

BRITISH PARKING ASSOCIATION

DRIVING ISSUES, RAISING STANDARDS



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Breathing Space Call for Evidence,
HM Treasury,
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Emailed to: AAPConsultation@dft.gsi.gov.uk

16th January 2018

Dear Sirs,

Response to Breathing Space Call for Evidence Consultation

About the British Parking Association

We welcome your consultation 'Breathing Space Call for Evidence'. We are the largest, most established and trusted professional association representing parking and traffic management in Europe, and the recognised authority within the parking profession. We represent the best interests of our members and the parking community and provide an extensive range of membership services to support parking professionals & organisations in their day-to-day work. Our diverse membership community of around 700 organisations includes technology developers & suppliers, equipment manufacturers, learning providers, consultants, structural & refurbishment experts, local authorities and parking on private land operators including retail parks, healthcare facilities, universities, airports and railways stations.

For more information regarding the BPA and our Blueprint for Parking please click [here](#).

Our response

I am pleased to set out below our response made on behalf of our members. We have consulted with some of our members on our response and their suggestions form the basis of our response.

Question 1: In your opinion, how should the government decide who is eligible for a breathing space? In particular: How should the government define serious problem debt in the context of a breathing space?

We believe the government needs to exercise caution when deciding who is eligible for Breathing Spaces to ensure it is restricted to persons with 'serious debt' problems and little or no assets to enable those liabilities to be met.

Any scheme should include credit and consumer debt types ensuring that protection is provided for customers where daily additional interest charges are applied to accounts and the definition of serious debt should be linked to loss of property and the inability to obtain future credit.

Debt included in the scheme include:

- Mortgages;
- Loans (Secured and Unsecured);
- Credit Cards;
- Consumer Credit Arrangements; and
- Utility arrears (not on-going charges).

The scheme should not include debts such as:

- Council Tax;
- Business Rates;
- Magistrates Court Fines; and
- Parking & Traffic Penalty Charge Notices (PCN's).

We believe it should not apply to any case subject to Schedule 12 Taking Control of Goods Procedure (Part 3 Tribunals, Courts and Enforcement Act 2007) but this should be left to the discretion of the creditor. Our rationale is that in all such cases the liability is triggered by either occupying premises or a contravention of parking or moving traffic regulations and the process for 'billing' and recovery follows either a statutory pathway ending in the granting of a warrant of control/ liability order issued by the courts. Or through an appeals system which also can end in County Court Judgement. As these processes have rights of appeal built-in and have the potential for the ultimate decision of a Court or Tribunal. It would not be correct for such a process to be suspended purely on the basis that a person may or may not have a serious debt problem.

Should eligibility be determined by a set of defined characteristics, or should there be some discretion to determine eligibility?

It is important to have some clear guidance on what debts are eligible by type and value. Local Authority debt has recently undergone a radical overhaul via the TCE act and this good work should not be undone or undermined. As such there must be clear eligibility criteria set out at the commencement of any scheme to ensure that it is applied consistently. This ensures that creditors, customers and the advice sector understand the scheme, its implications and their responsibilities. Creditors need to be clear on their responsibilities throughout. Some of our members believe that local and central government should have the option to apply discretion on a case by case basis (as they do currently) to debts that are not included in the breathing space scheme.

If there is some discretion, who should be tasked with exercising it – a regulated debt adviser, or some other person?

It is worth noting that at this early stage of the proposals, the scheme will rely on the responsible creditor to provide breathing space as part of the evaluation and determination of recovery action before recovery and court costs are applied. However, it is difficult to see how this could be provided without significant government funding given current budget constraints of both the advice sector and local authorities, and how this discretion would be impartial unless it was truly independent of both the debtors and creditors.

Are there any other entry criteria and / or exemptions the government should consider?

Exemptions for local taxation debt that has been granted a liability order in the magistrates' court should be applied in addition to PCN for parking and moving traffic contraventions that have been granted a Warrant through the Traffic Enforcement Centre.

These debts are statutory debts and have a clear and balanced recovery process and options available to suit customer circumstances. The duty of local authorities to collect local taxation and other statutory fees and charges are important to the availability of front line service delivery to the councils. Any fine/penalties imposed or other Local Authority debt for which a warrant has been issued have typically been through an extensive period to reach the debt recovery stage and appear to be well regulated via the TCE act regulations and guidance.

Who should be responsible for regulating and enforcing access to a breathing space and how can disputes be resolved?

We would suggest that the Financial Conduct Authority (FCA) could be the regulator responsible for enforcing access to breathing spaces. The FCA already has a role in protecting consumers from unsuitable financial operators. Regardless of who the regulator is they need to be an independent not for profit organisation with the 'clout' to arbitrate between debtor and creditor.

Question 2: What should be the trigger point for a breathing space? In particular: Should a breathing space only be available for a person who seeks regulated debt advice?

The reality is that by the time a person seeks welfare advice the debt enforcement process is well underway and in some cases significant additional costs have been incurred by the creditor. Within the Local Authority and Parking Enforcement sector debts are subject to extensive appeals procedures and policies are in place to protect vulnerable people. With that in mind breathing space should only be considered for a person prior to Warrants being issued by the Court and the commencement powers to Take Control of Goods. To maintain standards and consistency we believe breathing space should only be formally agreed and administered by a regulated not for profit organisation.

Should individuals have demonstrated they have already taken steps to try to manage their debt?

Local Authorities and parking enforcement companies provide numerous reminders and independent appeals procedures over many months, prior to the formal debt recovery procedures being commenced, giving debtors a significant period of time to seek debt advice and assistance. However, it is acknowledged that some people will, despite the issue of numerous reminder notices, 'bury their head in the sand' and ignore all correspondence until it is too late. Therefore, there would need to be controls in place to prevent the scheme from being abused by those seeking to frustrate the recovery process by using the scheme to avoid their debts.

If so, at what point should the six weeks start – for instance: once a breathing space has been requested, when the first advice session has occurred, or once adviser has confirmed a breathing space would be appropriate?

A breathing space should be clearly defined to set criteria, which the independent adviser would be responsible for determining. Once the debtor has been determined to fit that criteria, then the request for breathing space should commence on application containing clear proposals for the way forward to address the situation. Any period of 'breathing space' should be at the earliest opportunity by the creditor and should not interfere with the recovery process once a Warrant of Control has been issued by the Courts. Whilst we do not believe all debts should be bound by the breathing space scheme we do believe local and central government should be able to exercise discretion to suspend action on a case by case basis. Breathing space should not be available just to 'stall' or hinder any legal recovery process.

Question 3: Should all debts be eligible for a breathing space?

No. This scheme should be for consumer debt, credit and borrowing where there is a serious complication for the debtor in addition to increasing interest charges and the risk of losing their

home. Local Authority debt and low value debt should not be eligible for breathing space, should they come under the scope for breathing space this should be applied before any Warrant is authorised by the court. The scheme should also be extended to utility debt arrears (not on-going charges) where the debtor is at risk of supply or service suspension which again would cause wider issues for the debtor and that of their family.

These debts are the most common 'serious' debts that can have real impact on both debtors and creditors who accrue more costs through legislative actions. The debt for these types of liabilities do not stay static but continue to increase daily through interest charges and late payment fees in accordance to contracts. Breathing space may assist debtors to gain focus and prevent property repossessions or utility suspension with clear welfare advice and repayment plans that are realistic and balanced to the amount of debt and means of the debtor. Breathing space for these debts will assist control escalating fees and charges, often charged daily, and as such will make a real positive impact on the debtor and their dependants.

PCN's should be 'one off' and transactional charges for debtors to manage and with education on parking appropriately and travelling in designated bus lanes is high on local authority engagement agenda's the debt should be static and not recurring.

How should multiple debts be treated; is there a priority order of debts which should be included as part of a breathing space arrangement?

We would suggest that multiple consumer, credit and utility debt, should be prioritised in the scheme because of the escalation of Interest charges, late payment fees and supply suspension, inherent to those types of debt.

Should some types of debt be exempt? In particular, where the debt is the late payment of a fine or penalty?

We believe that fines and penalties should be exempt from the breathing space scheme, alongside Local Taxation and Parking PCN Warrant collection and enforcement.

Our reasoning for this, is that fines and penalties form part of an access to justice procedure and are deemed to be recompense for actions taken, including victim's surcharges. When passed through either court or statutory imposition, the individuals circumstances are fully examined, with any fine or imposition set according to sentencing guidelines and the means of the defendant/customer. There are then set legislative and good practice procedures set out for their further recovery and enforcement including applications to court for reassessment or applications to the local authority for additional reductions, reliefs and benefits to reduce liability and potential hardship.

In particular, should debt owed by self-employed / microbusinesses be included?

All consumer, credit and utility debt should form part of the scheme for equality and consistency. The employment status of an individual or type of company should not be a deciding factor in applying or excepting 'breathing space'.

Question 4: Should all interest, fees and charges be frozen throughout the breathing space period?

For consumer and credit debt, daily interest and late payment charges should be frozen during a successful breathing space period. Fees for warrants of control have been set by legislation along with the stages at which they are applied, this should not be affected by the process. Therefore, it would be essential that any 'breathing space' period, if deemed to be appropriate, be applied before the process to take control of goods commences.

Question 5: What activities must the breathing space participant continue with to remain eligible? For instance: Should they be required to attend advice sessions?

Should they be required to make any repayments during a six-week breathing space, if their financial situation allows it?

All participants should be required to fully engage with the creditor during this process, demonstrating means and circumstances and proof where appropriate. This includes proactive willingness to pay up front instalments and agree remaining payment arrangements. All participants in the scheme should receive debt advice as appropriate and training in budgeting skills. (Such advice and training are currently provided by leading debt advice charities at no cost to the debtor). Any breathing space scheme should not be used to avoid making payments, stalling the process or allowing additional time not to pay. Even if during the breathing space the payments are nominal based upon an agreed formula it is a means to an end.

Question 6: Are there circumstances in which a breathing space period could end before six weeks, such as if an appropriate solution is found? Who could be responsible for enforcing this?

If there is a successful resolution, produced by the debt advice services that led to arrangements that are acceptable to all parties within the 6 weeks breathing space, then if all parties agree it should be formally concluded. Alternatively, if it was deemed that the debtor had failed to maintain the requirements, for example to provide details of income, expenditure, capital/savings etc. Then the regulator would be required to manage this process and notify the debtor and the creditor appropriately. However, we reiterate that breathing spaces should not apply where Warrants of Control are issued to enforcement agents to exercise power granted under Schedule 12 of the Act. Public and Private parking operators offer a significant period of time and independent appeals prior to the escalation to debt recovery.

Question 7: Should breathing space protections only cover debts existing at the outset, or also include new debts arising during the six-week period?

While reiterating that breathing spaces should not apply where Warrants of Control are issued to enforcement agents to exercise power granted under Schedule 12 of the Act. We would argue that any new or potential liabilities that the regulator, creditor and most importantly the debtor is aware of should be planned for, managed, budgeted and maintained in any agreement that is reached. However, we do not believe that any Fines; PCN's; Warrants of Controls or Liability Orders incurred in the six-week breathing space should be included.

Question 8: Should a breathing space be noted on a person's credit file?

In the short term the breathing space should be noted on a person's credit file as a possible risk for future lenders. However, once the breathing space has been satisfied and the debt(s) cleared, then it should be removed from their file.

Question 9: How frequently should a debtor be able to access a breathing space, and what criteria should control the frequency of access? This is a difficult subject to place a definitive timeframe on. For the simple reason that the debt cycle for debtors may be intermittent and not in multiple occurrences. Assistance may be required more than once with creditors pursuing debts on or at different timescales. This fairness towards the debtor, however needs to be reasonable providing a limit on the number of times a customer requires formal breathing space to demonstrate the process has worked successfully.

Question 10: What challenges would creditors face in implementing the scheme?

The challenges for a creditor would be extremely complex, once implemented the scheme would have to be built into their credit management policies and procedures, most obviously in the stages of the recovery process.

Integrating the scheme into the debt recovery process is likely to create cost to the companies involved, some of which may be very high. Other costs which the scheme may generate within creditor organisations are equalities considerations, as well as effects upon audit and risk

analysis. In addition, we cannot ignore the potential that following the introduction of the scheme, lenders may well be more cautious about granting future credit to some if not all customers. This would inevitably result in higher costs for some consumers.

Question 11: Who would be responsible for notifying creditors that a customer has entered a breathing space? What updates are required during the breathing space period?

Customer themselves, should be encouraged to take the lead on contacting their creditors to inform them that they have entered a breathing space. But we would still recommend that the independent regulator should be empowered to notify the creditors and maintain a central register of customers who are in a breathing space period. This should be updated to include any changes in circumstances or successful outcomes or cancellation of the breathing space.

Question 12: Would a breathing space scheme impact on business revenue or have any other significant detriment? As mentioned in answer to Question 10, the scheme is likely to increase costs for businesses and by extension customers because of the increased timescale of debt recovery. As a result, there will be significant impact on budgets for bad and doubtful debt and some creditors will lose income. Debtors may also find their term of loan of mortgage may expand due to late payment and delayed redemptions. That is without considering the potential for the scheme to be abused.

Question 13: Should any creditor be exempt due to the size of their business?

While it may be of some benefit for small businesses to be exempt for the scheme, that exemption is likely to be prohibitively expensive to administer and in act. We would propose that local and central government are made exempt from the formal breathing space process but are instead granted discretionary powers to 'suspend' action against a debtor on a case by case basis. Finally, Public Authority debt, fines & penalties subject to Taking Control of Goods under the Tribunals Courts & Enforcement Act 2007, Schedule 12 should be exempt from the proposed scheme.

Question 14: What benefits could creditors see as a result of a statutory breathing space scheme? N/A

Question 15: How could the government ensure that a breathing space works with and adds value to existing support structures?

Ongoing consultation with all creditors and advice sectors, is the only way particularly when/if a scheme is first drafted and ongoing to final design.

Question 16: What safeguards are needed to prevent the scheme being abused?

To prevent abuse of the scheme clear definitions for each concept would need to be set (i.e. what is meant by serious debt, the types involved and what people can enter the scheme and who cannot). Those clear definitions would also need to extend to each stage of the process and to their legal basis.

Question 17: Should a breathing space be extended to Wales and Northern Ireland as well as England? If the scheme is designed and rolled out, protecting both creditor and debtor rights, it could be considered by the devolved parliaments concerned. It would be unfair to have a scheme that is dictated by postcode.

Question 18: How could a statutory debt repayment plan be administered?

Through an administering body similar to bankruptcy or debt relief orders.

Question 19: What challenges would be faced in administering a statutory repayment plan?

Debtor engagement, creditor acknowledgement and engagement and administrator red tape.

Question 20: What protections should apply during the statutory repayment plan? For instance, should it protect debtors from interest and fees and charges or just a selection of the three? If a selection, which of these three should be prioritised?

Public Authority debt, fines and penalties do not incur Interest. Fees are statutory for Taking Control of Goods and set under The Taking Control of Goods (Fees) Regulations 2014. The legislation sets out a flat and transparent fee structure which is communicated to debtors before, and throughout, Schedule 12 power being exercised. Any proposals to freeze or remove fees raised in the process would have to consider that it would conflict with existing legislation.

PCN levels for off-street car park operators are controlled by strict codes of practice, drawn up by Accredited Trade Association (ATA) such as the BPA, and agreed with the DVLA. Parking operators must be members of an ATA to obtain keeper details to be able to pursue the debt. Once the above considerations are considered then we feel that it is suitable that protection during breathing space periods for consumer debt should include the following:

- Interest
- Late payment charges
- Other charges

Question 21: For whom and for what debt solutions will a statutory repayment plan be most appropriate? Again, for many of our members they only apply certain regulations towards debt repayments. As such based upon their recommendations, statutory repayment plans should not apply to debts subject to Schedule 12 power to Take Control of Goods, low value debts or fines. Under these provisions debtors can enter into a Taking Control of Goods Agreement which provides a repayment plan under existing legislation. There are no further, or additional charges set in legislation for this repayment plan so it is cost free for the debtor under existing provisions. For the wider debts they suggest that the following types of consumer credit be considered for statutory repayments plans:

- Mortgage
- Loans
- Credit agreements
- Hire purchase agreements
- Credit cards

Question 22: How will a debt adviser determine if a statutory repayment plan is appropriate? Under code of practice/guidelines used throughout the parking sector, there are periods for debtors to make appeals to receive advice and time to gather evidence of means or vulnerability to assist determine a suitable repayment plan. Therefore, a form of breathing space already exists in current provisions.

Enforcement Agents currently engage with free debt advice agencies and have an obligation to include details of the key organisations on all statutory documents to ensure that customers are aware of and can be signposted to receive independent advice and work together to agree a suitable repayment plan. The adviser should undertake a means enquiry and detailed and balanced view on all circumstances, existing and new liabilities and balanced offer subject to outcome of detailed means. Some of our members would advise debt advisors to abandon the Single Financial Statement (SFS) and treat each case on its own merit.

Question 23: If a statutory debt repayment plan cannot be agreed, how could the behaviour of creditors be managed immediately after the Breathing Space?

Our members believe that breathing space and statutory repayment plans should not apply to debts subject to Schedule 12 power to Take Control of Goods, Low value debts or debts/fines intended as a punitive nature. For all other debts, after the breathing space there should be

open engagement on how the debt will be repaid including court action and all appropriate recovery procedures as appropriate. If breathing space and suitable repayment plans fail the creditor should continue all recovery options available.

Question 24: Should the repayment plan apply to all debt?

No – Only consumer, credit and utility debt types. As outlined in our answers to Questions 20, 21 and 23, breathing space and statutory repayment plans should not apply to debts subject to Schedule 12 power to Take Control of Goods, Low value debts or debts/fines intended as a punitive nature.

Question 25: For the included debts, should some debts be prioritised for repayment?

Some of our members would suggest that the following debts be prioritised:

- Mortgage & Loans
- Credit agreements & Hire purchase agreements
- Credit cards
- Utility

Question 26: What should happen if one or more creditors disagree with the plan?

The plan would fail.

Question 27: What activities must the statutory debt repayment plan participant continue with to remain eligible? Must they simply meet agreed repayments to remain eligible? Some of our members would suggest that the following activities be prioritised:

- Evidence of debt advice and budgeting skills
- Meeting all ongoing liability
- Maintaining arrears reductions

Question 28: How should changes in income be dealt with? Should it be possible to suspend a plan, or have reduced payments for a period of time?

Public Authorities, have procedures in place to review repayment plans for customers that consider changing means. Local taxation, has a statutory instalment scheme already built in, and fines and penalties imposed by the court are usually because of sentencing guidelines and assessment of affordability. In cases not involving local taxations then all new income and change of circumstances should be immediately reviewed, and payment plans adjusted.

Question 29: What happens if a plan fails? Should creditors be able to apply any interest, fees or charges that they were prevented from charging during the plan?

Yes. Creditors undertaking breathing space and repayment plans, statutory or discretionary, at pre-court order stage should continue to recover the outstanding debt and apply fees and charges as appropriate using current regulations and procedures.

Question 30: Should there be a regime for sanctioning debtors where there is misconduct in relation to a breathing space or statutory debt repayment plan, as there is for bankruptcy and DROs? Yes. If the scheme is adopted for pre-court order debt, the case recovery should continue to recover the outstanding debt and apply fees and charges as appropriate using current regulations and procedures.

Question 31: Should a statutory debt management plan be extended to Wales and Northern Ireland as well as England?

This is a complicated issue. If the scheme is introduced it should not be dependent on postcode. Breathing Space should not apply to cases after the Schedule 12 power has commenced for public authorities. PCN procedures prior to debt recovery and during debt recovery are the same for England and Wales, these same regulations do not apply in Northern Ireland.

Question 32: For each of (1) a six-week breathing space, and (2) a statutory debt management plan, please describe in detail, and with supporting evidence, the positive impact expected through:

Improved access: How will it would encourage more people to seek debt advice earlier?

The scheme criteria should be set at early intervention and pre-court activity, which will promote early engagement with the debtor and approved debt advice agencies. This benefits the debtor and creditor in reducing costs in recovery as appropriate. However, in our evidence from members, some of them wished to point out that, Public Authorities and parking operators extensively promote early intervention and customer engagement prior to debt recovery procedures. This includes signposting to approved free debt advice agencies where appropriate.

Better support: How will it would improve outcomes for customers who are already in problem debt? The opportunity to receive professional advice and management of a situation. Ongoing training in budgeting and future debt compliance. At present public authorities and parking operators extensively promote early intervention and customer engagement prior to debt recovery procedures. This includes signposting to approve free debt advice agencies where appropriate.

Increased repayments: How will it increase the amount of debt repaid to creditors?

Early engagement with public authorities and parking operators through advice agencies will assist with the effective management of debt. Creditors will, if set early in the process, see improved cash flow.

Question 33: Once implemented, how could the government determine whether the breathing space and statutory repayment plan have been successful? What metrics would be appropriate to use? A statistical measure from all creditors, debtors and advice agencies. This needs to be by fact and numbers rather than anecdotal evidence.

In Summary

We are always very willing to work with government to develop parking policy and are at your disposal to assist with any further information, advice or support in relation to this very important area of public policy. We hope you find these comments of interest. We are ready to work with government to achieve its desired aims and look forward to discussing with you how we can assist in taking these issues forward.

Please do not hesitate to contact my colleague **Glenn Dives** by emailing consultations@britishparking.co.uk or calling **01444 447 300** if you require any further information.

Yours faithfully



Kelvin Reynolds
Director of Corporate and Public Affairs