

REPORT TO: Corporate Policy & Performance Board

DATE: 8th June 2021

REPORTING OFFICER: Strategic Director Enterprise Community & Resources

PORTFOLIO: Resources

SUBJECT: Breathing Space

WARD(S): Borough-wide

1. PURPOSE OF REPORT

- 1.1. This report provides Members of the Board with details of the Breathing Space process which came into effect on the 04 May 2021. It provides Council debtors with legal protections to ensure that creditors pause recovery and enforcement action for a period of up to 60 days.

2. RECOMMENDED: That the report be noted.

3. SUPPORTING INFORMATION

- 3.1 The Debt Respite Scheme (Breathing Space) came into effect on 4th May 2021. The legislation aims to give more time to debtors who are struggling with their debts to seek help from a qualified debt advice provider to find a resolution and gives someone in problem debt the right to legal protections from their creditors.
- 3.2 The legislation this report references is The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020
- 3.3 There are two types of breathing space: a standard breathing space and a mental health crisis breathing space.
- 3.4 A standard breathing space is available to anyone with problem debt. It gives them legal protections from creditor action for up to 60 days. The protections include pausing most enforcement action and contact from creditors and freezing most interest and charges on their debts.
- 3.5 A mental health crisis breathing space is only available to someone who is receiving mental health crisis treatment and it has some stronger protections. It lasts as long as the person's mental health crisis treatment, plus 30 days (no matter how long the crisis treatment lasts).

4. CREDITORS

- 4.1 As a creditor, if the Council are told that a debt owed to the Council is in a breathing space, all action related to that debt must be ceased with immediate

effect and the protections applied. These protections must stay in place until the breathing space ends.

- 4.2 The Insolvency Service will send the Council an electronic notification to notify about each debt owed to the Council in a breathing space and the date the breathing space started. The Council need to ensure it applies the protections to these debts from the date set out in the notification.

5. DEBT ADVICE PROVIDERS

- 5.1 A breathing space can only be started by a debt advice provider who is authorised by the Financial Conduct Authority (FCA) to offer debt counselling or a Local Authority (where they provide debt advice to residents). It should be noted that the Council currently has no debt advice providers.
- 5.2 Debt advice providers are responsible for the administration of a breathing space. They are the point of contact for the debtor, their creditors (and appointed agents), and the Insolvency Service (who own and maintain the electronic service).

6. THE INSOLVENCY SERVICE

- 6.1 The Insolvency Service maintain the electronic service that debt advisers use to start the breathing space process and then send notifications to the Council during it. They also maintain a private register of details of people whose debts are in a breathing space and the date a breathing space started and ended.

7. APPLYING FOR A STANDARD BREATHING SPACE

- 7.1 Debtors can only access a breathing space by seeking debt advice from a debt adviser. Anyone who cannot or is unlikely to be able to repay their debts can apply to a debt adviser for a standard breathing space. Although all applications must be considered, the debt adviser might decide a breathing space is not appropriate for a debtor.
- 7.2 For example, if a person can access funds or income, they might be able to pay their debts with some budgeting help. Another example would be if they already have assets that could easily be sold to clear the debt. In these cases, a breathing space would not be the right solution. A breathing space might also not be appropriate for someone who can enter a more suitable debt solution straight away, without needing the protections that a breathing space offers.

8. APPLYING FOR A MENTAL HEALTH CRISIS BREATHING SPACE

- 8.1 The government committed to develop an alternative route to access the protections for people receiving mental health crisis treatment, so that they do not have to access debt advice first. If an Approved Mental Health Professional (AMHP) certifies that a person is receiving mental health crisis

treatment, the AMHP's evidence can be used by a debt adviser to start a mental health crisis breathing space.

8.2 In addition to the debtor, the following can apply to a debt adviser on behalf of a debtor for a mental health crisis breathing space:

- The debtor's carer
- Approved Mental Health Professionals
- Care co-ordinators appointed for the debtor
- Mental health nurses
- Social workers
- Independent mental health advocates or mental capacity advocates appointed for the debtor
- A debtor's representative

9. DEBTOR ELIGIBILITY FOR A STANDARD BREATHING SPACE

9.1 Before a debt adviser can start the breathing space, they must confirm their client is eligible and meets all the conditions. These are that the debtor must:

- Be an individual
- Owe a qualifying debt to a creditor
- Live or usually reside in England or Wales
- Not have a debt relief order
- Not have an individual voluntary arrangement
- Not be an undischarged bankrupt at the time they apply
- Not already have a breathing space or have had a standard breathing space in the last 12 months at the time they apply

9.2 The debt adviser must also be satisfied that their client meets both of the following conditions:

- Their client cannot, or is unlikely to be able to, repay all or some of their debt
- A breathing space is appropriate for their client

10. DEBTOR ELIGIBILITY FOR A MENTAL HEALTH CRISIS BREATHING SPACE

10.1 To be eligible for a mental health crisis breathing space, the debtor must still meet the same criteria and conditions for a standard breathing space, but they must also be receiving mental health crisis treatment at the time that an application is made.

11. QUALIFYING DEBTS

11.1 Debts included in a breathing space must be qualifying debts. Debts are any sum of money owed by the debtor to the Council, while liabilities are any

obligation on the debtor to pay money to the Council. Most debts are likely to be qualifying debts, including

- Council tax
- Business rates
- Housing benefit overpayment
- Debtors & social care finance
- Merseyflow

Other non-Council debts likely to be included are:

- Credit cards
- Store cards
- Personal loans
- Pay day loans
- Overdrafts
- Utility bill arrears
- Mortgage or rent arrears

11.2 Joint debts can be included in a breathing space, even if only one person applies for a breathing space. The joint debt would become a breathing space debt, and the Council must apply the enforcement action protections to the other people who owe the debt.

11.3 Qualifying debts can include any that the debtor had before the breathing space legislation came into force on 4 May 2021. New debts incurred during a breathing space are not qualifying debts. Neither are new arrears on a secured debt that arises during a breathing space.

12.0 EXCLUDED DEBTS

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

- Council tax liabilities that have not yet fallen due
- Business Rates liabilities that have not yet fallen due
- Secured debts such as mortgages, hire purchase or conditional sale agreements.
- Debts incurred from fraud or fraudulent breach of trust.
- Liabilities to pay fines imposed by a court for an offence.
- Child maintenance or obligations under an order made in family court proceedings
- Crisis or budgeting loans from the social fund
- Student loans
- Advance payments of Universal Credit

13.0 WHAT HBC MUST DO DURING A BREATHING SPACE

13.1 When the Council receives a notification, it must search its own records to identify the debt owed by the debtor. This needs to happen as soon as

possible. If the Council only received notification about one debt, but it is owed two debts (for example, the debtor has a council tax debt and a sundry debt) then the Council should consider applying the protections set out below to both debts and, in all cases, it should tell the debt adviser about the additional debt. It is the debt adviser who will decide if the additional debt qualifies for the breathing space.

13.2 The Council must make sure they stop:

- The debtor having to pay certain interest, fees, penalties or charges for that debt during the breathing space
- Any enforcement or recovery action to recover that debt, by the Council or any agent it has appointed
- Contacting the debtor to request repayment of that debt, unless it got permission from the court.

14. STOPPING ENFORCEMENT ACTION

14.1 Once a breathing space has started, the Council or anybody acting on its behalf must not take any enforcement actions against the debtor or anyone who is jointly liable with them for a breathing space debt.

15. APPOINTED ENFORCEMENT AGENTS

15.1 If the Council is notified that a debt has gone into a breathing space, it must tell any agents it has appointed or instructed to recover it to stop enforcement action. The Council must also tell the Department for Work and Pensions (DWP) if they're making deductions from benefits (not including Universal Credit) in respect of its debt.

15.2 Existing deductions from Universal Credit are not included in breathing space. The Council should not tell DWP if they're making deductions from Universal Credit for its debt.

16. CONTACT BETWEEN CREDITORS AND DEBTORS DURING A BREATHING SPACE.

16.1 Generally, during a breathing space, the Council (or any agents the Council has instructed) must not contact a debtor about any collection or enforcement action for a breathing space debt. This includes asking them to pay or starting or continuing any legal action.

16.2 During the breathing space, the Council can contact the debtor's debt adviser about the debt it is owed, or to discuss a debt solution.

The Council, or any agents it has instructed, can only contact the debtor:

- About anything not related to the breathing space debt, like ongoing liabilities or an excluded debt.
- If the debtor asks the Council to talk about a breathing space debt or a debt solution.

- To respond to a query or complaint the debtor has sent to the Council.
- About any action or legal proceedings the court or tribunal have allowed.
- If the Council are required to do so under the Consumer Credit Act 1974 or by the FCA Handbook

16.3 These restrictions are intended to stop contact that reinforces the message that the debtor owes money to the Council or that they need to make payment. These communications can be worrying to debtors.

17. ONGOING LIABILITIES DURING A STANDARD BREATHING SPACE

17.1 Certain debts are considered 'ongoing liabilities' during a standard breathing space. The debtor needs to keep paying these if they can. If they don't, the debt adviser might cancel the standard breathing space. Ongoing liabilities include Council Tax and Business Rates.

17.2 Where a debtor does not pay an ongoing liability, the debt adviser might decide to cancel the standard breathing space. The debt adviser will consider whether cancelling it is unfair or unreasonable to the debtor. This can be done as part of the midway review process. This obligation and review process does not apply to debtors during a mental health crisis breathing space.

18. DEBT ADVISER REVIEW

18.1 During a standard breathing space, a debt adviser must carry out a midway review between day 25 and day 35. This is to make sure they are satisfied the debtor is complying with their obligations.

18.2 If the debt adviser thinks the debtor has been meeting their obligations and communicating with them, the standard breathing space will continue until the end date.

18.3 If the debt adviser thinks the debtor has not met all of their obligations, they can cancel the standard breathing space in respect of some or all the debts.

19. CANCELLING A STANDARD BREATHING SPACE

19.1 Provided they do not consider that the debtor's personal circumstances would make it unfair or unreasonable, the debt adviser must cancel a standard breathing space for one or more of the related debts after carrying out a midway review if they consider that:

- The debtor has not met one or all of their obligations. This includes them not paying their ongoing liabilities (unless the debt adviser considers that the debtor did not have the financial means to do so)
- They have put a debt solution in place
- They have not been able to communicate with the debtor about their breathing space. This includes where the debtor is not contactable or is not available

20. CANCELLING A MENTAL HEALTH CRISIS BREATHING SPACE

A mental health crisis breathing space does not have a midway review, but the debt adviser will regularly check that the person is still receiving mental health crisis treatment. The mental health crisis breathing space will continue for the duration of this treatment, plus 30 days.

However, the debt adviser must cancel a mental health crisis breathing space if:

- They believe the evidence provided to them about the debtor's mental health crisis treatment contains inaccurate, misleading or fraudulent information, and they do not consider that the debtor's personal circumstances would make the cancellation unfair or unreasonable
- The debtor asks for the mental health crisis breathing space to be cancelled

21. IF THE COUNCIL DO NOT COMPLY

21.1 The Council must apply all the breathing space protections for a debtor after it is notified about a breathing space. If the Council does not, any action it takes is null and void and it may be liable for the debtor's costs.

21.2 The debtor can complain to their debt adviser, who will contact the Council to remind it of its obligations. The debtor can also complain directly to the Council, using its complaint procedure. This might include referring their complaint to any external ombudsman, oversight body or regulatory body.

21.3 If the Council still do not meet its obligations, the debt adviser can tell the Insolvency Service who will contact the Council to remind it of its obligations. Repeated breaches of the regulations can be considered by the regulator, where appropriate.

22. END OF A STANDARD BREATHING SPACE

22.1 A standard breathing space ends:

- 60 days from the date it started
- The day after a debt adviser or a court cancels it
- If the debtor dies during the breathing space period. In this case, the breathing space ends on the day after the debtor died

23. END OF A MENTAL HEALTH BREATHING SPACE

23.1 A mental health crisis breathing space will end either 30 days after the debtor's mental health crisis treatment ended, or 30 days after the date a debt adviser had no response after asking for confirmation from the nominated point of contact about a debtor's ongoing mental health crisis treatment.

24. NEXT STEPS

24.1 When a breathing space ends, the Council can:

- Start applying interest, fees, penalties and charges to the debt from the date that the breathing space ends.

- Take any action to enforce its debt, including contacting the debtor, or collecting debts from benefits
- Start or continue any legal proceedings about its debts

24.2 The Council cannot take these actions if the debtor has gone into a debt solution. This could include a debt relief order or bankruptcy.

24.3 The Council cannot take action if the debtor has made a formal arrangement with the Council to deal with their debt, such as an individual voluntary arrangement.

24.4 An update on the number of debts owed to the Council which have been entered into a breathing space will be provided on a on a regular basis through quarterly performance reports.

25. POLICY IMPLICATIONS

25.1 None

26. FINANCIAL IMPLICATIONS

26.1 Breathing Space may delay collection and enforcement of debts owed to the Council.

27. IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

27.1 Children and Young People in Halton

None

27.2 Employment, Learning and Skills in Halton

None

27.3 A Healthy Halton

None

27.4 A Safer Halton

None

27.5 Halton's Urban Renewal

28. RISK ANALYSIS

28.1 Breathing Space may delay collection and enforcement of debts owed to the Council.

29. EQUALITY AND DIVERSITY ISSUES

29.1 None.

30. LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

30.1 None