

Our ref. GB/PJK/NH

16 January 2018

HM Treasury
Breathing Space Call for Evidence
1 Horse Guard Road
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Email: BreathingSpaceCFE@hmtreasury.gsi.gov.uk

Dear Sir/Madam

**RESPONSE OF THE CHARTERED INSTITUTE OF CREDIT MANAGEMENT TO: HM
TREASURY – BREATHING SPACE CALL FOR EVIDENCE**

The Chartered Institute of Credit Management ([CICM](#)) is the largest recognised professional body in the world for the credit management community. Formed over 75 years ago, the Institute was granted its Royal Charter in 2014. Representing all areas of the credit and collections lifecycle, it is the trusted leader and expert in its field providing its members with support, resources, advice, and career development as well as a networking and interactive community. In addition to its comprehensive suite of qualifications and learning opportunities, events and magazine 'Credit Management', the CICM administers the [Prompt Payment Code](#) for BEIS. Independently, and through collaboration with business organisations, it provides vital advice to businesses of all sizes on how best to manage cashflow and credit.

CICM members hold important, credit-related appointments throughout industry and commerce, and we feel it appropriate to comment on this consultation.

Our answers to the questions posed in the consultation are attached to this letter.

If we can help in any further way please do not hesitate to contact us.

Yours faithfully



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RESPONSE OF THE CHARTERED INSTITUTE OF CREDIT MANAGEMENT TO: HM TREASURY – BREATHING SPACE CALL FOR EVIDENCE

Question 1: In your opinion, how should the government decide who is eligible for a breathing space? In particular:

- How should the government define serious problem debt in the context of a breathing space?
- Should eligibility be determined by a set of defined characteristics, or should there be some discretion to determine eligibility?
- If there is some discretion, who should be tasked with exercising it – a regulated debt advisor, or some other person?
- Are there any other entry criteria and / or exemptions the government should consider?
- Who should be responsible for regulating and enforcing access to a breathing space and how can disputes be resolved?

Answer:

Breathing space should be used to allow an individual to seek or take advantage of expert support/advice in order to best understand how to manage their individual situation. Discretion needs to be applied as each circumstance is different and it will depend on the availability of information from different creditors as to how much time is required.

We believe it is important to allow creditors and servicers the ability to apply a common sense approach to the individual set of circumstances and that setting defined criteria will undoubtedly have unintended consequences and mean that individuals that do need additional time to obtain support/guidance could be negatively impacted.

We feel that eligibility should be determined by a qualified debt advisor whose actions and advice can be checked for quality and impartiality. The findings of the advisor should be passed to the creditors to maintain transparency, and with compliance to a code of conduct, disputes should be kept to a minimum.

We believe that the advice should be overseen by a regulatory body such as the FCA.

Question 2: What should be the trigger point for a breathing space? In particular:

- Should a breathing space only be available for a person who seeks regulated debt advice?
- Should individuals have demonstrated they have already taken steps to try to manage their debt?
- If so, at what point should the six weeks start – for instance: once a breathing space has been requested, when the first advice session has occurred, or once advisor has confirmed a breathing space would be appropriate?

Answer:

Breathing space should be available for an individual who has received some form of evidenced debt advice support or guidance. Breathing space should be applied once a qualified debt advisor or equivalent has discussed the case with the debtor, confirmed that all possible alternatives have been considered, and that the breathing space is the most appropriate way forward.

Question 3: Should all debts be eligible for a breathing space?

- How should multiple debts be treated; is there a priority order of debts which should be included as part of a breathing space arrangement?
- Should some types of debt be exempt? In particular, where the debt is the late payment of a fine or penalty?
- In particular, should debt owed by self-employed / microbusinesses be included?

Answer:

All debts should be eligible for breathing space - none should be exempt (neither fine, penalties nor government owed debt such as council tax or personal tax). The ultimate aim of breathing space is to give the customer the time to re-organise their priorities and set a recovery process that works for them and that is sustainable. There is already a clear mechanism for prioritising debts and if the customer has sought regulated debt advice, then they will already be equipped to support this.

Question 4: Should all interest, fees and charges be frozen throughout the breathing space period?

Answer:

Yes. However, due consideration needs to be given to the fact that this may be difficult to administer in some environments and may form part of the outcomes/agreements after the breathing space period.

Question 5: What activities must the breathing space participant continue with to remain eligible? For instance:

- Should they be required to attend advice sessions?
- Should they be required to make any repayments during a six-week breathing space, if their financial situation allows it?

Answer:

Yes, the debtor should be required to attend advice sessions, if their financial situation allows it. The advice should be focused on providing a range of possible solutions and allow the debtor to ask questions about the impact of the decisions they might make. Making a payment during the breathing space period would be a sensible thing to do, but assessing if the debtor's situation allows it is key. Consideration should be given to this option, as the amount is likely to be minimal and it could be a time consuming process.

Question 6: Are there circumstances in which a breathing space period could end before six weeks, such as if an appropriate solution is found? Who could be responsible for enforcing this?

Answer:

Yes. A period of breathing space should be able to be reduced if an appropriate solution has been found, however we do not feel that this is something that would require enforcing. Stipulation that it is permitted, under a set of stated circumstances, would be adequate.

Question 7: Should breathing space protections only cover debts existing at the outset, or also include new debts arising during the six-week period?

Answer:

Protections should cover debts existing at the outset.

Question 8: Should a breathing space be noted on a person's credit file?

Answer:

Yes.

Question 9: How frequently should a debtor be able to access a breathing space, and what criteria should control the frequency of access?

Answer:

Breathing space should only be allowed once in a 12 month period, except in exceptional circumstances where a second could be allowed. Frequency of access should be driven by the individual's own circumstances and any significant change since the last review, vulnerability status and historical ability to maintain previous arrangements.

Question 10: What challenges would creditors face in implementing the scheme?

Answer:

We believe that one challenge could be additional administrative overheads to manage and monitor the process. Also, assuming that the account has been passed from collections to recoveries/debt collection/sale, then the creditor could have a challenge in transferring the account into a specialist area and the debtor get a genuine breathing space. A delay could occur to the process, which could give rise to potential complaints to be raised, and the benefits of a breathing space could be lost.

Question 11: Who would be responsible for notifying creditors that a customer has entered a breathing space? What updates are required during the breathing space period?

Answer:

The advisor should be responsible for notifying creditors and updates should be given only at the end of the 6 week period.

Question 12: Would a breathing space scheme impact on business revenue or have any other significant detriment?

Answer:

A breathing space scheme could impact business revenue, principally in changing systems, staff training etc to ensure compliance, however it is applied throughout industry already and is formally recognised as something that creditors support.

If the creditor loses income either from debt write-off or a contribution/levy to the costs of the scheme, this may be an impact to also consider.

Question 13: Should any creditor be exempt due to the size of their business?

Answer:

No.

Question 14: What benefits could creditors see as a result of a statutory breathing space scheme?

Answer:

The principal benefit to creditors is that they could work to a consistent industry standard. Breathing space is often already provided by creditors and making it statutory could add complications and reduce flexibility for the customer.

Question 15: How could the government ensure that a breathing space works with and adds value to existing support structures?

Answer:

The introduction of structured, regulated guidelines which ensure that breathing space applies to any debts would assist all parties.

Question 16: What safeguards are needed to prevent the scheme being abused?

Answer:

We believe that abuse of the system could be prevented by ensuring it is only available through qualified debt advisors. In doing so, the breathing space applied to each debt, and the number of times it is applied for, can be appropriately administered.

Question 17: Should a breathing space be extended to Wales and Northern Ireland as well as England?

Answer:

Yes.

Question 18: How could a statutory debt repayment plan be administered?

Answer:

Any debt repayment plan needs to be set to take into consideration the individual requirements of each customer; once it is set in line with the guidelines or statutory requirements this should be administered like any other payment plan. One particular challenge with such a plan could be the processing of payments at an economical price.

Question 19: What challenges would be faced in administering a statutory repayment plan?

Answer:

This would be dependent on what is set out in the statute, however a potential challenge could be providing the service required by all parties at an economical price.

Question 20: What protections should apply during the statutory repayment plan?

- For instance, should it protect debtors from interest and fees and charges or just a selection of the three? If a selection, which of these three should be prioritised?

Answer:

Interest, fees and charges on all debts should be frozen from the date of the plan so that the repayment figures are fixed.

Question 21: For whom and for what debt solutions will a statutory repayment plan be most appropriate?

Answer:

A repayment plan would be most appropriate for an individual who has sought advice and has an income that will allow them to make some form of repayment, irrespective of the debt solution, and within a reasonable period of time.

Question 22: How will a debt advisor determine if a statutory repayment plan is appropriate?

Answer:

A repayment plan would be appropriate if the debt advisor determines that the individual has sought appropriate advice, they are in a financial position to make payments and they meet the set criteria of the plan.

Question 23: If a statutory debt repayment plan cannot be agreed, how could the behaviour of creditors be managed immediately after the Breathing Space?

Answer:

Creditors could share information of the customer's individual circumstances, identify whether an extension to the breathing space is appropriate, and look to identify any next steps. If a statutory debt repayment plan is not maintained by the debtor, action should continue as it would have done previously, unless further steps could be taken to implement a different debt solution.

Question 24: Should the repayment plan apply to all debt?

Answer:

Yes.

Question 25: For the included debts, should some debts be prioritised for repayment?

Answer:

Yes, priority living debts should be prioritised in line with all other payment plans.

Question 26: What should happen if one or more creditors disagree with the plan?

Answer:

A majority rules approach should apply.

Question 27: What activities must the statutory debt repayment plan participant continue with to remain eligible? Must they simply meet agreed repayments to remain eligible?

Answer:

The principal requirement should be that the agreed repayments must be met on time, but the participant should also commit to a regular review.

Question 28: How should changes in income be dealt with? Should it be possible to suspend a plan, or have reduced payments for a period of time?

Answer:

Any changes in income should be reviewed in line with the repayment plan in the same way any other payment plan is required to be assessed and reviewed.

Question 29: What happens if a plan fails? Should creditors be able to apply any interest, fees or charges that they were prevented from charging during the plan?

Answer:

No.

Question 30: Should there be a regime for sanctioning debtors where there is misconduct in relation to a breathing space or statutory debt repayment plan, as there is for bankruptcy and DROs?

Answer:

Yes, there needs to be a disincentive to prevent abuse.

Question 31: Should a statutory debt management plan be extended to Wales and Northern Ireland as well as England?

Answer:

Yes.

Question 32: For each of (1) a six-week breathing space, and (2) a statutory debt management plan, please describe in detail, and with supporting evidence, the positive impact expected through:

- Improved access: How will it would encourage more people to seek debt advice earlier?
- Better support: How will it would improve outcomes for customers who are already in problem debt?
- Increased repayments: How will it increase the amount of debt repaid to creditors?

Answer:

We do not have any specific information that would support this, however we do believe that the six week breathing space would not necessarily encourage more people overall to seek debt advice earlier, or necessarily improve outcomes. We recognise that the scheme does provide another opportunity for debtors to find a resolution to their debts.

Question 33: For a statutory debt management plan, please describe in detail, and with supporting evidence, the positive impact expected through: - Improved access: How will it would encourage more people to seek debt advice earlier? - Better support: How will it would improve outcomes for customers who are already in problem debt? - Increased repayments: How will it increase the amount of debt repaid to creditors?

Answer:

We do not have any specific information that would support this.

Question 34: Once implemented, how could the government determine whether the breathing space and statutory repayment plan have been successful? What metrics would be appropriate to use?

Answer:

Metrics could include the percentage of arrangements that stay in place, the percentage of customers who successfully come out of debt, and the percentage of customers that repeatedly apply for breathing space.

Question 35: Do you have any other comments on the consultation, or the six week breathing space or statutory debt repayment plan?

Answer:

We have no other comments.