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The debt respite scheme – defined parameters?

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Who is this talk for?

- Any practitioner who deals with debtors will be assisted in understanding the scope of the regulation and what steps can be taken in proceedings when a debtor enters a moratorium. Being faced with a breathing space is particularly common in the following types of proceedings:
 - i) Possession claims;
 - ii) Bankruptcies (including at the statutory demand stage);
 - iii) Simple debt claims; and
 - iv) Applications for charging orders/ applications for possession and sale.

Why is this talk particularly relevant now?



- Despite its relative age, the regulation continues to cause issues for practitioners (mainly due to its drafting).
- It has recently reached the Court of Appeal in *Forbes v Interbay Funding Limited* [2025] EWCA Civ 690.



What are we going to cover?

- Part 1 - a whistle stop tour of the regulation itself;
- Part 2 - a look at what steps can be taken in proceedings if a debtor enters a moratorium;
- Part 3 - a review of the Court of Appeal's decision in *Forbes v Interbay*; and
- Part 4 - a look at some practical scenarios.

Part 1 – a review of the regulation



The Regulation - a background

- The regulation came into effect on 4 May 2021.
- According to the government's impact assessment the scheme was designed to:
 - i) encourage people to get access to debt advice; and
 - ii) provide debtors who engage with advice space to find a debt solutions by pausing enforcement, interest and charges on debts.



How does a debtor commence a breathing space and what are the criteria?

- A debtor must first apply to a debt advice provider for advice;
- The debt advice provider then has to initiate the moratorium, if it considers that:
 - i) the debtor meets the eligibility criteria (the corner stone being the notion of a qualifying debt);
 - ii) the debtor is unable to repay, or is unlikely to be able to repay, some or all of their debts; and
 - iii) A breathing space is appropriate.



What is a qualifying debt?

- All debts, unless they are non-eligible (per reg 5(1)). They include debts which pre-date the regulations (reg 5(2)).
- Non eligible debts are contained at regulation 5(4).
- Qualifying debts are moratorium debts (under reg 6). But such debts do not include debts incurred after the moratorium takes effect (*Axnoller v Brade* [2021] EWHC 2308).



How does a debtor obtain a mental health moratorium?

- Under regulation 28, a mental health crisis moratorium is one where a debtor is receiving mental health crisis treatment.
- Regulation 28(2) provides a breakdown as to what stands as mental health crisis treatment, but the breadth of the term is detailed as sub-paragraph (e) to include:

“...other crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service in relation to a mental disorder of a serious nature”



How to obtain a mental health moratorium – part 2

- An application for such a moratorium can be made by a class of applicant under regulation 29(1).
- The application must include evidence from a mental health professional which shows the debtor is receiving mental health crisis treatment (which we dealt with in the previous slide) and details of all debts to which the debtor is subject.

Duration of the respective moratoriums

- In the regular context, pursuant to regulation 26, it lasts for 60 days and cannot be extended.
- In the mental health context, pursuant to regulation 32, the earliest of:
 - i) 30 days after the debtor stops receiving treatment;
 - ii) 30 days after a debt adviser asks for information about the debtor's treatment (if there is no response);
 - iii) When it is cancelled; or
 - iv) The death of the debtor.



Part 2 – What can/cannot be done during the term of a moratorium



Regulation 7 – Effect of a moratorium

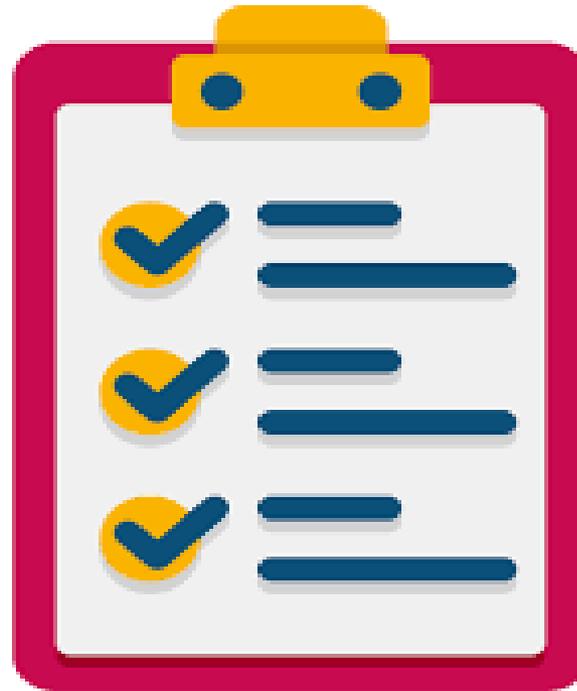
Pursuant to regulation 7(6), a creditor is prevented from:

- (i) Requiring a debtor to pay interest on a moratorium debt;
- (ii) Requiring a debtor to pay charges on a moratorium debt;
- (iii) Taking any enforcement action;
- (iv) Instructing an agent to carry out any of the above.



What is enforcement action?

- See regulation 7(7) for the full list.



What about steps outside regulation 7(7)?



- The “enforcement steps” at paragraph 7(7) are non-exhaustive, and the court has previously held other steps amounted to (or would have amounted to) enforcement action.
- In particular, see *Axnoller Events Ltd v Brake* [2021] 1 WLR 6218.



What about proceedings which are already underfoot?

- We have already discussed proceedings which are yet to be commenced (i.e. that they cannot be started).
- Under regulation 10, however, proceedings which have already commenced can continue until judgment. This, however, does not apply to bankruptcy petitions (which must be stayed), or enforcement proceedings



Part 3 – *Forbes v Interbay*



What did the court have to determine?



- Whether the principal of a secured debt amounted to “arrears” such that it was an eligible debt capable of attracting the protection of a moratorium.



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What were the facts?

- Mr Forbes had taken an interest only mortgage from Interbay for approximately 1.3m, secured by a first legal charge.
- He fell into arrears and, as a result, the whole capital sum was called in.
- Mr Forbes entered a mental health breathing space moratorium, and possession proceedings were issued, which resulted in a possession order, despite the moratorium.
- Mr Forbes appealed...

What did the court of appeal decide?

- In short, that a secured principal debt was not moratorium debt.



How did the court reach that decision?

- The starting point was the definition of a non-eligible debt at regulation 5(4)(a), which means:

” [a] secured debt which does not amount to arrears in respect of [a] secured debt”



What does arrears mean in the secured debt context?

- The Court of Appeal took a very common-sense approach to the question and said that arrears are:

“53... the word “arrears” carries its natural meaning. In order for something to be added to the outstanding balance it must be different from the outstanding balance itself. unpaid installments (whether of interest, in an interest only mortgage, or interest and capital, in a repayment mortgage, or outstanding charges) in respect of outstanding principal sum”



What is the end result of that definition?

- Because the court drew a distinction between arrears on the principal and the principal itself, in cases where the principal is due and owing (i.e. because a loan has been called in), the principle is not impacted by the moratorium.
- Consequently, a creditor can still charge interest on the principle and can likely bring proceedings in respect of the principle.

A word of caution!

- There was a point that the Court of Appeal did not decide, and that was in relation to where a creditor holds a claim in respect of a non-moratorium debt and a moratorium debt simultaneously.
- See *Bluestone v Stoute* [2025] 1 WLR 3124



Part 4 – linking it all together

- **Possession proceedings** – if you are dealing with a moratorium debt, you cannot issue a section 8 notice, but if you have already issued, you may be able to advance the matter until the point of judgment.
- **Bankruptcy proceedings** – cannot be commenced and are stayed upon entry into a breathing space.
- **Enforcement proceedings** – cannot be commenced and cannot be progressed.



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Thank you

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