



**SOUTH
KESTEVEN
DISTRICT
COUNCIL**

**Finance, Economic Development and
Corporate Services Overview and Scrutiny
Committee**

7 September 2021

Report of: Councillor Adam Stokes
Cabinet Member for Finance and
Resources



Breathing Space Update

To provide an update regarding the Debt Respite Regulations and the introduction of the Breathing Space Policy.

Report Author

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Corporate Priority:	Decision type:	Wards:
Administrative	Budget and Policy Framework	All Wards

Reviewed by:	Alison Hall-Wright, Head of Finance and ICT	20 August 2021
Approved by:	Richard Wyles, Assistant Director of Finance	26 August 2021
Signed off by:	Councillor Adam Stokes, Cabinet Member for Finance and Resources	27 August 2021

Recommendation (s) to the decision maker (s)

- Finance, Economic Development and Corporate Services Overview and Scrutiny Committee is asked to note the introduction of the Debt Respite Scheme (Breathing Space), along with the financial impact and arrangements that have been put in place to enable the Council to respond to the legislative requirements.**

1 The Background to the Report

- 1.1 The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Moratorium) (England and Wales) Regulations 2020 - SI 2020 No 1311 were made on 17 November 2020 and came into force on 4 May 2021.
- 1.2 The regulations give people legal protection from most creditor action while they receive advice and enter an appropriate debt solution. This will include residents who are debtors of South Kesteven District Council, for example, Council Tax, Debtors invoices, Housing Benefit Overpayment, Rent etc
- 1.3 On 4 May 2021, South Kesteven District Council, as a creditor, were required to introduce the Debt Respite Scheme, Breathing Space. There are two types of Breathing Space – Standard and Mental Health crisis
 - 1) 1) Standard Breathing Space is available to any resident and gives them legal protections from creditor action for up to 60 days. The protections include pausing most enforcement action and contact from any department within the Council (which hold a debt). A resident can only access Breathing Space once in a 12-month period
 - 2) Mental Health Crisis is only available to a resident who is receiving mental health crisis treatment. There are some stronger protections, and it lasts as long as the residents mental health crisis treatment, plus 30 days (no matter how long the crisis treatment lasts). There is no limit on how many times a resident who is receiving mental health crisis treatment can access Breathing Space.
- 1.4 All sections within South Kesteven DC have been prepared for Breathing Space and the actions required to be taken. The work is centrally managed by the Revenues and Benefits Team as a result of the formation of the Breathing Space Project Team. The actions taken are: -
 - 1) Project team to receive and manage notifications from the Insolvency Service and issue a notification email to all sections with debtor information so checks can be undertaken
 - 2) All sections to undertake checks and complete a spreadsheet to verify this action record whether there is a debt or not. If a there is a debt, the value is recorded.
 - 3) All sections to hold any contact with the debtor for 60 days. All contact must be through the nominated debt advisor
 - 4) Debt advisor is contacted by the project team if the debt type or value is different to that notified
 - 5) Project team to continue to review processes, ensuring all guidance is followed. The team will amend and adapt guidance as required, ensuring all sections are updated with new the new process.

Financial Impact to South Kesteven District Council

- 1.5 Since the regulations came in to force, South Kesteven DC have received 37 Breathing Space notifications, all of which have a Council debt, totalling £118,250.

1.6 The level of individual debt ranges from £234.56 to £18,034. There are just 6 debtors with one debt type, the remaining 31 have debt in multiple areas. A breakdown of this debt is shown in the table below:

Table 1: Breathing Space debt type:

	Council Tax (arrears)	Council Tax (current)	Housing Benefit OP	Rent arrears
Value of debt	£52,166	£6,555	£13,855	£45,674
Number of debtors	28	14	9	22

1.7 With the exception of council tax (current), formal recovery of the above debts was suspended during 2020/21 and part of 2021/22 as a direct result of Covid. The hold on recovery has been either through direct instruction from Government, or a Council decision:

- 1) Council Tax (arrears) – these are debts relating to 2020/21 or earlier. The council took the decision to suspend all formal recovery action relating to this debt until September 2020. At this point, formal recovery resumed and during the period September 2020 through to March 2021, 9,730 reminders were issued, totalling £2,971,105. Of those reminders that were not paid, or arrangements were not put in place, 1,295 summonses were issued, totalling £781,872.
- 2) Council Tax (current) – these debts are relating to 2021/22. All debts are currently being taken through the formal recovery route.
- 3) Housing Benefit Overpayment – the Department for Work and Pensions provided instruction to all Councils to suspend all formal recovery action relating to this debt. Recovery resumed in May 2021.
- 4) Rent arrears – in March 2020, the Ministry of Housing, Communities and Local Government (MHCLG) issued notification that all notices, possession orders and evictions were to cease until further notice. In September 2020 and July 2021, guidance was issued, introducing the lifting of suspension of possession cases and latterly, the resumption of evictions from 1 June 2021.

1.8 The suspension and slow resumption of formal recovery has impacted on the collection of the above debts. It has also impacted on the level of debt outstanding. In some cases, little or no Council Tax / rent has been paid during 2020/21.

1.9 As a result of the above, unusually large debt levels have been included within Breathing Space. Breathing Space also stops any recovery that may be in place for a further 60-days. Unless a debt resolution is reached by the end of the 60-day period, recovery of the debt will be re-instated.

Actions to be taken post 60-days

1.10 The first 60-day period ended on 5 July 2021. It is only at this point we will know what debt solution to debtor has entered in to.

- 1.11 The recovery position of the debt prior to Breathing Space, may not be retained after this 60-day period
- 1.12 Of the 37 debtors in Breathing Space, there are 19 where their 60-day period has ended.
- 1.13 As a result of the recommendations from the Rural and Communities Overview and Scrutiny Committee meeting on 1 July 2021, the project team have reviewed the position of these debtors and have agreed the post 60-day action to be taken is dependant on the debt type. The following actions have been implemented by the project team:
- 5) Debt types identified and individual next step actions have been agreed. The debts of the current 37 debtors all relate to Council Tax (current and arrears), Housing Benefit Overpayment and rent arrears. As a result, the following actions as specifically relating to these debt types
 - 6) The debts have been divided into two specific areas:
 - a. Debt type 1: Non enforcement debt – Housing Benefit Overpayment and Council Tax/Business Rates pre-summons stage
 - b. Debt type 2: Enforcement debt – Rent arrears and Council Tax/Business Rates post-summons stage
 - 7) The debts have been split into two distinct categories. Those debts that have not reached enforcement stage or additional costs relating to the recovery of the debt, and those debts that have reached enforcement stage with the consequences of non-payment being significant i.e. possession of property, court eviction, instruction of recovery to an enforcement agent.
 - 8) The actions to be undertaken are different for each debt type:
 - a. Debt type 1:
 - i. The Breathing Space Project Team will contact the debt adviser and request the debt solution. This is something the debt adviser is required to provide under the terms of the breathing space legislation.
 - ii. If the debt solution is not provided within 5 working days, the project team will inform all SK Teams and recovery of the debt will continue.
 - iii. The recovery of the debt will resume at the same stage prior to the 60-day Breathing Space period.
 - iv. A letter will be issued to the debtor to advise of the actions taken above.
 - v. The intention of contact is to engage with the debtor and consider any support which has not been identified during the breathing space process. The preferred outcome is to agree a sustainable payment arrangement with the debtor.
 - b. Debt type 2:
 - i. The Breathing Space Project Team will contact the debt adviser and request the debt solution. This is something the debt adviser is required to provide under the terms of the breathing space legislation.

- ii. If the debt solution is not provided within 5 working days, the SK Team holding the debt will contact the individual debtor.
- iii. A letter will be issued to the debtor to advise we have been notified their 60-day breathing space period has ended and contact within 5 working days is required to review the position of the debt.
- iv. The intention of contact is to engage with the debtor and consider any support which has not been identified during the breathing space process. Officers will also ensure the debtor is fully aware of the position of the debt and the consequences of non-payment / engagement. The preferred outcome is to agree a sustainable payment arrangement with the debtor.
- v. If the debtor does not respond, the recovery will resume at the same stage prior to the 60-day Breathing Space period.
- vi. The relevant actions will be undertaken to resume recovery of the debt and suitable correspondence will be issued to the debtor.

The Breathing Space Project Team

- 1.14 The project team are constantly reviewing the actions taken, the effectiveness of the support given to the debtor and the successful recovery of the outstanding debt.
- 1.15 To ensure all of the above can be undertaken effectively, with immediate effect, one officer will be taking the lead. They will undertake all actions from receipt of the initial breathing space notification through to the post 60-day notification to all SK Teams. This will ensure consistency and the officer will undertake analysis of the impact of all stages.

2 Consultation and Feedback Received, Including Overview and Scrutiny

- 2.1 Members were presented with this scheme via a briefing report emailed to them on 29 March 2021.
- 2.2 The Corporate Management and Senior Management Team have been made aware of the regulations, with detailed process and guidance notes being issued to those sections identified where they are likely to hold a debt.
- 2.3 A full report was presented to Rural and Communities Overview and Scrutiny Committee on 1 July 2021. The report can be accessed here:

<http://moderngov.southkesteven.gov.uk/ieListDocuments.aspx?CId=665&MId=4161>

3 Available Options Considered

- 3.1 There are no other options – the adherence to the actions as set out in this report and laid out in the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Moratorium) (England and Wales) Regulations 2020.

4 Preferred Option

- 4.1 The preferred option is to continue, but amending and adapting processes as required (in line with legislation).

5 Reasons for the Recommendation (s)

5.1 These are set out in the report.

6 Next Steps – Communication and Implementation of the Decision

6.1 To continue to action and respond to Breathing Space notifications in accordance with legislation and guidance.

7 Financial Implications

7.1 The financial implications associated with this legislation, specifically collection rates and levels of debt write off have been addressed in the report. However the impact will not be known for some time – as detailed in paragraph 1.7

Financial Implications reviewed by: Richard Wyles, Assistant Director of Finance and s151 Officer

8 Legal and Governance Implications

8.1 The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Moratorium) (England and Wales) Regulations 2020 set out the regulations that are to be followed by all sections where a debt is held.

Legal Implications reviewed by: Graham Watts, Head of Democratic Services and Deputy Monitoring Officer

9 Equality and Safeguarding Implications

9.1 The impact of the 60-day Breathing Space period, and resumption of collection of debt has been considered by the project team. This is as a result of recommendations from the Rural and Communities Overview and Scrutiny Committee meeting on 1 July 2021 and are detailed in paragraph 1.7 to 1.15 of this report.

10 Risk and Mitigation

10.1 The Council (along with the other preceptors for Council Tax and Business Rates), bears the risk of the cost of reduced or non-collection of any debt.

10.2 Any changes to internal procedure and guidance will be undertaken in line with the regulations and communication of the changes will be efficient and effective.

11 Community Safety Implications

11.1 None

12 How will the recommendations support South Kesteven District Council's declaration of a climate emergency?

12.1 None

13 Other Implications (where significant)

13.1 None

14 Background Papers

14.1 A full report was presented to Rural and Communities Overview and Scrutiny Committee on 1 July 2021. The report can be accessed here:

15 Appendices

15.1 None

Report Timeline:	Date of Publication on Forward Plan (if required)	N/a
	Previously Considered by: Rural and Communities Overview and Scrutiny Committee	1 July 2021
	Final Decision date	N/a