

BREATHING SPACE WEBINAR – Q&A'S

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Policy in Practice

Does an Approved Mental Health Professional have to go through a debt advise provider in order to put someone into a Mental Health Crises Breathing Space?

Yes - but the duration of Breathing Space will not be time limited.

I noticed that you can't apply for a third party deduction from benefits during a Breathing Space - but what if one is already in payment - does that have to be cancelled as that might be very difficult to get the DWP to do that ?

Third party deductions from UC are to be introduced in a phased manner to allow IT systems to keep up. So these will continue from UC initially.

Do deductions from UC for rent arrears need to be stopped during the 60 day period?

Please see below the [guidance issued by the Insolvency Service](#) on 24th December:

Once a Breathing Space has started, you or anybody acting on your behalf must not take any enforcement actions against the debtor or anyone who is jointly liable with them for a Breathing Space debt.

Enforcement action is when you try to:

- collect or enforce a Breathing Space debt, including where this is done by any agent you've appointed. This includes the Department for Work and Pensions (DWP) where they are collecting a Breathing Space debt on your behalf through third party deductions. It does not include an existing attachment of earnings order made before the start of the Breathing Space, which may continue.
- apply to DWP for a new third party deduction to be taken from an individual's benefit payments

Attachment of Earnings Orders that were in place before the moratorium and third party deductions that were already in place from UC, PIP, JSA and ESA can continue.

Do we have to have issued a summons to include full CT year or can it be included if only a bill and/or reminder has been issued?

Please see below the guidance issued by the Insolvency Service on 24th December in relation to Council Tax:

If all instalments for that financial year have fallen due and have not been paid, these are considered to be a qualifying debt. If a debtor has been served with a 'reminder notice' to pay a council tax bill, the remaining liability for the financial year is a qualifying debt.

Why is Breathing Space applicable to debts that can be dealt with DHPs and DROs?

Government has decided that all debts are to be included in Breathing Space unless they are on the list of excluded debts (2.7 below)

2.7 Excluded debts

All personal debts and liabilities are qualifying debts, except for:

- secured debts (like mortgages, hire purchase or conditional sale agreements). You can only include arrears on these debts that exist at the date of an application for a Breathing Space. Any new secured debt arrears that happen after the Breathing Space starts are

not protected. [If a secured debt is also an ongoing liability](#) and a debtor misses payments, it could mean the debt adviser stops their Breathing Space

- debts incurred from fraud or fraudulent breach of trust. You should think of this in the same way you would if a person is bankrupt. Discharge from bankruptcy does not release a person from bankruptcy debts which they incurred by fraud. If you request a review of a Breathing Space because of fraud or suspected fraud, you might have to provide evidence to the debt adviser or to a court
- liabilities to pay fines imposed by a court for an offence. This includes any interest on the fine and any penalties connected to it. This does not include penalty charge notices, like a parking ticket
- obligations from a confiscation order
- child maintenance or obligations under an order made in family court proceedings
- a crisis or budgeting loan from the social fund
- student loans
- damages they need to pay for death or personal injury caused to someone else
- advance payments of Universal Credit
- council tax liabilities have not yet fallen due. If all instalments for that financial year have fallen due and have not been paid, these are considered to be a qualifying debt. If a debtor has been served with a 'reminder notice' to pay a council tax bill, the remaining liability for the financial year is a qualifying debt

Does the notification that someone has entered into Breathing Space have to come from a debt advisor directly ?

Creditors will receive notification from the Insolvency Service. Please see the [guidance](#) below which they issued on 24th December:

A Breathing Space can only be started by:

- a debt advice provider who is authorised by the Financial Conduct Authority (FCA) to offer debt counselling
- a local authority (where they provide debt advice to residents)

Debt advice providers (referred to in this guidance as debt advisers) are responsible for the administration of a Breathing Space. They are the point of contact for the debtor, their creditors (and appointed agents), and the Insolvency Service (who own and maintain the electronic service).

The Insolvency Service maintain the electronic service that debt advisers use to start the Breathing Space process, and we send notifications to creditors during it.

What would be the cost of resourcing this intervention and is there any funding available for this

Currently, HM Treasury have stated that New Burdens funding will not be provided to local authorities for implementing Breathing Space.

So what is the process from start to finish receiving the notification from SOS?

Creditors will be notified by the Insolvency Service that a debtor has entered Breathing Space. They then need to ensure that their internal procedures identify all debts that the creditor owes to them and apply the 60-day moratorium to these, as required.

Who notifies the DWP that claimant has entered into Breathing Space?

Where a debtor has entered Breathing Space and a debt is being collected by the DWP it would be the responsibility of the creditor to inform the DWP. However, third party deductions from UC, PIP, JSA and ESA which were already in place can continue.

Is joint and several liability overridden if only one person goes into Breathing Space?

Yes. See the extract below from the [guidance](#) issued by the Insolvency Service on 24th December:

Joint debts can be included in a Breathing Space, even if only one person applies for a Breathing Space. The joint debt would become a Breathing Space debt, and you must apply the same protections to the other people who owe that debt to you. The Breathing Space does not affect the other people's debts and liabilities in their own names.

Can Lift identify help maximising discounts, disregards, exemptions, disabled relief?

Yes - provided the data you hold is accurate.

Registered Social Landlords. - Breathing Space. So the tenants still have to pay ongoing rent - but nothing for arrears? is that correct?

Yes. Arrears fall under Breathing Space. New liabilities do not.

What if an Officer set up a 3rd Party deduction without knowing that the customer was already in the scheme?

The creditor's internal procedures should prevent this from occurring.

Do debt advisers have to offer Breathing Space ? If it is a small team of Advisers with a large case load it might be hard to keep on top of the contacting creditor aspect of Breathing Space?

If a debt advisor is unable to deal with a case, for example, because they might not have the capacity to deal with the client, then they can refer the client to another debt advice provider.

So we have 24hours to turn around the notification yes?

Essentially, a Breathing Space will start the day after the debtor's details are put onto the Breathing Space register, but please see below the [guidance](#) below issued by the Insolvency Service on 24th December:

As a creditor, if you're told that a debt owed to you is in a Breathing Space, you must stop all action related to that debt and apply the protections. These protections must stay in place until the Breathing Space ends.

The electronic service will send you a notification to tell you about each debt owed to you in a Breathing Space and the date the Breathing Space started. You need to make sure you apply the protections to these debts from the date set out in the notification.

If you're a creditor, it's also possible your debt might be added to a Breathing Space at a later date, because it is only identified after the Breathing Space has started. In this case, you have to apply the protections from the date you get the notification, or when the regulations consider you to have received it, whichever is the earliest.

For electronic notifications this is the date they are sent. For postal notifications this is 4 working days after it was posted.

what's the regulation requirement for an LA with regard to their employees being classed as responsible for inclusion in Breathing Space?

Please see below the [guidance](#) issued by the Insolvency Service on 24th December:

A Breathing Space can only be started by:

- a debt advice provider who is authorised by the Financial Conduct Authority (FCA) to offer debt counselling
- a local authority (where they provide debt advice to residents)

Debt advice providers (referred to in this guidance as debt advisers) are responsible for the administration of a Breathing Space. They are the point of contact for the debtor, their creditors (and appointed agents), and the Insolvency Service (who own and maintain the electronic service). The draft legislation does not refer to an LA's employees, but simply states 'a local authority'.

Can you explain more about rent arrears and Breathing Space.

Arrears fall under the 60 day Breathing Space moratorium but new liabilities do not.

It would be good to have a chart what is included and what isn't

Sure - see below (all from the [guidance](#) issued by the Insolvency Service on 24th December). This is 2.6 and 2.7 below

2.6 Qualifying debts

Debts included in a Breathing Space must be qualifying debts. Debts are any sum of money owed by the debtor to you, while liabilities are any obligation on the debtor to pay money to you. Most debts are likely to be qualifying debts. These will include:

- credit cards
- store cards
- personal loans
- pay day loans
- overdrafts
- utility bill arrears
- mortgage or rent arrears

Government debts like tax and benefit debts are all likely to qualify, unless they are included in the list of excluded debts.

2.7 Excluded debts

All personal debts and liabilities are qualifying debts, except for:

- secured debts (like mortgages, hire purchase or conditional sale agreements). You can only include arrears on these debts that exist at the date of an application for a Breathing Space. Any new secured debt arrears that happen after the Breathing Space starts are not protected. [If a secured debt is also an ongoing liability](#) and a debtor misses payments, it could mean the debt adviser stops their Breathing Space
- debts incurred from fraud or fraudulent breach of trust. You should think of this in the same way you would if a person is bankrupt. Discharge from bankruptcy does not release a person from bankruptcy debts which they incurred by fraud. If you request a review of a Breathing Space because of fraud or suspected fraud, you might have to provide evidence to the debt adviser or to a court
- liabilities to pay fines imposed by a court for an offence. This includes any interest on the fine and any penalties connected to it. This does not include penalty charge notices, like a parking ticket
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- council tax liabilities have not yet fallen due. If all instalments for that financial year have fallen due and have not been paid, these are considered to be a qualifying debt. If a debtor has been served with a 'reminder notice' to pay a council tax bill, the remaining liability for the financial year is a qualifying debt

How often can someone enter Breathing Space, if they go to a different debt advisor 6 months after the first is another 60 days Breathing Space due?

Before a debt adviser can start the Breathing Space, they must confirm their client is eligible, which includes confirming that they have not already had a Breathing Space in the last 12 months at the time they apply.

Note that this check of eligibility is not needed for those entering Breathing Space through the mental health provisions.

If all the information is meant to be stored in a central hub, then how will this be collated and when will this start as we have not been contacted?

A Breathing Space will start the day after the debtor's details are put onto the Insolvency Service's Breathing Space register. The Insolvency Service will maintain the electronic service that debt advisers use to start the Breathing Space process and will send notifications to creditors during it. They will also maintain a private register of:

- details of people whose debts are in a Breathing Space
- the date a Breathing Space ended or was cancelled in the last 15 months

Breathing Space is due to come into force on 4th May 2021.

Does this scheme relate to Local Authority Sundry Debts e.g. Commercial Rents, Commercial Waste, Overpaid Salaries etc? Can only see info on Council Tax & Housing Benefit Overpayment. Is it only specific Council debt such as these that's applicable?

Yes. This scheme relates to all debts except those which are in the list of excluded debts. (2.7 above). With regards to commercial debts, it would apply to sole traders, but not to companies.

If you require any further information or have any other queries related to this topic contact:

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