LGA Response to HM Treasury
Breathing space scheme: consultation on a policy proposal

January 2019

Submission

18 Smith Square, London, SW1P 3HZ
Email rose.doran@local.gov.uk
Tel 020 7664 3073 Fax 020 7664 3030
www.local.gov.uk

About the Local Government Association

The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government.

We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

Introduction

Councils need to balance efficient and prudent financial management - being able to recover monies owed to them and manage their debts and revenues - with their role in providing integrated support to households facing debt and financial hardship.

We are fully in favour of providing timely and effective support to households facing problem debt. This is better for these individuals and households and it supports wider, shared objectives around social inclusion and social mobility.

However, the pressures on low income households are, currently, significant and complex. It is clearly not efficient, fair or effective if councils - and by extension the users of the services they provide - lose out financially as a consequence of these pressures. It is the LGA's view, therefore, that any financial or administrative burdens arising from breathing space should be fully funded.

It is also the LGA's view that breathing space and debt repayment plans have the potential to be most effective and achieve better, more sustainable long-term outcomes if HMT's approach is integrated with a Government-wide approach to reducing problem debt and financial exclusion, and if the wider role of councils and local partners in promoting financial inclusion, and supporting low income households is properly recognised and funded. There are clearly important links to be made, for example, with the Reimagine Debt project.

Our responses to the specific questions set out in the consultation document are set out below.

Q1: *Do you agree with the eligibility criteria for entering a breathing space, including the 12 month period?*

The LGA agrees with the eligibility criteria for entering a breathing space, including the 12 month period

Q2: *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?*

From the perspective of protecting vulnerable households there could be detrimental consequences from delaying entry in to Breathing Space. It is likely that any formal query or review mechanism would have to delay the start of the process, and there may be discrepancies in views between different creditors.

Given the relatively short proposed time period that a Breathing Space would encompass, in the LGA's view it would be more efficient and effective to bear with some decisions with which we may disagree, than to risk adding unnecessary delays and administrative complexity to the process.

Q3: *Do you agree with the outline of the alternative access mechanism for individuals in mental health crisis care?*

The LGA agrees with the outline of the alternative access mechanism for individuals in mental health crisis care.

We do think it is worth highlighting here the challenges and delays many people currently face in accessing mental health support, and the need, perhaps, for careful consideration to be given to whether all those who might need an alternative access mechanism will be able to access it.

Q4: *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?*

The LGA agrees that other third parties (e.g. carers) be permitted to use a professional assessment to make a referral to a debt advice agency on an individual's behalf.

Q5: *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?*

It is the LGA's view that councils should be notified of **all** cases where someone enters a breathing space, not just when they are identified as a creditor.

It is important that the Insolvency Service (or whichever organisation ultimately has responsibility for breathing space) is able and willing to work in partnership with councils and other stakeholders on wider financial inclusion support, and not just on debt.

The majority of households have ongoing liabilities to their council. These liabilities include council tax, rent and business rates. The LGA agrees with the proposed approach to ongoing liabilities set out in the consultation document. However, there are a number of reasons why we think councils should be notified that someone is entering a Breathing Space, even if the debtor has not identified that they owe money to the council:

- Many councils offer and / or co-ordinate financial inclusion and other support to households facing financial difficulties. There are some potential scenarios where we might not be identified as a creditor to someone entering breathing space, but who might benefit from this wider support– e.g. if someone is receiving Local Council Tax Support (and therefore does not have an existing council tax liability)

- While we broadly agree with the proposed treatment of ongoing liabilities, the council may wish to take a more tailored or closely managed approach to enforcement action on new debts arising during breathing space

- Some individuals may not know - and may therefore not notify the debt adviser – that they are repaying debts to the council, for example if existing arrears are being collected on top of rent, particularly if that payment is subject to an Alternative Payment Arrangement (APA) or they are in receipt of a Discretionary Housing Payment (DHP); or if deductions are being applied to Housing Benefit (e.g. HB Overpayment Debt).

Q6: *Do you think there should be an oversight role to ensure creditor compliance with breathing space? If so, how should this oversight role operate?*

n/a

Q7: *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?*

The LGA agrees that trusted partners should have access to the register, but we do not agree that the register should be fully public. This could be open to the kinds of abuse identified in the consultation document, and may deter people from seeking help.

Q8: *Do you agree with the proposed approach for excluding certain debts from the protections of breathing space?*

We would like to understand more fully the rationale for excluding social fund loans from the scheme’s protections, beyond them being exempt from personal insolvency solutions. The purpose of social fund loans was usually to help out people facing significant short-term hardship, which makes them distinct in nature from the other excluded debts set out in this list. In our view this does not make them suitable for exclusion.

Q9: *Do you think there are other debts, such as those in regulated credit agreements, or certain types of benefits, that should be excluded?*

It is the LGA’s view that certain Fixed Penalty Notices and Parking Charge Notices could be considered for exclusion, on the basis that these are of a similar character to the other debts proposed for exclusion from the scheme's protections.

Q10: *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?*

We agree that Breathing Space could be used for sole traders and that this would cover business taxes such as business rates. However we would be concerned if that led to less business rates being collected (over 98% of business rates are currently collected in the year in which they are due), unless this was compensated by HMG.

Q11: *Do you agree with the proposed treatment of interest, fees and charges in breathing space?*

Councils have long asked for it to be possible for debtors to enter into a voluntary repayment plan without proceeding to a liability order for recovery of council tax. At present we are obliged to take the statutory route, which routinely adds administration and court costs to the debt.

Resolving this would be good practice in our wider approach to financial support and inclusion. It seems particularly challenging to add costs to recovery for someone who is in breathing space and / or on a debt repayment plan and we think this warrants further discussion.

Q12: *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?*

The LGA agrees with the treatment of collections and recovery. However we would want to ensure that any additional costs to councils arising from this were met in line with the New Burdens doctrine.

We also think that it is important that the approach to breathing space is integrated with councils' wider thinking about debt recovery and vulnerability.

We welcome the consideration that is given under 4.9 to benefit reductions, however it is not completely clear what is intended here in terms of existing reduction in benefit and we would like to understand this more fully. We think there is potential for ambiguity in respect of, for example, budgeting advances. There is no reference in the consultation to Conditionality Sanctions in relation to working age benefits. The LGA would like consideration to be given to the potential detrimental impact of applying any benefit reductions to an individual identified to be in problem debt, particularly during the period of breathing space.

There is also some ambiguity in relation to eviction proceedings that are either already underway or - potentially – initiated during the breathing space period. The proposal is for Section 8 evictions to be stopped once someone is on a debt repayment plan (as identified under 7.3 within the consultation).

It is the LGA's view that HMT should consider the case for suspension of all Section 8 eviction proceedings as soon as breathing space is entered.

The LGA is also aware that there are concerns amongst some councils, partners and stakeholders about the use of Section 21 evictions, including the range of circumstances in which they can apply, and the impact of eviction on households who are already facing severe financial hardship. In our view there needs to be more detailed consideration given to joining –up debt and housing / homelessness support more generally and we would urge HMT to ensure that the approach to breathing space is aligned with Government's wider policy and objectives on homelessness prevention. We also comment on this in our response to Q21 below, in relation to the debt repayment plan.

Q13 *How should creditor compliance with the scheme be monitored?*

The LGA favours a light-touch approach to monitoring council compliance.

Q14 *Do you agree with the proposed length of breathing space? Do you have any other comments on the operation of the check?*

The LGA agrees with the proposed length of the breathing space

Q15 *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 LGA considers that this protection is appropriate for individuals in mental health crisis. However, as highlighted above, we think careful consideration needs to be given to the fact that many people currently find it difficult to access the metal health support to which they are arguably entitled, so there is a risk that some vulnerable customers may miss out. We don't think there is an easy answer to this, but it does need to be borne in mind.

Q16: *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?*

The LGA is pleased that HMT has indicated that there will be further work and consultation on the development of the debt repayment plan.

Impact on council finances

It is the LGA's view that debts to the public sector, and councils in particular, are different in an important way from some other forms of debt. This is money that would otherwise, in many cases, be paying for essential public services and / or reducing councils' bad debt provision. Any income which doesn't come in, or which is delayed, will have a cash flow impact. It may also need changes to council procedures and to software. This should be taken into account in any New Burdens assessment.

There is also, in our view, an important interaction between the length of the plan and the prioritisation of certain debts within the plan.

For example, changes introduced under Universal Credit have already made it much harder for us to recover housing benefit overpayment debt, and we would want to be reassured that the duration and prioritisation within a debt repayment plan didn't place further financial risks and burdens on councils. Or, if it did so, that these should be funded under the New Burdens doctrine.

Government takes a keen interest in the performance of local government in collecting money due to them such as council tax. Currently over 97% of council tax income is received in the year in which it is due. Again this needs to be taken into consideration in the design of the debt repayment plan and overall Government policy on the recovery of public sector debt.

Impact on councils' wider support for low income, disadvantaged or indebted households

There is considerable scope for individuals on a debt repayment plan to be plugged in to other forms of support. This feels like a significant gap in the current proposed approach to both breathing space and the debt repayment plan. The specific provisions around mental health are welcome, but they set the bar quite high. The LGA would like to see much greater consideration given to how breathing space and a subsequent debt repayment plan is integrated with other forms of support.

We would also recommend that Government uses information that flows from the implementation of breathing space to inform a proper consideration of the drivers of debt and financial difficulty.

It is the LGA's view that debt advice can and should be more effectively integrated with other forms of support, and that financial difficulties often exist in a complex relationship (of both cause and effect) with other factors such as family conflict, welfare reform, health, disability, access to stable employment, housing affordability and childcare.

We would like Government to give proper consideration to the wider support that will need to sit around a debt repayment plan to ensure that it is effective. Councils are significantly under-resourced for the role they currently play in providing a safety net. In our view, without those wider resources, there is a significant risk of debt issues persisting or recurring.

It is also the LGA's view that some households find it particularly challenging to adjust to welfare reforms and / or reductions in the generosity of working age benefits, and may continue to do so whilst on a debt repayment plan.

One of the solutions proposed by Government to the challenges of adjusting to Universal Credit, for example, is to provide a Budgeting Advance. But it is debatable how helpful or appropriate this is for someone who is trying to clear existing debts, particularly if this is immediately deducted from their UC award.

Breathing space and strengthened debt support is welcome, but in order to sustainably improve outcomes for low income households Government needs to be careful to ensure that is has a full and fair understanding of the pressures faced by those on low incomes, and provide adequate resources to councils and their local partners to provide vital wider safety net support.

Q17: *Do you agree with the proposed criteria for creditors to object to the plan? Are there any other criteria you feel would be appropriate?*

The LGA agrees with the proposed criteria for creditors to object to the plan.

Q18: *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 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?*

It is the LGA's view that we may need to consult councils on this once the full proposals are put forward, but we would agree with the principle that the priority should be for a plan to be put into place as quickly and simply as possible.

Q19: *Do you agree with the debts included within a plan? Should any other debts be excluded, or excludable on request?*

It is the LGA's view that Fixed Penalty Notices and Parking Charge Notices could be considered for exclusion, on the basis that these are of a similar character to the other debts proposed for exclusion from plan's protections.

Q20: *Do you agree with the proposed treatment of interest, fees and charges within the plan?*

Please see our note on liability orders in response to **Q11.**

Q21 *Do you agree with the proposed protections within a plan? Are there any unintended consequences that could arise from providing these protections to debtors?*

While the LGA agrees with the proposal that Section 8 evictions should be suspended there is a risk of creating a perverse incentive for landlords to use Section 21 evictions as an alternative if the treatment of the two approaches is significantly different.

The LGA is also aware that there are concerns amongst some councils, partners and stakeholders about the use of Section 21 evictions, including the range of circumstances in which they can apply, and the impact of eviction on households who are already facing severe financial hardship. It is clearly not practical or desirable to suspend all 'no fault' evictions for the duration of a debt repayment plan. However, we think that more research needs to be done to understand how and when Section 21 evictions are currently used.

In our view there needs to be more detailed consideration given to joining – up debt and housing / homelessness support more generally and we would urge HMT to ensure that the approach to breathing space is aligned with Government's wider policy and objectives on homelessness prevention.

Q22 *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?*

The approach to monitoring compliance by councils should be light touch.

Any administrative requirements placed on councils should be funded in line with the New Burdens doctrine.

Q23: *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?*

The LGA agrees that debts to councils including rent, council tax and business rates should be prioritised.

'Certain tax and benefit debts' is quite vague. It is also not clear how 'priority debts' might relate to each other. We would welcome more detailed discussion of what this might mean in practice.

Further consideration also needs to be given to how the proposed prioritisation within a debt repayment plan relates to / interacts with other recovery or Payment Deduction schemes, for example from Universal Credit. There is considerable scope for confusion / contradiction here.

Q24: *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?*

There is an underlying assumption in all of this that, once someone has sought help and entered a debt repayment plan, a reasonable level of debt repayment will be manageable for them. For the majority of people we hope that this is likely to be true, particularly if other aspects of their circumstances improve. However for some people coping on a low and reduced income will remain challenging. A relatively minor change in circumstances such as a rent increase or an increase in travel-to-work costs can be the difference between 'coping' and 'not coping' for people living month-to-month. This does raise some important questions about how the flexibility will be implemented and how the debt adviser will make decisions about affordability.

There are also challenges for individuals with irregular or fluctuating employment incomes, for example people working in the gig economy, seasonal work or the self-employed.

We are pleased that the flexibilities include scope for an individual to 'contact their debt adviser at any time to review their payments'. This is a crucial flexibility. But it is clearly also vital that the debt repayment plan is integrated with other forms of support.

There are - potentially - other ways in which these fluctuations could be mitigated, for example through access to rent flexibility, which could be offered alongside the plan. This strengthens the point that we have made elsewhere about the benefits of integrating the debt repayment plan with wider financial inclusion support.

Q25: *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?*

We can certainly see the benefits of being able to pause a plan, and we agree that the intention behind it is sound.

The distinctions currently seem quite sharp – you're either proceeding with the plan, or something drastic has happened and you're not paying anything back at all. And then six months later everything's back to normal and on you go.

As noted in the response to Q24 above, a change may not have to be 'severe' to jeopardise a repayment plan, given that the individual may be managing within relatively tight margins. And 'temporary' may be quite hard to predict, in terms of both of the examples given (how feasible is it to predict how soon someone might e.g. find another job or recover from an illness).

We wonder whether there may be merit in setting the bar for a 'financial shock' lower, so that it could encompass things like a significant rent increase, a significant drop in earnings, a one-off cost (e.g. funeral expenses); still with a requirement that proof be provided. Then offering people the opportunity to pause the plan and re-enter breathing space while their circumstances are reviewed. They could then - potentially - go on to a revised debt repayment plan.

It is also worth reflecting that the wider benefits system should mitigate some of the impacts of job loss or sickness through an increase in benefit entitlement. People who are not on a debt repayment plan, but who may nonetheless be managing on a low income or be at risk of financial hardship, who are subjected to a sudden financial shock, are expected to recover without any support beyond that provided by the benefits system and discretionary local welfare support.

We think this whole area needs greater discussion and consideration to ensure that it delivers the intended outcome and provides both debtors and creditors with the flexibility and assurances they need.

Q26: *Do you agree with the requirements for continued eligibility for the plan?*

The LGA agrees with the requirements for continued eligibility, with the caveat that there probably needs to be greater flexibility in the plan, as outlined above, to recognise changes in circumstances that may make meeting ongoing financial liabilities challenging.

Q27 *Should the plan's funding mechanism system be based on taking a share of creditors' monthly repayments?*

n/a

Q28 *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?*

n/a

Q29: *Do you have views on how a breathing space and plan should be reflected on a debtor's credit file?*

n/a

Q30 *Do you agree with the proposed territorial scope of the scheme?*

n/a