

# MoneySavingExpert.com

## Response to HM Treasury's consultation:

### Breathing Space: call for evidence

#### Introduction

MoneySavingExpert.com welcomes the opportunity to respond to this vital consultation.

The establishment of a statutory Breathing Space scheme and debt repayment plan offers the potential to benefit consumers, creditors and the government: it is a 'win-win-win' proposal.

Some of this gain could be measured in the pounds and pence of debt that will be repaid to creditors, rather than eventually written off.

Other gains are more complex. For example, the stress caused by unmanageable debt can often lead to poor health and time out of the workplace. Having respite from the pressure of creditors could be essential for those living with unmanageable debt to mentally and physically recover and get back to work. This could lead to increased productivity and generate higher tax returns.

However it is impossible to put a value on the lives that could be saved by these proposals. This includes some of the most vulnerable people in society, who are in financial crisis, and who need time to get to grips with their debts and seek formal, professional help.

It is precisely because these proposals are so important, that they must work. An effective Breathing Space scheme must:

- provide total respite, halting all interest, fees, charges and enforcement action from creditors
- be long enough to allow financial and psychological recovery, or for an appropriate next step (such as the Statutory Debt Management Plan) to have begun. We have previously suggested twelve months would be an appropriate length of time, and are therefore concerned that the Government is currently committed to only six weeks' Breathing Space protection.

The Government seems to see the key benefit of the scheme as encouraging those in problem debt to seek regulated debt advice sooner. This would of course be a huge step forward, but Breathing Space also promises to offer financial and psychological relief to those in crisis; making it more likely that some difficulties can be resolved before they spiral into more entrenched problems.

The proposed statutory repayment plan must also offer sufficient protection to debtors and be able to follow on seamlessly from the initial Breathing Space protection where it is needed.

Time is of the essence. Considering the delays that the establishment of a Breathing Space scheme has already faced, the Government must now swiftly proceed to make these proposals a reality for those who need it.

In answering this consultation we have decided to focus on the questions we feel best informed to answer.

**Question 1: In your opinion, how should the government decide who is eligible for a Breathing Space? In particular:**

**a) how should the government define serious problem debt in the context of a Breathing Space?**

We recommend that debt advisors should be able to use their expertise to assess whether someone contacting them is in problem debt.

It would be unhelpful to create a limited definition of “problem debt”, as the factors which push individuals into severe financial hardship vary too much. Therefore, a precise definition would either be too broad (making too many people eligible) or too narrow (leaving people out that should be included).

As a rule of thumb, MoneySavingExpert.com asks its users three questions to help them identify if they might have problem debt and should therefore seek non-profit debt counselling (if they answer yes to any of them):

- (1) Are you struggling to pay all basic outgoings (e.g. mortgage, rent, energy bills, debt minimum repayments etc.) or to stay inside your overdraft limit?
- (2) Are your debts (excluding your mortgage and student loan) bigger than a year’s after-tax income?
- (3) Is worrying about your debt regularly causing you to have sleepless nights or impacting your mental health?

However, this is only a rule of thumb and expert debt advisors should be making this judgement on a case-by-case basis.

**b) who should be responsible for regulating and enforcing access to a Breathing Space and how can disputes be resolved?**

Regulated debt advisers should be responsible for deciding who is eligible for a Breathing Space scheme. Due to the individual nature of personal debt, eligibility should be judged on a case-by-case basis. This provision, as opposed to self-referral, also means that issues of moral hazard are avoided.

If a consumer is denied access to Breathing Space, they should first complain to the regulated debt agency, and if still unhappy, be able to escalate this immediately to the Financial Ombudsman Service (FOS) for an impartial decision (and this must be communicated to them).

Currently, consumers can only complain to the FOS eight weeks after complaining to the firm in question, or if they are in receipt of a deadlock letter. Due to the crisis nature of those who would need access to a Breathing Space scheme this would be too long a wait. Consumers would need to be able to escalate complaints about Breathing Space to the ombudsman straight away.

MoneySavingExpert’s recent report *Sharper teeth: the consumer need for ombudsman reform*<sup>1</sup>, calls for the eight week rule to be shortened for all ombudsmen, and an exception brought in for those in crisis to be able to go to the ombudsman even sooner.

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<sup>1</sup> The report was published on 1 November 2017. The full report is available online: [https://images6.moneysavingexpert.com/images/documents/MSE-Sharper\\_teeth\\_interactive.pdf](https://images6.moneysavingexpert.com/images/documents/MSE-Sharper_teeth_interactive.pdf)

**Question 2: What should be the trigger point for a Breathing Space? In particular:**

**a) Should a Breathing Space only be available for a person who seeks regulated debt advice?**

Yes. As described above, a regulated debt adviser is best qualified to determine a debtor's eligibility to a Breathing Space scheme. This should be a compulsory condition for accessing the scheme, and would create wider confidence that Breathing Space is helping those it is intended to, and not those who it isn't. Breathing Space must also be available free of charge to those who need it. Some flexibility may be needed on the precise point of the advice journey at which Breathing Space can be triggered.

Additionally, if an individual discusses a situation that could lead to Breathing Space being appropriate with any company they owe money to, that company should be obliged to provide information about Breathing Space and how they can get it.

**b) Should individuals have demonstrated they have already taken steps to try to manage their debt?**

No. We think this suggestion is flawed.

Many people with debt problems act like the proverbial ostrich, with their head in the sand. They don't open letters, they continue with their normal spending habits; they avoid dealing with it. That they have overcome this barrier of denial to seek debt help is a big step. To then penalise them because they haven't done anything earlier is counter-productive.

Breathing Space is about providing people in problem debt with immediate relief; qualification should be based on need, rather than observed behaviour.

Asking for a 'demonstration' of previous attempts to manage their debt could involve a subjective judgement and lead to consumers being treated unfairly. For example, a consumer with a poor understanding of how credit works may have inadvertently made their situation worse by making ill-informed decisions, or someone with mental ill health may struggle to control compulsive spending<sup>2</sup>.

A key element of Breathing Space is to remove the stigma as much as possible around debt – and minimise any embarrassment around seeking help. If previous behaviour is taken into account Breathing Space applications would inevitably be being judged, which could be a deterrent to those seeking help.

If a consumer needs a period of Breathing Space, then they need Breathing Space.

**Question 3: Should all debts be eligible for a Breathing Space?**

**a) How should multiple debts be treated; is there a priority order of debts which should be included as part of a Breathing Space arrangement?**

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<sup>2</sup> For further information on the links between poor mental health and debt see the Money and Mental Health Policy Institute report *In Control: A Consultation on regulating spending during periods of poor mental health*. To see the full report: <http://www.moneyandmentalhealth.org/wp-content/uploads/2016/07/In-Control.pdf>

The aim of introducing a Breathing Space scheme is to help some of the most vulnerable in society, in times of crisis. Any prioritisation of debts should therefore be based on what is going to help them most to get back on their feet financially – so that the ‘win-win-win’ described above can be achieved.

On a related point, it is vital that Government, local councils and energy firms are included in the Breathing Space scheme. These creditors place just as much pressure on debtors as others, and must also be bound by the conditions of Breathing Space for the scheme to be effective.

**b) Should some types of debt be exempt? In particular, where the debt is the late payment of a fine or penalty?**

Having any debts exempt from a Breathing Space scheme could undermine the scheme, so any exceptions must be extremely limited.

For example, someone who has recently lost their job and who is eligible for Breathing Space should be able to focus on finding new employment, with at least some peace of mind from knowing that they will not be contacted by creditors. If they are still being chased by a creditor, this could set them back or even derail their job search completely.

**Question 4: Should all interest, fees and charges be frozen throughout the Breathing Space period?**

Yes. As answered to Question 3, the statutory protections offered by a Breathing Space scheme should ideally be all encompassing to ensure that it has the maximum benefit for debtors, allowing them to get back on their feet and repay their debts, therefore also benefitting creditors and the government.

Halting enforcement action is also vital in the implementation of a Breathing Space scheme. If this is not halted, those in debt will continue to panic over a worsening financial situation. Even if some payments are still due, enforcement action would cause unnecessary psychological worry and could lead to perverse decision making. This would let down those who the scheme is supposed to help. As such, it is deeply concerning that the consultation has not given this specific issue more attention.

**Question 8: Should a Breathing Space be noted on a person’s credit file?**

It’s sensible for some record of Breathing Space to be included on a person’s credit file – but how this operates in practice needs to be carefully considered.

Breathing Space is a temporary remedy for temporary debt problems. It is less severe and final than other available debt solutions, such as bankruptcy or insolvency. Accordingly, it would be inappropriate for access to the scheme to appear on an individual’s credit file for as long as those do. If it did, those who are really in need of the scheme may be put off due to fears of stigmatisation and difficulty in accessing financial products in the future.

One possibility is that Breathing Space should appear on an individual’s credit file for only a year – just as with application data.

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

The Government must work closely with the free debt advice charities in particular to make sure that the scheme meets its objective of providing genuine relief to people in problem debt, and can be refined if necessary.

As described, we feel strongly that 6 weeks' Breathing Space is too short, and a much longer period is needed. However, to make sure that Breathing Space is achieving its objectives, an annual review of the scheme is essential, so that it can be improved over time to make sure it achieves its objectives. Any such changes to the scheme must be able to include an extension of the Breathing Space period if this is what the evidence supports.

We note that in Scotland, the DAS is already under review due to the perception that it is too short.

For a Breathing Space scheme to be effective, it is essential that those in need of it are aware of it. It is therefore vital that there is large scale publicity around the launch of the scheme and that those who look for debt advice and debt solutions are quickly and easily able to find information about the scheme.

**Question 17: Should a Breathing Space be extended to Wales and Northern Ireland as well as England?**

Yes, a version of the scheme should absolutely be made available for people in financial crisis in Wales and Northern Ireland.

**Question 20: What protections should apply during the statutory repayment plan? For instance, should it protect debtors from interest and fees and charges or just a selection of the three? If a selection, which of these three should be prioritised?**

Up to all three protections should apply in the statutory repayment plan, depending on what a regulated debt adviser decides is appropriate on a case-by-case basis.

However, we are concerned that the call for evidence appears to leave open the possibility of a gap between Breathing Space and the statutory repayment plan. These two tools to help people in crisis must be aligned so that where necessary a consumer can seamlessly go from Breathing Space into the repayment plan. Any gap would clearly be problematic for debtors and have the potential to undo any good achieved by the initial Breathing Space.

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

Yes.

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

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

Using the MSE Forum, we asked our users who had experienced debt how they felt about the Government's proposals for Breathing Space.<sup>3</sup> The comments we received helped to inform our response and are outlined below by key themes.

***The detrimental psychological impact of spiralling fees, charges, interest and enforcement action for those in problem debt, and thus the positive impact of halting these:***

"...companies have no legal obligation to freeze interest, and when a company refuses to [cooperate], [debt charities] can't act on my behalf, it's down to me to negotiate with said company, [this] means using charities [...] is pointless.

Having one or two companies that every year cause a ton of hassle, a ton of phone calls, ignore my requests only to deal in writing etc is also stressful and causes unneeded frustration...

Almost feeling suicidal, not there yet, but life feels pretty pointless as it's unneeded stress after stress with no end in sight."

***Six weeks is good, but a longer period would have a more positive impact:***

"I would like to see it extended to at least 6 months because by the time people ask for help, they have already eroded every other avenue, and will be behind on most household bills, as well as credit debts.

You need time to get back on track with utility bills etc, before you can even think about sorting the credit debts."

***A statutory debt repayment scheme would have a very positive impact, but this would be severely undermined by any involvement from private debt management companies:***

"A statutory repayment plan is a great idea, but it must be administered by either the government, or the debt charities, certainly not the private sector... debt management companies should be outlawed, and all debt remedies should only be able to be administered by the government and/or the debt charities."

***We also had input from individuals who had found the Scottish DAS to have had a significantly positive impact on their financial and psychological well-being:***

"I'm 18 months into a Debt Arrangement Scheme (DAS). It was easy to arrange, I have a local advisor that I can contact if needed. It took a huge weight off my mind and is so good to see the debt amount decreasing month by month. I wish I had done it sooner (I had the forms for over a year before I filled them in!)"

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<sup>3</sup> This research was conducted on the MSE Forum Debt-Free Wannabe board, in which those who are experiencing debt, or who have experience debt, share their stories, information and support. The full thread is available: <http://forums.moneysavingexpert.com/showthread.php?t=5755701>

## **About MoneySavingExpert.com**

MoneySavingExpert.com is the UK's biggest consumer website dedicated to saving people money on anything and everything by finding the best deals, beating the system and campaigning for financial justice. It's based on detailed journalistic research and cutting edge tools, and has one of the UK's top 10 social networking communities.

Martin Lewis, founder and chair of MoneySavingExpert.com, has been working at the core of the Breathing Space campaign, including work with StepChange Debt Charity, speaking in Parliament on the issue and raising awareness of the need for Breathing Space across the media.

During December 2017 MoneySavingExpert had 14.1 million users, visiting the site 24.5 million times, and looking at over 67.6 million pages. Over 12 million people have opted to receive our free weekly email, more than 1.6 million users have registered on the forum and over 3 million have joined our Cheap Energy Club.

In the event of any queries, please contact the campaigns team:

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