

**Housing
Rights**

Policy Response
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**Policy Response to Breathing Space Scheme:
Consultation on a Policy Proposal**

when everyone has a **home**

Introduction

Housing Rights is the leading provider of specialist housing advice in Northern Ireland, and has worked for over 50 years to help those in housing need. We work to achieve positive change by protecting and promoting the rights of people who are in housing need. In 2017/18, we assisted with almost 13,000 cases, encompassing 47,000 housing issues. Housing Rights is uniquely placed to respond to this consultation, given that our policy work is informed by an evidence base, which draws upon the direct experience of our client casework service.

Our work includes helping people with mortgage, tenancy and other housing debts, in addition to working to ensure that our clients are assisted to sustain their tenancies. Housing Rights also offers financial capability training, which equips clients with the skills required to effectively manage a budget. This is a particularly important aspect of our work, given recent statistics which identify Northern Ireland as having some of the lowest levels of financial capability in the UK [1].

History of engagement

Housing Rights had previously responded to the call for evidence in connection with the Breathing Space Scheme in December 2017. Housing Rights welcomes the opportunity to comment upon the policy proposals for the Breathing Space Scheme, drawing upon our housing debt advice casework. Whilst this consultation is for a scheme in England, Housing Rights would welcome similar conversations about the suitability of such a scheme in Northern Ireland.

Response summary

- **Housing Rights welcomes the opportunity to comment upon the policy proposals for the Breathing Space Scheme, which will protect people in debt against further creditor action and accrual of interest and charges for a period of 60 days. Housing Rights would welcome further information about the oversight mechanism which would be established, to ensure compliance with the terms of the Breathing Space Scheme.**
- **The requirement that debtors seek debt advice in order to access the scheme is especially welcome. Advice should be independent, rigorously regulated, quality assured and ideally free to access, with referrals made for specialist housing debt advice in cases where debtors have housing debts.**
- **Should a register of those who have accessed the scheme be compiled, it is Housing Rights' view that steps should be taken to ensure these debtors are protected from being targeted by unscrupulous lenders.**

[1] <https://financialhealthexchange.org.uk/wp-content/uploads/2015/11/Levels-of-financial-capability-in-the-UK-Results-of-a-baseline-survey.pdf>

- **Housing Rights welcomes the proposal that, under the Statutory Debt Repayment Plan (SDRP) debtors' financial statements will be reviewed in light of any changes to their surplus income and also the proposal that they may avail of a freeze on payments, in the event of any financial shock. Housing Rights recommends that further consideration is given to extending these flexibilities to debtors who have entered a breathing space and who subsequently suffer an income shock.**
- **Housing Rights, welcomes the proposal that housing debts could be excluded under the SDRP, thereby enabling clients to repay these debts more quickly to avoid eviction; and also the proposal that, where housing debts are included in any SDRP, these debts will be prioritised. Housing Rights would request reconsideration of the approach towards prioritisation of debts, for instance, prioritising housing debts (so as to reduce the risk of eviction) and then redistributing a percentage of remaining funds to all other creditors.**
- **Housing Rights has concerns that lenders may seek to stipulate that clients avail of an SDRP before approving a mortgage shortfall application, when it may be more advantageous to the client to enter a voluntary agreement for the shortfall as an unsecured debt.**
- **Housing Rights would welcome clarification as to whether there would be scope to include interest-only mortgages in SDRPs in cases where the principal has been paid off.**

Response

Breathing Space Scheme

1. Eligibility for the Breathing Space Scheme
 - 1.1 Housing Rights welcomes the proposal that individuals seeking a breathing space from their debt will be required to engage with an FCA-regulated debt adviser (or any body which qualifies for exemption from regulation). Housing Rights is of the view that this advice should be independent, rigorously regulated and quality assured. The usefulness of this engagement will be maximised if advisers are explicitly required to act solely in the best interests of the client, to ensure that clients receive impartial advice best suited to their situation. Additionally, Housing Rights welcomes the proposal that clients can access a breathing space free of charge and would also recommend that regulated debt advice is free to the client, or at a minimum, that clients are clearly signposted to free sources of FCA-regulated advice by the Government.
 - 1.2 Furthermore, given the specialised nature of housing debt advice and the importance of dealing effectively with these debts in order to prevent any threat to a client's security of tenure, Housing Rights would recommend that the regulation and

quality assurance of advice should include specific requirements on standards of housing debt advice and, at a minimum, that advice is sought from specialist housing debt advisers, where a client has housing debts. The Treasury may be interested to learn of arrangements which previously existed in Northern Ireland (and which may also exist elsewhere) whereby claimants referred for debt advice to Citizens Advice Bureau (CAB), were referred by CAB to Housing Rights in cases where specialist Housing Advice was required.

- 1.3 **Housing Rights would welcome clarification as to what the Government defines as ‘problem debt’.** Given the potential for subjectivity around this, it is Housing Rights’ belief that a standardised, formal assessment tool would assist debt advisers in deciding whether or not a client is in problem debt and would benefit from some form of debt relief. Such an assessment tool should be advisory and permit advisers some discretion / flexibility in determining the most appropriate debt solution for their client. Again, where housing debts are concerned, Housing Rights would emphasise the need to ensure that specialist housing debt advice is sought to ensure the most appropriate advice / options are made available to clients.
 - 1.4 With regard to the proposal to limit breathing spaces to one per year, Housing Rights would agree with this approach, given that breathing spaces are intended to give clients the opportunity to ‘get on top’ of their finances and to enter a sustainable debt solution. However, there is potential that some clients may be disadvantaged, for instance, if they had entered a breathing space, but then secured employment and were able to repay their debts (meaning they had no need to enter a statutory debt repayment plan (SDRP)) but the client subsequently lost their job the same year, meaning they were no longer able to repay their debts. Housing Rights is of the view that consideration should be given to offering such clients another breathing space within a year, where they have experienced such a temporary financial shock, particularly if they had not availed of an SDRP on the first occasion.
 - 1.5 Should the Government approve a facility whereby creditors can object to clients entering a breathing space, Housing Rights believes that there should be set grounds under which creditors may object (otherwise this may result in the Insolvency Service having to adjudicate in a potentially significant volume of cases) with an opportunity for the client to respond and challenge any objection. Such an approach would be of benefit to both the Insolvency Service and the client. **Housing Rights would welcome further information regarding the operation of any process through which creditors could object.**
2. Administration of the Breathing Space Scheme
 - 2.1 Housing Rights agrees with the proposed involvement of the Insolvency Service.
 - 2.2 It is Housing Rights’ belief that there is a need for an oversight role to ensure creditors and debt advisers comply with the Breathing Space Scheme’s guidelines, particularly to ensure that any enforcement action is paused for the duration of the breathing space. Housing Rights is of the view that the Government should consider

what specific role an oversight body should have, in order to ensure maximum effectiveness of the Breathing Space Scheme.

- 2.3 Housing Rights is of the view that the register of those who have accessed a breathing space should be private, as this may put vulnerable clients at risk of being targeted by debt consolidation companies, or more unscrupulous lenders seeking to exploit any vulnerability on the part of clients. This could result in increased stress for clients (in addition to potential stigma) which would run contrary to the aspirations of the Breathing Space Scheme. Provided the intended system of notification to creditors works as planned, there should be no need for creditors to search a public register, as they will automatically receive notification that a client has entered a breathing space. In the unlikely event that they do not receive notification, the Government may wish to consider making a private register available only to those who have a need to access it. The Government may wish to seek guidance from the Information Commissioner's Office as to who should have access to a register and on what basis.

3. Protections under the Breathing Space Scheme

Housing Rights agrees with the approach set out in the consultation document, which is in-keeping with arrangements under other debt solutions.

4. Business debts under the Breathing Space Scheme

Housing Rights has no comment to make in relation to this particular matter.

5. Treatment of ongoing liabilities

Housing Rights recognises that ongoing liabilities should, where possible, continue to be met by the client during any breathing space, to ensure that further arrears do not build and, particularly in the case of mortgage and rent payments, to ensure that there is no risk to clients' security of tenure. However, it is the view of Housing Rights that clients should not be excluded from the scheme for failing to meet their ongoing liabilities, for instance, in the event of an income shock, if they were to lose a job or become ill. It is relevant to note here that protections which existed under Housing Benefit, such as Income Shock Protection (which covered tenants' contractual rent for up to 13 weeks if they lost their job and had not claimed Housing Benefit in the preceding 52 weeks) no longer exist under Universal Credit. Furthermore, due to the introduction of Local Housing Allowance, any fresh claim for housing costs under Universal Credit will be capped, meaning many tenants will have a shortfall in rent. In such cases, clients are likely to experience difficulty in meeting their ongoing liabilities, unless they have access to forms of discretionary support. To maximise the effectiveness of the Breathing Space Scheme, it is important that debt advisers provide support to clients who will struggle financially.

Housing Rights has experience dealing with a client who was in rent arrears and who was due to attend court to agree a possession order with a stay. Housing Rights had successfully negotiated a repayment plan based on the household's income in advance of attending court; however, the household's circumstances changed twice in the 24 hours preceding the court hearing. The client's non-dependent son lost his job, which had been under a zero-hours contract. He signed on for Job Seekers' Allowance later that day, but then managed to secure another temporary job that evening, in order to honour the original repayments we had negotiated in advance of the court hearing.

Such clients ought not to be penalised for something which is beyond their control, particularly given the precarious nature of casual employment; on the contrary, such clients will require further protection during such a stressful period (and should be sign-posted to specialist housing advisers where appropriate). Housing Rights is of the view that there is a need for the Breathing Space Scheme to be adaptable to a client's change of circumstances. Any debts that accrue during the breathing space period could potentially be included in any subsequent debt management plan (presuming that debt solutions are deemed appropriate for the client).

6. Treatment and interest of charges

It is welcome that creditors will be prevented from retrospectively applying interest and charges if a client's breathing space comes to an end, with or without a payment plan put in place. It is also welcome that lenders will not be able to charge interest on mortgage arrears during this period. With respect to mortgages, Housing Rights notes that secured debts, "such as the principal and interest of a mortgage" are deemed to be ongoing liabilities and that "mortgage providers should expect to receive payments for both the principal and interest on ongoing mortgage payments". It is also stated that "all interest – both contractual and default [...] would be prevented from accruing". **Housing Rights would welcome clarification as to whether interest-only mortgages are deemed an ongoing liability, or if, in the event the principal of the mortgage has been paid off, the remaining interest could be frozen**, as this would determine the advice we would provide to our clients. Again, Housing Rights would reiterate the need to seek specialist housing debt advice in such cases.

7. Treatment of collections and recovery action & further enforcement action

- 7.1 Similar to the rest of the United Kingdom, Northern Ireland has specific pre-action protocols for lenders seeking to possess a home for mortgage arrears [2] and social landlords seeking possession for rent arrears [3]. These pre-action protocols are vital protections for clients seeking to sustain their tenancies and homes and to ensure that lenders and landlords follow due process of law when seeking possession of a property. Housing Rights notes that creditors will not be able to initiate the pre-

[2] <https://www.justiceni.gov.uk/sites/default/files/publications/justice/Revised%20Pre%20Action%20Protocol%20for%20Repossession%20Proceedings.pdf>

[3] <http://bit.ly/2AlrTJR>

action protocol during a breathing space and, if the pre-action protocol has already been initiated, that it must be paused and no further legal action can be initiated during a breathing space (but that any pre-existing applications to the court are not expected to be withdrawn and any pre-existing attachments of earnings orders shall be observed). Furthermore, it is noted that if enforcement action has already been approved by the courts, creditors are expected to pause most forms of action, including stopping any new attachments of earnings. It is our understanding that the pre-action protocol would be paused during any breathing space and could later be resumed; however, **Housing Rights would welcome further clarification that the introduction of any Breathing Space Scheme would be separate to and would observe existing pre-action protocols.**

7.2 Should an equivalent of the Breathing Space Scheme be extended to Northern Ireland in due course, it is important to note a difference between how charges of land operate in England and Northern Ireland. Case law has established that charges of land are classified as an administrative function in Northern Ireland, as opposed to being treated as a further step in the judicial process. Consequently, there is potential that such action may not be construed as a form of enforcement action in Northern Ireland. Accordingly, it may be necessary to make clear that no further enforcement action (including administrative functions) can be initiated during a breathing space.

8. Continued eligibility for the Breathing Space Scheme

As outlined earlier in this response, Housing Rights has concerns regarding both criteria for continuing eligibility for a breathing space. Clients disengaging from debt advice can often be a sign that they are struggling to cope with debts and this is often associated with mental health difficulties (in the experience of our clients). Equally, a client may not respond due to a bereavement or illness. Rather than removing protections from these clients, Housing Rights believes efforts should be made to ascertain the reason why the client has disengaged and then to re-engage them. Additionally, with regard to the requirement to meet all ongoing liabilities, this is to presume the client will not be faced with any income shocks. As stated under section 5 of this response, Housing Rights is of the view that clients should only be expected to meet ongoing liabilities where possible and should not be excluded from the scheme if they are unable to meet these as a result of any income shock, for instance. Clients who have perhaps become ill or lost a job should be afforded more protection in light of these vulnerabilities; they should not have protections removed.

9. Operation and duration of the Breathing Space Scheme

9.1 Housing Rights welcomes the extension of the breathing space from 6 weeks to 60 days, provided this is sufficient time for debt advisers to determine a sustainable debt solution with their client (taking into consideration any underlying mental

health difficulties and any delays this may cause). It is therefore welcome that clients who access the scheme via the alternative access mechanism will be granted a breathing space for the duration of their treatment

- 9.2 Housing Rights agrees with the proposed check midway through a breathing space period to ensure the scheme is working as intended. Again, we would reiterate that clients who are not engaging promptly, or who have failed to meet ongoing liabilities should not be excluded from the scheme at this point. Rather, checks should be made to assess any extenuating circumstances or change of circumstances which could impact upon the success of the breathing space, with a view to getting the client back on track. **Housing Rights would welcome clarification as to whether or not there may be grounds to extend a breathing space, where this might be appropriate for the client. Housing Rights would also welcome confirmation that, in instances where proposals are submitted to creditors towards the end of the 60 day period, that the debtor will still be protected by the breathing space for the period of 14 days in which creditors consider their proposal.**

Statutory Debt Repayment Plan (SDRP)

10. Eligibility for the SDRP

10.1 Agreed. Housing Rights welcomes the proposal that clients will have a maximum period of ten years within which to clear their debts. With regard to the criterion that clients must be assessed as being able to repay their debts in full over a reasonable timeframe, it is the experience of our advisers that the success of any repayment plan will be contingent upon how thorough and realistic the client's financial statement is. It is possible that clients may not disclose other debts, such as money owed to 'doorstep lenders', which may affect the viability of the payment plan.

10.2 There is also a need to future-proof financial statements, particularly where clients are availing of the maximum repayment term of ten years, to ensure that contingencies are factored in for increases in rent, growing households, or increased expenditure on utilities, for instance. Depending on a client's change of circumstances, there may be a need to revise their financial statement and amend their payment plan accordingly.

10.3 With regard to creditors objecting to any proposed payment plan, Housing Rights would have concerns that a single creditor who is owed at least 25% of the total debt (for instance a mortgage lender) could effectively, single-handedly veto a payment plan, despite the fact that it may be of benefit to other creditors. Housing Rights is of the view that the Government should consider whether or not there is a more appropriate way of managing this, so as to minimise the potential for the Insolvency Service to have to adjudicate in such cases. Housing Rights would also have reservations regarding the potential for abuse of this system by creditors, as it is of no cost to creditors to object, simply on the grounds that they are unhappy

with the amount offered, or the term over which the debt will be repaid. It is the view of Housing Rights that creditors should be made to provide a rationale for their objection. Regardless of the reasons for objection, consideration will still need to be given to the fact that any payment plan must, first and foremost, be sustainable for the client, without overstressing them. Housing Rights would welcome further information regarding the operation of any process through which creditors could object.

10.4 Housing Rights is in agreement with the intended approach for the 'fair and reasonable' test; however, we do not agree that creditors should be able to make further objections once the Insolvency Service has made a determination under the fair and reasonable test.

11. Debts excluded under the SDRP

Agreed. Housing Rights also welcomes the proposal that there will be an option to exclude mortgage or rent arrears from SDRPs, thereby enabling clients to repay these debts more quickly, to avoid possible eviction. As stated earlier in this response, advice should be sought from specialist housing debt advisers as to which options are best for dealing with housing debt.

For instance, a client who has £29,000 mortgage arrears may not realistically be able to pay this off within the maximum term of ten years and may be best addressing their debt through chancery court, where they will have longer to pay off their debt and on a more sustainable basis.

Conversely, a client who has had shortfall on sale may be able to effectively avail of an SDRP (however, Housing Rights would have concerns that lenders may seek to stipulate that clients avail of an SDRP before approving a shortfall, when it may be more advantageous to the client to enter a voluntary agreement for the shortfall as an unsecured debt).

Housing Rights would again request clarification as to whether or not interest-only mortgages (where the principal has been paid off) would be eligible to be included under an SDRP.

12. Treatment of interest and charges under the SDRP

Agreed.

13. Treatment of collections and recovery action under the SDRP

Agreed. Creditor compliance should be monitored in accordance with other debt solutions.

14. Prioritisation of debts under the SDRP

Housing Rights agrees that any mortgage, tenancy and other housing debts should be prioritised within SDRPs, as the ultimate sanction of these forms of debt is eviction, or possession of the client's home. The proposals under the SDRP scheme are therefore welcome, however, Housing Rights could foresee that it may be necessary to increase the amount of housing arrears paid in cases where housing debts have been included in an SDRP (beyond what has been proposed).

Where the debtor has 14 debts and each creditor (whether priority or non-priority) is entitled to 5%, 70% of the debtor's available surplus income has already been distributed, leaving just 30% to be distributed on a pro rata basis across priority creditors. In real terms, depending on how many of those 14 debts are considered priority debts, lenders seeking recovery of mortgage arrears, for instance, may not receive sufficient funds to reduce the debtor's arrears, meaning that the debtor could be at risk of repossession and homelessness.

This scenario reinforces the need for clients with housing debt to seek specialist housing debt advice. In light of this hypothetical scenario, the Government may wish to reconsider its approach towards prioritisation of debts, for instance, prioritising housing debts in the first instance and then redistributing 5% of remaining funds to all other creditors. It is also important to consider 'square-peg' debts, which may be classed as non-priority, as they are not secured debts, but nevertheless cover essential items for the client. Housing Rights believes debt advisers should be able to use discretion, where it can be justified, to prioritise repayment of essential non-priority debts.

15. Reviews & flexibilities under SDRPs

15.1 Housing Rights agrees with the proposal to review clients' payment plans annually, in light of the fact that personal and financial circumstances could change significantly over the course of a payment plan. Given the current context of casual employment, it may be necessary to review some clients' payment plans more frequently than this, with the possible outcomes that the existing plan continues, is temporarily paused (in the event of a financial shock) or ended (in the event another debt solution would be more appropriate). Housing Rights therefore agrees with the proposed approach of completing an updated financial statement in the event of surplus income levels changing, to ensure clients' payments are still appropriate for them. Housing Rights welcomes the proposal that clients will have the option of applying for a temporary freeze on payments, should they suffer a financial shock, and also the proposal that the life of their payment plan could be extended (including beyond the maximum permitted term of ten years) thereby ensuring clients do not have to resume payments at a higher rate to clear their debts within the original timeframe.

15.2 Housing Rights has concerns that, if there is no cost attached to creditors objecting to either reduced payments (in the event of a financial shock) or a payment freeze,

that this could result in the Insolvency Service being inundated with requests for 'fair and reasonable' assessments by creditors. Accordingly, it may be necessary to consider specific grounds under which creditors could object to reduced payments / payment freezes.

15.3 The experience of our advisers would suggest that an exhaustive list of what constitutes a temporary financial shock should not be compiled, since each client's ability to repay their debts will ultimately be determined by the amount of income they have against what outgoings they have. Housing Rights would again stress the need to ensure that financial statements are future-proofed, allowing for interest rate rises etc, and also for contingencies. However, for the purposes of assessing what may constitute a temporary financial shock in the context of an application for a payment freeze, examples of temporary financial shocks might include (but are not restricted to): loss of job / reduction in hours and associated pay, illness, bereavement (and any associated leave / reduction in pay), birth of a child (and any associated leave / reduction in pay), temporary changes to welfare benefits (for instance the application of the Benefit Cap due to a temporary change in circumstances) in addition to any unforeseen expenses, for example, boiler replacement or repair. It has been documented [4] that over half of all children in Northern Ireland are living in households that could not afford to pay an unexpected, but necessary expense of £500. This research correlates with the experience of Housing Rights' clients, who are vulnerable to even minor income shocks. Should a list of set examples of temporary financial shocks be produced, **Housing Rights would welcome clarification as to whether or not a rise in rent may constitute a temporary financial shock, for instance, where the client intends to source cheaper accommodation.** In any event, repayment should not push clients into a situation where they are below the poverty threshold (<60% of median household income).

16. Continued eligibility for the SDRP

As set out in section 8 of this response, Housing Rights agrees that clients should be expected to meet their ongoing liabilities where possible; however, if they have experienced a temporary financial shock and have grounds to apply for a payment freeze, it stands that they may also experience difficulty in meeting their ongoing liabilities. It is welcome that clients will be given a period of time to resume compliance with the scheme's rules; however, this may be insufficient time for someone to find alternative (secure) employment, for instance. Clients who are making a concerted effort to resume compliance with the scheme, or who are not complying for reasons beyond their control (for instance clients who have become ill or who are not engaging with their debt adviser as they have suffered a bereavement) should not be excluded from the scheme, at least not without having first assessed whether there are any extenuating circumstances.

[4] Tomlinson, M., Hillyard, P., Kelly, G. (2014) Child Poverty in Northern Ireland: results from the poverty and exclusion study. Child Poverty Alliance.

17. Administration of the Breathing Space Scheme and SDRP

Housing Rights would reiterate that clients should be signposted to free, independent advice and that payment distribution, regardless of whether administered by debt advisers, or the Insolvency Service, should be independently regulated.

18. Credit reports

Housing Rights notes that the Government recognises that there are potentially both positive and negative consequences to recording activity under the Breathing Space and SDRP Schemes on clients' credit reports. There is a risk that any record on a client's credit record may deter them from availing from either scheme, particularly if it is perceived that this may affect access to affordable forms of credit throughout the duration of an SDRP (which could be up to ten years) or push them into having to access less affordable forms of credit. Housing Rights would also note that landlords are increasingly using credit-scoring and credit reference checks when determining whether or not to award a tenancy to a client and there are concerns that this could potentially be used to prevent someone from being awarded a tenancy, when they may actually have a good credit score and simply require help addressing problem debt. Should a decision be made to reflect the fact that a client has entered a breathing space or SDRP on a client's credit report, Housing Rights is of the view that this should be reported as a responsible activity on the part of the debtor.

19. Territorial scope of scheme

Housing Rights would welcome further consideration on the extension of the Breathing Space and SDRP Schemes to Northern Ireland.

For further information, please contact Laura McNamee, Policy & Public Affairs Officer at Housing Rights on 02890 245640 or laura@housingrights.org.uk