



The Debt Respite (Breathing Space) Scheme

As you may be aware, the Government is introducing a Debt Respite (Breathing Space) Scheme, which comes into force on 4 May 2021. The aim of the Breathing Space Scheme is for individuals in England and Wales with problem debt, to receive professional debt advice with a view to finding long-term solutions to their financial difficulties.

What is breathing space?

Breathing space is a moratorium which gives individuals ('debtors') legal protections from creditors for a period of 60 days and can only be initiated by FCA authorised debt advisers, providing certain eligibility criteria are met (e.g. the debtor must: be an individual; owe a qualifying debt; not be subject to an IVA, debt relief order or bankruptcy). Debtors can only enter into a breathing space moratorium once in a period of 12 months.

What debts can be included?

Breathing space only applies to qualifying debts, which are mostly unsecured debts. For example credit card debts, personal loans, overdrafts and utility bill arrears.

All personal debts and liabilities are qualifying debts, except for secured debts, which includes hire purchase or conditional sale agreements. However, arrears in relation to secured debts that exist at the date of an application for a moratorium can be included in the moratorium. New secured debt arrears (which accrue after the breathing space moratorium starts), are not protected by the moratorium.

A breathing space is not a payment holiday; a customer should continue to pay their debts and liabilities.

What does it mean for creditors?

For creditors, a breathing space moratorium essentially has the effect of pressing the pause button on recovering, enforcing, applying interest/charges/penalties on, or contacting individuals about, qualifying debts (which as above, does not include secured debt (save for arrears at the date of an application for breathing space)). The exception to contacting a customer about a qualifying debt subject to breathing space, is where

creditors are required to contact/engage with a customer under the CCA 1974, or by the FCA Handbook.

Notification of breathing space

The Insolvency Service is responsible for maintaining a register of those debtors in a breathing space moratorium and notifying creditors of the same. Creditors are bound by the moratorium once notification is received (or is deemed to have been received).

The Insolvency Service will only know which creditors to notify, based on what debtors tell the debt advisers upon an application for breathing space. Therefore, in circumstances where we are instructed by you, it may be that your customer informs the debt adviser of our details and not yours, or yours and not ours. It is therefore important that if either you or us receive notification from the Insolvency Service about a customer entering into a moratorium that the information is shared immediately.

If you have not already done so, please send the details requested in the [attached document](#) to the Insolvency Service at: breathingspace@insolvency.gov.uk.

The Creditor Portal

The Insolvency Service are introducing a creditor portal, which will allow creditors who have registered for it, to view all of their notifications in one place and notify debt advisers of any additional debts etc. Unfortunately, the Insolvency Service have recently confirmed that the creditor portal will not be ready for the start of the Breathing Space Scheme on 4 May 2021

Creditors will however, still receive notification from the Insolvency Service, by their preferred method of contact, about those customers that have entered breathing space. Those notifications will include contact details for the relevant debt adviser managing the breathing space. Therefore, until such time that the creditor portal is ready, any communications with debt advisers need to take place outside of the portal via email or telephone.

Consequences of a creditor's breach

If a creditor either has, or ought to have, received notification of a customer entering into a moratorium and takes action to recover a qualifying debt, any action will be deemed null and void and creditors may be liable for the debtor's costs. The debtor can complain to their debt advisor, who will issue a reminder to the creditor/agent and thereafter the matter can be escalated to the Insolvency Service, who will similarly make contact to remind creditors/agents of their obligations. Repeated breaches of the regulations can be considered by the relevant regulator, where appropriate, and which in the context of the Financial Conduct Authority may potentially result in fines being issued or adverse publicity for creditors.

Ongoing court proceedings

The court must be notified in writing immediately, if a debtor enters breathing space, and court proceedings have already been issued or a bankruptcy petition has already been filed. Once the court has received notification, it will stop bankruptcy proceedings until the breathing space ends. Any other court proceedings (other than enforcement proceedings) can continue until the court makes an order or judgment.

Unless the court gives permission to continue, any action to enforce a court order or judgment must cease during breathing space. However, the court can still send notices or correspondence to the debtor about the legal proceedings, during breathing space.

Once breathing space ends, any legal proceedings that were 'paused' because of breathing space can continue. If a time limit in respect of commencing legal proceedings or enforcement ends during breathing space, the time limit is extended to 8 weeks after it ends.

During breathing space, creditors are still permitted to start or continue any legal action relating to an excluded debt (i.e. a debt that is not a qualifying debt).

Mental Health Crisis Moratorium

It should also be noted, that as well as a breathing space moratorium, the Government is introducing a mental health crisis moratorium. A mental health crisis moratorium is only available to a debtor who is receiving mental health crisis treatment and will end 30 days after the mental health crisis treatment ends (it does not have a 60 day limit and can be applied for more than once in any period of 12 months).

A mental health crisis moratorium also provides a debtor with the same protections as the breathing space moratorium and has the same eligibility criteria, save for the debtor must also be receiving mental health crisis treatment (certified by an approved mental health professional) at the time the application is made.

Similar to breathing space, only a FCA authorised debt adviser can initiate the moratorium and it only applies to qualifying debts. However, in addition to the debtor, others can apply to a debt adviser for a mental health crisis moratorium on behalf of the debtor, including social workers, mental health nurses and a debtor's representative.

The above is only a brief overview and further guidance for creditors can be found [here](#).

Contact

If you have any questions, please get in touch with our [Litigation and Recoveries](#) team by emailing

online.enquiries@LA-law.com.