

BRIEFING:

“Breathing Space” debt respite scheme for mental health crisis

What is “Breathing Space”?

Breathing Space is time given to someone in debt during which recovery action for their debt is suspended.

There are two types of breathing space – a standard type and a mental health crisis type.

The governing regulations are **The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020** which are available here: <https://www.legislation.gov.uk/ukdsi/2020/9780348209976/contents>

What is the effect of a breathing space – and how long does it last?

Breathing Space exists to give someone time to address their debt issues. It does not mean that debts will be written off or payments stopped.

Breathing Space pauses most enforcement action on their debts and stops contact from creditors, it freezes most interest and charges on someone’s debts to give them time to seek advice and support.

If Breathing Space is applied for and the person meets the criteria, the Insolvency Service instigates it and notifies all creditors so that they hold off debt recovery action.

A **Standard Breathing Space** lasts for up to 60 days, with a review done between the 25th and 35th day. A person can only claim one a year.

A **Mental Health Crisis Breathing Space** is different. It can last for however long the person remains in mental health crisis, but needs to be reviewed and re-authorised every 30 days.

Who can ask for a breathing space?

The process starts when someone asks or is identified as needing breathing space because of a need to address their debt.

For a standard Breathing Space this would be the person in debt or their representative who requests breathing space on their behalf.

For Mental Health Breathing Space any one of the following people are able to make a referral:

- The debtor
- The debtor’s carer
- An AMHP
- The debtor’s care co-ordinator
- A mental health nurse
- A Social Worker
- An IMHA
- An IMCA
- A Relevant Person’s Representative (under DoLS)
- An AMCP
- An appropriate person (under LPS)

Who applies for the Breathing Space?

- Only a debt adviser, authorised by the Financial Conduct Authority (FCA) can make a referral for either (or both) the Standard and the MH Crisis Breathing Space.
- A person may be eligible for a Mental Health Breathing Space if they are resident in England and Wales and receiving mental health crisis treatment (including if that treatment has already started).

Role of the AMHP

The AMHP is the only person who can authorise a referral for Mental Health Breathing Space. They are required to confirm that the person meets the criteria for mental health crisis on a specific referral form sent via www.maps.org.uk/mhcbs

If the AMHP does not agree that the person meets the criteria for Mental Health Breathing Space the person may still be eligible to apply for the standard Breathing Space. A debt adviser should be able to advise further. There is a free list of debt advisors on the Money Advice Service's website.

Criteria to be met for Mental Health Breathing Space

The person "must be receiving mental health crisis treatment for a serious mental health disorder":

What is "Mental health crisis treatment"?

The Person:

- Has been detained in hospital for assessment or treatment (including under part 3 of the Mental Health Act 1983);
- Has been removed to a place of safety by a police constable;

or

- Is receiving any other crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service in relation to a mental disorder of a serious nature.
- This can include services offered by community mental health services and crisis houses.
- A 'specialist mental health service' means a mental health service provided by a crisis home treatment team, a liaison mental health team, a community mental health team or any other specialist mental health crisis service that the AMHP considers appropriate.
- A 'mental disorder of a serious nature' means any mental health problem, disorder or disability of the mind that the AMHP considers to be of a serious nature.

The AMHP decision

- Although an AMHP may be asked to complete an evidence form, the AMHP is not under any statutory duty to complete a form, and there are no circumstances in which an AMHP can be required to complete an evidence form by anyone else. It is the AMHP's judgement that is of paramount importance.
- The relevant legislation does not set out the steps an AMHP should follow before completing an evidence form. They may carry out an assessment in person or remotely or rely on evidence provided to them by another professional involved in that individual's care. It is not necessary for an AMHP to have carried out a Mental Health Act Assessment on the individual, although they may consider whether to complete an evidence form when they do such an assessment.
- If the AMHP is satisfied that the person is receiving mental health treatment, the evidence form should be completed, including details of the AMHP and a nominated point of contact
- The AMHP does not need to know or provide any specific details of the person's debts in the evidence form, but it is very helpful for them to include any information they do have.
- Once the evidence form has been received, the AMHP has no further role unless they have been identified as the nominated point of contact for the individual.

Data protection – is consent needed to send the evidence form?

If the person has capacity

They must give their consent for you to be able to complete and submit the evidence form. The referral form will include a consent statement.

If the person lacks capacity

You can seek consent from someone who has been appointed to act on that individual's behalf (e.g. Lasting Power of Attorney or a Court Appointed Deputy). If there is no one who can disclose information or give consent on the person's behalf, a Best Interest Decision meeting (MCA) should be held and details included on the referral form.

How do AMHP's provide evidence for a Mental Health Breathing Space?

Only the form located here: <https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance-on-mental-health-crisis-breathing-space> should be used to evidence mental health crisis.

There is a copy attached to this guide, it is straightforward to complete and contains instructions to help.

Once filled in, the form needs to go to a debt advice provider to be submitted via the Money and Pensions Service web pages, they are the organisation appointed to act as the single point of application.

The form contains the web page address: www.maps.org.uk/mhcbs

A single point of contact for further enquiries

Debt advisers have to make periodic checks every 20-30 days to make sure the conditions for Mental Health Crisis Breathing Space continue to be met.

Therefore the identified nominated point of contact is someone that a debt adviser needs to contact:

This can **only** be one of the following:

- An AMHP,
- A care co-ordinator or;
- A mental health nurse.

This point of contact is important as debt advisers will need to make these checks every 20-30 days. If confirmation is not received the Breathing Space period will end.

Ending a mental health crisis breathing space

If a person stops meeting the qualifying conditions because the period of crisis treatment ends, the nominated point of contact must tell the debt adviser so that they can end the breathing space.

Breathing Space for mental health crisis ends 30 days after the crisis treatment ends.

Mental health crisis breathing space: Information for individuals

A mental health crisis breathing space will help stop you being chased or charged fees and interest on your debts for as long as you are receiving crisis treatment, and for 30 days after your treatment ends. The aim is to create time and space for you to get the treatment you need, without having to worry about your debts growing or your creditors contacting you during your treatment.

How the mental health crisis breathing space works

