



Money and Mental Health response to HM Treasury consultation. Breathing space scheme: consultation on a policy proposal

Introduction

The Money and Mental Health Policy Institute is a research charity, established in 2016 by Martin Lewis to break the link between financial difficulty and mental health problems. The Institute's research and policy work is informed by our Research Community, a group of 5,000 people with lived experience of mental health problems or of caring for someone who does. All quotes in this response are drawn directly from our Research Community.

This response covers questions 1, 3, 4, 7, 9, 11, 12, 14, 15, 26, 29 and 30, as well as providing additional comments on several elements of the proposals not directly addressed in these questions.

Background

- In any given year, one in four people will experience a mental health problem.¹ However, we do not always know when we are unwell, or receive treatment. Over a third (36%) of people with a common mental disorder have never received a diagnosis, and 62% are not currently receiving treatment.²
- People with mental health problems are three times as likely to be in problem debt as those without.³ Half of adults in problem debt also have a mental health problem.⁴
- Mental health problems can make it harder for people to avoid problem debt. People with mental health problems are more likely to be living on a low income,⁵ and cognitive and psychological symptoms of mental health problems, like increased impulsivity, low motivation, unreliable memory and reduced planning and problem-solving abilities, can significantly affect people's financial capability and make it harder to keep on top of money management.⁶ These symptoms can also make it dramatically harder to seek help with problem debts.

¹ McManus S et al. Adult psychiatric morbidity in England, 2007. Results of a household survey. NHS Information Centre for Health and Social Care. 2009.

² McManus S et al. Mental health and wellbeing in England: Adult Psychiatric Morbidity Survey 2014. NHS Digital. 2016.

³ Jenkins R et al. Debt, income and mental disorder in the general population. *Psychological Medicine* 2008; 38: 1485-1493.

⁴ Jenkins R et al. Mental disorder in people with debt in the general population. *Public Health Medicine* 2009; 6, 3: 88-92.

⁵ The Mental Health Taskforce. *The Five Year Forward View for Mental Health*. 2016.

⁶ Holkar M. *Seeing through the fog: How mental health problems affect financial capability*. Money and Mental Health Policy Institute. 2017.



- Mental health and financial problems can form a devastating, self-reinforcing cycle. Over 420,000 people in problem debt consider taking their own life in England each year, and more than 100,000 people in debt actually attempt suicide.⁷
- During a period of mental health crisis, people are often unable to cope with everyday tasks, let alone keep up with financial management. In England in the 2016/17 financial year, 23,000 people were struggling with problem debt whilst in hospital for their mental health, and many thousands more were managing debt whilst in the care of a crisis team in the community.⁸ It's essential that we protect these people from financial harm and give them space to recover.

Eligibility for breathing space

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

We broadly agree with the eligibility criteria set out in the consultation document. Requiring people to access debt advice should create a powerful incentive for people to get help with their debts, and it seems appropriate that assessment of financial difficulties is left to debt advisers' expert judgement.

However, whilst we understand the need to balance protections for consumers with costs to firms, we feel that the proposed restriction to one breathing space every 12 months could leave some people vulnerable. Ideally, a single period of breathing space and debt advice would be sufficient to help a person identify an appropriate, sustainable debt solution, and guard against further financial problems over a 12 month period. In reality, however some people will still struggle, often as the result of an unexpected shock such as a relationship breakdown, job loss or a period of poor mental health. While ideally a debt solution could be adjusted to deal with such a shock, if a person is not able to engage promptly they may find themselves in difficulties once again. In these circumstances, limiting a person to one breathing space per year risks leaving people waiting to seek debt advice again, meaning debts escalate, and their mental health suffers - exactly the situation the scheme hoped to avoid. To balance this with the risk that the scheme will be misused, we propose that debt advisers should be afforded the discretion to enter someone into more than one period of breathing space in a 12 month period, where this is in the client's long term interests.

⁷ Bond N and Holkar M. A silent killer: Breaking the link between financial difficulty and suicide. Money and Mental Health Policy Institute. 2018.

⁸ Bond N, Braverman R and Clarke T. Recovery Space: Minimising the financial harm caused by mental health crisis. Money and Mental Health Policy Institute. 2018.



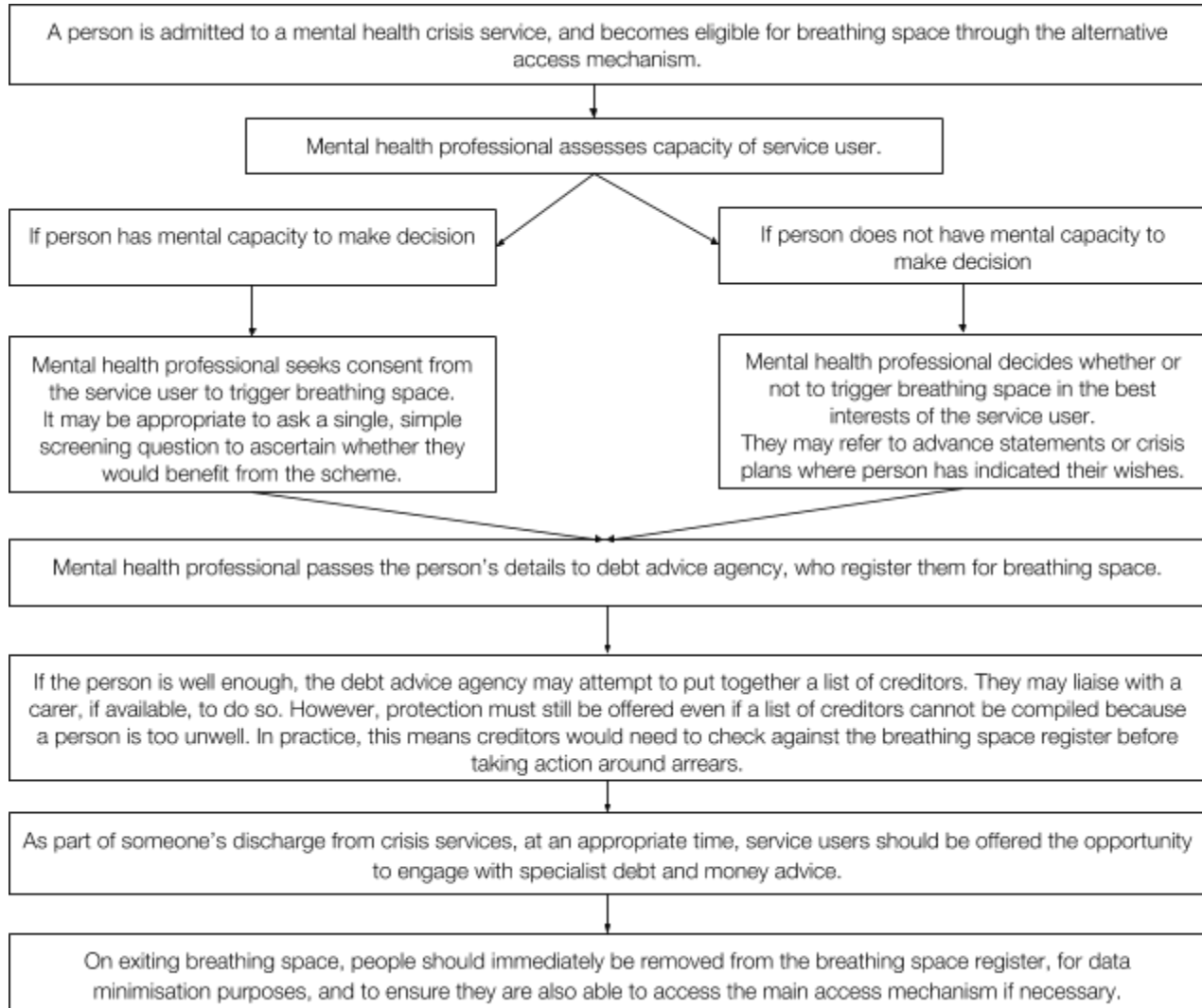
Question 3 - Do you agree with the outline of the alternative access mechanism for individuals in mental health crisis care?

We welcome the outline of the alternative access mechanism, in particular that debt advice agencies will not be required to carry out a full financial assessment of people in mental health crisis and that access via this alternative mechanism would not be limited to once per year.

A mental health crisis is an acute health problem and most people accessing crisis services are at serious risk of harm. The immediate health and safety of the service user should always be prioritised. It is not reasonable to expect people to engage with debt advice services during a mental health crisis, and doing so may be counterproductive or even dangerous in some cases. The design of the alternative access mechanism must recognise this context. The following flow chart gives an indication of how we expect the referral pathway would function.



Figure 1: Example route through alternative access mechanism



Source: Money and Mental Health Policy Institute. 2019.

Entering breathing space through the alternative access mechanism

Admission to a mental health crisis service should be the only necessary criteria for accessing breathing space by this mechanism. We envisage that the referral to breathing space would be made by a mental health professional, as the person themselves is likely to be too unwell to take this step. To minimise the burden on mental health professionals, they should simply have to provide their details to a single debt advice agency who provide a centralised administration service for the alternative access mechanism. This agency would then apply for the person to be placed on the breathing space register.

Where possible, the mental health professional should seek consent from the service user to trigger breathing space. They may also ask a simple screening question to assess whether the person could benefit from breathing space. In line with the Mental Capacity Act, the mental health professional should support the service user to make the decision themselves where possible.⁹ If the person lacks mental capacity to make this decision, the mental health professional may make a decision around whether or not to trigger breathing space in the person's best interests.

Administering breathing space through the alternative access mechanism

It may not be possible to create a list of creditors for a person in the midst of mental health crisis. Where carers are available and have relevant information, with the person's consent, they could liaise with the debt advice agency to create such a list, though it is unlikely to be complete. In other cases, the effectiveness of breathing space would rely on creditors checking the register before taking action against customers in arrears. This means creditors will need access to the register of people receiving breathing space.

Exiting breathing space through the alternative access mechanism

Breathing space should last as long as someone is receiving crisis care, and for a minimum of 60 days. This ensures that people who receive short-term crisis support receive protection while awaiting referral to other support services, including debt advice. As part of someone's discharge from crisis services, at an appropriate time, service users should be offered the opportunity to engage with specialist debt and money advice. This would help set people on a sustainable path to recovery. Advice could be provided through a specialist service or through local provision. We recommend a pilot scheme to test how best to provide this support around discharge. On exiting breathing space, people should immediately be removed from the breathing space register, for data minimisation purposes, and to ensure they are also able to access main access mechanism if necessary.

The definition of eligible mental health crisis services should be as broad as possible to ensure all those who need this protection are able to benefit from it. The list should include, as a minimum:

- Psychiatric inpatient facilities
- Local crisis recovery and home treatment teams
- People under Community Treatment Orders
- Users of local crisis houses and cafes, which are designed to divert people from potentially inappropriate clinical crisis settings, like A&E.

We suggest three principles to ensure that the alternative access mechanism functions as effectively as possible.

⁹ Department of Health. Mental Capacity Act. 2005.



1. **Don't overburden clinical staff** - Clinical staff are busy and are not expert in financial matters. When designing the alternative access mechanism, HMT should minimise the additional burden on these staff by not expecting them to carry out detailed assessments of people's finances, and making it as simple as possible for them to trigger breathing space and refer service users to appropriate debt advice. To achieve this, HMT should:
 - **Choose a dedicated debt advice provider to administer mental health breathing space and set up a simple referral pathway to this provider.** The chosen provider should be funded for this service, given that people in mental health crisis are likely to have more complex needs. Clinicians should be able to register a service user for breathing space with this agency around the time of a person's admission to crisis care, without needing to engage further in the process.
 - **Promote the co-location of debt advisers within mental health settings.** Although debt advisers should not be involved in the admission pathway, as it is inappropriate to expect a person to engage with debt advice during a mental health crisis, co-location would significantly smooth the process of removing breathing space when a person is discharged from crisis services, and ensure people have adequate support with money matters as they recover.

2. **Seek consent wherever possible** - Mental health professionals should seek consent before triggering breathing space whenever it is appropriate to do so. To help with this decision, people should be provided with a simple guide to mental health breathing space. Co-located advice services could help people making this decision, where they are well enough to do so.

However, in some cases, a person in mental health crisis may lack the capacity to make a decision. In these cases we suggest that:

- **People with ongoing mental health problems should be encouraged to consider mental health breathing space in advance statements or crisis plans.** This would allow people to proactively consent to being entered into breathing space in the event of a mental health crisis.
- **Where someone lacks capacity and has not proactively made their preferences clear, mental health professionals should make a decision, in the service user's best interests, about whether or not to trigger breathing space.** To inform these decisions, mental health professionals would need guidance or training on the benefits and risks of breathing space. To support professionals to make decisions in these cases, it is also vital that the potential negative impacts of breathing space - for example on a person's privacy or future creditworthiness - are minimised.



3. **Protecting privacy** - In some cases, breathing space may be offered through the alternative access mechanism without a person's consent, when they are too unwell to make that decision. To allow mental health professionals to make the decision to enrol a person into breathing space in a proactive, preventative fashion on a best interest basis, it is vital that the risks of doing so and possible harm to the person are minimised. Protecting privacy is a core part of this. We suggest that:
- To minimise data sharing, HMT should limit access to the register of people receiving breathing space to those who need it: creditors and debt advisers. We do not think it is appropriate for a list of potentially vulnerable people to be publicly available.
 - The register of people receiving breathing space should not indicate whether someone accessed breathing space through the alternative access mechanism or the mainstream mechanism, as this information is not necessary for administering breathing space.
 - People who access breathing space through the alternative access mechanism should be removed from the breathing space register as soon as they stop receiving this protection. This is particularly important as some people will be added to the register without their consent during a period of mental health crisis. While those entering standard breathing space may need to remain on some sort of register for 12 months to ensure rules around access are followed, this is unnecessary for the mental health breathing space where the number of entries is unlimited.

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?

Carers, or other third parties, should only be able to make a referral to a debt advice agency and trigger mental health breathing space on an individual's behalf with their explicit consent.

Where it is not possible to gain this consent, carers may still play a vital role in advising mental health professionals about someone's financial situation, as they already do about people's health. But the power to act in a someone else's best interests should rest with mental health professionals, unless there is a pre-existing legal basis for a third party to do so (e.g. Power of Attorney or Deputyship).

Many people with mental health problems do not have a carer who can advocate on their behalf, so HMT should prioritise making the professional referral pathway as straightforward as possible, rather than relying on carers to play this role.

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?

We do not think that a fully public register is necessary, and are concerned that it could pose a risk to breathing space participants, particularly those who have accessed breathing space through the alternative access mechanism while in mental health crisis, who may not have consented to be added to the register. Instead, we believe a register accessible to relevant debt agencies and creditors would be sufficient for the effective administration of breathing space - including the alternative access mechanism - and would balance practicalities with the principles of data minimisation and privacy.

A public register may also discourage those who need the scheme from accessing it, especially if they are struggling with feelings of shame or guilt around their debt. There is a significant societal stigma around financial problems. Many people don't tell close friends and family about debt problems, and are hesitant about accessing free, independent debt advice, even when they have a serious problem. 50% of StepChange clients wait a year between worrying about debt and seeking help.¹⁰ Breathing space could provide a powerful incentive to overcome this stigma and access advice, but if the names of breathing space recipients are made public this will be a major deterrent.

"I feel as if my financial situation is the "elephant in the room" but I'm the only person that knows about them. I have kept all of this secret from my husband and family. I am so ashamed of the situation I am in."

Expert by experience

Creditors and debt advisers, however, will need to be able to access the register in order to properly administer breathing space, including ensuring that a person who has accessed breathing space through the alternative access mechanism receives the protections they are entitled to, even if they have not been well enough to provide a debt adviser with a list of creditors. This approach would necessitate the creation of a list of organisations who have permission to access the register, but other lists could be used to facilitate this process - for example the list of FCA regulated debt advice agencies and creditors, lists of Ofgem licensed energy suppliers, etc.

¹⁰ StepChange Debt Charity. Statistics Yearbook: Personal Debt. StepChange Debt Charity. 2013.

The creation of a list which creditors can access may create concerns among members of the public that applying for breathing space could negatively impact them, for example through limiting future access to credit. To allay these concerns, HMT should ensure that those accessing the register are bound by terms which prevent them from using this information for any purpose other than the administration of breathing space.

Protections of 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 believe that any debts, beyond the list provided by HMT in the consultation document, should be excluded from breathing space.

In order for breathing space to be effective, it must include as many debts as possible, including money owed to local authorities and government departments. We understand that a small number of debts, such as those currently excluded from personal insolvency solutions, may need to be exempted, particularly where failure to do so would cause another person financial harm (e.g. child maintenance payments). However we would be loathe to extend this list of general exemptions further, and particularly would dispute the argument that existing regulatory frameworks provide adequate protection to debtors. Our research consistently finds that creditor activity, including that of regulated consumer credit firms, causes significant psychological distress to consumers.¹¹

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

Yes - protection from accumulating interest, fees and charges is a key strength of the breathing space proposal. In some cases, fees and charges are the factor that makes a debt unaffordable. Offering a pause could encourage people to seek advice at this early stage.

As well as practically adding to someone's financial difficulties, continued accrual of debt can be a driver of mental distress, which, in some cases, can leave people feeling overwhelmed and unable to engage in financial management. Avoidance is a common coping mechanism for anxiety, for people with and without mental health problems.

¹¹ Bond N and Holkar M. A silent killer: Breaking the link between financial difficulty and suicide. Money and Mental Health Policy Institute. 2018.



"I don't like opening letters and find I avoid bills in case I can't afford to pay them, its burying your head in the sand in case the truth is too hard to handle. On the face of it, I am a professional women who is competent, yet my head spins sometimes when I am under pressure and feel low."
Expert by experience

The breadth of the proposed protection from interest, fees and charges could provide a powerful incentive for people struggling with mental health problems and financial difficulties to engage with debt advice. This protection would directly address feelings of mounting pressure and being overwhelmed by debts, and should help people receiving breathing space feel safe and supported, providing the right conditions for people to take constructive action to address long-standing financial issues.

Question 12 - Do you agree with the treatment of collections and 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?

Yes, we agree with the treatment of collections and recovery action proposed during breathing space.

Collections and recovery action can act as a constant reminder of financial problems and threaten a person's sense of security. When someone has multiple debts with different creditors, cumulative collections activity can seem excessive and insensitive, leading people to feel trapped by their debts and struggling to see a way out.¹² For many, protection from collections and recovery action will be as important, or even more so, than the financial protection offered by breathing space.

"To be in debt and to have people calling up to fifteen times a day, to have your voicemail full, to have the postman open your letterbox with even more debt letters with even more threats, is too much for anyone. You think your life isn't worth living."

Expert by experience

While we understand that notices of sums in arrears and default notices are an important consumer protection measure mandated by the Consumer Credit Act, there is a risk that these notices could be confusing or distressing for someone receiving breathing space. There is a limit to which the government can address this tension in the short-term, given these notices are mandated in legislation, with serious penalties for firms if they fail to comply. In the short-term, the government should ensure that the FCA information sheet that creditors are required to send with

¹² Bond N and Holkar M. A silent killer: Breaking the link between financial difficulty and suicide. Money and Mental Health Policy Institute. 2018.



arrears and default notices is amended to contain information about breathing space. The updated information sheet should also contain a clear instruction that people who are already receiving breathing space need not take additional action. Debt advisers should also ensure that people feel able to approach them if they receive these, or other communications from creditors, and don't know what to do. Furthermore, HMT has an opportunity to review the Consumer Credit Act later this year, following the FCA's report and recommendations on the matter due by April 1st, and could, at this time, choose to make amendments to it which enable consumers to be protected from receiving these notices while in breathing space, or revise the mandatory wording of these notices to refer to breathing space.

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

Proposed length of breathing space

We welcome the the recognition that six weeks will not be sufficient for some people to to seek a long term solution to debts. However, 60 days will still be insufficient for some. In particular, 60 days may be insufficient for people with more complex problems, both financial and otherwise, and for people who find it harder to engage with the debt advice process.

Half of people in problem debt will also have a mental health problem,¹³ and common symptoms of mental health problems can affect someone's ability to engage with debt advice in a range of ways.¹⁴ For example, memory problems are a common symptom of conditions such as depression, and a side-effect of many medications prescribed for mental health problems. People experiencing memory problems may find it harder to keep up with the administrative demands of debt advice, such as providing a complete list of creditors and other information, and may also struggle to follow advice without continued support and reminders of specific details.

We recommend that debt advisers are granted the flexibility to extend breathing space where more time is needed to develop a long term solution to a client's debt problems. Limiting protection to 60 days risks making the scheme ineffective for those with greater need.

¹³ Jenkins R et al. Mental disorder in people with debt in the general population. *Public Health Medicine* 2009; 6, 3: 88-92.

¹⁴ Holkar M. Seeing through the fog: How mental health problems affect financial capability. Money and Mental Health Policy Institute. 2017.



30 day check

We understand the desire to make sure that people are making the most of a period of breathing space through a 30 day check, but are concerned that the costs of this intervention could outweigh any benefits. Practically, it is not clear how a debt adviser would be expected to assess whether or not a client is complying with the scheme, other than simply by asking them. It does not seem reasonable to expect a debt adviser to check that all ongoing bills are being paid with recipient organisations.

The requirement to perform a check would place significant additional administrative burden on debt advisers, drawing capacity away from their area of expertise: advice giving. Giving advisers an enforcement role could also jeopardise the trusting relationship between client and adviser and reduce the effectiveness of the advice process, if advisers are no longer perceived to be independent and on the client's side.

However, if the government remains keen for a check to be implemented, we would suggest this opportunity should be used to check compliance on both sides of the arrangement, and that people in receipt of breathing space should also be asked whether they have continued to receive inappropriate communications from creditors. This, in turn, will provide an opportunity to check creditor compliance with the scheme. This check should also be framed as a support opportunity, rather than an eligibility test, providing a chance for those who are struggling to take the next steps to find a debt solution to reach out for more help, to ensure the scheme leads to successful outcomes.

In designing the check, government should also be mindful that half of people in problem debt (and thus likely half of those using breathing space through the mainstream mechanism) will be experiencing a mental health problem,¹⁵ which may make engaging with communications more difficult than usual. Recent Money and Mental Health research found that half (50%) of people with a mental health problem struggle to communicate with essential services providers through the telephone and a third struggle to open post from essential services providers.¹⁶ People with mental health problems are likely to experience similar difficulties engaging with communications from debt advisers, or the Insolvency Service. To ensure people who are unwell can engage with any check, careful consideration must be given to the way that this is organised and people are notified of it, to ensure it remains accessible.

¹⁵ Jenkins R et al. Mental disorder in people with debt in the general population. *Public Health Medicine* 2009; 6, 3: 88-92.

¹⁶ Holkar M. Evans K and Langston K. *Access Essentials: Giving people with mental health problems equal access to vital services*. Money and Mental Health Policy Institute. 2018.

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?

The proposed protections would make a significant difference to people in mental health crisis, reducing additional pressures at a time when they are already vulnerable and least able to manage their finances. These protections could prevent the financial harm that currently often accompanies mental health crisis and provide people with an opportunity to resolve long term financial issues.

We recommend three additional protections for people accessing breathing space through the alternative access mechanism, to ensure that these potential benefits are realised.

Ongoing eligibility requirements - It is essential that people accessing breathing space through the alternative access mechanism are not subject to ongoing eligibility requirements that could result in breathing space protections being removed. Whilst it may be reasonable to expect people accessing to breathing space through the main channel to engage with debt advice or to keep up with ongoing liabilities as far possible, this will simply not be possible or appropriate for many people in mental health crisis. People may not have access to online banking, use the telephone or be able to leave the house or hospital to visit a paypoint or bank. If a person is unable to work and their sick pay ceases, they may also be too unwell to apply for benefits to allow them to meet ongoing liabilities.¹⁷ Even if someone in crisis has the money to pay their bills, they may be unable to do so unless they have previously set up direct debits or granted a third party access to their accounts. In these circumstances, the scheme is unlikely to be of any benefit unless people can remain in the scheme despite being unable to pay ongoing liabilities.

60 day minimum - People who consent to accessing breathing space whilst in mental health crisis care should be entitled to at least 60 days of protection, even if they receive crisis care for fewer than 60 days. People who have been discharged from crisis care may not have fully recovered and are likely to still be vulnerable. The period immediately after discharge can be particularly difficult financially if people return home to unpaid bills and an empty fridge. A minimum of 60 days protection would ensure that people have a reasonable amount of time to engage with debt advice and get help with their finances.

Access to money advice at discharge - The proposed alternative access mechanism rightly ensures that people receiving treatment for a mental health crisis are able to receive the protections of breathing space without having to be assessed by a debt advisor, as this is not

¹⁷ Bond N and Braverman R. Too ill to work, too broke not to: the cost of sickness absence for people with mental health problems. Money and Mental Health Policy Institute. 2018.

appropriate. However, given the financial difficulties associated with mental health crisis,¹⁸ it is important that money advice is built into the process at a more appropriate point. Advice could be provided through a co-located advice service, or through a referral to an appropriate local advice agency - in the latter case, the national service used to administer the alternative access mechanism could also provide a referral service, rather than relying upon mental health professionals to locate appropriate services.

This advice offer should not be limited to debt advice, as people who have experienced a mental health crisis may have a range of interrelated problems, including issues around housing, benefits eligibility and applications, and debt, which are best dealt with holistically. This is particularly important as the people in this situation will be continuing to recover from a mental health crisis, may still be experiencing symptoms of a mental health problem, and may require specialist support or case work to regain financial stability. The government should consider piloting approaches to the provision of this advice to ensure it is as effective as possible.

Further comments on protections of breathing space

Further comment on section 4.2 debts excluded from the scheme's protections:

Beyond the given list of debts that the government proposes to exclude from breathing space, debt advisers should be afforded the flexibility to exclude further debts from breathing space protection, if they deem it in the client's best interests. For example, they may choose to exclude rent arrears from breathing space protection in order to protect a client's housing security. We recommend allowing debt advisers discretion, rather than taking a more prescriptive approach here, so that advisers can adapt breathing space protections to clients' individual circumstances.

Further comments on section 4.10 continued eligibility for breathing space:

Half of people in problem debt also have a mental health problem,¹⁹ meaning many people seeking breathing space will be experiencing symptoms that might affect their financial capability²⁰ and their ability to engage with the scheme. A substantial proportion of these people are likely to be unaware that they are experiencing a mental health problem, and so unable to ask for additional support. To ensure that the scheme is as effective as possible and accessible to those who need it most, HMT

¹⁸ Bond N, Braverman R and Clarke T. Recovery Space: Minimising the financial harm caused by mental health crisis. Money and Mental Health Policy Institute. 2018.

¹⁹ Jenkins R et al. Mental disorder in people with debt in the general population. Public Health Medicine 2009; 6, 3: 88-92.

²⁰ Holkar M. Seeing through the fog: How mental health problems affect financial capability. Money and Mental Health Policy Institute. 2017.

should adopt a universal design approach - explicitly designing the core scheme with the needs of people experiencing mental health problems in mind.

In practical terms, this means recognising that many people, some of the time, will be experiencing symptoms that might make it harder for them to comply with the ongoing eligibility criteria for breathing space. For example, memory problems could result in a period of disorganisation and missed payments, or increased impulsivity could result in difficulties controlling spending when unwell. HMT should build flexibility into the system to ensure that people experiencing these symptoms are not immediately ejected from the scheme. Not offering sufficient flexibility could undermine the objectives of the scheme by failing to help those with the biggest problems and dampening the incentive to seek advice in the first place.

Requirement to provide prompt, accurate and complete information - We do not feel it is reasonable to expect all clients to give “prompt, accurate and complete responses to debt advisers’ requests for information” in order to remain eligible for breathing space. There is a strong incentive for a client to provide complete information as soon as possible, to ensure maximum protection from breathing space, but we feel that the current continued eligibility requirement sets the bar too high. Half of people in problem debt also have a mental health problem,²¹ which can affect their financial capability and organisation,²² and will sometimes lead to people providing inaccurate or incomplete information by mistake, or struggling to engage at all when particularly unwell. It would be unfair to eject people who were struggling to comply due to their health problem from breathing space, as most of this group will not be receiving mental health crisis services and so will not be covered by the alternative access mechanism.

The requirement to provide prompt and complete information also seems inconsistent with section 4.2 of the consultation document, which states that “debts that existed but had not been identified at the outset of breathing space would be eligible for inclusion in the protections after the breathing space had commenced”. We welcome this flexibility and recommend that the ongoing eligibility criteria in section 4.10 are amended to allow a reasonable tolerance for people making mistakes or struggling to engage. For example, it would be more reasonable to expect people to provide prompt, accurate and complete responses to debt advisers’ requests for information, *to the best of their ability*.

Requirement to keep paying ongoing liabilities - It is clearly important that people continue to pay their ongoing liabilities during a period of breathing space. Failure to pay can result in penalties far worse than ejection from breathing space, such as eviction. HMT should recognise that there are a

²¹ Jenkins R et al. Mental disorder in people with debt in the general population. *Public Health Medicine* 2009; 6, 3: 88-92.

²² Holkar M. *Seeing through the fog: How mental health problems affect financial capability*. Money and Mental Health Policy Institute. 2017.

range of reasons why somebody might fail to pay a bill, such as a sudden financial shock or an unexpected price rise, and should not assume that this represents a lack of commitment to the scheme. People who enter debt advice with a deficit budget will be unable to keep up with all ongoing liabilities at the start of the advice process. To maximise effectiveness, breathing space should be designed to tolerate some missed payments as long as a sustainable debt solution is still possible. People should be encouraged to contact their debt adviser if they are going to miss a payment during breathing space. This would give advisers an opportunity to find out more about clients' financial problems and work towards a more sustainable solution.

Protections of the statutory debt repayment plan

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

As outlined in further comments on the protections of breathing space, disengagement from the advice process, or a failure to keep up with ongoing liabilities, should not be interpreted as a lack of commitment to the scheme. Whilst a mechanism for dealing with people who are in fact non-compliant is clearly necessary, HMT should allow debt advisers broad discretion in cases where someone is struggling to comply with the conditions of a repayment plan, but the plan is still considered appropriate and sustainable in the long term. People should not be punished for failing to comply with eligibility criteria due to a health problem or because accessibility problems prevent them from engaging with debt advice.

Administration of breathing space and statutory debt repayment plan

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

Credit files should continue to hold an accurate record of someone's repayment history, but we do not feel that an additional flag to indicate that someone is in breathing space or a statutory debt repayment plan is either necessary or desirable. In line with the principle of data minimisation, this information should not be shared further than is necessary to administer the schemes.

If information about breathing space is recorded on people's credit files, this could act as a disincentive to enter the scheme. It is not clear how creditors would interpret this additional data, so people considering breathing space might reasonably be concerned about the impact on their long term access to credit. This perceived threat of lasting credit score damage is likely to act as a particularly strong disincentive for people who are more reliant on credit to get by. In other contexts, Money and Mental Health research consistently finds that concerns about credit score damage are a barrier to disclosure of problems and take up of additional support services.



“My credit card provider has now sent me a default notice and I am scared and confused about what this means for the future.”

Expert by experience

If credit files are to hold a record of people receiving breathing space, it is essential that it is not possible to distinguish between people who have accessed breathing space through the mental health alternative access mechanism and the mainstream mechanism. This is particularly important as some people will be entered into breathing space without their consent during a period of mental health crisis, and all information about people’s mental health is highly sensitive personal data.

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

Yes - we are particularly pleased that the proposed scope includes both England and Wales. However, we recommend that the scheme is also pursued as soon as possible in Northern Ireland, given the specific economic problems and relatively high rates of suicide in Northern Ireland.