**The Insolvency Service**

**Guidance**

**Debt Respite Scheme (Breathing Space) guidance for creditors**

**Updated 5 March 2021**

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The Debt Respite Scheme (Breathing Space) does not come into force until 4 May 2021

The Debt Respite Scheme (Breathing Space) will give someone in problem debt the right to legal protections from their creditors.

There are two types of breathing space: a standard breathing space and a mental health crisis breathing space. Where there is a difference between them, we’ll refer specifically to either a standard breathing space or a mental health crisis breathing space. Where there is no difference, we will simply refer to a breathing space.

A standard breathing space is available to anyone with problem debt. It gives them legal protections from creditor action for up to 60 days. The protections include pausing most enforcement action and contact from creditors and freezing most interest and charges on their debts.

A mental health crisis breathing space is only available to someone who is receiving mental health crisis treatment and it has some stronger protections. It lasts as long as the person's mental health crisis treatment, plus 30 days (no matter how long the crisis treatment lasts).

The legislation this guidance references is The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020. This guidance is intended to support creditors in understanding the regulations.

**1. Your responsibilities**

**1.1 Creditors**

As a creditor, if you’re told that a debt owed to you is in a breathing space, you must stop all action related to that debt and apply the protections. These protections must stay in place until the breathing space ends.

The electronic service will send you a notification to tell you about each debt owed to you in a breathing space and the date the breathing space started. You need to make sure you [apply the protections to these debts from the date set out in the notification](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#notification-action).

If you’re a creditor, it’s also possible your debt might be added to a breathing space at a later date, because it is only [identified after the breathing space has started](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#debts-after-breathing-space). In this case, you have to apply the protections from the date you get the notification, or when the regulations consider you to have received it, whichever is the earliest.

For electronic notifications this is the date they are sent. For postal notifications this is 4 working days after it was posted.

If you have any questions about a breathing space you’ve had a notification for, you should contact the debt advice provider whose details are in the notification.

**1.2 Debt advice providers**

A breathing space can only be started by:

* a debt advice provider who is authorised by the Financial Conduct Authority (FCA) to offer debt counselling
* a local authority (where they provide debt advice to residents)

Debt advice providers (referred to in this guidance as debt advisers) are responsible for the administration of a breathing space. They are the point of contact for the debtor, their creditors (and appointed agents), and the Insolvency Service (who own and maintain the electronic service).

**1.3 The Insolvency Service**

We maintain the electronic service that debt advisers use to start the breathing space process, and we send notifications to creditors during it. We also maintain a private register of:

* details of people whose debts are in a breathing space
* the date a breathing space ended or was cancelled in the last 15 months

We cannot help with individual case enquiries.

**2. Starting a breathing space**

**2.1 Applying for a standard breathing space**

Debtors can only access a breathing space by seeking debt advice from a debt adviser.

Anyone who cannot or is unlikely to be able to repay their debts can apply to a debt adviser for a standard breathing space.

Although all applications must be considered, the debt adviser might decide a breathing space is not appropriate for a debtor.

For example, if a person can access funds or income, they might be able to pay their debts with some budgeting help. Another example would be if they already have assets that could easily be sold to clear the debt. In these cases, a breathing space would not be the right solution. A breathing space might also not be appropriate for a someone who can enter a more suitable debt solution straight away, without needing the protections.

**2.2 Applying for a mental health crisis breathing space**

The government committed to develop an alternative route to access the protections for people receiving mental health crisis treatment, so that they do not have to access debt advice first. If an Approved Mental Health Professional (AMHP) certifies that a person is receiving mental health crisis treatment, the AMHP’s evidence can be used by a debt adviser to start a mental health crisis breathing space.

In addition to the debtor, the following people can apply to a debt adviser on behalf of a debtor for a mental health crisis breathing space:

* any debtor receiving mental health crisis treatment
* the debtor’s carer
* Approved Mental Health Professionals
* care co-ordinators appointed for the debtor
* mental health nurses
* social workers
* independent mental health advocates or mental capacity advocates appointed for the debtor
* a debtor’s representative

**2.3 Debtor eligibility for a standard breathing space**

Before a debt adviser can start the breathing space, they must confirm their client is eligible and meets all the conditions. These are that the debtor must:

* be an individual
* owe a qualifying debt to a creditor
* live or usually reside in England or Wales
* not have a debt relief order (DRO), an individual voluntary arrangement (IVA), an interim order, or be an undischarged bankrupt at the time they apply
* not already have a breathing space or have had a standard breathing space in the last 12 months at the time they apply

The debt adviser must also be satisfied that their client meets both of the following conditions:

* their client cannot, or is unlikely to be able to, repay all or some of their debt
* a breathing space is appropriate for their client

**2.4 Debtor eligibility for a mental health crisis breathing space**

The debtor must still meet the same criteria and conditions for a standard breathing space, but they must also be receiving mental health crisis treatment at the time that an application is made. A debtor who has had a standard or mental health crisis breathing space in the last 12 months may be eligible for a mental health crisis breathing space.

There is no limit to how many times a debtor can enter a mental health crisis breathing space.

**2.5 Information the debt adviser needs**

To apply, a debtor must provide their debt adviser with their:

* full name
* date of birth
* usual residential address (in some very limited circumstances, this address might be [withheld from the breathing space register and any notification to creditors](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#address-disclosure))
* details of the debts that they owe, including the type of debt they owe
* the name and contact details for the creditor

if relevant and known, the name and contact details for any agent appointed by the creditor

If the debtor is a sole trader and has business debts to include, they must also provide:

* their trading name or names
* any business address

Debt advisers will also try to find out and provide extra information that might help you identify the debtor or their debt. This might include:

* the debtor’s previous names and addresses, if they’ve recently changed
* details of any amounts or references relevant to the debt (such as the debtor’s National Insurance number, if the debt is a government debt, or a credit card number)

However, this information is not required before a debt adviser can start a breathing space.

A debtor must have at least one qualifying debt owed to a creditor, and this must be included in the application. The debtor must tell the debt adviser about all of the debts they know about and give them the contact details they have for each creditor. If they know about a debt collection agent acting on a creditor’s behalf, they might also give the debt adviser those details. This does not change the legal standing of either the agent or the creditor.

**2.6 Qualifying debts**

Debts included in a breathing space must be qualifying debts. Debts are any sum of money owed by the debtor to you, while liabilities are any obligation on the debtor to pay money to you. Most debts are likely to be qualifying debts. These will include:

* credit cards
* store cards
* personal loans
* pay day loans
* overdrafts
* utility bill arrears
* mortgage or rent arrears

Government debts like tax and benefit debts are all likely to qualify, unless they are included in the list of excluded debts.

Joint debts can be included in a breathing space, even if only one person applies for a breathing space. The joint debt would become a breathing space debt, and you must apply the same protections to the other people who owe that debt to you. The breathing space does not affect the other people’s debts and liabilities in their own names.

While guarantor loans can be included in a breathing space, the protections do not extend to the guarantor. The guarantor can apply for their own breathing space, if they’re eligible.

Qualifying debts can include any that the debtor had before the Breathing Space legislation came into force on 4 May 2021.

New debts incurred during a breathing space are not qualifying debts. Neither are new arrears on a secured debt that arises during a breathing space.

**2.7 Excluded debts**

All personal debts and liabilities are qualifying debts, except for:

* secured debts (like mortgages, hire purchase or conditional sale agreements). You can only include arrears on these debts that exist at the date of an application for a breathing space. Any new secured debt arrears that happen after the breathing space starts are not protected. [If a secured debt is also an ongoing liability](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#ongoing-liabilities) and a debtor misses payments, it could mean the debt adviser stops their breathing space
* debts incurred from fraud or fraudulent breach of trust. You should think of this in the same way you would if a person is bankrupt. Discharge from bankruptcy does not release a person from bankruptcy debts which they incurred by fraud. If you request a review of a breathing space because of fraud or suspected fraud, you might have to provide evidence to the debt adviser or to a court
* liabilities to pay fines imposed by a court for an offence. This includes any interest on the fine and any penalties connected to it. This does not include penalty charge notices, like a parking ticket
* obligations from a confiscation order
* child maintenance or obligations under an order made in family court proceedings
* a crisis or budgeting loan from the social fund
* student loans
* damages they need to pay for death or personal injury caused to someone else
* advance payments of Universal Credit
* council tax liabilities have not yet fallen due. If all instalments for that financial year have fallen due and have not been paid, these are considered to be a qualifying debt. If a debtor has been served with a ‘reminder notice’ to pay a council tax bill, the remaining liability for the financial year is a qualifying debt

While some business debts also qualify for the breathing space, they do not qualify if the debt only relates to the business (not the debtor personally) and the debtor is VAT registered, or the debtor is a partner in a business with someone else.

An eligible non-domestic rates debt (or business rates) is a qualifying debt if all instalments for that financial year have fallen due and have not been paid. If a debtor has been served with a ‘further notice’, the remaining liability for that financial year is a qualifying debt.

**2.8 Request to not disclose debtor’s address**

When applying for a breathing space, a debtor or their representative can ask their debt adviser to withhold their usual residential address from you.

The address can be withheld if it is reasonably expected that showing the address would lead to violence against them or someone who normally lives with them. If the debt adviser decides that the debtor’s address should be withheld, it will not appear in any notifications sent to you and will not be on the register maintained by the Insolvency Service.

**2.9 When a breathing space starts**

A breathing space will start the day after the debtor’s details are put onto the breathing space register.

If you receive electronic notifications about the start of a breathing space, you should receive a notification the same day that details are put on the register. It’s likely this will be the day before the breathing space starts. If you receive notifications by post, it’s likely you’ll receive it after the breathing space has started.

Once a debtor’s details have been put onto the register, you’ll receive a notification, telling you the breathing space start date and details of your qualifying debt (if the debt adviser had those details). If the debt adviser is aware that you are owed more than one qualifying debt, you will receive a notification for each debt. [‘Taking action on the notification’](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#notification-action) has advice on what to do if you are not sure which debt or debts the notifications relate to.

You can receive notifications by:

* electronic communication (either a notification directly from the electronic service or an email). We can only send electronic communications to you if you opted in through the electronic service
* post
* someone leaving a copy of the notification at your address

The regulations consider that you’ve received:

* an electronic notification on the day it was sent
* a postal notification 4 business days after the notification was posted
* a notification left at your address on the day it was left

**3. What to do during a breathing space**

**3.1 Taking action on the notification**

When you receive a notification, you must search your own records to identify the debt owed to you by the debtor. This needs to happen as soon as possible. If you have only received notification about one debt, but you are owed two debts (for example, the debtor has an overdraft and credit card debt with you) then you should consider applying the protections set out below to both debts and, in all cases, you should [tell the debt adviser about the additional debt](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#debts-after-breathing-space). It is the debt adviser who will decide if the additional debt qualifies for the breathing space.

You must make sure you stop:

* the debtor having to pay certain interest, fees, penalties or charges for that debt during the breathing space
* any [enforcement or recovery action to recover that debt](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#stop-enforcement-action), by you or [any agent you’ve appointed](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#appointed-agents)
* contacting the debtor to request repayment of that debt, unless you’ve got permission from the court

Interest can still be charged on the principal in secured debt, but not on the arrears.

If it’s not possible to stop interest, fees, penalties or charges accruing on the debt during the breathing space (for example, this could be because of IT system limitations), it can continue to accrue. However, the debtor must not be required to pay charges or interest that accrue in this way either during or after the breathing space.

Nothing in the regulations changes what a customer is contracted to pay. For example, if a payment is due during the breathing space and it includes interest that would have been due normally, creditors are not expected to make complex system changes to recalculate these payment amounts. Instead, creditors can make an adjustment to the overall balance owing on the debtor’s account as soon as they can.

Ideally, communications you send debtors should not show interest, fees or charges that accrue during a breathing space. However, it does not breach the regulations to show them, as long as you do not require the debtor to pay. You must make sure you are not asking the debtor for payment. You might want to tell the debtor how you’ll deal with this accrual during the breathing space. You can contact the debtor with information about how you will deal with their breathing space.

**3.2 If you have sold the debt on**

If you receive a notification of a breathing space debt that you have sold to another creditor (an ‘assigned creditor’), you must tell that creditor the breathing space has started and give their contact details to the debt adviser.

If you do not do this as soon as possible, you’re liable for any losses the debtor or the assigned creditor have as a result.

If you’ve told a debt adviser the contact details of the assigned creditor, they must update the details on the electronic service. You will not receive any more notifications about that debtor or the debt, and you will not be able to view any of those details on the electronic service.

If you are the assigned creditor, the original creditor should tell you about the breathing space. From the date the breathing space started, you must stop any interest and fees on the debt from being charged and any enforcement action. You will receive a [notification from the electronic service](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#notification-action), which will tell you what action to take.

**3.3 Debts identified after a breathing space starts**

When you receive a notification, you must search your records for details of the debt you’ve been notified about. You must also search for any additional debts owed to you by the debtor.

If you find an additional debt, or it is not clear which debt the notification is about, you must tell the debt adviser about it as soon as reasonably practicable. What is reasonable may depend on the nature and complexity of your systems, records and processes or the type of debt or liability owed by the debtor.

When the debt adviser is given (or becomes aware of) details of an additional debt, they must decide whether it is a qualifying debt. If the debt adviser decides that it is, they must update the electronic service. The electronic service will send you a notification.

The additional debt does not become a breathing space debt until the debt adviser has updated the electronic service and a notification has been sent to the creditor. You do not need to apply the protections to this debt until you receive the notification or it is considered in the regulations that you have received the notification, whichever is the earliest (the day it was sent if you receive it electronically or 4 days after posting). However, this will not change the original start or end date of the breathing space.

The exception to this is where the debt adviser is told of the additional debt more than 45 days after the breathing space started. In these circumstances, it’s possible the debt adviser might think it’s not appropriate to add the additional debt to the breathing space and can decide not to do so.

If the debt adviser decides not to add the additional debt to the electronic service, you will not receive any notification about the debt from the electronic service. In these cases, you can continue any action to recover the debt.

If you notified the debt adviser about an additional debt but have not had a notification about the start of a breathing space for it, you should contact the debt adviser dealing with the breathing space to confirm what is happening.

**3.4 Stopping enforcement action**

Once a breathing space has started, you or anybody acting on your behalf must not take any enforcement actions against the debtor or anyone who is jointly liable with them for a breathing space debt.

Enforcement action is when you try to:

* collect or enforce a breathing space debt, including where this is done by any agent you’ve appointed. This includes the Department for Work and Pensions (DWP) where they are collecting a breathing space debt on your behalf through third party deductions. It does not include an existing attachment of earnings order made before the start of the breathing space, which may continue
* apply to DWP for a new third party deduction to be taken from an individual’s benefit payments
* try to enforce a judgment or order issued by a court or tribunal, before or during the breathing space, [without the court’s permission](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#existing-legal-proceedings)
* enforce your security over a breathing space debt
* obtain a warrant or writ
* get or seek a liability order
* sell or take control of the debtor’s property or goods. If a bailiff or enforcement agent has taken control of any goods by removing them and securing them elsewhere before a breathing space started, the goods may be sold during the breathing space and the costs of the sale deducted from the proceeds. However, fees accrued during the breathing space for storage of those goods cannot be charged either during the breathing space, or after it ends
* start any action or legal proceedings (including bankruptcy petitions) against the debtor
* make an application for a default judgment for a claim for money against the debtor
* take steps to install a pre-payment meter or use a pre-payment meter already installed for the supply of gas or electricity, to collect payment for a debt in the breathing space, unless the debtor has already provided their consent to do so, before the breathing space starts
* take steps to disconnect a debtor’s premises from a supply of gas or electricity, unless they have taken that supply illegally
* serve a notice to take possession of a property let to the debtor on the grounds of rent arrears due up to the start of the breathing space; or take possession of a property let to the debtor having served such a notice prior to the start of the breathing space
* contact the debtor about the enforcement of a breathing space debt. [The only exception to this is where you are required to contact or engage with the debtor under the Consumer Credit Act 1974, or by the FCA Handbook](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#contact-creditors-debtors)

Firms that report to credit reference agencies if payments are received or not can keep doing this during a breathing space. But there should be no automatic effect on a debtor’s credit file triggered by starting the breathing space, and no automatic flag or code that will stay on the file after the breathing space has finished.

**3.5 Appointed agents**

If you are notified that a debt has gone into a breathing space, you must tell any agents you’ve appointed or instructed to recover it. You must tell the agent to stop enforcement action. If you do not do this as soon as possible, you may be liable for any losses the debtor or the agent have as a result.

If the debtor gives the debt adviser contact details for any agent appointed by a creditor when the debtor applies for the breathing space, a notification of the start of the breathing space will also be sent to the agent. If the agent is sent this notification, a creditor is not liable for any of the agent’s losses they could have avoided. Where an agent manages the debt on behalf of a creditor, they should tell the creditor of the breathing space and the protections.

During a breathing space, any agent you have appointed or instructed must not:

* take enforcement action regarding the breathing space debt
* give notice about collecting or enforcing that debt
* visit the debtor’s home or business to take their goods
* take any of the debtor’s goods
* sell any of the debtor’s goods, unless the agent took them before the breathing space started. If a bailiff or enforcement agent has taken control of any goods by removing them and securing them elsewhere before a breathing space started, the goods may be sold during the breathing space and the costs of the sale deducted from the proceeds. However, fees accrued during the breathing space for storage of those goods cannot be charged either during the breathing space, or after it ends
* collect a breathing space debt through existing third party deductions from an individual’s benefit payments
* seek to collect a breathing space debt by applying to DWP for a new third party deduction to be taken from an individual’s benefit payments

It is possible that the debtor will only give the debt adviser details of an agent, not of the original creditor, and that only the agent managing the debt is notified of the breathing space. If you are an agent that has been appointed to manage debt on behalf of a creditor, and you receive a notification, you will want to inform the creditor of the breathing space as soon as possible.

**3.6 Existing legal proceedings**

If you had already filed a petition for bankruptcy or started any other action in a court or tribunal relating to a debt that is now in breathing space, you must tell the court or tribunal in writing. You must do this as soon as you receive notification of the breathing space.

**3.7 Where a court judgment or order has not yet been issued**

Any court that receives notification about a breathing space debt where a bankruptcy petition has started, must stop the bankruptcy proceedings, until the breathing space ends or is cancelled. Other court proceedings about the debt (other than enforcement of court judgments or orders) can continue until the court or tribunal makes an order or judgment.

**3.8 Where a court judgment or order has been issued**

Unless the court or tribunal gives you permission to continue, the court or tribunal must make sure any action to enforce a court order or judgment about a breathing space debt stops during the breathing space. These might be actions like:

* holding a hearing during the breathing space
* making or serving an order or warrant, writ of control, writ of execution or judgment summons
* instructing an enforcement agent to serve an order, warrant, writ of control, writ, execution or judgment summons

The court or tribunal can still send notices or correspondence to the debtor about an action or proceeding.

Court orders and judgments for a breathing space debt, which were made before the breathing space began, cannot be enforced until the breathing space ends. This is unless the court or tribunal gives permission for these actions to continue.

Existing legal proceedings can continue when the breathing space ends. If a time limit for enforcement or new legal claims related to the debt ran out during the breathing space, this is extended to 8 weeks after it ends.

You can still start or continue any legal action relating to any debt that is not a breathing space debt, during a breathing space.

**3.9 Contact between creditors and debtors during a breathing space**

Generally, during a breathing space, you (or any agents you have instructed) must not contact a debtor about any collection or enforcement action for a breathing space debt. This includes asking them to pay or starting or continuing any legal action.

During the breathing space, you can contact the debtor’s debt adviser about the debt you are owed, or to discuss a debt solution.

You, or any agent, can only contact the debtor:

* about anything not related to the breathing space debt, like ongoing liabilities or an excluded debt
* if the debtor asks you to talk about a breathing space debt or a debt solution
* to respond to a query or complaint the debtor sent you
* about any action or legal proceedings the court or tribunal have allowed
* if you or your agent are required to do so under the Consumer Credit Act 1974 or by the FCA Handbook

These restrictions are intended to stop contact that reinforces the message that the debtor owes money to you or that they need to make payment. These communications can be worrying to debtors.

It is not intended to stop communication that might be helpful to the debtor. You might want to contact a debtor at the start of a breathing space to tell them they do not need to worry about normal communications you send them. This might be particularly important if there are debts governed by the Consumer Credit Act 1974, where you’re legally required to send them communications.

Any communication you send should be minimal and must be carefully drafted to make sure it could not be read like it is about asking them to pay what they owe.

If you receive calls from customers worried by letters they receive from you during a breathing space, this may mean that you need to consider whether the letters are appropriately worded, and whether they are consistent with the regulations.

**3.10 Contact between creditors and debt advisers during breathing space**

You and the debt adviser may contact each other during the breathing space on anything about the debtor and your debt. This might include things like:

* a breathing space debt
* a debt solution for the debtor
* [telling them about an additional debt](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#debts-after-breathing-space)
* [asking for a review](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#request-a-review)
* telling them the debtor is not meeting their obligations

You will need to consider your own data protection obligations and decide what action you might need to take where you are sharing personal data. The regulations make clear that the duty to disclose information under the breathing space scheme should be taken into account in determining whether doing so would contravene data protection legislation. The Data Protection Act 2018 permits you to disclose personal data to a third party where you are required to do so by law.

**3.11 Creditor access to the breathing space register**

We will maintain a private register with details of:

* the debtor’s full name
* the debtor’s date of birth
* the debtor’s usual residential address
* the trading name or names and any address, if the debtor has carried on business with qualifying debts included in the breathing space
* the debtor’s breathing space debts
* the date the breathing space started
* the date the breathing space ended or was cancelled

If you have received a notification about a breathing space debt, you’re allowed to see any information on the register about that debtor and the breathing space debt they owe to you. You are not able to see any information held about:

* any other creditor the debtor has
* any other breathing space debt owed to another creditor
* the debtor’s usual residential address if it has been withheld

**3.12 Receiving payments during a breathing space**

A breathing space is not a payment holiday. While you cannot enforce a breathing space debt during a breathing space or charge interest or fees on it, a debtor is still legally required to pay their debts and liabilities. During the Breathing Space, the debtor should continue to pay any debts and liabilities they owe you. You can continue to accept these payments, including those you get from existing direct debits.

If there is a controlled goods agreement in place with an enforcement agent on a qualifying debt and a repayment plan has been agreed between the debtor and the enforcement agent, the debtor should continue to make payments under that agreement as they fall due. Although no enforcement action may be taken during the moratorium period and any time limit within the plan will be extended until 8 weeks after the end of the moratorium period, when that time limit expires, any unpaid instalments may be treated as a breach of the repayment plan.

**3.13 Ongoing liabilities during a standard breathing space**

Certain debts are considered ‘ongoing liabilities’ during a standard breathing space. The debtor needs to keep paying these if they can. If they don’t, the debt adviser might cancel the standard breathing space.

An ongoing liability is any payment the debtor has to pay during a standard breathing space for:

* a mortgage secured against the debtor’s primary residence (this does not include arrears accrued up to the start of the breathing space)
* a lease or rental agreement for the debtor’s primary residence (this does not include arrears of rent for the property accrued up to the start of the breathing space)
* an insurance agreement
* any taxes, duties and national insurance contributions
* any local taxes or rates for local authorities
* water, sewerage, electricity, gas, heating oil or solid fuel bills

Any other debts or bills (secured or unsecured) that fall due during a standard breathing space are not ongoing liabilities.

**3.14 If a debtor does not pay ongoing liabilities during a standard breathing space**

Where a debtor does not pay an ongoing liability, the debt adviser might decide to cancel the standard breathing space. The debt adviser will consider whether cancelling it is unfair or unreasonable to the debtor. This can be done as part of the midway review process. This obligation and review process does not apply to debtors during a mental health crisis breathing space.

**3.15 Debt adviser midway review during a standard breathing space**

During a standard breathing space, a debt adviser must carry out a midway review between day 25 and day 35. This is to make sure they are satisfied the debtor is complying with their obligations.

If the debt adviser thinks the debtor has been meeting their obligations and communicating with them, the standard breathing space will continue until the end date.

If the debt adviser thinks the debtor has not met all of their obligations, they can cancel the standard breathing space in respect of some or all the debts.

If you have asked for a review of a Breathing Space, the debt adviser might [combine this with the midway review](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#request-a-review).

**3.16 Cancelling a standard breathing space**

Provided they do not consider that the debtor’s personal circumstances would make it unfair or unreasonable, the debt adviser must cancel a standard breathing space for one or more of the related debts after carrying out a midway review if they consider that:

* the debtor has not met one or all of their obligations. This includes them not paying their ongoing liabilities (unless the debt adviser considers that the debtor did not have the financial means to do so)
* they have put a debt solution in place
* they have not been able to communicate with the debtor about their breathing space. This includes where the debtor is not contactable or is not available
* there is an issue with the debtor’s application, or there has been some unfair prejudice to the creditor’s interest, after [completing a creditor’s request for a review](https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors#request-a-review)

If the debt adviser decides it’s necessary to cancel a standard breathing space after a midway review, they should discuss this with the debtor before it’s cancelled, where they can. They must then:

* notify the debtor that the breathing space is being cancelled
* update the electronic service to tell the Insolvency Service the breathing space has been cancelled

Updating the electronic service automatically updates the breathing space register. The cancellation takes effect on the following day. The electronic service will also send notifications to the creditors telling them the date of the cancellation and the reason the breathing space was ended.

**3.17 Cancelling a mental health crisis breathing space**

A mental health crisis breathing space does not have a midway review, but the debt adviser will regularly check that the person is still receiving mental health crisis treatment. The mental health crisis breathing space will continue for the duration of this treatment, plus 30 days.

However, the debt adviser must cancel a mental health crisis breathing space if:

* they believe the evidence provided to them about the debtor’s mental health crisis treatment contains inaccurate, misleading or fraudulent information, and they do not consider that the debtor’s personal circumstances would make the cancellation unfair or unreasonable
* the debtor asks for the mental health crisis breathing space to be cancelled

**3.18 Request a breathing space review**

You can ask a debt adviser to review the breathing space, or specific debts being included in it, only if you consider that:

* the breathing space unfairly prejudices your interests. For example, you think that there has been discriminatory treatment in respect of you, or your debt
* the debtor does not meet at least one of the eligibility criteria for a breathing space
* any of the debts included in the breathing space do not qualify
* the debtor has enough funds to repay their debts

You have limited time to request a review, either:

* within 20 days of the breathing space starting, based on the start date in the notification you received
* within 20 days of an additional debt being added to the breathing space, based on the date when you received or were deemed to have received the notification

To request a review, you need to give the debt adviser a written statement with the reasons you want a review and provide any supporting evidence you want to provide. This will need to be done outside of the electronic service.

The debt adviser can decide to carry out the review you have requested as part of the breathing space midway review process.

The debt adviser must cancel the breathing space in respect of all or some of the debts if they agree with you unless the debt adviser thinks cancelling the breathing space is unfair or unreasonable due to the debtor’s personal circumstances.

**3.19 Breathing space cancelled after creditor review**

If a debt adviser decides to cancel a breathing space after a creditor request for a review, they will update the electronic service to tell the Insolvency Service it has been cancelled. You’ll receive a notification that the breathing space has been cancelled, and whether this is for some or all of the debts. After you have received this notification, you can restart enforcement action and charges. You cannot backdate any interest or fees accrued during the breathing space period, unless a court lets you.

**3.20 Breathing space not cancelled after creditor review**

If the debt adviser decides not to cancel the breathing space, they will tell you about this decision. The breathing space continues, but you can take further action by applying to a court, if you still do not agree.

**3.21 Apply to court to cancel a breathing space**

After a review, if you do not agree with a debt adviser’s decision, you can apply to a court to cancel the breathing space in respect of some or all of the debts.

You need to apply to the court within 50 days of the breathing space starting, or 50 days after being notified about an additional debt being added to it. You cannot do this before the debt adviser has completed their review and has let you know the outcome.

If you decide to apply to the court, you should tell the debt adviser. You must make the application based on the same reasons you sent to the debt adviser for your original review. The court will consider your case and tell you, the debtor, and the Insolvency Service of its decision. If the breathing space is cancelled for all of the debts or just some of them, the Insolvency Service will update the breathing space register. You will receive a notification that the breathing space has been cancelled, and whether this is for some or all of the debts.

You cannot backdate any interest, penalties, fees or charges accrued during the breathing space period, unless a court lets you.

**3.22 If you do not comply**

You must apply all the breathing space protections for a debtor after you’re notified about a breathing space.

If you do not, any action you take is null and void and you may be liable for the debtor’s costs.

The debtor can complain to their debt adviser, who will contact you to remind you of your obligations. The debtor can also complain directly to you, using your complaint procedure. This might include referring their complaint to any external ombudsman, oversight body or regulatory body.

If you still do not meet your obligations, the debt adviser can tell the Insolvency Service and we’ll contact you to remind you of your obligations.

Repeated breaches of the regulations can be considered by your regulator, where appropriate.

**4. End of a breathing space**

**4.1 When a standard breathing space ends**

A standard breathing space ends:

* 60 days from the date it started
* the day after a debt adviser or a court cancels it
* if the debtor dies during the breathing space period. In this case, the breathing space ends on the day after the debtor died

**4.2 When a mental health crisis breathing space ends**

A mental health crisis breathing space will end either 30 days after the debtor’s mental health crisis treatment ended, or 30 days after the date a debt adviser had no response after asking for confirmation from the nominated point of contact about a debtor’s ongoing mental health crisis treatment.

**4.3 End of a breathing space notification**

When a breathing space ends, you will be sent a notification. It will tell you the date the breathing space ended. If the breathing space was cancelled by the debt adviser or the court, or the debtor has died during the breathing space period, the notification will tell you the reason why it was cancelled.

**4.4 Next steps**

When a breathing space ends, you can:

* start applying interest, fees, penalties and charges to the debt from the date that the breathing space ends. You cannot backdate or apply any interest, fees, penalties or charges that accrued or would have accrued during the Breathing Space period, unless a court allows you to do this
* take any action to enforce your debt, including contacting the debtor
* start or continue any legal proceedings about your debt

You cannot take these actions if the debtor has gone into a debt solution. This could include a debt relief order or bankruptcy.

You also cannot take action if they have made a formal arrangement with their creditors to deal with their debt, such as an individual voluntary arrangement.

You can check the [Individual Insolvency Register](https://www.gov.uk/search-bankruptcy-insolvency-register) to see if your debtor is in a formal insolvency solution.