

# BSA Response to HM Treasury Breathing Space: Call for evidence

Restricted  
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 **Building Societies**  
Association

# Introduction

The Building Societies Association (BSA) represents all 44 UK building societies. Building societies have total assets of over £374 billion and, together with their subsidiaries, hold residential mortgages of over £297 billion, 22% of the total outstanding in the UK. They hold over £266 billion of retail deposits, accounting for 18% of all such deposits in the UK. Building societies account for 34% of all cash ISA balances. They employ approximately 40,000 full and part-time staff and operate through approximately 1,550 branches.

This response has been prepared by the BSA in consultation with its members. We have provided responses to only those questions that are directly relevant to our members. We have focussed our response from a mortgage lending perspective, as this is the main area of lending in the building society sector.

## General Comments

The BSA and its members remain committed to supporting borrowers in financial difficulty and are supportive of initiatives that encourage people to seek debt advice early.

The sector is heavily regulated by the Financial Conduct Authority (FCA) in this regard, who set out in the lenders' handbook strict procedures to ensure that consumers are treated fairly. In recent years the FCA has conducted several Thematic Reviews looking at the treatment of borrowers in payment difficulty.

The FCA believes and the BSA agrees, that customers should be protected from unfair and excessive charging practices. The FCA states that the charges imposed on a customer in payment difficulties must be based upon the costs incurred by the firm. <sup>1</sup>*A firm must ensure that any regulated mortgage contract that it enters into does not impose, and cannot be used to impose, a charge or charges for a payment shortfall on a customer unless the firm is able objectively to justify that the charge is equal to or lower than a reasonable calculation of the cost of the additional administration required as a result of the customer having a payment shortfall.*

The Building Society sector has also carried out significant work in this area to ensure that Societies are able to offer those borrowers who are facing payment difficulty the support they need to get back on track with their payments. This includes working closely with debt guidance providers in developing a [Can't pay your mortgage](#), help is at hand leaflet, which encourages borrowers to seek

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<sup>1</sup> <https://www.handbook.fca.org.uk/handbook/MCOB/12/4.html>

advice early if they think that they will have problems meeting their financial commitments and sign posting to agencies where they can get additional advice and support.

In addition, the Ministry of Justice (MoJ) pre-action protocol <sup>2</sup>for mortgages describes the behaviour that the court will normally expect of the parties prior to the start of a possession claim and aims to ensure difficulties are resolved wherever possible without court proceedings. Repossession is the absolute last resort for lenders, when all other options have been explored and this protocol serves as an additional layer of consumer protection.

Given the regulatory and legal protections already in place for consumers, enforced by the FCA and Ministry of Justice (MOJ), we do not support the introduction of a mandatory 6 week breathing space for mortgage lenders, this is a costly and unnecessary scheme for the sector. It is not clear what the scheme would deliver over and above the robust system that is already in place.

We do however acknowledge that there may be sectors where creditor behaviour is less tightly monitored and controlled and agree that standards should be improved where issues are identified. We see unregulated creditors that are outside the scope of FCA regulation as a particular area of risk, where the potential for consumer detriment is high.

The introduction of a breathing space scheme should therefore be limited to those sectors where consumer detriment is identified and there is little or no regulatory or legal protections for consumers.

A full cost/benefit analysis needs to be undertaken before such a scheme is implemented to avoid duplication of existing systems and processes that are already in place and work well for the benefit of consumers.

**Question 1: In your opinion, how should the government decide who is eligible for a breathing space?**

Defining problem debt is likely to be fraught with difficulty and may overcomplicate the issue. Consumers actively seeking advice and help because they are concerned about their finances should always be able to easily access this. Capacity in the free-to-client debt advice sector is currently under pressure and consideration should be given to how this can be relieved to ensure those who need help can access it. The impact of a scheme such as this should certainly not work to worsen the situation for an already over-burdened free debt advice sector.

Building Societies work hard to ensure that they support their borrowers when they are in financial difficulty. Experience has shown that the earlier help is sought the more likely a borrower is to get back on track with their repayments. Societies will send factsheets and leaflets such as the “Can’t pay your mortgages, help is at hand” leaflet which encourages borrowers to engage early with their lender and also provides details of where further debt advice can be obtained.

Repossession is always the last resort, when all other options have been explored. Repossession will typically commence only after a customer has been in arrears for some time and a borrower’s

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<sup>2</sup> [https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_mha#2.1](https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_mha#2.1)

situation is unlikely to improve. The FCA caution against delaying repossession in instances where this will be to the detriment of the customer, this is referred to as over-forbearance and can result in a less favourable outcome for the customer than taking action once it becomes clear that a borrowers situation will not improve. A breathing space scheme should therefore not prevent swift action where needed.

The sector is heavily regulated by FCA, with a robust regulatory framework to ensure good consumer outcomes. In addition, the Ministry of Justice (MoJ) pre-action protocol for mortgages describes the behaviour that the court will normally expect of the parties prior to the start of a possession claim and aims to ensure difficulties are resolved wherever possible without court proceedings.

Firms use a range of tools to assist borrowers in arrears, such as putting someone onto a period of interest only, reviewing the term of the loan or accepting reduced payments for a short period of time. Many of these options are longer than 6 weeks breathing space proposed.

We believe that the existing system works well for mortgage borrowers, the historic low level of arrears and possessions in the sector attests to this. We therefore strongly believe that mortgages should be excluded from the breathing space scheme.

#### **Question 2: What should be the trigger point for a breathing space?**

- **Should a breathing space only be available for a person who seeks regulated debt advice?**
- **Should individuals have demonstrated they have already taken steps to try to manage their debt?**
- **If so, at what point should the six weeks start – for instance: once a breathing space has been requested, when the first advice session has occurred, or once adviser has confirmed a breathing space would be appropriate?**

This scheme should only be available to anyone who is proactively taking steps to address their financial difficulties and has contacted a debt adviser for help. This would help ensure that the system is not exploited and those needing help can get it. Once the adviser has confirmed breathing space is appropriate would seem a sensible time for breathing space to begin.

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

No. Given the regulatory and legal protections already in place for consumers, enforced by the FCA and Ministry of Justice (MOJ), we do not support the introduction of a mandatory 6 week breathing space for mortgages. This is a costly and unnecessary scheme for the sector with little benefit to consumers. The existing system works well for mortgage borrowers and should not be disrupted.

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

Firms should be allowed to recover their costs proportionately, as is already set out by the FCA. It is unreasonable to expect firms to fully fund the costs of the breathing space scheme. In addition, to

make the necessary changes to I.T systems to freeze all interest, fees and charges will take considerable time and at the expense of firms.

Freezing the contractual interest on a loan may not be in the long-term best interests of the customer. Freezing all fees and charges may also encourage the wrong customer behaviour and incentivise gaming of the system.

**Question 5: What activities must the breathing space participant continue with to remain eligible?**

**For instance:**

- **Should they be required to attend advice sessions?**

Yes, either in person or over the phone.

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

Yes – if affordable there is no reason for the borrower to fall further behind with their payments and repayments should therefore continue.

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

Yes, if an appropriate alternative solution is found. The qualified debt adviser from the appointed firm should enforce this.

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

We would not expect a borrower to apply for additional lending during the 6 week period as this is against the intention of breathing space. However, a borrower may decide with the guidance of their debt adviser to apply for further lending to restructure their loans to improve their situation, this could be allowed.

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

Yes. This will require further consideration and development by the credit reference agencies and the financial services sector once more details of the scheme are known.

**Question 9: How frequently should a debtor be able to access a breathing space, and what criteria should control the frequency of access?**

Once per calendar year seems appropriate. If a debtor requires frequent use of the scheme it would suggest that the scheme is not working for them and could be exacerbating their problem. It would also be opening the scheme up to abuse.

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

As previously mentioned this will be an extremely costly scheme for lenders to administer. It will require changes to systems and processes. If all fees, interest and charges are frozen during the 6 weeks firms will effectively be bearing the full costs for the scheme.

Other challenges include the communication around when a borrower has been approved for breathing space, how will a lender be kept updated? How will a borrower be prevented from accessing further lending that could make their situation worse?

Lenders are subject to robust regulatory and legal requirements lenders which may not align with the new breathing space scheme. If HM Treasury believe that the existing regulatory protections are not sufficient to protect consumers, it should consult directly with the FCA to address this.

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

The appointed debt advice provider. We are however concerned that this scheme will put additional pressure on debt guidance providers which are already at capacity.

**Question 12: Would a breathing space scheme impact on business revenue or have any other significant detriment?**

Yes, this will be a costly scheme for firms to implement as mentioned previously. It may also make it more difficult for firms to understand a borrower's situation and offer support to the borrower as everything is put on hold for six weeks it removes a firms opportunity to help in those first crucial weeks. The scheme is also likely to discourage direct engagement between lender and borrower, which is a crucial step in ensuring the right outcome for the customer.

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

As mentioned above we feel that sectors that are already heavily regulated, such as mortgage lenders, should be exempt. These firms have already implemented, at significant cost, frameworks that ensure they support borrowers in financial difficulty.

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

A debtor should not be able to access this scheme more than once in a timeframe, for example a 12 month period.

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

We do not believe that secured mortgage debts should be included within a statutory debt plan as by their nature these are a priority debt. The secured mortgage arrears process already offers a number of forbearance and protections to ensure that the borrower has access to support with the appropriate time allowed to do so.

**Question 30: Should there be a regime for sanctioning debtors where there is misconduct in relation to a breathing space or statutory debt repayment plan, as there is for bankruptcy and DROs?**

Yes, the scheme should not be left open to abuse.

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

We see no reason that this should not be extended to Wales and Northern Ireland as well as England.



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The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £345 billion, and account for approximately 20% of both the UK mortgage and savings markets