



CHELSEA HOUSE, 8-14 BROADWAY
HAYWARDS HEATH, WEST SUSSEX, RH16 3AH
+44 (0) 1444 447300

www.britishparking.co.uk info@britishparking.co.uk

1/Blue
HM Treasury 1 Horse Guards Road
London
SW1A 2HQ

Emailed to: breathingspace@hmtreasury.gov.uk

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Dear Sirs,

Response to breathing space scheme: consultation on a policy proposal

About the British Parking Association

We welcome this consultation. The [British Parking Association](#) is a not for profit organisation, representing, promoting and influencing the parking and traffic management profession throughout the UK and Europe. Our membership of more than 750 organisations and individuals includes local authorities, car park operators, retail parks, healthcare facilities, universities, railway stations, technology providers, trainers and consultants. We work with our partners to support growth for our communities, improve compliance by those managing and using parking facilities, and encourage fairness to achieve our vision of excellence in parking for all. Any surplus income arising from our work is reinvested back into activities to support our members or put into a reserve fund to ensure we can continue to raise standards and encourage professionalism.

Our response

I am pleased to set out below our response made on behalf of our members.

We welcome the government:

1. creating extra protection for borrowers taking out consumer credit
2. creating a single service offering of debt advice, and
3. increasing the debt advice budget.

However, the government's response to the January breathing space consultation did not include our recommendation to exclude from breathing space certain debts including Parking & Traffic Penalty Charge Notices (PCN's) debt. We reiterate our reasons for this in our response to Question 1.

We have encouraged our members to respond individually and also consulted closely with some and their suggestions form the basis of our response.

Question 1

Do you agree with the eligibility criteria for entering a breathing space, including the 12- month period? We believe the government needs to exercise caution when deciding who is eligible for breathing space to ensure it is restricted to persons with 'serious debt' problems and little or no assets to enable those liabilities to be met. **The government's response to the first breathing space consultation did not include our recommendation to exclude certain individual's debt.**

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 includes:

- mortgages
- loans (secured and unsecured)
- credit cards
- consumer credit arrangements, and
- utility arrears (not on-going charges).

The scheme should **not** include these debts:

- 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) and 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. In these examples 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.

Local authority debt has been radically overhauled via the TCE Act and this good work should not be undone or undermined. Some of our members believe 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. Exemptions for local taxation debt that has been granted a liability order in the magistrates' court should be applied, in addition to PCNs 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 frontline 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. We believe that at the initial assessment the debtor should be required to provide evidence of being in debt to help the debt advisor determine if the debtor meets the eligibility criteria.

Currently local authorities and parking operators do extensively promote early intervention and customer engagement prior to debt recovery procedures. This includes signposting to approve free debt advice agencies where appropriate

With regards to limiting access to only once in a 12-month period.

Yes we agree. However, this policy must be backed up with significant government funding to meet the predicted increase in demand for independent debt advice for both debtors and creditors, together with a public education campaign that aims to avoid people needing to enter breathing space in the first place. We recommend the government acts on the [National Audit Office advice in their report Tackling Problem Debt \(September 2018\)](#) that the government **reinstate the over-indebtedness strategy** to assess the effectiveness on all government interventions including breathing space.

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?

Yes we agree. We recommend that before entering breathing space it is a requirement that contact is made with the creditor. An online register would minimise the administrative burden.

Question 3

Do you agree with the outline of the alternative access mechanism for individuals in mental health crisis care? Yes, we agree.

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? Yes, we agree.

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? Yes, we agree with the proposed method of administering entrance into a breathing space however in our members experience debtors do not always reveal all their debts, or debts they may have in another name or previous address. To help overcome this issue we recommend the debtor is asked if they have been known by any other name or has debts at any other address.

Yes, we agree with the proposed role for the Insolvency Service and recommend the Insolvency Service Notification include the debtors: name, current address, any other name known as, previous address/es they may have debt, date of birth, amount owed and summary of why they have been assessed as needing a breathing space. The creditor should then be

able to confirm the amount owed, if it is a priority debt, any grounds for the debt being excluded and any objection to the debtor eligible for the scheme.

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? Yes we agree, creditors need to comply with their obligations when they have been notified of the debtor's inclusion to the scheme and any failure to do so dealt with by the County Court.

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? To ensure creditors have knowledge of their debtors in breathing space and avoid the administrative burden of creditors having to seek proof, our members recommend the register is fully public. A limited access register could be explored if there is a requirement for the debtor, or representative, to contact the creditor before seeking breathing space.

Question 8

Do you agree with the proposed approach for excluding certain debts from the protections of breathing space? Yes, however we reiterate breathing space should not apply where Warrants of Control are issued to enforcement agents to exercise power granted under Schedule 12 of the Act. 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 fines; PCN's; Warrants of Controls or Liability Orders incurred in breathing space should be included since all of these are subject to a right of appeal.

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? Yes, see our response to Question 8.

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?**

No, we do not agree with business debts being included in breathing space. We recommend sole traders are treated as self-employed and only personal debt considered for breathing space.

Question 11

Do you agree with the proposed treatment of interest, fees and charges in breathing space? Yes we agree.

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? For clarity it would be good to have council tax formally mentioned in the definition of an ongoing liability.

Question 13

How should creditor compliance with the scheme be monitored? To minimise the resources and potential costs our members believe the compliance of creditors should be monitored by feedback to the Insolvency Service who should have powers to impose penalties or refer issues or complaints to the County Court.

Question 14

Do you agree with the proposed length of breathing space? Do you have any other comments on the operation of the check? We appreciate the rationale for proposing a 60-day period of breathing space but believe an initial 42-day proposal is more reasonable. We suggest that in active cases where an enforcement agent, is 'Taking Control of Goods' in accordance with Schedule 12, then the Regulation 9, Time limit for taking control of said goods, in (The Taking Control of Goods Regulations 2013), would need to be amended to accommodate this change and enable the period to be extended accordingly.

Operation of the check: we acknowledge that building in a check halfway through the 60 day period is designed to confirm continued engagement with the debt advice agency and payment of ongoing liabilities. However, we recommend checks are made fortnightly (at week two, four and six) so the debtor can be encouraged to make payment towards ongoing liabilities.

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? No, we do not consider this protection adequate. By extending the protection for such individuals for the full length of an individual's care under an NHS crisis team this would in effect grant an exemption from debt collection. This would clash with the policies which many creditors already operate for the management of vulnerable debtors with mental health issues.

Question 16

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? No, we believe the eligibility needs to be tightened to ensure the process is not open to abuse. We recommend the government:

- Makes it a requirement that prior to embarking on the scheme the creditor is notified of the debtors intention to access the scheme
- Ensures debt advice confirms:
 - actual income
 - income of their partner
 - employer details
 - household details including ages of children and any non-dependent adults
 - expenditure
 - capital in the form of savings; investments or property they own;
- Regular reviews to take account of changes in circumstance or arrears being paid off.
- Ensure both the debtor and the debt adviser sign a declaration that the documents are accurate and a true reflection of the circumstances of the debtor
- Make it an offence to knowingly provide false information or withhold pertinent information such as income or capital.

We believe six years is a more realistic length of time for a debt repayment plan to be effective, with the option to extend the plan in extreme circumstances.

Question 17

Do you agree with the proposed criteria for creditors to object to the plan? Are there any other criteria you feel would be appropriate? Yes we agree, however in addition we believe where the debt is for a priority debt such as council tax, we recommend the local authority be able to consider alternative statutory options to take alternative enforcement action and have the right to object on this basis. For example, to make an attachment of earnings order (AEO).

Similarly, if the debtor has three or more unpaid Penalty Charge Notice's for Parking and/or traffic contraventions and classed as a persistent evader, we recommend the authority be able to object to the plan in favour of alternative enforcement remedies. [Recent research by BPA member Penham Excel](#) estimates half billion pounds is owed to local authorities by persistent evaders. We believe this an underestimation and research is ongoing.

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 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?**

Yes, we agree to the Insolvency Service determining whether the proposed plan was fair and reasonable.

Yes, we believe 14 days is an appropriate timeframe providing ALL creditors are notified of the proposed plan. In our members' experience of Individual Voluntary Arrangement's or Debt Relief Order's, not ALL creditors receive the notifications.

Yes, we recommend a further right of appeal which could be dealt with by the courts.

In the event of an objection the plan should proceed until such time as the court rules on the issue.

Question 19

Do you agree with the debts included within a plan? Should any other debts be excluded, or excludable on request? No, we recommend these additional debts be excluded:

- council tax
- business rates
- magistrates court fines and
- Parking & Traffic Penalty Charge Notices (PCN's).

This is because in these instances the debts will have been issued with the relevant statutory notices and are subject to a right of appeal.

These debts are in the main local authority debts and subject to local authority codes of practice which ensure such cases are placed on hold at the discretion of the local authority anyway.

Question 20

Do you agree with the proposed treatment of interest, fees and charges within the plan? Yes, we agree.

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? Yes, we agree. However, where breathing space does not result in a payment arrangement being agreed then it will impact on the time limit for taking control of goods – so the Ministry of Justice may need to amend Regulation 9 of The Taking Control of Goods Regulation 2013.

Similarly, in respect of Parking and Traffic enforcement, it is a requirement of Part 75 Traffic Enforcement of Civil Procedure Rules 1988 “Within 7-days of the sealing of the request the authority must prepare the warrant in the appropriate form” (Rule 75.7(3)). This *may* need to be amended to enable the local authority to hold action for cases that enter breathing space during the period of debt registration and the granting of a local authority Warrant of Control and its issue to the enforcement agency.

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? We assume the Insolvency Service will handle complaints about creditor compliance and in dealing with these complaints we recommend they have the power to impose a penalty or sanctions or refer the matter to the Court.

We agree, creditors who deliberately fail to comply should be subject to additional sanctions but this should depend on the reason(s) for the failure, and be subject to the ‘fair and reasonable’ test.

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? Yes we agree, however we recommend the proposed list be more explicit to formally include council tax as at present the proposed list states 'certain tax and benefit debts (owed to both central and local government)' leaving it unclear if this means council tax.

Yes, we appreciate the proposed model of prioritisation is intended to ensure that all creditors, both priority and non-priority, receive some payments and in addition priority creditors receive a pro-rata share of any balance.

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? No, the debtor should be under a duty to report any improvement in their circumstances to the Insolvency Service who can determine if an immediate review should be undertaken.

There may also be circumstances where a debt excluded from the plan is paid off at this point, we recommend a further review is triggered to ensure an increase in amount available to be paid towards the plan. For example, the debtor may have paid off a fine or social fund loan which is excluded from the plan.

Our members believe it would be beneficial for all, if the debtor continued to make affordable payments, no matter how much, that they have been re-assessed for, rather than pay nothing. We therefore propose that in exceptional circumstances, where the debtor has experienced a severe but temporary financial shock, a temporary reduced arrangement of less than six months should be put in place.

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? If a payment break is offered to the debtor, then this should be conditional on them maintaining payments on their current liabilities or contacting the creditors to explain the circumstances. In our members experience personal debt is usually caused by a lifestyle accident:

- redundancy or job loss
- relationship breakdowns
- family bereavement
- illness or
- an emergency expense for which they have no savings.

If the person does not have savings or appropriate insurance cover then they will need to seek immediate debt and welfare benefit financial assistance before the situation leads to severe financial shock.

Question 26

Do you agree with the requirements for continued eligibility for the plan? Yes, we believe it is important these three criteria are adhered to, to:

- continue making payments specified within the plan
- continue paying ongoing liabilities to creditors within the plan
- provide information to their debt adviser and engage with them regularly as necessary.

Question 27

Should the plan's funding mechanism system be based on taking a share of creditors' monthly repayments? Yes, there should be no cost to the creditors. All costs should be borne by the debtor who is subject to breathing space and the payment plan. It should be made clear the administration fee is a cost to the debtor and not part of the actual repayment to creditors. We recommend the funding is in accordance with the proposal.

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? We recommend the payment distribution in the plan is done in whichever way is the most efficient to get payments to the creditors.

Question 29

Do you have views on how a breathing space and plan should be reflected on a debtor's credit file? We recommend the debtor is listed on a central public register for the breathing space scheme and do not have specific recommendations for how the details should be represented on a debtor's credit file.

Question 30

Do you agree with the proposed territorial scope of the scheme? Yes, we agree.

In Summary

We work closely with government, especially the Department for Transport and the Ministry of Housing, Communities and Local Government, as well as recently with the Department of Food and Rural Affairs and the Law Commission, to develop parking policy and traffic management. We are happy to assist you with any further information in relation to this very important area of public policy.

Please do not hesitate to contact my colleague **Sarah Greenslade** by emailing consultations@britishparking.co.uk or calling **01444 447 300** if you need more information.

Yours faithfully



Kelvin Reynolds
Director of Corporate and Public Affairs