

Let's create a better breathing space

**Grassroots debt advisers call for improvements to
the forthcoming Debt Respite Scheme Regulations**

January 2021



Summary

We Are Debt Advisers is a grassroots campaign organised by frontline debt advisers to ensure our voices are heard when formulating policy and legislation.

We support the principles of the breathing space moratorium which is due to start in May 2021, and believe that it has potential to benefit many of our clients.

However, the detail of the scheme means that currently it will not be suitable for significant numbers of clients in the most vulnerable situations. It will place an unnecessary administrative burden on already stretched advice services, and it jeopardises the relationship between advisers and our clients.

The breathing space consultation process happened between 2017 and 2019, before the Covid-19 crisis, and debt advice in the post-pandemic world already looks very different. The process to date has not directly consulted the frontline advisers who will be using the breathing space scheme once it is implemented. It is critical that we are included.

There is still time to make improvements to breathing space to ensure that it helps as many clients as possible and is fit for the difficulties expected in the coming years.

The following changes will make breathing space work:

- 1) Give the debt adviser control over the moratorium duration
- 2) Remove the mid-way review
- 3) Review the solutions available at the end of breathing space
- 4) Give debt advisers discretion to omit debts
- 5) Penalise creditor non-compliance

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Introduction

What is the breathing space moratorium?

The breathing space moratorium will be available from 4th May 2021, and is the first major innovation in debt advice since the debt relief order (DRO) was launched in April 2009.

It was created by *The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020*¹ following several years of consultations with HM Treasury and campaigning from large organisations in the debt advice sector.

The government's policy objective for the breathing space moratorium is:

*'to incentivise more people in problem debt to access professional debt advice, to do so sooner, and to enable them to enter the debt solution that is most appropriate in view of their individual circumstances.'*²

Debt advisers support these three aims, as long as we are funded to meet the increase in demand and workload.

In practice, the breathing space moratorium will be a 60-day period in which a client's creditors cease contacting the client, freeze interest and charges, and cannot begin enforcement action to recover the debt. The process can only be activated by an FCA-regulated or local authority debt adviser. A separate moratorium process can be started for clients who are engaged with mental health crisis services, and this form of breathing space can be extended beyond 60 days.

The client needs to meet certain requirements during the 60 days, including working with the debt adviser towards a long-term debt solution³.

Breathing space therefore has huge potential to help our clients to contact and remain engaged with a debt adviser, and to ease the difficult journey to a long-term debt solution.

However, as this paper outlines, debt advisers have significant concerns about the details of the scheme.

In its *current form*, the scheme includes major flaws which undermine the policy objective above by:

- a) excluding many of the clients who need it most, and
- b) creating unnecessary extra work for debt advice providers⁴ which are already underfunded and facing a post-pandemic surge in demand.

The current Regulations also risk changing the nature of the client-adviser relationship and the debt adviser role in ways we consider to be at odds with our professional values.

This paper identifies five major problems and proposes practical solutions which can be enacted through secondary legislation before the scheme begins.

Who are we?

We Are Debt Advisers is a grassroots campaign formed in November 2020, made up of advisers working on the frontline, and our supporters. It is an independent voice for the workers who do this difficult job every day, many of us with decades of experience. Successful improvement in debt advice depends on listening to practitioners, yet we are rarely consulted when policy and legislation affecting us and our clients is decided.

We work in local authorities, Citizens Advice, housing associations, and many more organisations. Some of the agencies we work for are large, specialist providers of debt advice. Others are based in local communities and form part of wider support to help people get back to work, or deal with health and other problems. We are all part of a well-trained and highly dedicated workforce, working across the country to help people in debt keep their heads above water.

We are supported by the **Centre for Responsible Credit** (CfRC) which has helped us with a web presence and campaign assistance.

We welcome dialogue with policymakers, and ask that frontline debt advisers are directly consulted during the remainder of the breathing space implementation process, and in any similar future developments.

Improvements needed to make breathing space work

1 - Give the debt adviser control over the moratorium duration

The problem: Once the moratorium has started, it will end in 60 days regardless of whether a client is ready to proceed to a debt solution. There is then no option to reapply for another 12 months⁵.

The following table lists some examples which will be familiar to all debt advisers, where an important step in the debt advice process will take much more than 60 days:

Scenario	Appropriate breathing space duration
A client's essential living costs exceed their current income (a 'deficit budget'). Debt advice providers report this affects 30-48% of clients overall ⁶ but advisers working in areas of high deprivation will see far more of these cases. Deficit budgets have been increasing in recent years ⁷ and this trend is likely to continue following the pandemic.	<i>Until the client's income or spending has changed so their financial situation is no longer deteriorating</i>
A client has applied for universal credit or new-style employment and support allowance and is awaiting the outcome of a work capability assessment. This takes a minimum of three months, and often far longer if the initial decision needs to be appealed.	<i>Until the client's benefit income has stabilised</i>
A client's best advice is a debt relief order (DRO) or bankruptcy, but they do not have access to the application fee.	<i>Until the client has raised the necessary £90 or £680</i>
A client on maternity leave is unable to afford any repayments, but once back at work she can make a realistic repayment offer.	<i>Until she returns to work</i>
A client has made an affordability complaint to the Financial Ombudsman Service and if successful may receive a substantial refund of interest paid.	<i>Until the outcome of the Ombudsman complaint</i>

There are also factors affecting the interaction with the debt advice provider which mean that for many of our more vulnerable clients, 60 days is unlikely to be sufficient to progress to a debt solution. In all of these cases, the process of working with clients can be slow. It might require a stage of building up trust, and clients often disengage with a service for periods. It might also require joint-working with other agencies, which can be under strain themselves. These factors include:

- **Mental health problems.** Many of our clients have mental health problems which make it difficult to deal with their debts, but which do not meet the entry conditions for the extended mental health crisis moratorium. This might be for example because their treatment is managed by a GP not an approved mental health professional⁸.

- **Different communication needs.** Sourcing and paying for interpreters for British Sign Language or non-English speaking clients may cause delays in the advice process. The extra time needed to communicate through a third party means the debt advice process itself takes longer, sometimes requiring extra appointments.
- **Chaotic lives.** Some of our clients come to us with complex related problems which affect their ability to deal with their debts. A debt solution is often impossible until steps have been taken to stabilise these wider problems. Examples include substance misuse, homelessness or imprisonment.
- **Other problems.** We have clients with many other severe problems which need to be addressed, often before debt advice can be completed. Examples include domestic abuse, gambling, divorce or bereavement.

60 days is not sufficient time for meaningful progress with many of our clients. This period does not offer any improvement on the existing 60 days outlined in FCA guidance for authorised firms⁹. Other agencies have already raised this problem during the consultation process¹⁰. For clients with chaotic or fluctuating circumstances, it may be appropriate to have more than one moratorium in 12 months.

Our solution: Amend Reg. 26(2) to **add** a third reason for varying the moratorium period from 60 days: *'(c) the debt advice provider considers that a longer duration is required'*.

Also amend Reg. 24(3)(g) to **remove** the words *'and, if they have previously been subject to a breathing space moratorium, that moratorium ended more than 12 months before the date of the application'*

2 - Remove the mid-way review

The problem: Debt advisers are required to contact the client half way through the moratorium for a follow-up review. This is unnecessary, intrusive and wastes debt advisers' time and resources.

The Regulations require the debt adviser to conduct a 'mid-way review' between the 25th and 35th days¹¹. Debt advice providers have already highlighted the unnecessary administrative burden this will create¹², which risks undermining the policy objective *'to incentivise more people in problem debt to access professional debt advice'*¹³

At the mid-way review, the debt adviser must 'consider' ending the moratorium if¹⁴:

- **The client has failed to meet one or more of their obligations.** There are four 'debtor obligations' a client must meet during the moratorium¹⁵:
 - a) Inform the debt advice provider of any changes.
 - b) Continue to pay their rent, mortgage, council tax, utility bills and insurance payments as they fall due.
 - c) Do not take out further credit total more than £500.

d) Continue to engage with the debt advice provider.

- **The client is uncontactable.**
- **The client has started a debt solution¹⁶.**

A debt advice provider does not have to cancel a moratorium if the client fails to meet debtor obligation b) above because of 'financial hardship'¹⁷. However, this does not apply to the other three debtor obligations. A debt adviser is also given broader discretion to not cancel the moratorium if it would be 'unfair or unreasonable' to do so¹⁸.

We have a number of concerns with this:

- The workload for debt advisers is already excessive¹⁹, and likely to increase as a result of debt problems due to the pandemic²⁰. The mid-way review takes up valuable adviser time which could be better spent helping new clients, or supporting existing clients with essential casework for which many advisers currently have insufficient time²¹.
- Clients can disengage from debt advice or fail to inform debt advisers of changes for many genuine reasons. Similarly, clients in extreme financial hardship often have no choice but to take out further borrowing to cover food and other essential costs. The debtor obligations above are not signs that a 'non-compliant' client needs reprimanding, instead they are more often indicators of greater vulnerability.
- The mid-way review appears to misinterpret the role of a debt adviser as being impartial, in a similar way to an insolvency practitioner. A debt adviser is not impartial. We have a duty to be non-judgmental and always to act in the **client's** best interests only. This is expressed in professional codes and regulation²² and is deeply embedded in the culture of debt advice. It is hard to see how the mid-way review is anything other than judgmental, and how withdrawing the support of the moratorium could ever be in a client's best interests. Since there is an option to take no action on the basis of it being 'unfair or unreasonable' to end the moratorium, the mid-way review appears largely pointless. It is very unlikely that a debt adviser would consider it fair and reasonable to revoke a moratorium.
- The process of contacting a client for a mid-way review, with the threat of revoking the moratorium if they are found to be non-compliant, redefines our relationship with our clients. A debt adviser's role is not to police our client's behaviour for the benefit of their creditors.

Our solution: Remove the requirement in Reg. 27 for a mid-way review. With our first proposal of a longer moratorium in place, the timing of reviews should be at the professional discretion of the debt adviser based on known or anticipated changes in a client's circumstances, and at least once annually. This model of reviews works successfully in debt advice already.

3 - Review the solutions available at the end of breathing space

The problem: The current range of debt solutions available at the end of the breathing space is inadequate, with barriers to debt relief²³ and repayments over excessive periods of time.

One of the policy aims of the breathing space moratorium is to help clients *'to enter the debt solution that is most appropriate in view of their individual circumstances'*²⁴. However, the current range of debt solutions is inadequate, with too many barriers to insolvency options, and some clients being expected to repay debts over excessively long periods of time.

In the post-pandemic economy, it is better for our clients to access debt relief rather than committing to repaying debts over many years. Where possible, a rapid debt-free fresh start is beneficial for the individual client and their household, and for the wider economy. It is better that someone can spend their disposable income on their family, paying for goods and services in their local economy, rather than repaying historic debts which in many cases will have been sold by the original lender to a debt purchaser for a fraction of their face value²⁵.

The existing range of debt solutions is a complex mix of statutory and informal processes, and there are potential disadvantages to all the options. Our concerns with the current options divide into two themes:

- **There are unnecessary barriers to debt relief.** Example of these barriers include:
 - The £680 application fee for **bankruptcy** prevents many people from accessing this, or means savings over a long period.
 - The £90 application fee for a **debt relief order (DRO)**, although much lower than bankruptcy, still excludes the poorest households who are the target of DROs.
 - The £20,000 maximum debt limit in a **DRO** leaves many clients having to pursue bankruptcy, despite having no disposable income or realisable assets from which to repay anything to creditors.
 - The £50 upper limit on disposable income in a **DRO** has not been reviewed since it was first proposed in 2004²⁶, so this condition has become substantially more restrictive in real terms.
 - The County Court **administration order** offers potential debt relief in the form of a composition order, but has fallen into disuse because of its archaic £5,000 debt limit and fees of 10p for each £1 paid²⁷.
- **Clients are often expected to repay debts over an unrealistic time.** Examples of this include:
 - A **debt management plan (DMP)** requires a client to live on a restricted budget paying all of their disposable income to creditors. As this involves no debt relief, it can continue for many years. DMPs of 10 or 20 years, or sometimes much longer are not uncommon, and in the absence of a long-term strategy to deal with the debts in another way, durations like this are excessive and bound to fail.
 - The proposed **statutory debt repayment plan (SDRP)** also requires a client to pay their full disposable income to creditors for a period of up to 10 years.
 - An **individual voluntary arrangement (IVA)** offers partial debt relief, and is typically proposed over 5-6 years but in practice can often last far longer than this²⁸.

We are not alone in our concerns. Others in and around the debt advice sector have called for both a comprehensive review of debt solutions²⁹ and innovative forms of debt relief³⁰.

Our solution: Three changes which can be enacted immediately by secondary legislation: a) an immediate lowering of the DRO and bankruptcy fees³¹, (b) the removal of the upper limit for DRO debts, and (c) an increase in the disposable income limit for DROs³².

Following this, a root-and-branch review of statutory and non-statutory debt solutions, with the aim of removing financial and other barriers to accessing insolvency, and ensuring that nobody is expected to repay debts over an unreasonable period.

4 - Give debt advisers discretion to omit debts

The problem: The Regulations require all debts to be included even if doing so would make a client's situation worse.

The Regulations state that when a client asks a debt advice provider for breathing space, they must disclose details of all their known debts, and the debt adviser must include all these debts when entering the client's details in the portal to start the moratorium³³.

This means the debt adviser has no discretion to omit any debts, even if including them would not be in the client's best interests. This is in contrast to the procedure at the midway review or when a creditor requests a review, where the debt adviser is given to discretion to remove individual debts from the moratorium³⁴.

Some examples of cases where including debts in a breathing space moratorium application may make a client's situation worse, or contradict the client's legitimate wishes include:

- **Assured shorthold tenants with rent arrears.** Notice of breathing space might encourage a landlord to serve notice under s.21 Housing Act 1988. This would not be prevented by a breathing space moratorium, because it is not '*action in respect of a moratorium debt*'³⁵. This risk is especially concerning since the number of tenants in arrears to private landlords has doubled during the pandemic³⁶.
- **Debts to individuals or to small businesses in sectors with weak or no regulation.** Examples might include loans to family or friends, or debts to garages, funeral providers, nurseries, childminders and similar. Contact through the breathing space scheme could put at risk personal relationships, essential services or goods retained under lien.
- **Illegal lending.** The definition of qualifying debts in the Regulations is '*any debt or liability other than non-eligible debt*'. This does not exclude loan sharks or drug debts because they are not specifically listed as non-eligible debts³⁷. Contacting an illegal lender could put the client at serious risk of harm.
- **Debts approaching the expiry of the limitation period.** Any contact via the breathing space portal would acknowledge a debt and restart the limitation period³⁸.

When assisting a client with debts like these, a debt adviser may make strategic recommendations that a client does not contact the creditor, does not disclose their financial difficulties, or delays

disclosing them. Based on the present requirement to include all debts in the moratorium, a debt adviser therefore has two unsatisfactory choices when faced with a debt like this:

- a) Recommend the client not to apply for a breathing space moratorium, or
- b) Omit the debt, in breach of the Regulations.

Given the limited benefits of the current 60-day moratorium period, we believe that debt advisers will largely adopt the first option where these debts are involved.

Our solution: This could be avoided by amending the Regulations to give debt advisers discretion to omit debts from the breathing space application. This could be done by amending Reg. 25(1)(b) to state that the adviser must disclose information about the client's debts only '*...to the extent that the debt advice provider considers to be appropriate*'

5 - Penalise creditor non-compliance

The problem: We expect most creditors will comply with the breathing space moratorium, but there is no mechanism to enforce compliance for those who don't.

Debt advisers are unlikely to find major compliance problems with lenders and debt purchasers which are regulated by the Financial Conduct Authority. However, there are no significant consequences to creditors which do choose to ignore the moratorium.

The HM Treasury consultation response states that the Insolvency Service can '*send a series of reminders to the creditor for them to comply*' or report the creditor to their regulator³⁹. The Regulations contain no provision for this, so there is no statutory obligation on the Insolvency Service to contact non-compliant creditors. This also offers no real deterrent for creditors which have no regulator, such as individuals and small business providers of goods and services. These are already the creditors most likely to cause difficulties for clients⁴⁰.

If a creditor does not stop interest or charges during the moratorium, a client could refuse to pay them and would have a defence if the creditor later sued for these sums. However, this would be a protracted process which is likely to need ongoing support from a debt adviser, so it would be preferable to ensure the interest or charges are not added in the first place.

Although not mentioned explicitly in the consultation response, a client could make a complaint and – depending on the creditor type – escalate this to an Ombudsman. However, the process to access an Ombudsman service typically requires allowing 8 weeks for the creditor to respond to an initial complaint, and investigations often take months. While a client may get redress later, this offers no immediate solution where a creditor continues to exert pressure on a client during the moratorium.

The Regulations state that a creditor can be held liable any losses incurred by a client, but only in the following limited situations:

- a) The creditor does not inform an agent acting on its behalf about the moratorium⁴¹

- b) The creditor does not inform the debt advice provider, and where relevant any collection agent or debt purchaser, about an additional debt identified after notice of the moratorium has been received⁴²

This is of little practical help to most debt advice clients as it would require them to prove a quantifiable loss and potentially take court action to recover this.

Debt advisers are therefore concerned that creditors in sectors with weak or no regulation can simply ignore notification of a breathing space moratorium, or any follow-up contact from the Insolvency Service or debt advice provider with impunity.

Our solution: The scheme needs a financial penalty for non-compliant creditors which can be outlined in the initial notification to creditors. Amend the Regulations to include a statutory process to deal with creditor non-compliance, made up of a written notice from the Insolvency Service in a prescribed form which will warn the creditor that they could be prosecuted for non-compliance.

A specific offence should be created within the Regulations, or elsewhere. For instance, s.40 *Administration of Justice Act 1970* could be amended to allow an offence of unlawful harassment of debtors to apply to commercial and non-commercial creditors which have disregarded a breathing space warning notice from the Insolvency Service⁴³.

References

- ¹ See www.legislation.gov.uk/uksi/2020/1311/contents/made (referred to in these endnotes as SI 2020/1311). Power to make these Regulations derives from ss.6-7 *Financial Guidance and Claims Act 2018*: www.legislation.gov.uk/ukpga/2018/10/contents
- ² **HM Treasury** (November 2020) *Explanatory Memorandum to The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020*. Available at: https://www.legislation.gov.uk/uksi/2020/1311/pdfs/uksiem_20201311_en.pdf (para 7.3)
- ³ ‘Debt solution’ is defined in SI 2020/1311 as ‘an arrangement, scheme or procedure, whether statutory or not, the aim of which is to pay, discharge or liquidate some or all of a debtor’s debts’. We use the term in this paper with this definition in mind. However, the term is not universally accepted. Some practitioners object to it because it implies that debt advice can be reduced to a process of selecting one of a series of pre-determined options (e.g. bankruptcy, DRO, DMP etc), thereby underestimating the technical complexity and the variety of strategies used by debt advisers.
- ⁴ ‘Debt advice providers’ is defined in Reg. 3 SI 2020/1311 to cover all voluntary and commercial sector organisations authorised by the Financial Conduct Authority to provide ‘debt counselling’, and all local authorities. We use the term in this paper with this definition in mind.
- ⁵ Reg. 26(2) and Reg. 24(3)(g) SI 2020/1311
- ⁶ **Money Advice Trust** (September 2018) *A Decade in Debt: How the UK’s debt landscape has changed from 2008 to 2018, as seen at National Debtline*. Available at: www.moneyadvice.org.uk/researchpolicy/research/Documents/MoneyAdviceTrust2020AdecadeinDebtSeptember202018.pdf (p.15); **StepChange** (March 2020) *Statistics Yearbook: Personal Debt in the UK January to December 2019*. Available at: www.stepchange.org/Portals/0/assets/pdf/stepchange-debt-statistics-2019.pdf (p.4)
- ⁷ **Citizens Advice** (February 2020) *Negative Budgets: A new perspective on poverty and household finances*. Available online at www.citizensadvice.org.uk/Global/CitizensAdvice/Consumerpublications/Negativebudgetsreport2020phase201201.pdf (p.8)
- ⁸ Reg. 29(2)(b) SI 2020/1311 states that evidence of mental health crisis must be from an approved mental health professional, and the definition of this in Reg. 2 does not include a GP. Reg. 29(3) SI 2020/1311 states that a nominated point of contact must be provided, and Reg. 2 defines this only as an approved mental health professional, a care co-ordinator, or a mental health nurse.
- ⁹ CONC 7.3.12G www.handbook.fca.org.uk/handbook/CONC/7/3.html
- ¹⁰ Among many examples, see for instance **Christians Against Poverty** (October 2018) *Breathing space scheme: consultation on a policy proposal: CAP’s official response to HM Treasury’s consultation*. Available at: https://capuk.org/files/server/downloads/policy_and_government/CAP_HMT_BS_con_response.pdf (p.9); **Money & Mental Health Policy Institute** (January 2019) *Money and Mental Health response to HM Treasury consultation. Breathing space scheme: consultation on a policy proposal*. Available at: www.moneyandmentalhealth.org/wp-content/uploads/2019/01/20190129-Money-and-Mental-Health-response-to-HM-Treasury-Breathing-Space-consultation.pdf (p.11); **Money Advice Trust** (January 2019) *Consultation response: HMT Breathing Space scheme consultation*. Available at: www.moneyadvice.org.uk/SiteCollectionDocuments/Policyconsultationresponses/Unilateralresponses/MoneyAdviceTrustresponse2020totheHMTreasuryBreathingSpaceconsultationJanuary202019.pdf (p.20); **National Energy Action** (June 2020) *Surviving the Wilderness: The landscape of personal debt in the UK*. Available at: www.nea.org.uk/wp-content/uploads/2020/10/Surviving-the-wilderness-final-version.pdf (p.19)
- ¹¹ Reg. 27(1) SI 2020/1311
- ¹² **Christians Against Poverty** (October 2018) *Breathing space scheme: consultation on a policy proposal: CAP’s official response to HM Treasury’s consultation*. (p.9); **Money Advice Trust** (January 2019) *Consultation response: HMT Breathing Space scheme consultation*. (pp.20-21); **StepChange** (January 2019) *Breathing space scheme: consultation*

on a policy proposal: *Response from StepChange Debt Charity*. Available at: www.stepchange.org/Portals/0/documents/consultationresponses/stepchange-debt-charity-response-to-hm-treasury-consultation-on-breathing-space-january-2019.pdf (paras 77-82)

¹³ **HM Treasury** (November 2020) *Explanatory Memorandum to The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020*. (para 7.3)

¹⁴ Reg. 27(5) SI 2020/1311

¹⁵ Reg. 16(2) SI 2020/1311.

¹⁶ We do not dispute that ending the moratorium in this case is likely to be appropriate. However, since any ‘formal’ debt solution will involve the client’s creditors being notified anyway, the debt adviser notifying creditors via the breathing space portal is an unnecessary duplication of work.

¹⁷ Reg. 27(7) SI 2020/1311

¹⁸ Reg. 27(6) SI 2020/1311

¹⁹ See for example **Institute of Money Advisers** (October 2020) *Workload conditions and wellbeing in the money advice sector*. Available at: www.i-m-a.org.uk/wp-content/uploads/dlm_uploads/IMA-Research-Report_Workloads-and-wellbeing-in-the-money-advice-sector-October-2020-.pdf (pp.24-27)

²⁰ See for example the growth in priority arrears during the early pandemic reported in **Citizens Advice** (August 2020) *Excess debts - who has fallen behind on their household bills due to coronavirus?* Available at: [www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Excess%20Debts_who%20has%20fallen%20behind%20on%20their%20household%20bills%20due%20to%20coronavirus%20plus%20methodology\).pdf](http://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Excess%20Debts_who%20has%20fallen%20behind%20on%20their%20household%20bills%20due%20to%20coronavirus%20plus%20methodology).pdf) (p.8)

²¹ 77% of advisers said current workloads make it difficult to provide appropriate levels of support to clients: **Institute of Money Advisers** (October 2020) *Workload conditions and wellbeing in the money advice sector* (p.20)

²² See for example CONC 8.3.2R(1)(a) www.handbook.fca.org.uk/handbook/CONC/8/3.html; **Institute of Money Advisers** (April 2014) *Money Advice Statement of Good Practice*. Available at: www.i-m-a.org.uk/wp-content/uploads/Statement-of-Good-Practice-Modified-16April2014.pdf (para 3.1 and 3.4)

²³ We use ‘debt relief’ to mean a debt solution where a client’s debts are partially or fully written off, distinct from debt solutions where a client must repay their debts in full.

²⁴ **HM Treasury** (November 2020) *Explanatory Memorandum to The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020*. Available at: www.legislation.gov.uk/ukxi/2020/1311/pdfs/ukxiem_20201311_en.pdf (para 7.3)

²⁵ See for example **Montgomerie, J.** (2019) *Should We Abolish Household Debt?* Cambridge: Polity Press (p.48); **Davey, R. and Packman, C.** (2017) ‘Debt Advice in an Age of Austerity: Is it time to talk about debt cancellation?’, *Quarterly Account*, 47, pp.18-20

²⁶ **Department for Constitutional Affairs** (July 2004) *A Choice of Paths: better options to manage over-indebtedness and multiple debt*. Available at: <https://webarchive.nationalarchives.gov.uk/20040722013541/http://www.dca.gov.uk/consult/debt/debt.pdf> (p.18)

²⁷ Numbers of administration orders have fallen from a high of 11,015 in 1992 to just 137 in 2019

²⁸ See for example **Debt Camel** (2019) *How long do IVAs last? And how many fail?* Available at: <https://debtcamel.co.uk/how-long-do-ivas-last-how-many-fail/>

²⁹ **Money Advice Trust** (2020) *Debt options in the new normal*. Available at: www.moneyadvicetrust.org/SiteCollectionDocuments/Research%20and%20reports/Money%20Advice%20Trust%20Debt%20options%20in%20the%20new%20normal%20October%202020.pdf (p.4)

³⁰ **Jubilee Debt Campaign** (March 2018) *The case for a household debt jubilee: How to tackle the burden of unjust debt on low income households*. Available at: <https://jubileedebt.org.uk/wp-content/uploads/2018/03/The-Case-For-A-Household-Debt-Jubilee.pdf> (pp.9-11); **Reset The Debt** (October 2020) *A fresh start for families in Britain swept into debt by Covid-19*. Available at: <https://resetthedebt.files.wordpress.com/2020/12/jpit-reset-the-debt-report-update-dec-2020-1.pdf> (pp.15-16)

³¹ By amending Sch. 1 *The Insolvency Proceedings (Fees) Order 2016* www.legislation.gov.uk/ukxi/2016/692/made

³² By amending Part 2 of the Schedule to *The Insolvency Proceedings (Monetary Limits) Order 1986* (www.legislation.gov.uk/uksi/1986/1996/contents/made) as amended. See Art.3 *The Insolvency Proceedings (Monetary Limits) (Amendment) Order 2009* (www.legislation.gov.uk/uksi/2009/465/article/3/made) for the amendment which inserted the DRO limits.

³³ Reg. 23(5)(a) and Reg. 25(1)(b) SI 2020/1311

³⁴ See for example Reg. 18(4)(b) and Reg. 27(5) SI 2020/1311

³⁵ Reg. 7(6)(c) SI 2020/1311

³⁶ **Shelter** (September 2020) *Renters at risk: Getting through the coronavirus crisis*. Available at: https://england.shelter.org.uk/data/assets/pdf_file/0010/1939510/2020-09-21_-_Renters_at_risk_Final.pdf (p.10)

³⁷ Reg. 5(1) and Reg. 5(4) SI 2020/1311

³⁸ See s.29(5) *Limitation Act 1980* (www.legislation.gov.uk/ukpga/1980/58/section/29) for the effect of acknowledgment. Reg. 8 SI 2020/1311 includes a specific process for debts where the limitation period ends between the start of the moratorium and 8 weeks after the last day of the moratorium. In these cases, the expiry of the limitation period is moved to 8 weeks after the moratorium. In practice, the effect of this is to give notice to the creditor and allow them sufficient time to begin a court claim.

³⁹ **HM Treasury** (July 2019) *Breathing space scheme: response to policy proposal*. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810058/17June_CLEAN_response.pdf (paras 3.74 to 3.79)

⁴⁰ The Government opted to make no distinction between small businesses and other creditors in respect of the 'regulatory burden'. However, we believe the Government failed to appreciate the difference in the experiences of debt advice clients when dealing with small businesses, which are often - for understandable reasons - much more aggressive in their approach to debt recovery. See **HM Treasury** (November 2020) *Explanatory Memorandum to The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020* (paras 13.1 to 13.6)

⁴¹ Reg. 12(2) SI 2020/1311

⁴² Reg. 14(4) SI 2020/1311

⁴³ See www.legislation.gov.uk/ukpga/1970/31/section/40. This was amended in May 2008 to exempt commercial debts. The penalty for unlawful harassment of debtors is only £100 fine for the first offence, so we also recommend this is increased.