



Her Majesty's Treasury (HMT): 'Breathing Space' Consultation on a policy proposal

15 January 2019

1. Introduction

1.1 The Consumer Council is a non-departmental public body established through the General Consumer Council (Northern Ireland) Order 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland.

1.2 The Consumer Council welcomes this opportunity to contribute to Her Majesty's Treasury (HMT) Committee's policy proposal on the 'Breathing space' consultation. The Consumer Council believes it is well placed to respond to this review from the perspective of the Northern Ireland consumer. Our outreach and empowerment work, complaint resolution and research gives us first-hand knowledge of the needs of consumers in Northern Ireland and the key issues affecting them.

2. Background Data on Northern Ireland

2.1 Within the UK there are common trends within consumer debt. The Office of National Statistics has revealed that total unsecured debt in the country is now at £428 billion, accounting for 30.4% of household income in the third quarter of 2018.¹ However, as often happens, this report excluded a study of debt within Northern Ireland. For this reason, UK wide approaches need to fully take regional differences on-board. Our aim in pointing this out is to reduce harm within Northern Ireland, particularly for those consumers who are less well insulated from potential detriment.

2.2 Northern Ireland is a region beset with deprivation and multiple deprivation. Within the UK regions, NI has the lowest median wage², highest economic inactivity rate³, the highest number of people on Personal Independence Payments (PIPs) and Disability Living Allowance (DLA)⁴ and lowest proportion of people with savings over £100.⁵ In addition to this, NI was hit harder by the 2008 Global Financial Crash (GFC) than other UK regions, leaving 41% of households with a mortgage in negative equity in 2013.⁶

¹ Unsecured Debt – Quarter 3- UK Statista – Sourced from ONS

<https://www.statista.com/chart/16541/unsecured-debt-uk/>

² The Office for National Statistics -

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2017provisionaland2016revisedresults#regional-earnings>

³ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/regionallabourmarket/july2017>

⁴ <http://www.newsletter.co.uk/news/cost-of-disability-claims-in-ni-soars-by-200m-a-year-1-7017974>

⁵ <https://www.statista.com/chart/6219/half-uk-adults-less-than-%25C2%25A3100-savings/>

⁶ Consumer Council – Assessment of NI Mortgage market- D Hogg 2017

3. **Answers to HMT Questions**

(Breathing Space Questions –Question 1- Question 15)

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

- 3.1 The Consumer Council welcomes this approach whereby advisors can use their own discretion and experience. However it is critical that debtors themselves are also made aware of the Breathing Space Scheme. The Consumer Council would welcome further information on how HMT intend to close the gaps in identifying and assisting eligible at risk consumers who are harder to reach?

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?

- 3.2 The Consumer Council fully appreciates that firms will be keen to safeguard against potential abuses of the system. However it would be inappropriate for The Consumer Council to comment on the rights or wishes of creditors as our focus in responding is on consumers and small businesses.

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

- 3.3 The Consumer Council agrees that individuals with mental illnesses would undoubtedly benefit from timely advisor intervention and the benefits of 'breathing space' to address and resolve their debt issues. Money and Mental Health Policy Institute⁷ claim that people with mental health problems are three times as likely to be in problem debt. This has been described by Martin Lewis, founder of Money and Mental Health Policy Institute as a 'toxic link'⁸. However the mental health effects are cyclical in nature, often starting from, as well as ending in, mental health problems. In Northern Ireland, 40% of Personal Independence Awards⁹ (PIPs) have psychiatric disorders as the main disabling condition. Given the high predominance of poor mental health in Northern Ireland, The Consumer Council is very interested in any further strategies that HMT might have for early detection and prevention of problem debt linked to this issue.

⁷ Money and Mental Health Policy Institute <https://www.moneyandmentalhealth.org/>

⁸ <https://www.moneyandmentalhealth.org/#>

⁹ Department for Communities Statistical Bulletin –August 2018- <https://www.communities-ni.gov.uk/system/files/publications/communities/personal-independence-payment-statistical-bulletin-aug-2018.pdf>

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?

3.4 The Consumer Council welcomes this approach because it gives multiple intervention points for vulnerable consumers who need to avail of 'breathing space'. This reflects the pastoral approach which The Consumer Council adopts towards consumers In Northern Ireland, ensuring that we act either as the main agent or a key referral on point for consumers, depending on their particular consumer needs.

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?

3.5 The Insolvency Service states its aim is to:

*'...deliver economic confidence by supporting those in financial distress, tackling financial wrongdoing and maximising returns to creditors.'*¹⁰

The Consumer Council would therefore welcome reassurances that a balanced and fair approach will be taken in dealing with indebted consumers and that creditor needs will not unduly dictate fair consumer outcomes. In addition it is the opinion of many advice bodies that they themselves should deliver the scheme through implementing a "statutory wrap" around best practice in debt advice and debt management. HMT will no doubt weigh these views up carefully.

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?

3.6 The Consumer Council welcomes any moves to ensure creditor compliance. However this is not an issue upon which we feel qualified to comment further.

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?

3.7 Aside from potential General Data Protection Regulation(GDPR) issues, The Consumer Council Council is very concerned that a list of every 'Breathing Space' users might be publically available .This information might potentially be used to generate leads for new business. This would be in stark contrast to the underpinning aims of the 'Breathing Space' policy which:

¹⁰ Insolvency Service Website-Sourced on 8 January 2019.<https://www.gov.uk/government/organisations/insolvency-service>

*'..aims to give people in problem debt the opportunity to take control of their finances and put them on a sustainable footing.'*¹¹

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

3.8 This part of the proposal suggest that certain debts be excluded, including Student Loans. In Northern Ireland, graduates in 2017¹² left university with average debts of £20,990 compared to £8,020 in 2003. Therefore The Consumer Council believes that this decision requires careful consideration to avoid negatively impacting upon an already vulnerable cohort.

Question 10: Do you agree with the treatment of sole traders in breathing space? In particular: Do you agree with the proposed eligibility criteria and protections for sole traders in breathing space? What would be the most appropriate way of distinguishing between business and personal debts for these purposes?

3.9 The need to protect small businesses and sole traders was recently bolstered when the Financial Conduct Authority (FCA) confirmed its plans to extend access to the Financial Ombudsman Service (FOS) to SMEs.¹³ The Consumer Council recognises the need to protect small businesses. Alongside a broader assessment of client needs, The Consumer Council welcomes the Inclusion of sole traders¹⁴into 'Breathing Space' scenario.

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

3.10 The Consumer Council agrees with the arrangement that default fees and charges be prevented from accruing in regard to SMEs and sole traders.

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?

3.11 The Consumer Council welcomes the recommendations that when SMEs or sole traders

¹¹ <https://www.gov.uk/government/consultations/breathing-space-scheme-consultation-on-a-policy-proposal/breathing-space-scheme-consultation-on-a-policy-proposal>

¹² <https://www.statista.com/statistics/376516/student-loans-northern-ireland-average-debt-on-entry-to-repayment-timeline/>

¹³ <https://www.financial-ombudsman.org.uk/about/2016/board-minutes-september-2016.pdf>

¹⁴ NB: Those who do not meet the threshold for VAT registration (currently a turnover of £85,000). <https://www.gov.uk/government/consultations/breathing-space-scheme-consultation-on-a-policy-proposal/breathing-space-scheme-consultation-on-a-policy-proposal>

enter 'Breathing Space', creditors must:

- Cease contact (bar 'business as usual' adverts etc.),
- Begin no new creditor action
- Pause any existing action.

A further observation is that bailiffs do not operate within Northern Ireland¹⁵ and hence it would be helpful to know if any thought has been given to how the Breathing Space policy might apply to Enforcement of Judgement officers in this region.

Question 13: How should creditor compliance with the scheme be monitored?

- 3.12 The Consumer Council believes that close monitoring should be undertaken by the Insolvency Service in 'Breathing Space' cases. A suggestion might be to collate and publish consumer metrics feedback on how companies treated them during their 60 day 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?

- 3.13 The 60 day period is very welcome as it will give some consumers time to reconfigure their debts and find a route out of their financially harmful situation. However, many indebted consumers don't seek help until very late in their debt journey and for these people, a longer time will most likely be needed. Alison Blackwood of Stepchange has said:

"As long as people are seeking regulated debt advice, the breathing space should be more flexible, so people could have longer time to sort out the best solution for them, and to get debt advice, and to find out what all of their debts are." ¹⁶

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?

- 3.14 The Money and Mental Health Policy Institute estimates that people with mental health problems are three times as likely to be in problem debt compared to the rest of the population.¹⁷ One third of Personal Independence Payments (PIP) claimants in Northern Ireland have registered psychiatric disorders¹⁸ than anywhere else in the UK.

¹⁵ Enforcement of Justice Officers in Northern Ireland.

<https://www.nidirect.gov.uk/articles/enforcement-civil-court-orders-northern-ireland-0#toc-0>

¹⁶ <https://www.theguardian.com/money/2018/feb/26/could-people-in-debt-receive-a-years-grace-to-get-back-on-track>

¹⁷ <https://www.moneyandmentalhealth.org/>

¹⁸ www.irishnews.com/news/northernirelandnews/2016/10/18/news/more-than-third-of-dla-claims-based-on-mental-health-741696/

3.15 Because of these factors, The Consumer Council recommends that the 'Breathing Space' proposals include a mental health alternative access mechanism as recommended by HMT to allow adequate protection for more vulnerable consumers.

Question 16: (Statutory Debt Plan SDP Questions 16-30) 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?

3.16 The Consumer Council agrees that to be eligible for the scheme, indebted consumers must:

- Have accessed debt advice
- Be assessed as able to repay their debts over a reasonable time and in full
- Have the agreement of their Creditor/ Insolvency Service

Question 17: Do you agree with the proposed criteria for creditors to object to the (Statutory Debt) Plan? Are there any other criteria you feel would be appropriate? &

Question 18: Do you agree with the design of the proposed fair and reasonable test? In particular: Do you agree that 14 days is an appropriate timeframe for creditors to object to a proposed (SD) plan? 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?

3.17 The Consumer Council agrees that 14 days seems an appropriate timeframe within which creditors can object to a proposed Statutory Debt Plan. However The Consumer Council does not support a process whereby creditors can subsequently challenge the final decision of the Insolvency Service. The concern with allowing creditor objections post Debt agreement Plan (DAP) is that it might de-rail the entire process which has been set up primarily for the benefit of the indebted client.

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

3.18 The Consumer Council welcomes the exclusion of Mortgage or rent arrears from the Statutory Debt (SD) plan on the request of a debtor or debt adviser. This will give lessen the likelihood of indebted consumers losing their homes. Ring fencing arrears on rent or mortgage will also enable a debtor to pay these housing debts more quickly as part of their monthly budget.

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

- 3.19 The Consumer Council welcomes the proposed plan to prevent the further accrual of all interest default fees and charges on the debts included in the SD plan. Stepchange reported that 60% of StepChange clients¹⁹ who had interest, charges and enforcement action frozen by creditors said that their financial situation had begun to stabilise.

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?

- 3.20 The Consumer Council is encouraged by the proposal to stop collections and recovery action on debts once a plan begins. The fact that this also prohibits disconnections and evictions is of key importance also.

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

- 3.21 The Insolvency Service is presumably well placed to formulate benchmarking measures for creditor compliance. However as mentioned in paragraph 3.12, consumer and advice agency feedback should be also be including in any review of creditor compliance.

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?

- 3.22 The Consumer Council broadly welcomes the prioritisation of the debts as set out by HMT, namely;
- housing debts (e.g. rent and mortgage arrears)
 - certain tax and benefit debts (owed to both central and local government)
 - arrears on gas and electricity
 - hire purchase debt

- 3.23 The Consumer Council agrees that this prioritisation will help to alleviate the potential for serious detriment to indebted consumers. However, The Consumer Council has qualms that every creditor including those deemed 'non-priority' would automatically receive a minimum payment of 5% of a debtor's total monthly plan payment. For maximum protection, The Consumer Council agrees with Stepchange's opinion that;

¹⁹ https://www.stepchange.org/Portals/0/img/policy-research/StepChange_Debt_Charity_response_Breathing_Space_call_for_evidence.pdf

*'Hire purchase or conditional sale agreement should be treated as a continuing liability where the goods in question are deemed to be essential for the applicant.'*²⁰

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? &

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?

3.24 The Consumer Council welcomes debtors having:

*'an annual reviews of their plan alongside being able to request a payment break from their plan of up to six months if they have a severe, but temporary, financial shock'.*²¹

The only cautionary addition to this is that people may not necessarily know how 'temporary' a situation is likely to be. Hence the flexibility of plans may need to be widened according to individual need and developing circumstances.

3.25 In regard to defining 'Income Shock' any number of factors could be included. However what is known is that many more people who are just one financial shock away from problems because they have no meaningful savings buffer. To illustrate how precarious this situation is, 56% of Northern Irish consumers asked had money set aside for a 'rainy day' but 26% had not.

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

3.26 For a debtor to get the most from the scheme, it is of course important that they continue making payments specified within the plan and keep in regular touch with their debt advisor.

In the case of a debtor not complying with the eligibility requirements for more than one month, it would be fairer to assess each case on individual merits, as far as possible rather than impose a blanket exclusion after a set amount of time.

²⁰ https://www.stepchange.org/Portals/0/img/policy-research/StepChange_Debt_Charity_response_Breathing_Space_call_for_evidence.pdf

²¹ <https://www.gov.uk/government/consultations/breathing-space-scheme-consultation-on-a-policy-proposal/breathing-space-scheme-consultation-on-a-policy-proposal>

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

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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?

- 3.27 The government has said that it hopes a body acting as a sole payment distributor would provide the greatest efficiencies.²² However, The Consumer Council, is guided by the work of organisations such as Stepchange who have considerable experience of providing a similar scheme to that proposed, the Debt Arrangement Scheme in Scotland. Stepchange have said that it would be more cost-effective to build on the current best practice debt advice models.²³

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

- 3.28 The Consumer Council appreciates that credit referencing is the industry standard for Lenders' decision making. However a potential addition to reference scoring could be the inclusion of a 'Breathing Space' notification on a credit file for the duration of the repayment plan or possibly beyond this. This could help guard against unaffordable borrowing for indebted consumers.

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

- 3.29 There is little doubt that there is a very clear need for such a scheme in Northern Ireland. Between January and June 2017 StepChange Debt Charity advised 27 out of 10,000 people in Northern Ireland. This compares with a figure of 66 out of 10,000 people in England. In 2015, the Money Advice Service (MAS) found that NI was the most indebted UK region. On average each adult in Northern Ireland has a personal loan of £1,109 compared to £745 in Great Britain (GB).²⁴ The Consumer Council welcomes the continuing work of HMT with the Department for Communities and Department for the Economy in considering the introduction of an equivalent scheme in Northern Ireland.

²² <https://www.gov.uk/government/consultations/breathing-space-scheme-consultation-on-a-policy-proposal/breathing-space-scheme-consultation-on-a-policy-proposal>

²³ https://www.stepchange.org/Portals/0/img/policy-research/StepChange_Debt_Charity_response_Breathing_Space_call_for_evidence.pdf

²⁴ <https://www.moneyadviceservice.org.uk/blog/are-you-one-of-the-8-3-million-adults-with-problem-debt>

4. Conclusion

People who are financially vulnerable often have no safety net in emergency situations and this can lead to a cyclical debt trap. In our most recent Consumer Outlook research²⁵ consumers were asked:

- 4.1 *'In a typical month, after you have paid your mortgage/rent and all essential bills how much money do you as a household have left?'*

In response, 34% of Northern Ireland consumers had less than £150 a month after paying all their essential bills.

- 4.2 Northern Ireland consumers lack confidence and are 'downbeat' about financial capability according to the FCA report 'Financial Lives'.²⁶ Given the national higher vulnerability ratings coupled with lower levels of financial capability within Northern Ireland, the Consumer Council welcomes the continuing work of HMT with the Department for Communities and the Department for the Economy in considering the introduction of an equivalent scheme to help those with problem debt in Northern Ireland.

5. Disclosure Statement

The Consumer Council consents to this response being made available on the HMT website. If you have any queries regarding this, please contact me on 028 9065 1627 or via email to eimear.duffy@consumercouncil.org.uk

Yours sincerely

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²⁵ Consumer Council Outlook YouGov Survey (n=1033) April 2018

²⁶ <https://www.fca.org.uk/publications/research/understanding-financial-lives-uk-adults>









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