

Breathing Space Scheme

Response to HM Treasury's
consultation on a policy
proposal



Background

Each year, Citizens Advice helps over 340,000 people with more than 1.5 million debt issues. 'Our online debt pages were accessed by 8 million people.'¹ Our service has helped people who are struggling with debts since it began and it lies at the very heart of our organisation's mission. We help solve 7 out of 10 of our client's debt problems, and 84% say they couldn't do without us.²

We increasingly find that people are falling behind on household bills. Last year we helped people with 690,000 household bill debt problems, compared to 350,000 consumer credit issues. One reason so many more people struggle with household bill debts is the way they are collected. Of the problems we helped people with last year, household bill debt problems were nearly twice as likely to be related to the way debts are collected than consumer credit debt issues (29% compared to 15%). Breathing space and the statutory debt repayment plan (SDRP) will provide welcome protections for those who are struggling with these debts and their methods of collection.

The breathing space and statutory debt repayment plan will be able to provide holistic protection to people from their creditors. More than half of all Universal Credit claimants in September 2018 had deductions from their benefit to pay off debts owed. Deductions are designed to help people manage their debts, keep their housing secure and their gas and electricity on. However, some people can't afford the amounts that are taken, and they often don't understand when or why they happen. Along with other debt repayments this reduces income and can increase the unpredictability of their finances over a longer period of time. High levels of deductions also lower monthly income. A single person over 25 claiming Universal Credit can see up to £127 taken per month to repay existing debts. Breathing space must work for people who claim Universal Credit, as well as others who are struggling to deal with financial difficulties.

Protection from interest will be important for people. Households in the lowest two income deciles, on average spend more than 10% of their incomes meeting the cost of debt servicing, with nearly 70% of these repayments going towards the cost of servicing credit card debt. Amongst those in the lowest income decile, 1 in 4 households struggle to meet the costs of servicing these debts.³ A breathing space will provide welcome protections to households who are struggling to meet the costs of servicing debts. These protections are likely to encourage more people to take steps to manage their debts and to give people time to choose an appropriate debt solution.

For those who need further help to repay their debts, a flexible, statutory debt repayment plan would help close some of the gaps between current insolvency solutions and overcome the medium term effects of changes in their circumstances. The flexibility of these solutions is of central importance; it will ensure that a broad range of clients can repay what they owe, without risking their home or damaging their ability to borrow in the longer term.

¹ All figures in this response are based on our client data from 2017-18 unless otherwise stated.

² Citizens Advice, (2017) Outcomes and Impact Research, 2017.

³ Institute for Fiscal Studies, [Problem Debt and Low Income Households](#), January 2018.

Overview of response

The proposed breathing space and statutory debt repayment plan will be a valuable resource for people facing financial difficulty. These schemes must provide robust protections for debtors both at the point of entry and throughout the schemes. In so doing, they must also support people to repay their debts.

We strongly agree with HM Treasury's decision to include a broad range of debts within both the breathing space and the SDRP. It's fundamental to the success of the schemes that the principles around the inclusion of debts within a breathing space are consistently applied for both public and private sector creditors. **In particular, it is crucial that deductions from benefits to pay off debts, including Advance Payments,⁴ are explicitly included within a breathing space.** Universal Credit deductions can see up to 40% (30% after October 2019) of a person's monthly income deducted. Such a high level of deductions could leave people continuing to face significant financial hardship after its initiation, and would invalidate the purpose of introducing breathing space. The technical mechanism for pausing these deductions under Universal Credit is already widely used,⁵ when deductions are paused for hardship. Notifications processes could be aligned with those set out in the consultation.

The protections provided by introducing the breathing space must remain robust. **We welcome the decision to protect debtors from both contractual and default interest, as well as arrears charges and enforcement activity.** The 60 days of relief from interest will be essential to the success of this scheme - providing people time to seek debt advice and select a debt solution with the confidence that their situation will not be worse than before, as well encouraging earlier engagement with debt advice agencies.

The breathing space and SDRP should remain free to clients at the point of delivery. The broad eligibility requirements of the breathing space and SDRP contribute to the attractiveness of the schemes. Therefore, as with debt relief orders, **the statutory regulations around the breathing space and SDRP should ensure that individuals are not charged for using these schemes.**

The breathing space and SDRP should retain a degree of flexibility. At times, it will be important to recognise that the 60 day period for the breathing space will not be sufficient. In conditions where individuals face major changes of circumstances or cannot access debt advice, advice providers should have the discretion to extend the protections of the breathing space. Similarly, where an increase in income or additional equity is anticipated, advisers should be given discretion to initiate 'low and grow' SDRPs which extend beyond 10 years. Debtors should be given some flexibility around payment breaks - allowing for multiple shorter payment breaks, as well as longer term breaks, in response to a major financial shock.

⁴ Advance Payments are an advance on an individual's Universal Credit claim which allows can be applied for to cover any costs which are incurred during the 5 week wait for the UC to come through. <https://www.gov.uk/universal-credit/get-an-advance-first-payment>

⁵ This is provided through the Department for Work and Pension's debt management contact centre. See DWP, '[If you can't pay back you Advance](#)'

We welcome the **Alternative Access Mechanism that aims to provide financial relief and support to people in mental health crisis**. The service can be delivered either through a centralised unit or a co-located advice service in health premises. The Alternative Mechanism should be:

- **Easy and quick** to access for both clients to enter, and for practitioners to refer.
- **Open to all clients in mental health crisis**, whether they are in in-patient or community settings.
- **Dependent on securing a client's consent**, except in circumstances where clients have existing powers of attorney.
- **Provided for a minimum of 60 days**, to take into account fluctuating mental health needs and to reduce administrative burden on mental health practitioners, debt advice agencies and creditors.

We advocate co-locating the Alternative Mechanism in health services. This is based on our experience of providing advice services in more than 600 GP practices and more than 30 mental health in-patient and community services. We propose that, prior to full implementation, there should be **a pilot that tests several delivery models, and co-designs the service with clients, practitioners and debt agencies**. They are well-positioned as end users of this service.

We agree that the administration of this scheme should be undertaken by the Insolvency Service. **For the breathing space and SDRPs to be deliverable by a large range of debt advice organisations, we propose that the notifications and payment distribution should occur through an Insolvency Service system**. This would operate alongside existing payment distribution mechanisms for debt advice agencies with appropriate permissions. The burden of delivering the breathing space and SDRP should also be minimised for debt advice agencies, by treating the 30 day check as a 'light-touch' intervention.

Finally, in order for these schemes to be effective, it is vital that sufficient funding is provided to debt advice agencies for their delivery. This includes funding for the process of advising clients, not just the distribution of payments.

Background	1
Overview of response	2
Proposals for a Breathing Space	6
Eligibility for a breathing space	6
Question 1. Do you agree with the eligibility criteria for entering a breathing space, including the 12 month period?	6
Question 2. Do you think there should be a formal mechanism to allow creditors to object to a debtor's entry into a breathing space, given the protections already outlined above? How could any such mechanism be best designed to minimise administrative burden?	7
Box 1. The Mental Health Alternative Access Mechanism	8
Question 3. Do you agree with the outline of the alternative access mechanism for individuals in mental health crisis care?	8
Question 4. Although it will be important for a professional assessment to be made of an individual's condition, do you agree that other third parties (e.g. carers) be permitted to use that professional assessment to make a referral to a debt advice agency on an individual's behalf?	8
Question 15. Do you consider that this protection is appropriate for individuals in mental health crisis? Should there be any further protections for individuals who have accessed breathing space in this way?	8
Question 5. Do you agree with the proposed method of administering entrance into breathing space? Do you agree with the proposed role for the Insolvency Service? What kind of functionality should the Insolvency Service's notification mechanism include?	18
Question 7: Do you think the register holding details of debtors in a breathing space should be fully public, accessible to relevant debt advice agencies and creditors or just accessible to the Insolvency Service?	18
Protections of a breathing space	19
Question 8: Do you agree with the proposed approach for excluding certain debts from the protections of breathing space?	19
Box 2. The breathing space must pause repayments to all government providers and, in particular, deductions from universal credit and attachment of benefits.	19
Question 9. Do you think there are other debts, such as those in regulated credit agreements, or certain types of benefits, that should be excluded?	21
Box 3. Treatment of Ongoing Liabilities	22
Question 11. Do you agree with the proposed treatment of interest, fees and charges in breathing space?	22
Question 12. Do you agree with the treatment of collections recovery action during breathing space? Should any other forms of collections and recovery action be explicitly included in the protections? How can any practical issues arising from preventing these collections and recovery actions be best mitigated?	23
Question 14. Do you agree with the proposed length of breathing space? Do you have any other comments on the operation of the check?	25

Creditor compliance with the breathing space and statutory debt repayment plan	26
Question 6. Do you think there should be an oversight role to ensure creditor compliance with breathing space? If so, how should this oversight role operate?	26
Question 13. How should creditor compliance with the breathing space be monitored?	26
Question 22. How do you think creditor compliance with the SDRP's protections can be best monitored? Should creditors who fail to comply face any additional sanction?	26
Proposals for the Statutory Debt Repayment Plan	28
Eligibility for the statutory debt repayment plan	28
Question 16. Do you agree with the eligibility criteria for entering a plan? In particular, do you agree that plans lasting for a maximum of ten years is an appropriate timeframe for debt repayment?	28
Box 4. The Breathing Space and SDRP should be free to clients	29
Question 17. Do you agree with the proposed criteria for creditors to object to the plan? Are there any other criteria you feel would be appropriate?	30
Question 18. Do you agree with the design of the proposed fair and reasonable test? In particular:	30
Do you agree that 14 days is an appropriate timeframe for creditors to object to a proposed plan?	30
Following an Insolvency Service decision that a plan is fair and reasonable, do you think that creditors and debtors should be able to make any further objection if they feel the Insolvency Service's decision is incorrect? If so, how should an objection mechanism work to minimise disruption and administrative burden for parties involved in the plan?	31
Protections of the statutory debt repayment plan	31
Question 19. Do you agree with the debts included within a plan? Should any other debts be excluded, or excludable on request?	31
Question 20. Do you agree with the proposed treatment of interest, fees and charges within the plan?	32
Question 21. Do you agree with the proposed protections within a plan? Are there any unintended consequences that could arise from providing these protections to debtors?	32
Question 23. Do you agree that some debts should be prioritised for repayments within the plan? If so, do you agree with the debts that the government proposes to prioritise, and the method of prioritisation?	33
Question 24. Do you agree with the two key plan flexibilities outlined? Should the plan offer any other flexibility that would help to make them sustainable over time?	33
Question 25. Do you have any specific comments about how these flexibilities should work? In particular, how do you think a severe, temporary, financial shock should be defined?	34

Question 26. Do you agree with the requirements for continued eligibility for the plan?	34
Administration of breathing space and statutory debt repayment plan	36
Question 27. Should the plan's funding mechanism system be based on taking a share of creditors' monthly repayments?	36
Box 6. Funding the process of debt advice	36
Question 28. How should payment distribution in the plan be done? Should it be offered by an individual's debt advice agency, if they have appropriate handling client money permissions, or by the Insolvency Service, or is there any other model that the government should consider?	37
Question 29. Do you have views on how a breathing space and plan should be reflected on a debtor's credit file?	37
Question 30. Do you agree with the proposed territorial scope of the scheme?	37

Proposals for a Breathing Space

Eligibility for a breathing space

Question 1. Do you agree with the eligibility criteria for entering a breathing space, including the 12 month period?

We agree with the proposed eligibility criteria for entering a breathing space and the 12 month period for frequency of access.

Accessing debt advice: We agree that an individual should obtain debt advice from a Financial Conduct Authority (FCA) regulated adviser before gaining access to a breathing space. We do not think that advisers who are exempt from FCA regulation, in particular insolvency practitioners, should extend to the provision of breathing space. It is crucial that when people enter into breathing space they have received impartial advice which allows them to seek the most appropriate debt solution for their situation.

Breathing space protections should avoid encouraging more people to seek advice from the insolvency practitioners until regulation of the sector improves, as there is an ongoing problem of inappropriate advice given by insolvency practitioners.⁶ We propose that this approach be reviewed if reforms are made to the regulation of insolvency practitioners.

Assessed as being in problem debt: We agree that there should be an 'initial assessment', though which breathing space is identified as an appropriate debt advice solution, for people who are assessed as having a chance of entering a debt solution. Such a debt solution should include informal arrangements with creditors, such as token payment offers, as well as the SDRP or an existing statutory debt solution.

The initial assessment should resemble the Citizens Advice Debt Assessment, formerly known as the Common Initial Assessment (CIA). The Debt Assessment includes the Money Advice Service recognised process for assessing financial need. A central objective of the Citizens Advice debt assessment is to establish a person's debt problem, their financial resilience and ability to take action to improve their situation. This approach captures whether the client meets MAS' definition of over indebtedness (having missed 3 payments and/or finding debts a heavy burden) and goes a step further to identify what type of intervention is likely to be most effective.⁷

The evidence required for this assessment should not be burdensome. Instead, if a client is identified as not being able to repay their debts when due, they ought to be eligible for breathing space. We agree that it is important that this session of debt advice is used to develop a complete list of clients' creditors, so that breathing space protections are effective.

One breathing space a year: We agree that limiting access to breathing space once in 12 months, starting from the date of commencing the breathing space, is fair. We would propose however, that if a debtor faces a major change of circumstances after a 6

⁶Insolvency Service, [Review of the Monitoring and Regulation of Insolvency Practitioners](#), September 2018.

⁷ Money Advice Service, [Levels of Over-Indebtedness: Technical Report](#), p. 5.

month period, the debt advice agency and Insolvency Service should be permitted to consider 'discretionary' re-entry after a 6 month period.

Question 2. Do you think there should be a formal mechanism to allow creditors to object to a debtor's entry into a breathing space, given the protections already outlined above? How could any such mechanism be best designed to minimise administrative burden?

A means for creditors to object to a breathing space would not be proportionate to the time period of 60 days. Crucially, by entering a breathing space, debtors are beginning to deal with their financial difficulties and taking steps towards repaying debts. The breathing space itself should not be considered as directly akin to a debt solution, as it does not involve debt being written off.

Allowing creditors to object to entry into a breathing space would create excessive disruption to the debtor and create additional costs for debt advice agencies within the system. Objections to the relatively short period of a breathing space would create an additional administrative burden both for the debtor and the debt advice agency - forcing the latter to negotiate with the different creditors who might be included within the breathing space.

If an individual has already entered a breathing space in the previous 12 months, without provision for 'discretionary re-entry', the Insolvency Service would identify this and the breathing space would not be initiated.

Box 1. The Mental Health Alternative Access Mechanism

Question 3. Do you agree with the outline of the alternative access mechanism for individuals in mental health crisis care?

Question 4. Although it will be important for a professional assessment to be made of an individual's condition, do you agree that other third parties (e.g. carers) be permitted to use that professional assessment to make a referral to a debt advice agency on an individual's behalf?

Question 15. Do you consider that this protection is appropriate for individuals in mental health crisis? Should there be any further protections for individuals who have accessed breathing space in this way?

In this section, we respond to questions 3, 4 and 15. 'Individuals', 'people' or 'clients' are used interchangeably in reference to individuals who are experiencing, waiting for, or are using mental health crisis services.

Our proposal: 'Alternative Access Mechanism for Mental Health Crisis'

We welcome the proposal for an Alternative Access Mechanism for people in mental health crisis, either as a centralised unit, or a co-located service in health premises. Our evidence supports the position that the 'Alternative Mechanism' should be as easy as possible for individuals, who might be struggling with severe mental health difficulties, to access financial relief. To ensure that the mechanism is accessible, the service design should:

1. consider the holistic client journey of an individual receiving mental health care, including the continuity of debt advice
2. incorporate simple referral pathways between mental health practitioners, GPs and other health practitioners and debt advice agencies, and
3. take into consideration potential issues highlighted below, and also should set core principles of service provision.

Prior to implementing the service, **we recommend that a pilot of the Alternative Access Mechanism is co-designed with clients, mental health and other health practitioners, and debt agencies.** This would test the various models of service delivery to ensure an easy, accessible and integrated service as possible.

It is important to co-design the delivery model with clients, health practitioners and debt organisations because:

- people with mental health difficulties are 'experts by experience' and will be able to help co-design an accessible and easy-to-use model. This is likely to encourage service uptake and to facilitate an effective financial support mechanism. The independent, user controlled organisation [Shaping Our Lives](#) research highlights the importance of service user involvement in service design and delivery. **Contributing service user experience to design work**

can help service providers and commissioners to address access issues and communication barriers.⁸

- Health practitioners, including mental health practitioners and GPs, have first-hand experience of working with people with complex mental health needs. They are well-positioned to help co-design a delivery model that **helps reduce administrative pressures on mental health services, and helps increase practitioner engagement to promote the service to clients.**
- Taking into account the client and practitioner's views will ensure that the interface between mental health services, Alternative Mechanism or debt agencies are integrated in the care pathway of mental health support, with less service fragmentation.
- Early engagement with clients and practitioners will also ensure that the continuity of support is provided for all parties involved. This could take the form of care support, administrative support, service uptake or continuous client engagement.

Issues to consider in service design and delivery

We highlight a number of issues to consider in order to make the Alternative Access Mechanism for breathing space available for people in mental health crisis.

- **Definition:** it is unclear from the consultation what the definition of 'mental health crisis' is, and whether this includes individuals with reduced or no mental capacity to give informed consent. The definition of 'mental health crisis' needs to be set out clearly in the regulations.
- **Access channels to mental health crisis care:** it is important to consider the client journey of mental health support. The access channels to breathing space for individuals in mental health crisis should take into account those who are:
 - receiving crisis care at a psychiatric in-patient setting,
 - in the care of local community mental health teams, such as Crisis Resolution or Home Treatment and other teams,
 - identified or referred by a GP while they are still waiting to access a mental health crisis service,
 - living independently in the community and not yet known to statutory services, and/or have been identified by emergency services such as the police or ambulance services.
- **Standards of evidence:** individuals in mental health crisis may often be requested by creditors and/or debt agencies to provide evidence that they are in crisis in order to check whether they are eligible for financial relief. This proof of eligibility should be easy to obtain, either through a mental health practitioner, or a GP who is responsible for the person's care while in crisis. This could include using a one-question screener or pro-forma to confirm a client's eligibility by a psychiatrist, a care coordinator, a social worker or a GP. Debt advice agencies, health practitioners and creditors should come to an agreement on the form this evidence should take.

⁸ Shaping Our Lives, [Improving Understanding of Service User Involvement and Identity](#), 2017.

- **Fluctuating mental health needs:** the experience of being in mental health crisis can vary considerably between individuals. Some people may be admitted into a mental health ward for a short period of time, while others may have short stays in hospital but relapse repeatedly for several months. Being in crisis can also affect the individual's capacity. Some people may have reduced or no capacity to make an informed decision. The Alternative Mechanism should take into account people's fluctuating mental health needs. This includes:
 - quick access to the Alternative Access Mechanism, whether individuals are waiting for mental health treatment or are already using crisis services.
 - one-to-one support to help people enter the service. This could be a mental health specialist debt advisor who can meet with the individual face-to-face, and help them make an informed decision about their finances.
- **Promotion of the Alternative Access for breathing space:** the promotion of this service should be proactive, encourage service uptake, and not add pressure on mental health services. The use of the Alternative Mechanism for the breathing space is likely to depend on how effective the engagement is between mental health practitioners and their clients. Providing information on financial advice or relief is not always made available by mental health practitioners. People receiving mental health care often want to have access to financial advice but do not always receive information on where to find support. The Community Mental Health Survey shows that people's experience of access to financial advice has declined. 'Of those respondents who wanted or needed help or advice with finding support for financial advice or benefits, [only] 29% said that they 'definitely' received this in the last 12 months – down from 32% in 2017'.⁹ Mental health services are under pressure. Mental health practitioners may not find it easy to refer, or often do not remember to promote the Alternative Mechanism, or provide information to clients.
- **Consent and data sharing:** clients in mental health crisis should be able to consent to enter the Alternative Mechanism service, and data sharing should be restricted unless it helps the client directly. However, to help clients make an informed decision, the debt advisor may need to have access to some data that enables them to provide advice for clients in crisis. A debt advisor may need to know prior to meeting the client, for example, the client's stress triggers, or preference to work with male or female advisors, in order to provide a suitable environment for debt advice. Data access should be minimal and only provided when it is helpful for the client. Co-locating or working very closely with mental health practitioners can enable data-sharing between mental health practitioners and debt advisors on a 'need-to-know' basis, that helps the client's support needs.

Comparison: co-located service and centralised unit of breathing space

⁹ Care Quality Commission, [Community Mental Health Survey](#), 2018.

	Co-located advice service	Centralised unit
Data sharing	A data sharing agreement may be negotiated individually between the co-located advice service and the hosting mental health service.	A data sharing agreement would need to be negotiated centrally with all mental health crisis services.
Warm referral and introduction	A health practitioner can introduce a client to a debt advisor in a health premises that is familiar to the client to encourage service uptake. This could be 'light touch' entry for people who might be in crisis, or a more 'full' debt advice session.	A health practitioner can refer the client via phone or submit an online application. The client may not be familiar with a debt advisor they have not met before.
One-to-one support to help obtaining informed decision about entering Alternative Mechanism	A health practitioner can work closely with a debt advisor to ensure the continuity of support is provided to a client. Case progress is shared between the debt advisor and the mental health practitioner directly, where necessary.	A Centralised Unit coordinates the progress update between the health practitioner, client and debt agency.
Service promotion and engagement with practitioners	The debt advisor can work closely with mental health practitioners to help encourage service uptake.	The Centralised Unit can promote the service to mental health practitioners either through training and/or developing access mechanism champions.
Obtaining evidence for service eligibility	The debt advisor can help the client to receive evidence from the mental health service directly.	The client receives evidence from the practitioner and shares it with the Centralised Unit.

Principles of service provision

- *Easy and quick access:*

1) the service should be easy and quick to access for people in mental health crisis. Finding out information on how to find or to use a service can be a daunting task while feeling vulnerable. Access to the Alternative Mechanism should enable closer working relationships between a caseworker/debt advisor and mental health practitioners. **Co-located advice services promote effective and integrated referral pathways, support service uptake, reduce administrative pressure on health services, and help mental health practitioners make the service more accessible to clients.** [Our research](#)¹⁰, in

¹⁰ Citizens Advice, [Advice in Practice](#), 2018.

partnership with the Royal College of General Practitioners, shows that co-locating advice in health settings has helped improve people's health and wellbeing, and it also enables practitioners focus their time more efficiently on the clinical part of a client's treatment. Co-locating helps clients attend the service in a place that they are already familiar with, and helps make an appointment easier. By co-locating services, an Alternative Mechanism debt advisor or worker could work closely with mental health practitioners and actively promote the service to clients.

2) the service should provide multiple access channels, via a mental health practitioner or GP who is responsible for the client's care while in crisis. This could include a referral by a mental health practitioner or by a GP who is responsible for the individual's care while in crisis. This should not impose a mandatory requirement that referrals can only be made by a specific group of referring parties. All referrals should have the explicit consent of the client being referred to the service.

- *Open to all individuals in mental health crisis:* **the eligibility criteria to enter the Alternative Mechanism should be open to all those who are in mental health crisis**, whether they are in an in-patient setting, waiting to access a mental health crisis service, or in the care of a community mental health team or their GP.
- *Consent and choice:* [our evidence](#)¹¹ shows that people in mental health care consistently call for a greater say over what support options should be made available to them. Whether they want to use or be entered into the Alternative Mechanism service, **this should be agreed with the client prior to entering the service, or their Power of Attorney representative in case the client has no capacity to give consent.**
- *'Warm referral' and one-to-one support:* given the variation of people's capacity to make an informed decision while in mental health crisis, **they often benefit from receiving the support of an assigned caseworker to help them make decisions about their finances.** [Our evidence](#)¹² shows that people with mental health problems benefit from a 'warm referral'. This means that a mental health practitioner, who is already working with the client, could introduce the client to another agency. For example, a mental health practitioner, a care coordinator, or a peer support worker could offer the Alternative Mechanism service to a client in an introductory meeting with a debt advisor. This practitioner should be in regular communication with the client and debt advisor to ensure that the continuity of support is provided. This would increase the likelihood that all creditors are kept up to date and would increase the effectiveness of the recovery space. It would also provide the necessary consent for access to data required for individuals to be entered into the protections provided by the Alternative Mechanism.

¹¹ Citizens Advice mental health insights: [people's experience of mental health care coordination](#), 2018.

¹² Citizens Advice mental health insights: [people's experience of mental health care coordination](#), 2018.

- **Further protections - minimum period of protection: as with individuals who enter the usual breathing space, clients who use the mental health alternative access mechanism should be given a minimum of 60 days of protection.** As a significant proportion of people who enter mental health crisis care find themselves moving between inpatient and community settings, the 60 day minimum will reduce the burden on mental health practitioners to notify a debt advice agency of a client's exit from care. It will also prevent individuals being entered into the mental health access mechanism multiple times, which will cause additional stresses to creditors' processes of dealing with delinquency.

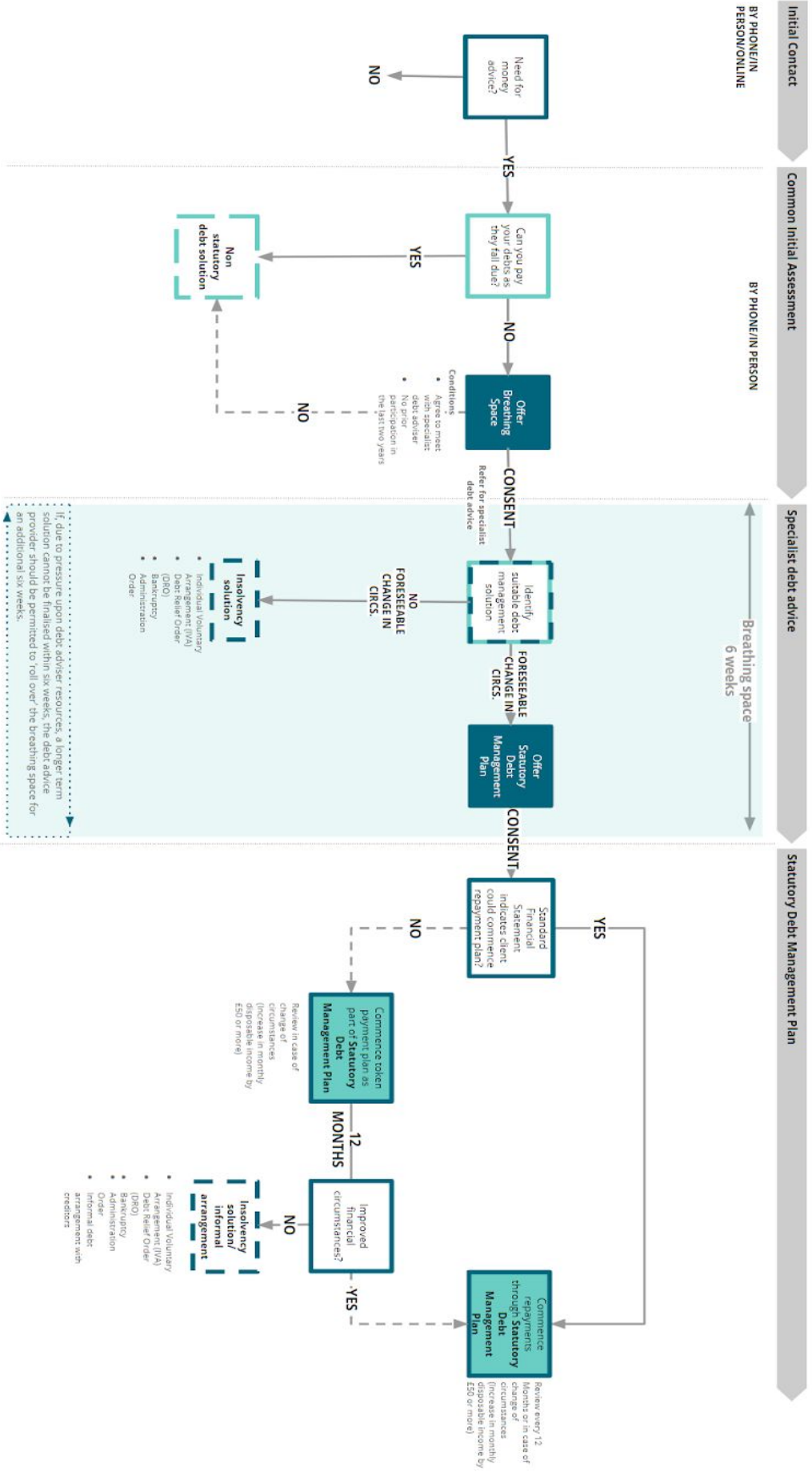
Client journey

In this section, we share a common scenario of the client journey of receiving debt advice. This is based on our experience of delivering debt and welfare advice in nearly 600 GP practices and more than 30 mental health in-patient, outreach and community care services. Our services are either co-located, or based in a community hub, working closely with mental health services. We envisage the client journey of receiving mental health care, followed by receiving debt advice, to be as follows:

1. *Onset*: a client experiences their first episode of mental health crisis.
2. *Identification*: a client is then identified by family members or carers to be going through a crisis. Some clients may have no family or carer. They may be identified by a local GP, emergency services, such as the ambulance or police, or the community mental health team.
3. *Waiting times*: once identified and referred to a mental health service by a practitioner, waiting times to receive mental health support may vary. The waiting time from the point of being referred to starting the mental health treatment, may take between less than 2 weeks, to 12 weeks. Some clients may be admitted into a mental health crisis service through Accident & Emergency, while others may stay in a police station overnight.
4. *Assessment* by mental health practitioner: before being admitted into a mental health crisis service, the client is assessed by a mental health practitioner, and appropriate care is provided. At present, assessing clients for financial support is not a standard provision as part of the initial assessment upon admission. This should be reconsidered under the alternative access mechanism.
5. *Referral* to debt advice: after being admitted into a mental health crisis service, access to a debt agency is promoted by a mental health practitioner. Once a client is identified to be in need of financial advice, the practitioner makes a referral to a debt agency.
6. *Warm referral and introduction* to breathing space: when the referral is made electronically or in writing to the debt agency, the practitioner introduces the debt advisor to the client, in a face-to-face meeting. This fosters trust between client and debt advisor.
7. *Consent and initial contact*: in a 3-way face-to-face meeting, the practitioner and debt advisor explain the service to the client and seek their consent to enter the service. The debt advisor works closely with the client to help them make decision whether the service is suitable for them or not.

8. *Initial assessment for financial advice and follow-up:* once consent is obtained, there should be regular communication between the debt advisor and mental health practitioner to ensure the care is continuously provided to client. **We anticipate the ideal client journey of debt advice to be as illustrated in the diagram below (p. 15).**
9. *How debt advisor can help clients:* the consultation proposes that 'the debt advice agency would be responsible for recording that an individual was in crisis, and could benefit from the protections of breathing space.' In circumstances where individuals are an in-patient, **it's important that authorisation is given to debt advice agencies to enter people into breathing space and gain consent to record their details.** This mechanism could be made more effective by permitting the regulated debt adviser to review the credit file of the person who is entering recovery space, so that major creditors can be recorded and informed about an individual's entry in the scheme.

Customer Journey through the Breathing Space and Statutory Debt Management Plans



Sheffield Mental Health Citizens Advice Service

Service offer - a real world example of how specialist advice can cut the cost of mental health care. It helps resolve complex and multiple problems and helps patients become discharged from hospital quickly, with continuous support in place.

Outcomes - providing welfare advice in secure mental health settings helps:

- **reduce lengths of stay:** the average cost of an inpatient stay is £330 per day nationally
- **prevent homelessness:** homelessness costs the public sector, including the NHS, up to £30,000 a year as well as causing great distress to the person affected, and
- **prevent relapse:** a relapse of schizophrenia costs the NHS over £18,000.



Case study¹³: Jane, a 57 year-old single parent with 2 children living at home, was admitted to hospital after taking an overdose in a suicide attempt. She was transferred to the psychiatric unit where she was referred to the Citizens Advice Mental Health Sheffield Service. She had been working part-time but had accrued several thousands of pounds worth of debts including 4 with payday loans. She also had council tax

and rent arrears. She was due for a court appearance in relation to the council tax and had received an eviction notice from her private rented flat as a result of the rent arrears.

During her 3 months on the ward, the Citizens Advice advisor worked with Jane to restructure her debts, stabilise her housing and sort out the employment issues. They established that she was not eligible for statutory sick pay and put in a claim for Employment Support Allowance as well as backdated housing benefit (HB), council tax benefit (CTB) and personal independence payment (PIP). Working with the discharge facilitator, new accommodation was found and new claims for HB and CTB made.

Jane was unable to return to work but wanted to start a course in science. The advisor is helping her to apply for this. Over a 4 month period, 115 contacts have been made on behalf of the client and the case is ongoing.

Jane's financial and housing situations had contributed to her suicide attempt. Being able to provide dedicated support on-site to secure appropriate housing, and stabilise Jane's finances while she was in hospital, helped to reduce Jane's anxiety and put her back in control of her life. She was able to return to a new home with her children and has continued to make progress with her college application.

¹³ This case study was first published in the Centre for Mental Health's [report](#).

Assist Advice Pathway, Citizens Advice South Somerset

What is the Assist Advice Pathway?

This service offers recovery-focused advice and coaching support that helps clients as they work towards recovery and improved wellbeing and increased confidence.

Who can use the service?

- Clients using mental health services including Home Treatment Team, Social Care Team, in-client wards and other community mental health services, and
- clients in recovery following a period of ill mental health who are re-building independent living skills.

What does the service offer?

- A dedicated, specially trained, personal advisor
- a one-to-one initial assessment
- ongoing advice and coaching support (up to 12 sessions)
- access to Confidence Club and other skills building opportunities
- assistance to take part in social and leisure activities, and
- help to widen their support networks.

Health and social wellbeing objectives

- Improved sense of being able to cope with daily life and arising issues
- reporting positive actions and improved confidence
- reporting reduced anxiety
- demonstrating improved decision-making skills (informed & timely)
- Better able to solve problems (effective use of resources to address arising issues)
- improved sense of security and control (budgeting, planning, saving, housing)
- reporting increased (breadth and nature) of support being used, and
- reporting improved engagement in community life and reduced isolation.

The Advice Assist Pathway provides a model for how co-locating debt advice within a mental health setting can reduce administrative burden on both advice agencies and mental health practitioners. This approach simultaneously enables people to manage financial problems, while securing better health outcomes for clients.

Question 5. Do you agree with the proposed method of administering entrance into breathing space? Do you agree with the proposed role for the Insolvency Service? What kind of functionality should the Insolvency Service’s notification mechanism include?

By virtue of its existing relationships with creditors and debt advice agencies, the Insolvency Service is well placed to administer the notification system for entrance into and exit from a breathing space. The online portal should provide push notifications to all types of creditors who would be expected to introduce the protections provided by a breathing space **within a 24 hour period**. As nearly half of all Citizens Advice clients seeking help with debt issues ‘need to take action urgently’, it’s crucial that the initiation of the breathing space occurs as soon as possible for those taking part.¹⁴ Furthermore, the relatively short duration of a breathing space means that delays in the initiation of the breathing space could compromise the holistic support this intervention is intended to offer. The breathing space protections would then last on a creditors’ system for a period of 60 days when - unless an individual was subject to an extension¹⁵ - a further push notification would bring the breathing space to an end.

Debt advice agencies would use this portal at the point of entering people into a breathing space. The portal would require the entry of essential personal information and the individuals’ creditors in order to begin the protections. Debt advice agencies should not be responsible for notifying creditors directly, but should work through the portal. Such a portal might share features with the Insolvency Service DRO2 online application form, which has a very significant database of creditors and creditor addresses.

It is crucial that the Insolvency Service has the resource and technology to appropriately fulfil this role. The value of the breathing space as an intervention will be lost if there isn’t a clear and direct process for notifying creditors, which introduces protections at short notice.

Question 7: Do you think the register holding details of debtors in a breathing space should be fully public, accessible to relevant debt advice agencies and creditors or just accessible to the Insolvency Service?

The register of breathing space participants should not be publically available.

There are 2 key reasons for this:

1. **public registers of people who use debt solutions have previously been used as lead generators** by unscrupulous creditors.¹⁶
2. **A public register might act as a barrier to people using the scheme.** People experience stigma around the issue of debt. We hope that the breathing space can support people who are experiencing temporary and resolvable debt problems. As such, it’s important that the breathing space acknowledges the

¹⁴ Citizens Advice, Outcomes and Impact Research, 2017.

¹⁵ Extensions to the breathing space might be the result of the mental health alternative access mechanism, or for other discretionary reasons, such as the debtor being unable to access debt advice within the 60 day period for reasons of demand.

¹⁶ Lead generation by companies seeking to sell credit products or paid for debt advice has previously relied on stores of information such as these. See [this page](#) on Debt Camel for an example.

need to maintain an individual's privacy at the point of entry into a breathing space.

In addition, the reason for setting up a public register - to enable creditors to take proactive steps to identify when someone enters into breathing space - should be satisfied through the insolvency service's notification portal.

As such, **access to the register should be limited to verified creditors and debt advice organisations.** The Insolvency Service should manage access to this register, with creditors able to apply to the Insolvency Service if they wish to gain access to the register.

Protections of a breathing space

Question 8: Do you agree with the proposed approach for excluding certain debts from the protections of breathing space?

It is very important that the breathing space covers a broad range of debts, including debts to government and priority debts. The objective of a breathing space is to secure a period of relief from the multiple problems associated with indebtedness. This should include protection from:

- **the monetary costs of financial difficulty**, such as interest both contractual and default, as well as fees and charges
- **the mental pressures** and acute anxiety that can emerge from indebtedness

The breathing space period should also enable people to stabilise their finances, by pausing additional costs, such as making payments towards debt servicing or debt repayment. This period of stabilisation should place people in a better position to start repaying their debts when they come to the end of the 60 days. It should also serve as a time in which people can access debt advice and find a more sustainable solution to their financial difficulties.

Box 2. The breathing space must pause repayments to *all* government providers and, in particular, deductions from universal credit and attachment of benefits.

The requirement for an effective breathing space to pause these repayments is particularly acute when it comes to Universal Credit, given that up to 40% of people's total monthly payment can currently be deducted (changing to up to 30% from October 2019), without undertaking an affordability assessment. Deductions are also particularly common under UC - with more than half of people who claim experiencing a form of deduction.¹⁷ 60% of people who make a new UC claim take on an Advanced Payment and this is also the highest cause of deductions from UC. *It's therefore vital that repayments of UC Advance Payments are paused during the breathing space.*

¹⁷ In September 2018, according to Parliamentary Question 196809, November 2018.

The DWP does currently make provision for deductions to be paused in cases of hardship.¹⁸ More information on this can be found on the DWP's Benefit Overpayment Recovery Guide, which states that DWP recovery practices must not cause 'undue hardship'.¹⁹

It is important that the breathing space draws on this *existing* functionality within UC to allow deductions and attachment of benefits to be paused when entering a breathing space. The guidance to introduce this pause could be added to the DWP's Recovery Guide. The current design features of UC can mean that failing to include deductions within the breathing space would leave a breathing space period completely meaningless for some debtors.

Client case study - deductions for wages and other debts not factored into calculations

Deductions can be particularly difficult for people in work like Paula. Each deduction is *calculated* as a proportion of the standard allowance people get, but if you receive 40% or less of that allowance due to earnings deductions, the money will be taken from other elements. This happened to Paula, who took home £1.25 in UC this July.

Her UC award is made up of £317.82 standard allowance and a £273.16 housing element. She earned £734.29 in June, meaning that her award was reduced by £462.20 to £128.38.

Deductions are being made for a Tax Credit overpayment, advance payment and social fund loan that are being deducted at a rate of 40% of her standard allowance, or £127.13 - which comes out of her housing element.

But Paula also had other deductible debts - she owes £850 in rent arrears and £1,000 unpaid council tax. Both these priority debts would supercede Tax Credit and social fund recovery, but neither her landlord or her council has made an application for third party deduction. So she is getting the maximum level of deductions **and** risking eviction.

Social fund loans are deducted in a similar way to attachment of earnings and deductions from UC, therefore it would be consistent to include social fund loans within the breathing space as well. It would also ensure consistency with an approach which does not prioritise some creditors, e.g. public or government creditors, over commercial creditors.

In addition to consumer and government debts, debts on housing payments should be included within the breathing space. This would include arrears on rent and mortgage payments which might have built up in the period before the commencement of the breathing space. Ongoing rent and mortgage payments should

¹⁸ Our advisers, who regularly ask for deductions to be reduced for our clients on the basis of hardship, told us they are often frustrated by the lack of flexibility and discretion used by decision makers. Around half have seen cases where the DWP has been asked to reduce repayment rates due to hardship, but has not done so. Surveys of advisers, March and November 2018 Base: 111 and 179 respectively

¹⁹ DWP, Benefit overpayment recovery guide - December 2018, p. 26.

be considered as ongoing liabilities so would not be included. Debts on these payments which accrue after the commencement of the scheme would not be included.

The clients' participation in the breathing space scheme should be viewed as an indication of their willingness to seek a long-term debt solution to address these arrears. Clients should not therefore be subject to eviction or unfair refusal to renew private rental contracts during the 60 day period. If clients later enter into a statutory debt repayment plan, these household debts should be prioritised for repayment.²⁰

We do, however, agree that the following debts should be excluded from the breathing space:

- debts incurred as a result of fraudulent behaviour
- fines imposed by a court
- confiscation orders
- child maintenance payments and debts that arise after an order made in family proceedings
- student loans
- personal injury liabilities

Within this approach, it will be important to clearly define the meaning of 'fraudulent' behaviour. Fraudulent behaviour should be limited to those circumstances where individuals have incurred fines from dishonest behaviour.²¹ We suggest that the DWP definition of fraud for benefit and tax credit overpayments would be best used in these circumstances. This can be found in Housing Benefit and Council Tax Benefit Circular G5/2009²² and sets out three different situations:

- a. The customer has been found guilty of an offence, whether under statute or otherwise
- b. the customer has made an admission after caution of deception or fraud for the purpose of obtaining relevant benefit or
- c. the customer has agreed to pay a penalty under section 115A of the Social Security Administration Act (penalty as an alternative to prosecution) and the agreement has not been withdrawn.

We agree that debts that existed but were not identified at the outset of breathing space should be eligible for inclusion in the protections after the breathing space commences. Any interest or charges levied since the commencement of the breathing space should be cancelled, and creditors would not be able to recover these if individuals subsequently exit the breathing space.

Question 9. Do you think there are other debts, such as those in regulated credit agreements, or certain types of benefits, that should be excluded?

We do not think that any further debts need to be excluded from the breathing space. The 60 day period is a short time, so it is important that the breathing space provides the broadest possible protections for debtors. **We would, however, retain for debtors the power to exclude housing debts on a discretionary basis** if they are

²⁰ See question 25.

²¹ DWP, [Benefit overpayment recovery guide](#), p.5.

²² [Housing Benefit and Council Tax Benefit Circular G5/2009](#)

particularly concerned about the threat of eviction or non-renewal of private rented sector contracts.

Box 3. Treatment of Ongoing Liabilities

During the breathing space, the government has proposed that individuals will still be expected to meet the costs of 'ongoing liabilities'. **We agree that people should continue to meet the costs of these payments** - from ongoing gas and electricity use, to rent, mortgage and water charges - during the short period of the breathing space.

It should not be possible, however, for creditors who see ongoing liabilities go unpaid to request the removal of a debtor from a breathing space. People who enter into a breathing space are likely to be facing significant financial difficulty, and hold a number of priority debts. On average, our clients have £1,990 of priority debt. In addition, people who enter a breathing space are likely to have recently encountered a life event. 9 in 10 Citizens Advice debt clients have experienced a major life event in the last year, and these changing circumstances are strongly associated with falls in income, making it harder to stay on top of payments.

Entering into a breathing space should be considered the first step in an attempt to allow people to begin repaying their debts. It's therefore important that people are given a chance to allow their income to recover, and if people do face additional financial hardship, that they are not pushed out of the breathing space.

Removing people from breathing space due to nonpayment of ongoing liabilities could incentivise people to delay entry into breathing space. If creditors are able to request the removal of a debtor for failing to meet a payment, individuals might find themselves with greater protection from enforcement, if they wait to fall behind on bills. We think debtors should have strong protections from the enforcement actions of creditors during the breathing space and to ensure that people do not feel encouraged to take on more debt before entering into the scheme.

Question 11. Do you agree with the proposed treatment of interest, fees and charges in breathing space?

Yes, we agree that interest, fees and charges must be included within a breathing space in order for it to provide adequate protections from financial difficulty.

Household debt burdens in the UK remain very high and unsecured debt is expected to grow over the next four years.²³

The addition of interest is an important feature of growing debt burdens and in addition, despite low interest rates, people are finding it increasingly difficult not only to totally repay, but to meet the cost of servicing these debts. Households in the lowest two income deciles spend more than 10% of their incomes on average meeting the cost of debt servicing, with nearly 70% of these repayments going towards the cost of servicing credit card debt. Amongst those in the lowest income decile, 1 in 4 households struggle to meet the costs of servicing these debts.²⁴ The difficulty faced by those on a low income to meet the cost of interest on their already existing debts reflects **the vital**

²³ [Office of Budgetary Responsibility](#), October 2018.

²⁴ Institute for Fiscal Studies, [Problem Debt and Low Income Households](#), January 2018.

importance of pausing interest (both contractual and default), as well as fees and charges, during the breathing space.

We strongly agree that debtors should not be charged retroactively for interest that was not charged during a breathing space. Entry into a breathing space is intended to give people time to seek debt advice and consider an appropriate debt solution. Some people may find that this period provides sufficient time to allow their income to recover and either repay their debts, or enter into an informal debt solution - such as a payment arrangement with specific creditors. If interest were charged retroactively on exiting a breathing space, the financial recovery secured through the 60 day period could be undermined, taking people back to the position they were in when they started.

We agree that creditors should be allowed to charge interest on debts, such as mortgages, which the client has decided to leave out of the breathing space.

Question 12. Do you agree with the treatment of collections recovery action during breathing space? Should any other forms of collections and recovery action be explicitly included in the protections? How can any practical issues arising from preventing these collections and recovery actions be best mitigated?

Broadly, we agree with the treatment of collections and recovery action during breathing space. It's important that the breathing space includes all forms of enforcement action; including enforcement which can take place outside of a court as well as those that require court proceedings.

a. Contacting a debtor to request repayment of a debt. We agree that all contact with a debtor in relation to the repayment of debts should be prevented during a breathing space. This should include all contact through calls, texts, emails and letters. Communications by creditors are a major source of stress for those who are struggling with debt issues, and are particularly concerning given that these letters often deploy threatening language - with knock-on effects for people's mental health.²⁵

Given that people who enter a breathing space are likely to be struggling financially, companies should cease marketing communication during a breathing space. The persistence of such advertising can leave people, especially those who are vulnerable, feeling encouraged to take out further credit despite already struggling to meet their expenses.

Case study: Eileen

Eileen was 74 years old when she came to Citizens Advice, and living alone in private rented housing. She is blind in one eye and has struggled with a learning difficulty throughout her life. She had no savings, and debts of nearly £6,000.

Eileen owed a rent-to-own provider £550 for a tablet computer, a mobile phone and a vacuum cleaner. She struggled to meet her weekly payments of £75.60 to the store, but despite her inability to pay, Eileen found herself persistently being contacted by the store to purchase 'new and better' goods. Our advisor recounted that Eileen; 'Has

²⁵ See Money and Mental Health Policy Institute's recent [research](#) on the effect of such threatening letters on the the mental health of those struggling with financial problems.

enough to live on, but struggles to understand the high interest rates charged on the goods... [When she is contacted], she feels vulnerable and finds it hard to say no.'

We understand that providers may need to continue to send monthly statements and notices of arrears under the Consumer Credit Act during the breathing space. We would, however, propose that government should mandate providers to **include a notification to breathing space participants to acknowledge that further fees, interest and the prospect of enforcement action are not being added** to their payments during this period.

b. Court action

We agree that creditors should not be permitted to start or escalate court action within the following stages during a breathing space:

- sending a letter of claim under the the debt pre-action protocol
- applying to court for a money judgment or order
- applying to court to take action to enforce the judgment or order

We understand that it may be excessively burdensome upon creditors and courts for money claims that have already been applied to be withdrawn from the courts.

c. Non-court based enforcement action

Some enforcement action does not require action through the courts. Individuals will also need to be protected from the following actions to ensure that the breathing space supports engagement with debt advice:

- direct earnings attachments can be added by DWP without going to court - this applies to the recovery of all benefits and tax credit overpayments
- HMRC can also take money via PAYE or from bank accounts, or take control of goods without a court order
- creditors should not be able to send a statutory demand

For the breathing space to provide genuine protection from creditors, and to ensure certain creditors with greater statutory powers are not able to sidestep its provisions, the above enforcement tools must be prevented from use during the period.

d. Further enforcement action

We agree that a creditor should not be able to apply to the court to enforce a judgment during a breathing space. We agree that most forms of action including stopping new attachment of earnings orders should be paused but we think *all benefit reductions* - new and existing - should also be paused. We have made the case for this in Box 2 above.

We agree that to pause existing attachment of earnings could be excessively burdensome for employers and courts, as well as risking charges to clients to re-initiate the attachment of earnings order. We do not think the same logic applies to attachment of benefits or deductions from Universal Credit however. There are 5.6 million employers in the UK, whereas benefit deductions come from a single source and can easily be re-commenced after the end of the breathing space period, as they currently are in cases where hardship is caused.

Deductions for debts that are excluded from the breathing space should, of course, continue to be deducted from benefits. This would include court fines and child maintenance arrears.

Question 14. Do you agree with the proposed length of breathing space? Do you have any other comments on the operation of the check?

The proposed length of the breathing space is a significant improvement on earlier proposals of 6 weeks. It brings the period into line with the period set out for commercial creditors by the FCA, thereby providing consistency around the period of relief to debtors and creditors alike.

It should, however, be recognised that 60 days remains a short period for those who might be struggling to find financial stability. Evidence from debt advice organisations suggests that large numbers of debtors wait long periods to seek advice.²⁶ Such long-term financial difficulty may mean that the 60 days of breathing space does not provide a sufficient time to secure greater financial stability.

As such, debt advice organisations should have powers to provide discretionary extensions to the protections for people who might face a major personal problem - such as a job loss or bereavement - during the 60 days, or those who might struggle to secure access to a debt advice session in the period of the breathing space.

The check on the breathing space should be light touch for debt advice agencies. Protections should only come to an end if a debt advice agency has specifically flagged that a debtor has disengaged from the breathing space. This is because:

- **Some debtors may not have secured a further specialist debt advice appointment within a 30 day window.** At present, 1 in 4 advisers state that clients are sometimes or often unable to arrange a meeting with a specialist debt adviser within six weeks.²⁷ It is very important that breathing space participants who encounter under-resourced debt advice providers are not penalised for this.
- **The breathing space and statutory debt repayment plans are likely to increase the administrative burden of, and demand for, debt advice.** This increased demand could lead to longer waiting times for those in the breathing space. It would be unfair for debtors to be excluded from the breathing space on this basis.

If participants are not meeting their ongoing liabilities during the breathing space, they should be offered a further debt advice session to discuss financial capability or income maximisation strategies where practicable. Only if clients ignore or refuse such further support should the protections of a breathing space be brought to an end.

²⁶ Two-thirds of Christians Against Poverty clients waited for over a year to seek advice, while a further third waited over three years. Breathing Space Consultation Document, October 2018.

²⁷ Survey of Citizens Advice Debt Advisers, December 2017 - January 2018, 93 respondents.

Creditor compliance with the breathing space and statutory debt repayment plan

Question 6. Do you think there should be an oversight role to ensure creditor compliance with breathing space? If so, how should this oversight role operate?

Question 13. How should creditor compliance with the breathing space be monitored?

Question 22. How do you think creditor compliance with the SDRP's protections can be best monitored? Should creditors who fail to comply face any additional sanction?

For the breathing space and SDRP to be effective, it will be need to be accompanied by a clear oversight and compliance function. This would be a route for debt advice agencies and people under the protections of breathing space to highlight where a creditor is not complying with the scheme.

Regulators will need to play a role here – ensuring compliance with the scheme and reflecting this in their rules, supervision and enforcement regimes. The FCA could be responsible for overseeing consumer creditors' compliance with a breathing space. If regulated financial services firms do not comply with the protections of the breathing space or SDMP, we would propose that individuals or their adviser complain to the Financial Ombudsman Service.

However, for those creditors without a clear, single regulator (e.g. local and national government), more consideration needs to be given to how to ensure compliance with the scheme.

Non-compliance

Specific acts of non-compliance could have specific penalties or repercussions. For example, if a creditor proceeds with court action against someone under the protections of breathing space (such as by issuing a money claim), the existence of breathing space should be considered an absolute defence, and any claim or application should be struck out. It will be important here that the Courts Service receives information about those under the protection of breathing space so that they can check claims against this, and block action where needed. There may be an option to make clear that breaching the breathing space protections would constitute a breach of a statutory duty, meaning an individual could launch a civil claim for damages.

The Consumer Protection from Unfair Trading Regulations protect consumers against aggressive practices from businesses.²⁸ If pursuing someone under the protections of breathing space for debts were constituted an aggressive practice under these regulations, then this could be constituted an offence, and lead to sanctions against creditors. However, this would only apply to businesses who were creditors, and may not cover public sector creditors. Here, there may be a need to consider whether the Administration of Justice Act 1970 contains any provisions that may constitute a similar offence for public sector creditors. Alternatively, it may be easier or more appropriate to

²⁸ [The Consumer Protection from Unfair Trading Regulations 2008](#)

create a specific legal duty and offence relating to a breach of the breathing space protection covering all creditors.

Alternately, the Insolvency Service could be given extended powers to monitor compliance, identify creditors who are underperforming, and sanction creditors who are not abiding by a breathing space. This might include a complaints portal for individuals or debt advisers to identify particular reoffenders.

Proposals for the Statutory Debt Repayment Plan

Eligibility for the statutory debt repayment plan

Question 16. Do you agree with the eligibility criteria for entering a plan? In particular, do you agree that plans lasting for a maximum of ten years is an appropriate timeframe for debt repayment?

Access debt advice:

We agree that the Statutory Debt Repayment Plan should be accessed primarily through regulated debt advice agencies. The repayment plans are likely to be long term, require substantial administrative support and involve a commitment to long term management of spending. The support provided by specialist advisers are likely to be an important factor determining the success of the scheme.

At present, we do not believe FCA exempt Insolvency Practitioners should be permitted to provide access to the SDRP. As with entry to the breathing space, we are concerned about the quality of advice provided through insolvency practitioners. Entry to the SDRP should not be possible through advice from the Insolvency practitioners until regulation of the sector improves.²⁹

Able to repay debts in full over a reasonable timeframe:

We agree that the expected timeframe of a SDRP should be around 7 years, with an upper limit of 10 years for those who are eligible for the plan. We agree that those who are likely to be unable to repay their debts over a 10 year period may be in too severe financial difficulty to meet the parameters of the plan.

In some circumstances, however, advisers should be given the discretion to extend the payment plan beyond 10 years. This discretionary entry would allow debtors who might be approaching the end of the breathing space, but still face financial hardship, to start the plan by making smaller than expected, 'low and grow' payments. These payments might be akin to a token payment for a 6-10 month period, but would be dependent on advisers identifying a foreseeable improvement in financial circumstances over the next year.

Large numbers of people have volatile incomes both in the short-term and longer-term. Over a 2 year period more than two-thirds of earners experience a 10% change in their income, with 40% experiencing an increase. In the shorter term, more than 1 in 10 say their income changes a lot or a fair amount from one month to the next.³⁰

This discretionary entry would not be appropriate for those who are likely to be experiencing a long term and irrecoverable depreciation in income. If, after the first year review, clients have not experienced an income increase, their participation within the SDRP would be reassessed and they should be passed into alternate debt solution.

²⁹ See our response to Question 1: Eligibility for a breathing space

³⁰ Citizens Advice, (2018) [Walking on thin ice](#)

We agree with the broad parameters of the creditor objection process. The 14 day period to accept or object to a SDRP is a reasonable timeframe for creditors, and it means that the commencement of the plan is not likely to be significantly delayed whilst waiting for creditor responses.

We would, however, propose that the threshold for creditor objection to the plan be raised from 25% to 50%. On average, Citizens Advice clients coming to us in Quarter 1 of 2018-19 had 5.3 debts, with the median council tax debt representing 34% of the value of the median priority debt total.³¹ This common weighting of people's debts towards one creditor could leave local authorities with an excessive influence over individual's capacity to enter into a SDRP. We would instead propose that if a simple majority of creditors by debt value did not object to the scheme then the SDRP should be considered accepted.

Box 4. The Breathing Space and SDRP should be free to clients

Entry into the breathing space and SDRP is a commitment by an individual to repay their debts in full. This involves limiting spending for up to a ten year period, and is likely to require significant financial discipline for individuals. It is therefore important that people who agree to make such payments are able to make repayments towards not just the added costs - such as interest and arrears charges - of debts which had accrued before the initiation of the breathing space, but also to pay off the capital which they have borrowed.

- **Making payments to paid for debt advice agencies is a poor use of debtors available funds.** Both debt management plans and IVAs, which are both commonly provided through paid for debt advice, can see individuals make repayments for several years before beginning to repay creditors for the money owed. This is bad for the individual - it takes them longer to repay their debts - and bad for the creditors, as they are awaiting payments which could be made sooner. There is also the risk that payment plans fail down the line, resulting in debts not being fully repaid.
- **Being asked to pay for debt repayment plans can dissuade individuals from entering a debt solution.** For those with very low income, the prospect of paying for a debt repayment plan, at the same time as re-paying one's debts can feel overwhelming. Furthermore, individuals are not always aware of the possibility of free to use debt advice.
- **There are widespread problems in the quality of paid for debt advice.** The incentives on paid for debt advice agencies can leave individuals encouraged to adopt a solution which is more profitable for the paid for debt advice agency but do not most appropriately meet their needs. This is one feature of the poor practices which are widespread in the IVA and IVA lead generation sectors at present.³²
- **Charges for breathing space and SDRP could lead to distortions in the market.** As government provided services - which are likely to provide strong protections for debtors - the breathing space and SDRP will significantly increase the attractiveness of the debt advice process. Using lead generation tactics, paid for debt advice agencies could direct large numbers of people into the breathing space for a charge. Such a process could be a lucrative

³¹ Citizens Advice, Money Advice Recording Tool Data, Q1 2018/19

³² Insolvency Service, [Review of the Monitoring and Regulation of Insolvency Practitioners](#), September 2018.

proposition for paid for debt advice agencies, but could undermine the credibility of the breathing space scheme and lead to people being passed into a breathing space when it might not be the most appropriate step for the individual.

- **The legislation which prevents charges for advice on DROs provides strong protections for debtors.** Any advice and assistance from an intermediary to support a debtor to apply for a DRO must be free.³³ Whilst the upfront fee can act as a barrier to entry to DROs, this debt solutions tend to be effective at the point of delivery and does not see the kinds of issues associated with IVA delivery.

In these circumstances, we propose that clients should not be charged for advice or payment distribution during the breathing space and SDRP. This could be included within the respective pieces of legislation - as with DROs - which introduces these two schemes.

Question 17. Do you agree with the proposed criteria for creditors to object to the plan? Are there any other criteria you feel would be appropriate?

We agree with the following proposed criteria for creditors to object to the SDRP:

- **inaccuracies in an individual's standard financial statement**
- **the period over which the plan will operate**

We do not, however, agree that the level of payments to creditors should be grounds to object to the SDRP. We recognise that very low payment levels can be costly for creditors to process. It's important that the SDRP remains both affordable for debtors and flexible at the point of entry. If - on the basis of the standard financial statement - it is not affordable for debtors to pay a greater sum to each creditor, it should not be possible for the creditor to object to the plan. Ensuring that participants are facilitated to begin making debt repayments, albeit small repayments, is likely to secure greater buy-in from debtors and increase the likelihood that debtors pay over the long term. It will also ensure that debtors are able to transition from the breathing space into the SDRP without incurring costs or the potentially disruptive effects of enforcement action.

Question 18. Do you agree with the design of the proposed fair and reasonable test? In particular:

- a. Do you agree that 14 days is an appropriate timeframe for creditors to object to a proposed plan?**

We agree with the broad parameters of the creditor objection process. The 14 day period to accept or object to a SDRP is a reasonable timeframe for creditors, and it means that the commencement of the plan is not likely to be significantly delayed whilst waiting for creditor responses.

³³ S251U (7) of the Insolvency Act 1986 which states that "an approved intermediary cannot charge a debtor any fee in connection with a debt relief order".

b. Following an Insolvency Service decision that a plan is fair and reasonable, do you think that creditors and debtors should be able to make any further objection if they feel the Insolvency Service’s decision is incorrect? If so, how should an objection mechanism work to minimise disruption and administrative burden for parties involved in the plan?

No, a secondary objection process to the SDRP should not be necessary for creditors. The Insolvency Service should be the organisation which is able to arbitrate on the necessary conditions for a SDRP to be both ‘fair and reasonable’. Additional opportunities to object would be likely to delay the initiation of the repayment plan and cause additional costs and administrative burden for all parties: debtor, creditor, debt advice agency and the Insolvency Service.

Protections of the statutory debt repayment plan

Question 19. Do you agree with the debts included within a plan? Should any other debts be excluded, or excludable on request?

As we have set out earlier in the consultation response, it’s very important that as broad a range of debts as possible are included within the SDRP.

We agree that the following debts should be excluded from the plan:

- debts incurred because of fraudulent behaviour
- fines imposed by a court
- confiscation orders
- child maintenance payments and debts that arise after an order made in family proceedings
- student loans
- personal injury payments

As with the breathing space, we propose that **social fund loans should not be excluded from the plan** as they represent a similar type of debt to other central government debts, such as Advance Payments, which must be included in both the Breathing Space and the SDRP in order for the schemes to be effective.

Advisers should have discretion to include additional debts in a SDRP after it has started. This might include debts which were accidentally missed off the initial SDRP or credit which might have been taken out because of a severe financial shock,³⁴ such as a loan taken out for funeral expenses. The long term nature of a SDRP differentiates it from a DRO and means that such discretion will be important to sustaining the success of the scheme.

We agree that rent and mortgage arrears should be ‘excludable’ within the SDRP.

Box 5. The treatment of council tax arrears under a SDRP

If individuals are in arrears on their council tax payments, we propose that their total council tax liability for the year should be included as a debt in their SDRP. This would ensure that people would benefit from protection from enforcement action and are

³⁴ We propose that a severe financial shock could be defined here in the same context as the flexibility in question 24 and 25.

able to make repayments towards council tax debts in affordable installments.

The Council Tax (Administration and Enforcement) Regulations 1992 set out that, if within 7 days of being sent a reminder notice, the individual fails to pay the arrears, they become liable for the total year's council tax.³⁵ We see this practice regularly pushing people from struggling to meet the cost of a single monthly payment towards a scenario in which they become liable for a very large debt. The SDRP could provide stronger protections from the escalation of debts to local authorities - and the addition of these protections - would also be likely to increase the success rate of the SDRP.

Question 20. Do you agree with the proposed treatment of interest, fees and charges within the plan?

We strongly agree with the prevention of further interest, fees and charges accruing within the SDRP. One of the key attractive feature of the SDRP for clients is likely to be the fact that it allows individuals to limit the accrual of additional fees and charges whilst they repay their debts. If interest, fees and charges continue to escalate after the point at which people enter into a debt solution, the attraction of the SDRP is likely to diminish, and it is also likely to make it longer - and harder - for clients to recover from their debt problems.

We agree that it should not be possible to charge these fees retrospectively to debtors if they exit the SDRP. This would risk massive detriment to people who are likely to be struggling financially already.

Importantly, these protections will build upon the limited protections currently available to participants in debt management plans who often find themselves subject to ongoing contact from their creditors. Our research revealed that two in five debt advisers had encountered clients who still experienced enforcement activities, interest, fees and charges, despite the client's participation in a debt management plan.

³⁶

Question 21. Do you agree with the proposed protections within a plan? Are there any unintended consequences that could arise from providing these protections to debtors?

We agree with the protections from recovery proposed within the plan:

- Contact by creditors with debtors in relation to debt repayment.
- Creditors initiating new court action and pending court action
- All further enforcement action by creditors – including reductions to earnings and certain types of benefits (to make repayments to any creditor)
- Disconnections, or new installations of pre-payment meters by utility companies
- Evictions due to unpaid debts under section 8 of the Housing Act 1988

In addition to this, the protections extended to clients should include protection from eviction. This protection should endure throughout the SDRP. Current insolvency solutions do not provide protection from eviction and as a result clients often leave repayment of rent and mortgage arrears outside of the scheme. This can leave them

³⁵ [The Council Tax \(Administration and Enforcement\) Regulations 1992](#)

³⁶ Citizens Advice, [Stuck in Debt](#), August 2017

struggling to meet other commitments. The SDMP offers a chance to formalise the repayment of priority debts for the first time. This not only protects clients, but returns funds to creditors in the right order, and is therefore consistent with debt advice best practice.³⁷

Question 23. Do you agree that some debts should be prioritised for repayments within the plan? If so, do you agree with the debts that the government proposes to prioritise, and the method of prioritisation?

We agree that some debts should be prioritised within a SDRP. Whilst the DAS scheme in Scotland distributes debt repayments on a pro rata basis, evidence from Citizens Advice Scotland suggests this has two negative effects:

- If plans fail, the protections supporting the scheme are no longer in place, and can leave former participants vulnerable to eviction by landlords or enforcement action and prosecution by local authorities.
- The breathing space and SDMP should provide protection from eviction and the non-renewal of private rental contracts. Distributing debts on a pro rata basis, however, would still leave clients exposed to private rental contracts being refused when they face renewal if significant arrears remain on rent payments.

Broadly, we agree with the process for debt prioritisation proposed within the consultation document. It's particularly important that housing, local authority taxes and energy debts are prioritised within an SDMP. The failure to do so could lead people facing severe enforcement action if the SDMP came to an end.

We propose that there should be a 30 day 'cooling-off' period for clients if they exit the SDRP. This would be an opportunity for those who might be struggling to manage their rate of repayments, to seek further advice and enter into an alternative debt solution. If the SDRP winds down too quickly, there is a risk that people who have benefitted from its protections find themselves suddenly exposed to a significant number of creditors' demands and the instigation of enforcement action on multiple fronts. During the cooling-off period, individuals should be offered an appointment with a debt advice agency. In certain circumstances, for example if a client needed to enter into an alternate debt solution, this 'cooling-off' period could be ended on the request of the client.

Question 24. Do you agree with the two key plan flexibilities outlined? Should the plan offer any other flexibility that would help to make them sustainable over time?

We agree that the SDRP should incorporate flexibilities, including annual payment reviews and payment breaks. But, in addition to long term payment breaks in response to severe financial shocks, we would advocate that individuals should be allowed **more frequent and short term payment breaks**, on 1-2 occasions per year.

Missed payments are often the result of unexpected expenditures or minor income changes, rather than major shocks, such as a job loss. In polling conducted

³⁷ Whilst this will mark a departure from prior insolvency solutions, informally the non-inclusion of priority debts in existing schemes mirrors this effect, whilst in this instance clients would enjoy greater security from eviction.

in 2017, we found that more than half (57%) of people surveyed had experienced an unexpected expense in the last year, and a quarter (27%) reported two or more unexpected expenses. The most common costs people faced were repairing a car, replacing a household appliance, or a home repair.³⁸ Such costs are likely to disrupt the expected disposable income incorporated into the SFS, and make it difficult for debtors to meet the cost of their monthly payment.

It's important that the SDRP reflects the usual payment behaviour of people on low incomes and therefore, does not leave people falling in and out of plans over a small number of missed payments.

Question 25. Do you have any specific comments about how these flexibilities should work? In particular, how do you think a severe, temporary, financial shock should be defined?

We do not think that a severe temporary financial shock is the only appropriate definition for when payment holidays should be introduced. Instead, the plan should be flexible to individuals missing one or two payments per year, with the opportunity to make up such payments on other occasions. If clients were to experience a major life event, they should be permitted to apply for possible longer term breaks - according to the model set out in the consultation.

A severe, temporary financial shock could therefore include a job loss, bereavement, or relationship breakdown. Polling we conducted in 2017 found that people who experienced a life event in the past 12 months were nearly twice as likely to report their income was 'a lot lower' than the previous year - 15% compared with 8% for those who had not experienced a life event.³⁹

In our polling we found income changes over the year are often driven by changes in employment. Of those who reported a drop in income, 13% said they had lost a job or been made redundant and 18% had a reduction in pay or decrease in hours over the past year. The most common life event leading to income loss was households that faced **separation or divorce**, or were bereaved of a partner or spouse, 40% of whom reported a lower income than a year ago.⁴⁰

Question 26. Do you agree with the requirements for continued eligibility for the plan?

Broadly, we agree with the four requirements for continued eligibility for the plan.

- **Individuals must agree an annual review of the SDRP.**

We agree that participants in a SDRP should review the plan annually to assess their levels of income and expenditure, as well as the level of payments being made. This annual review could also be used to discuss additional financial capability concerns, and the ongoing appropriateness of the SDRP as a debt solution for the client.

- **Individuals must continue making payments specified within the plan.**

³⁸ YouGov online survey of 2,116 UK adults conducted on behalf of Citizens Advice (June 2017)

³⁹ YouGov online survey of 2,116 UK adults conducted on behalf of Citizens Advice (June 2017)

⁴⁰ YouGov online survey of 2,116 UK adults conducted on behalf of Citizens Advice (June 2017)

We agree that individuals must continue to meet the payments specified in the plan in order to continue to be eligible for the SDRP. It is important, however, to ensure that:

- a. **Flexibilities for short term payment holidays are included** - in order to ensure that people do not find themselves rapidly squeezed out of a SDRP, with the consequential costs for debtor, creditor and debt advice agency.
 - b. **Plans do not end abruptly after a missed payment.** Instead, we would propose that if a debtor misses *three payments* in succession and does not engage with a request for a meeting with a debt adviser, they should be given notice for removal from the plan. This would bring the SDRP in accordance with the IVA, where three missed payments in succession can bring the plan to an end.
- **Individuals should continue paying ongoing liabilities to creditors within the plan.**

We agree that individuals should continue to meet the costs of their ongoing liabilities while participating in a SDRP. We would stress that even after entering into a SDRP, individuals are likely to be experiencing fluctuating financial circumstances. This may result in debtors struggling to meet the cost of ongoing liabilities from time to time. We would encourage the SDRP to provide flexibility to participants and ensure that if individuals are significant in arrears, such as being behind on two or more payments to more than one provider, they should be offered an additional debt advice session. This session should give them the opportunity to reassess their Standard Financial Statement or to reconsider alternate debt solutions. Only if debtors ignore or do not engage with debt advice agencies at this point should the SDRP be brought to an end.

- **Individuals should provide information to their debt adviser, and engage with them regularly as necessary**

We agree that individuals who participate in the breathing space scheme should provide information to their adviser, and engage with them as regularly as necessary.

Notifications of missed payments and plan exit

If an individual misses a payment after months 1 and 2, they should be notified by letter in plain English, as well as being contacted by the debt advice agency with whom they entered the plan. If a third payment is missed, without engagement from the participant, the individual should be given 14 days to contact the debt advice provider to set up a debt advice appointment. In addition to letters, the processes for notification should draw from best practice guides, and include emails, calls and text notifications.

Administration of breathing space and statutory debt repayment plan

Question 27. Should the plan's funding mechanism system be based on taking a share of creditors' monthly repayments?

In principle, funding the payment distribution element of a SDRP through a share of creditors' monthly repayments is an acceptable way of delivering sustainable debt advice plans. A SDRP is a commitment to repaying one's debts over a long term period - and it therefore seems fair that creditors make a contribution towards the cost of delivering the repayment plan. It's important to note that the 10% share of creditor's repayments would not cover the cost of delivering the breathing space and SDRP to debtors. It is already acknowledged within the sector that a funding model which relies on a share of creditors' monthly payments struggles to meet the costs of delivering advice. The two main advice agencies who use this model - StepChange and PayPlan - are currently seeking changes to the Fair Share scheme which operates under similar principles.

In addition it has the capacity to create incentives to target debt advice at those with large debts and higher levels of surplus income rather than the individuals most in need of debt advice. The Treasury should work with the SFGFB to explore new funding mechanisms that would provide a more sustainable model for funding debt advice.

Box 6. Funding the process of debt advice

We disagree with the government's proposal not to introduce a specific new funding stream for the administration of a breathing space and SDRP. The intention of a breathing space is to encourage people to seek debt advice earlier and to encourage more people to seek debt advice. The Wyman Review stated that a further 1.7 million people would benefit from debt advice.⁴¹ Even if only a small proportion of these people sought to gain the protections of a breathing space and SDRP, this would involve a significantly increased burden on debt advice agencies. This burden must be accounted for by the SFGFB and HMT, and - to prevent risk of reducing the supply of debt advice agencies - they should reconsider the funding model for debt advice organisations.

The ongoing advice and administration involved in the delivery of a SDRP is also likely to incur further costs for debt advice agencies, above and beyond those incurred through the distribution of payments. We would therefore stress the clear necessity of further funding for the advice process being introduced alongside the implementation of the breathing space and SDRP schemes.

Underfunding the advice element of the SDRP could have significant unintended consequences. Most importantly, it could incentivise those who administer the SDRP to increase the level of payments, and thereby leave out clients with reduced disposable income - or to limit access to the breathing space to clients with a disposable income above a certain threshold. Such a strategy would

⁴¹ Peter Wyman, Independent Review of the Funding of Debt Advice in England, Wales, Scotland and Northern Ireland, January 2018.

undermine the strong and effective protections set out in the SDRP and exacerbate existing problems in the debt advice sector.

Question 28. How should payment distribution in the plan be done? Should it be offered by an individual's debt advice agency, if they have appropriate handling client money permissions, or by the Insolvency Service, or is there any other model that the government should consider?

We propose that there should be a combined approach to payment distribution under a breathing space, which would enable *both* existing debt advice agencies with appropriate permissions and the Insolvency Service to undertake payment distribution.

First, we agree that debt advice agencies, if they have appropriate handling client money permissions, should play a role in distributing payments under a SDRP. As the consultation states, this could occur through a system whereby debt advice agencies handle the entire customer journey or form trusted partnerships with suppliers who have the capacity to undertake this payment distribution model.

Alongside this model, there should be an alternative method of payment distribution provided through the Insolvency Service. The introduction of a payment distribution system is likely to be highly resource intensive for the majority of debt advice agencies. It will involve not only a technical process of setting up a means of payment distribution, but also building of a very significant number of bilateral relationships. Referral or 'white labelling' arrangements too, can be risky and complex processes to set up, and can be hard to manage for smaller debt advice agencies, particularly if there may be mistakes made at the point of payment distribution.

A payment distribution mechanism available through the Insolvency Service would be likely to ensure that a larger number and range of small frontline debt advice agencies would be able to support access to the SDRP. This might in particular support access to SDRPs for those needing face-to-face debt advice provision. In so doing, it would also avoid the risk of consolidating the market position of a few large debt advice organisations. This would mirror the approach to payment distribution adopted by the Accountant in Bankruptcy in Scotland which undertakes payment distribution on behalf of clients.

Question 29. Do you have views on how a breathing space and plan should be reflected on a debtor's credit file?

A breathing space should be noted on participants credit files in accordance with current practices around payment holidays. This system should remain under review in case the notation system dissuades clients from participating in the scheme. Similarly, a statutory debt repayment plan should appear on a person's file in accordance with current practice with regards to debt management plans.

Question 30. Do you agree with the proposed territorial scope of the scheme?

We agree with the proposed territorial scope of the scheme, including England and Wales.

Free, confidential advice. Whoever you are.

We help people overcome their problems and campaign on big issues when their voices need to be heard.

We value diversity, champion equality, and challenge discrimination and harassment.

We're here for everyone.



citizensadvice.org.uk

Published January 2019

Citizens Advice is an operating name of The National Association of Citizens Advice Bureaux.

Registered charity number 279057.