes no reference to a 'debt repayment plan' or even to a 'debt solution'. Indeed, paragraph 7.1 of the Insolvency Service's *Guidance for Money Advisers* states: 'You do not have to give advice or conduct a midway review for a mental health breathing space'.

Initiating a breathing space moratorium is not a self-help option for a client. The regulations provide for the client to make an application to a debt advice provider who has provided them with advice face-to-face, over the telephone or by electronic means. '**Advice**' is defined as: 'advice as to the suitability, conditions and consequences of a breathing space moratorium for the debtor'. ³ Paragraph 4.3 of the Insolvency Service's *Guidance for money advisers* provides:

Before you start a standard breathing space you must obtain enough information to understand your client's financial situation. This is so you can advise them on whether they are suitable for a breathing space and any consequences of being in one. However, it is not necessary to complete the full debt advice process with your client before you consider a breathing space. You also do not need to complete a full Standard Financial Statement at this stage.

Clearly, if the purpose of the breathing space moratorium is to enable you to advise the client on their options, full advice will not have been given and a 'standard financial statement' may not have been drawn up at this stage. However, if the purpose of the breathing space moratorium is to enable a debt solution to be put in place, then the expectation is that full advice will have been given, including drawing up a standard financial statement. Given that, when advising on the appropriateness of a breathing space moratorium, you will need to consider whether the client can repay some or all of their debts as they fall due, then some assessment of the client's financial situation would seem to be required.

The guidance states that clients should be advised on the impact of a moratorium on their credit reference file, namely that, if payments are not being made, this will continue to be recorded.

You will need to obtain from the client:

- their full name, date of birth and usual residential address; *and*

- the trading name or names and address of any business carried on by the client; *and*
- details of all the debts they owe and contact details of their creditors and any agents, including enforcement agents, acting on their behalf so far as they are known to the client.

As the client is only protected from recovery action by their creditors in respect of debts of which the details have been provided to the Insolvency Service, included on the Breathing Space Register and of which the creditor has been notified, you should consider whether it would be appropriate to obtain copies of your client's credit reference reports.

1 *Kaye v Lees* [2023] EWHC 758 (KB), paras 24-36. At para 52, the judge suggests that if a debt adviser failed to apply the tests set out in the DRS Regs 2020 correctly, they could be the subject of judicial review proceedings which would be against them rather than their client and would carry costs implications. At para 53, the judge acknowledges that judicial review may not be appropriate given the creditor had an 'adequate alternative remedy' under the creditor review and appeal to the court procedure provided by the scheme (regs 17 and 19 DRS Regs 2020).

2 [2021] EWHC 2308 (Ch), paras 17-19

3 Reg 23(7) DRS Regs

Initiating a breathing space moratorium

You initiate a breathing space moratorium electronically via the money adviser portal provided by the Insolvency Service. Your organisation, rather than you as an individual debt adviser, is registered as the user, which means that colleagues also have access to the portal and therefore to clients' records. In addition to the client's details, you must include:

- details of the client's debts, each individual debt being recorded separately rather than as a total to a particular creditor (the Insolvency Service has said that enforcement agents' fees should be recorded separately from the debt being recovered and that court costs and costs orders can always be recorded even if the judgment debt itself is not a qualifying debt); *and*
- contact details of their creditors; *and*
- contact details of any known agent of the creditor, such as debt collectors or enforcement agents.

The Insolvency Service adds all this information to the Breathing Space Register and notifies the client's creditors and any agents whose details have been provided. **Note:** the Insolvency Service does **not** carry out any verification checks so it is essential that you ensure your entries are

accurate and, in particular, that you check the Breathing Space Register and the individual insolvency register to ensure your client is eligible for breathing space.

When details are entered into the portal, the Insolvency Service has until the end of the next working day to put them on to the register. In practice, this may happen on the same day. The moratorium starts the day after the client's details are put on to the register and at that point the client's qualifying debts become moratorium debts. The register includes the client's full name, date of birth, usual residential address and the date the moratorium started and ended (or was cancelled). Only you, the client and the client's creditors (but not agents) can access the information held on the register, and creditors can only access details of their own debts but not of those owed to any other creditor.

Corresponding to the electronic money adviser portal is an electronic creditor portal through which creditors can not only view their notifications but also notify you of any additional debts or any debts sold on, or request a review (see here).

As soon as possible after receiving notification of the start of a breathing space moratorium, creditors must search their records to identify the debt notified to them and any additional debt(s) owed by the client that were not detailed in the notification they received from the Insolvency Service. Paragraph 2.6 of the *Guidance for creditors* states: '... if new debt is incurred in the period after the breathing space starts but before you [ie, the creditor] make your search for additional debts, they may be able to be included in the breathing space'. This is misleading and is not correct (see below) so, hopefully, will be deleted by the Insolvency Service. Creditors must then:

- inform you of any additional debt(s) they have found; *and*
- if a moratorium debt or any additional debt has been assigned to another creditor, provide you with contact details of that other creditor; *and*
- inform a creditor to whom a moratorium debt or additional debt has been assigned about the start of the moratorium.

As well as receiving information from creditors about additional debts and other creditors to whom debts have been assigned, you may also receive information about other debts that were not included in the moratorium – eg, from information provided by the client themselves or their credit reference report. You must then add these debts to your client's record through the money adviser portal so that they become moratorium debts. If 45 or more days have passed since the start of the moratorium, you may choose not to add a debt to the client's record if you do not consider it appropriate for the moratorium to apply to that debt, taking into account how much of that moratorium remains. If a creditor provides you with details of a debt that has been assigned to another creditor, you must amend the creditor details on your client's record but **not** create a record of a new debt. **Note:** new debts incurred during the breathing space moratorium cannot be included as additional debts, nor can further arrears of debts included when the breathing space

was initiated. However, if a debt which was a qualifying debt is discovered after the start of the breathing space, it can be added as an 'additional debt' and included in the breathing space.

If the client's death occurs during the moratorium, the moratorium will end the following day. You must update the client's record, using the money adviser portal, as soon as reasonably practicable on becoming aware of this so that the Insolvency Service can update the register and notify creditors of the end of the moratorium.

If you become aware that any information you have provided the Insolvency Service through the money adviser portal is inaccurate, you must update your client's record accordingly.

Non-disclosure of client's address

The information provided to the Insolvency Service as part of initiating the breathing space moratorium includes details of the client's usual residential address. This is available to creditors on the Breathing Space Register. The client can request that their address is not disclosed on the ground that disclosure 'might reasonably be expected to lead to violence against the debtor or against a person who normally resides with the debtor as a member of the debtor's family'.¹ The regulation requires the client to explain why their address should not be disclosed (which, if not provided in writing, should be fully case recorded) and provide evidence in support (presumably, if available). As part of your advice on this issue, you should explain that the Breathing Space Register is not published and it is not available to members of the public.

You must consider all non-disclosure requests and notify the client of your decision within seven days. If you decide that disclosure of the client's address **is** appropriate, you must still provide details of the client's address when initiating the moratorium but there is an option within the money adviser portal to instruct the Insolvency Service not to disclose this address to creditors. Creditors will not be informed of the client's address and it will not be available on the register itself.

If your decision is that the client has not sufficiently demonstrated that the grounds for non-disclosure have been made, the client can appeal that decision to the county court within 28 days of being notified of the decision and you must inform the client that they have a right to appeal. The client must apply on notice on Form N244E to the debt advice provider. The court fee is £5.

It is advisable to inform the client of your decision in writing, including your reason(s), which should be more detailed if the decision is to refuse the client's request. If the client unsuccessfully challenges this, they may not want to go ahead with the breathing space.

Note: this process could impact the start of the breathing space moratorium as you would not be able to initiate this until the earliest of:

- the date of your decision that the address should not be disclosed; *or*
- 28 days from the date of your decision not to withhold the address with no appeal to the court; *or*
- the determination of any appeal regarding your decision.

1 Reg 38 DRS Regs

Creditor request for review

Alert: In *Seculink Ltd v Forbes*, the High Court has overruled a County Court decision which held that the procedure described below set out in Regs 17 and 19 DRS Regs was the only avenue available to determining whether a debt was a qualifying debt or not where a creditor wished to challenge whether their debt should have been included in a breathing space moratorium. The High Court judge considered that: 'Parliament cannot have intended to exclude the jurisdiction of the court to decide legal points about qualifying debts in favour of their first being decided by a non-qualified DAP...'. The High Court judge pointed out that a debt was either a qualifying debt or it was not and determining this might 'require some tricky legal points'. The High Court judge pointed out that one circumstance where it might be thought appropriate for the creditor to be able to raise the issue in court via a different route to Regs 17 and 19 was where a moratorium was entered into during existing court proceedings about the particular debt (as in this case). ¹

Although referred to as a 'review', this essentially involves a creditor objecting to the breathing space moratorium in respect of some or all of the debts notified to it by the Insolvency Service. The creditor must request a review within 20 days of the start of the moratorium or, if the creditor has been added subsequently, within 20 days of the moratorium applying. The review must be requested in writing stating the reason(s) for the review and provide any supporting evidence. The grounds upon which a review can be requested are:

- the moratorium unfairly prejudices the interests of the creditor; *or*
- there has been some 'material irregularity'.

In the unreported case of *West One Loans v Salah*, a county court judge found that the entry into a breathing space moratorium by a joint debtor following the expiry of a breathing space moratorium entered into by another joint debtor was not done as a means of finding a debt solution but as a means to frustrate the creditor and prevent enforcement. The judge found there had been 'abuse' of the breathing space scheme and grounds to cancel the moratorium for 'unfair prejudice' to the creditor. ² Although this decision does not mean that joint debtors cannot apply for successive breathing space moratoriums, you must be in a position, if challenged, to evidence

the progress that has been made in finding a debt solution and any obstacles to this to refute allegations of abuse of the process.

The regulations specify the meaning of '**material irregularity**' as follows:

- the client did not meet the eligibility criteria (see here); *or*
- a moratorium debt is not a qualifying debt (see here); *or*
- the client has sufficient funds to pay their debts as they fall due (**Note:** non-payment by the client of an 'ongoing liability' is not grounds for a creditor review (see here)). **3**

If you consider that the creditor has demonstrated unfair prejudice to their interests or that there has been a material irregularity, you must cancel the moratorium in whole or in part *unless* you consider that the client's personal circumstances would make the cancellation unfair or unreasonable. Neither the regulations nor the Insolvency Service's *Guidance for money advisers* provide any advice on how to exercise this discretion. Having come to your decision, you must then notify the creditor of the outcome of your review and, if your decision is to uphold the review request and cancel the moratorium in whole or in part, you must also consult with the client (to the extent that it is possible to do so – ie, that they are prepared to co-operate). If your decision is to refuse the creditor's review request, it would be advisable to provide full reasons for that decision in your response. Equally, if your decision is to cancel the moratorium in whole or in part, you should not only convey this to the client in writing but also provide full reasons.

You must carry out these steps within 35 days of the moratorium starting or, in the case of additional creditors, 35 days of the moratorium applying to them.

If your decision remains that the moratorium should be cancelled in whole or in part, you must update the client's record appropriately through the money adviser portal.

If the creditor is dissatisfied with your decision, it may apply to the county court for a review. The client has no corresponding right but would, of course, have the right to make a complaint. This application must be made within 50 days of the start of the moratorium or, in the case of additional creditors, within 50 days of the moratorium applying to them. The creditor must apply on notice in Form N244D to the debt adviser and also to the client. The court has no power to extend the time limits provided in the regulations for the creditor review process to be carried out. **4**

The application is not a review of your decision. The court is making its own decision on the application based on the information made available to it on the client's and creditor's situations respectively. Therefore, the court does not necessarily need your involvement in the proceedings, but you are notified of the proceedings as an interested party not only for your information but also so that you can provide further advice, submit evidence and/or attend court as necessary to support your client. **Note:** in *Guy v Brake & others*, **5** which concerns an application to cancel a

mental health crisis moratorium, the applicant made the debt advice provider a party to the proceedings.

Any award of costs in these proceedings is at the discretion of the court. According to the Insolvency Service: 'It is possible that a debtor could be required to pay costs, for example, where the court finds them to be at fault in some way (for example if they have made false statements)' (paragraph 7.19 of the *Guidance for money advisers*). Also in paragraph 7.19: '...the possibility of a costs order being made against a debt advice provider cannot be ruled out, but should not normally arise where the provider has complied with the regulations'. It is important to remember that this is only Insolvency Service guidance and will not necessarily be accepted by the court. You should, therefore, point out there is some risk the client could be ordered to pay a successful creditor's costs. As noted above, although a non-party, you are also at risk of an order for costs being made against you (see CPR 46.2 for further information on the procedure). You should therefore case record all decision-making (eligibility, appropriateness, creditor and midway reviews, 30-day mental health crisis moratorium reviews) in detail, referencing any legislation, caselaw or guidance so that the steps in your decision-making process are clear and you can evidence that you have taken into account all relevant matters, including any representations made by the creditor and the matters specified in the regulations. ⁶

If the creditor applies to the court under regulation 19, as noted above, you will be given notice of the hearing. You should take legal advice and regardless of whether or not your client consents, you should consider filing a witness statement evidencing and justifying your decision. There is no guarantee your client will engage with the process or be represented or even attend the hearing. The *Kaye v Lees* decisions illustrate the consequences of this: the court will only hear the creditor's side of the story and you may even find yourself the subject of unjust criticism. Given the risk of an adverse costs order in such proceedings (even more so should a judicial review application be made against you (see here)) the filing of a witness statement explaining your decision-making process and compliance with the DRS Regs may help to prevent this.

In the first reported decision on an application to cancel a moratorium (*Axnoller Events Ltd v Brake & another*), ⁷ the judge declined to lay down any firm guidelines for the future on how to apply the phrase 'unfairly prejudices'. He did, however, accept that:

'...unfairness is to be assessed objectively and that this will require the court to embark upon a balancing exercise. I further accept that, where the moratorium discriminates unfairly between creditors, so that the impact on one is significantly more severe than on another, that may well be a proper basis on which the court can say that the moratorium 'unfairly prejudices' the applicant creditor. But I also accept that the phrase 'unfairly prejudices' should not be confined to that. These are ordinary English words, undefined in the legislation and not obviously terms of art. They can properly be understood to go wider' (paragraph 31).

-
- 1 See *Seculink Ltd v Forbes* [2024] EWHC 3339 (Ch) at paras 65 - 69
 - 2 County Court at Central London, 30 March 2022. See the 'Case law and important decisions' section of Shelter's SDAS ebulletin, June 2022.
 - 3 Reg 17(2) DRS Regs
 - 4 See *Kaye v Lees* [2022] EWHC 3326 (KB), para 24
 - 5 [2023] EWHC 1560 (Ch)
 - 6 See also L Oliver, 'Problems with the breathing space creditor review process' in the 'Spotlight' section of Shelter's SDAS ebulletin, March 2022
 - 7 [2021] EWHC 2308 (Ch)

Adviser's midway review

Between days 25 and 35 of a standard breathing space moratorium, you must carry out a review in order to determine whether it should continue or be cancelled in whole or in part. This review can be combined with a creditor's request for a review when appropriate. When conducting a review, you need to consider the following, namely whether:

- the client is complying with their obligations – eg, paying their ongoing liabilities or engaging appropriately with you; *or*
- the client has entered into a debt solution.

If you decide the moratorium should continue, nothing further needs to be done. However, if your decision is that the client is not complying with their obligations or a debt solution has been entered into, you need to consider whether the moratorium should continue or be cancelled and, if cancelled, whether this should be in whole or in part. The regulations do provide some assistance to help you reach a decision.

- If the client has not engaged with you appropriately, you must take into account the reason(s).
- You are not required to cancel a moratorium if the client's personal circumstances would make the cancellation unfair or unreasonable (there is no guidance on exercising this discretion).
- If the client has not paid their ongoing liabilities, you do not need to cancel the moratorium if the client does not have the financial means to pay them.

If your decision is to cancel the moratorium, then you must consult the client about this (to the

extent this is possible – ie, that they are prepared to co-operate). If your decision is still to cancel the moratorium, you must update the client's record using the money adviser portal. You should convey your decision to the client, including full reasons. The client has no right of appeal to, or review by, the court, but again could make a complaint.

The Insolvency Service will notify the relevant creditors of the cancellation and the moratorium will cease to apply to them.

If your client enters into a debt solution either before the midway review point or after you have carried out the midway review and decided the moratorium should continue, there is nothing in the legislation to prevent you from cancelling the moratorium immediately on the basis that the breathing space has fulfilled its purpose and is no longer appropriate – eg, if your client's DRO application has been approved (subject, of course to it not being unfair or unreasonable to do so). But neither are you required to do so. In the case of a debt management plan, the client has not 'entered into' the debt solution until all the creditors who are to be involved have agreed to the plan. Once the decision to cancel the moratorium has been made, you must update the client's record accordingly as above so that the Insolvency Service can notify affected creditors.

Creditor non-compliance

If creditors do not comply with their obligations in relation to the client under the breathing space scheme, the first step is to point out what those obligations are, how they are not complying with them, that any action(s) taken in breach of those obligations is null and void and then to request that they comply with them for the remainder of the moratorium. If their non-compliance has been triggered by failed review request, then their remedy is to apply to the court rather than ignore their obligations under the scheme.

If the non-compliance continues, you should consider using the money adviser portal to generate a non-compliance letter in the name of the Insolvency Service which will then be automatically sent to the creditor to remind the creditor of its obligations and request its compliance.

Finally, you should consider making a formal complaint to the creditor which can be escalated to the relevant Ombudsman, if necessary.

End of the moratorium

For whatever reason the moratorium ends, the client should be informed that the moratorium has not had the effect of writing off or reducing their debts and that they are still owing.

When creditors receive their notification that the moratorium has ended, they will (depending

on the nature of any debt solution entered into by the client during the moratorium) be able to:

- resume adding interest, fees and penalties to the client's debts from the date the moratorium ended (but not any that accrued, or would have accrued, during the moratorium);
- take action to recover their debt, including contacting the client;
- resume or begin legal proceedings against the client for their debts.

Statutory debt repayment plans

The statutory debt repayment plan aims to enable clients with problem debt to enter into formal agreements with their creditors to repay their debts in full over an extended period. Clients will benefit from the same protections in the breathing space scheme. ¹

Following feedback on its latest consultation, the government will not proceed with implementation for the time being and will base further decisions on its future on the outcomes of the Insolvency Service's review of the personal insolvency framework.

¹ For further information, see M Agboh-Davison, 'Statutory debt repayment plans: what do we know so far?', *Quarterly Account*, IMA