

# In debt? – then breathe!

New measures are being considered by the Government to ease the debt burden for those struggling to repay.

AUTHOR – David Kerr MCICM is the Chief Executive of the Insolvency Practitioners Association (IPA).



David Kerr

procedures, via regulated debt advisors, or intermediaries currently acting in respect of Debt Relief Orders, or Insolvency Practitioners or the bankruptcy adjudicator, to ensure that debtors receive regulated advice.

## BREATHING SPACE

The current proposal is for a six-week breathing space. Creditors can reasonably expect that all of a debtor's liabilities must be disclosed, and debtors will need to be advised of the consequences of non-disclosure, and in particular that creditors not covered by the new process may be at liberty to continue to pursue their debts.

There is an argument for allowing interest to continue to be applied until a formal insolvency process is in place (if that is the result at the end of the breathing space), so as not to interfere with existing rights of creditors. The Government has sought views on whether interest as well as other charges should stop at the point the breathing space commences.

If a repayment plan or other formal process can be commenced before the expiry of six weeks, then there would seem little point in prolonging the breathing space, and it will be interesting to see how proposals for early termination of the breathing space look when the consultation is published. This includes bringing it to an end early if the process is abused, for example if the debtor does not take regulated advice, prefers certain creditors over others, takes further credit, or does not make full disclosure.

## HOW IT COULD WORK

A key point for creditors is the need for a means by which those entering the breathing space can be identified. A searchable register would assist creditors and afford the debtor some protection.

The Government considers that there could be benefits for creditors as well as debtors in having a period of protection. The positive impact of consumers taking advice and making reasonable and sustainable proposals for dealing with their debts should outweigh any short-term detriment to creditors, provided the breathing space period is a maximum of six weeks. A longer period increases the risk of distortion of creditors' rights in any subsequent insolvency process.

## REPAYMENT PLAN

The breathing space can be an entry point into a formal solution to a debt problem. It should not be seen only as a means to enter a debt repayment plan of the type envisaged in the call for evidence. A number of outcomes are possible, including the current full range of statutory options.

The manifesto commits the Government to introduce a statutory debt repayment plan where appropriate. Debt management companies already administer debt management plans and are regulated by the FCA for that purpose. Other formal solutions such as an IVA may be administered by IPs. Some careful consideration needs to be given to how a new formal debt repayment plan would sit alongside existing solutions.

## TO VOTE OR NOT TO VOTE

In IVAs, creditors' rights, which are affected by a process that provides for some debt forgiveness (i.e. not full repayment), are protected by a vote at the outset, albeit one through which there is provision to bind dissenting creditors. A simple majority vote could be included for a debt repayment plan, and perhaps enhance creditor confidence in the new procedure. Some might argue that if 'repayment in full' is envisaged then a vote is unnecessary, but in every case creditors' rights are adversely affected if only by delayed repayment and removal of enforcement options.

There is also the possibility if plans run for several years, that a debtor's circumstances will change and that a plan intended to repay in full will not do so; in those circumstances (and where a debtor is avoiding bankruptcy and the potential for investigation of a debtor's conduct) creditors might expect to be consulted. Engaging creditors at the beginning of a process is likely to be more fruitful than seeking to do so some way down the track.

## NEXT STEPS

The Conservative manifesto committed the Government to introduce the scheme 'with the right safeguards to prevent abuse'. It remains to be seen whether the final proposals will hold true to those aims.

I wrote last summer about the possibility of legislation on proposals for a 'breathing space' for debtors; it seemed there was a glimmer of hope that this would see the light of Parliamentary scrutiny, because the main opposition parties pledged something similar.

The Government has taken the first step down this road. A call for evidence has just closed, and we can expect a consultation this year on the measures the Treasury intends to introduce. The breathing space concept will provide some additional assistance to indebted individuals. It will though require appropriate supervision to ensure that the process is not abused and that creditors can be assured that their positions are not worsened.

The breathing space has to fit well with existing debt solutions, and use of existing insolvency tests would ensure consistency. However, there are a number of people who are 'just about managing' to meet minimum payments due to creditors, but living with a heavy debt burden and without any real prospect of repaying the principal debt. Perhaps they too should be eligible if it is clear they have no prospect of repaying capital and genuinely wish to bring about an orderly resolution of their debts.

The breathing space could build on existing routes of entry into insolvency