

## Citizens Advice Scotland

### Mental Health Moratorium Consultation Response

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*Citizens Advice Scotland (CAS), our 59-member Citizen Advice Bureaux (CAB) and the Extra Help Unit, form Scotland's largest independent advice network. Scotland's Citizens Advice Network is an essential community service that empowers people through our local bureaux and national services by providing free, confidential and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help and we change lives for the better.*

*During 2022-23, the Citizens Advice network provided advice and assistance to over 187,000 people. The network put almost £142 million back into people's pockets during this time, with every £1 invested in core advice funding returning £14 in gains for people. Our extensive footprint is important in helping us understand how issues impact locally and nationally across the country and the different impacts that policies can have in different areas.*

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## Introduction

Citizens Advice Scotland (CAS) welcome the Government's proposal of introducing a bespoke Mental Health Moratorium through powers contained in the Bankruptcy and Diligence (Scotland) Bill. CAS have worked closely with Scottish Government officials and the Accountant in Bankruptcy's Mental Health Moratorium Working Group to develop this moratorium.

CAS welcome the Government's focus on recovery, first allowing an individual with mental health and money issues to focus on their mental health journey, then an additional period of time to support dealing with their debts. It is a core piece of work and will protect people with serious mental health issues from debt recovery.

CAS's views in the response reflect these core values and we will continue to work closely with Scottish Government and the Accountant in Bankruptcy as the Mental Health Moratorium is developed and brought into practice.

## Questions

*Q1: Do you agree with proposed Mental Health Moratorium Eligibility Criteria?*

Citizens Advice Scotland (CAS) agree with the proposed eligibility criteria to a certain extent as there are two elements which should be added to the regulations:

The first is that the Debt and Mental Health Evidence Form (DMHEF) should be incorporated into the process. Clients with mental health issues can be in crisis without being subject to a compulsion order and clients who complete a DMHEF should be eligible for a Mental Health Moratorium (*More detail in Q1A*).

The second is that a review process of the overall Mental Health Moratorium must be built into the regulations to ensure it is assessed once the moratorium is up and running. This may allow potential widening of the scope to ensure more people can benefit from the Mental Health Moratorium.

Whilst CAS were a member of the Accountant's in Bankruptcy's (AIB) Working Group on the Mental Health Moratorium and understand the reasoning on why such narrow criteria has been proposed, we equally share some of the concerns from the wider sector around the criteria being too narrow.

**CAS agree with Scottish Government that starting small is a sensible approach to ensure the Mental Health Moratorium is on a sound footing as it operates in practice. However, such criteria is likely to result in clients across our Citizens Advice Network who are not subjected to a Compulsory Treatment Order (or others as detailed above) but would indeed benefit from a Mental Health Moratorium but due to the narrow criteria are excluded.**

This may appear, on the surface, contrary to original policy aim of the Mental Health Moratorium. That being said, as members of the working group, CAS understands the reasoning for such proposals in that the system of eligibility, by being grounded in Mental Health Legislation, also comes with an in-built review process which will assist the triggering of the second (recovery) period, once the individual has completed the compulsory part of their Treatment Order. Additionally, the Compulsory Treatment Orders (and others as detailed above) are closely monitored by the Mental Health professional which should provide the necessary reassurance to creditors.

CAS understands such criteria is a balance of fairness, but we would urge Scottish Government and Ministers to build into the regulations a period of review of the overall Mental Health Moratorium process. By doing so will guarantee that such criteria is monitored and reconsidered in light of the Mental Health Moratorium working in practice. If such evidence is shown that the criteria is too narrow and those who require the use of the Mental Health Moratorium are excluded, and better criteria can be installed, then such amendments should be made to the regulations.

Having a narrow criteria (to begin with) does have the added benefit to allow the Mental Health Moratorium to be enacted and enforced quickly. It is clear, given the current economic climate with the cost of living crisis and the well-established link between mental health and money worries, the Mental Health Moratorium is desperately needed now by debt advisers to support individuals struggling to cope with their mental health and money worries.

**CITIZENS ALERT:** East of Scotland CAB reports client who lives alone in social housing with rent arrears as well as energy debt after their supplier changed without their knowledge. Client has been receiving support with energy debt and has applied for social tariffs to reduce their expenditure. Client mainly struggles as income is too low as they are solely on benefits as well as needing a larger property to accommodate their children who stay over at weekends. Benefits are further reduced due to deductions for council tax arrears and repayment of Universal Credit Advance. Client has several health issues including anxiety and depression. Client is on medication and speaks to their doctor regularly. Client needs support to increase their income and apply for Adult Disability Payment (ADP) but struggles with forms. However due to deductions from benefits, client is struggling to maintain their ongoing bills. Client now relies on foodbanks as income is simply not enough. Whilst client could apply for ADP, mental health is a barrier to such applications. Client wishes to apply for bankruptcy to get a fresh start<sup>1</sup>.

**CITIZENS ALERT:** East of Scotland CAB reports case which demonstrates how the cost of living and low income can make client's situation extremely difficult day to day as well as exacerbate their mental health issues. Client was referred to CAB due to rent and council tax arrears. This followed after the client had to give up work due to both physical and mental health issues causing their debts to spiral. Client lives alone in council rented property and solely on benefit income following job loss. Client's poor mental health affected their ability to cope with day to day activities and struggled to deal with their finances. Client feels if they were able to get their mental health sorted, they would be able to move forward. Client is now receiving assistance with their mental health and now has a nurse supporting them. Client has applied for Adult Disability Payment and is currently awaiting a decision. With assistance from CAB, client is seeking to pursue MAP sequestration in order to get back on their feet and remove the deductions from benefits. Client feels this would assist their mental state as they would no longer be stressing about their debts<sup>2</sup>.

**CITIZENS ALERT:** North of Scotland CAB reports client who sought support from client with benefits claims but suffers from debilitating mental health problems. This can make the client very resistant to change and feels like there is no one to help them. Client originally sought support with non-digital claim for Universal Credit but also supported in new claim for Adult Disability Payment and Council Tax Reduction. Adviser had to spent time prior to the benefit appointment to prepare the client as well as ensuring the timing of such application would cause the minimum financial disruption. As a result, the client had all the relevant information to hand as well as able to maintain their ongoing liabilities. This extra time by the adviser made a huge difference

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<sup>1</sup> CARF-CASE-367608

<sup>2</sup> CARF-CASE-336099

to the client's confidence and empowered them to move forward with their benefit claims. CAB will continue to support the client, especially with their medical assessment and ensure client's awards for his rent and council tax are not impacted by change in benefits<sup>3</sup>.

The above clients are not in acute mental health crisis but due to mental health issues, the process for dealing with their debt problems is taking longer than anticipated. Clients such as these would clearly benefit from a Mental Health Moratorium but under current eligibility recommendation, would not be able to apply for one.

It is for this purpose that such provisions should remain in secondary legislation to allow amendments to be made as the Mental Health Moratorium develops in practice. At present, it is challenging to know which individuals will be excluded and the impact of such until the Mental Health Moratorium has had a chance to be tested. The sooner it is in practice the better.

*Q1A: If you believe the proposed Mental Health Moratorium criteria are too narrow – suggest an alternative that could be measured fairly and easily implemented*

As stated above, CAS understands the proposed reasoning on why such a narrow approach has been considered. The proposed criterion has the added benefit of having an in-built review process where Mental Health professionals must regularly and routinely assess the necessity of placing an individual under the Compulsory Treatment Order (or others as outlined). By being so closely monitored, it provides reassurance to creditors that those accessing the Mental Health Moratorium need specific protections and closes the gap of potential abuses of the system. The purpose and policy aim of the Mental Health Moratorium ensures that it needs to be grounded in the Mental Health sector and such criterion lends itself to this aim.

Nonetheless, there is an existing form which could be utilised as a "triggering point" opening the Mental Health Moratorium to a wider spectrum of individuals with mental health issues whilst still being grounded in the Mental Health professional sector.

This is the Debt and Mental Health Evidence Form (DMHEF)

DMHEF is already used in practice by both the mental health and the debt advice sector. DMHEF was co-designed by creditors, mental health professionals and the debt advice sector. It is used by debt advisers to support someone struggling with debt and mental health issues to provide evidence and facilitate disclosure of their mental health issue to creditors.

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<sup>3</sup> NAIRN-CASE-61060

The purpose of the DMHEF is to trigger tailored support relating to the individual's vulnerability and can be extremely effective in supporting individuals as, on receipt of the form, creditors may offer longer breathing space, appropriate forbearance measures or even debt write-off to support the vulnerable individual.

CAS believe a completed DMHEF should be used as evidence that the client meets the criteria for a Mental Health Moratorium.

**DMHEF itself actually covers what is being sought by the Mental Health Moratorium in terms of certification and declaration. It is completed by a Mental Health Professional, debt adviser and client.** It states that the client's mental health problems are affecting their ability to manage their debt situation, the debt adviser is aware of their debt situation (or aware as they are able to be at this stage) and the client (or POA/Guardian) has given explicit consent to the Mental Health Professional to divulge this information. This should be sufficient evidence of a crisis and be allowed as evidence that the client requires the protection of the Mental Health Moratorium.

It is widely used and accepted across the debt advice and mental health sectors.

By using DMHEF as an additional triggering point to the Mental Health Moratorium, not only will it widen access as being sought by many concerned about the proposed narrow criterion, it removes the "discretionary" ambiguity that many in the mental health sector are concerned about as the form simply asks them to certify their service user does indeed have mental health issues impacting on their money management capabilities. The process is simple, recognised and well-established.

DMHEF should be used alongside the proposed criteria and does not need to be a "one or the other" scenario but rather an alternative route into the Mental Health Moratorium for those not subject to a Compulsory Treatment Order but where their mental health is acute and the individual desperately requires the time, space and compassion to get the support they need for their mental health, before being able to deal with their debts. It recognises that the focus should be on their mental health until such time they are in a position to deal with their debts.

**CITIZENS ALERT:** East of Scotland CAB reports client who is seeking support regarding their NHS concerns. Client has had mental health problems for a number of years and supported by a psychiatrist and CPN in the past but this has since ended. Client was referred for ADHD assessment as client believes this form of medication could help with their concentration whereas their anti-depressant medication is not helping. However, the client could wait "years" before getting a diagnosis and support which comes with this. Client is concerned about this waiting list as they struggle with concentration and with day to day functioning. CAB provided support with client in accessing alternative support whilst on the waiting list as well as making a complaint to the Health Board and MSP. This would take into account the fact the client is

already known to adult mental health services and that they have had no success from therapies tried so far<sup>4</sup>.

Whilst this case doesn't necessarily demonstrate the type of cases for a Mental Health Moratorium, it does illustrate the issue of waiting lists which may have an unintended impact on the Moratorium's processes. If eligibility criteria is dependent on clients being under certain treatment orders, clients could end up having to wait for certain treatments or for certain mental health professionals, already under strain, to sign off on the Moratorium. This could lead to unnecessary delays. By widening the eligibility criteria to include the use of the Debt and Mental Health Evidence Form which is not dependent on waiting lists of this kind, it would ensure those who need access to the Mental Health Moratorium can access it, without delay.

Moreover, the above client may have to wait a significant period of time for assessment which impacts on all aspects of their life, including being able to deal with their financial situation. This can add to the client's poor mental wellbeing as they struggle to manage financially day to day. Whilst clients may not be under a "crisis", their mental health issue does continue to have a serious impact on their lives. Many clients are in a similar position where they may struggle to access support which could help them manage their finances such as ADHD assessment and support but due to waiting lists, they are unable to do so. By not having this support, it could make the debt journeys more complex and longer which the Mental Health Moratorium must take into account, especially in terms of freezing interest and charges.

As stated above, as it is likely the Mental Health Officer will be the first person to become aware of the individual's financial circumstances especially as such questioning is now built into the creation of Treatment and Care plans. By using an established, already well-recognised form such as the DMHEF will remove any confusion on what the process should be and embeds existing tools into a newly formed system.

It should be noted that there is a barrier to using the Debt and Mental Health Evidence form in that medical professionals, mostly GPs, can charge for completing the form. Under the Mental Health Moratorium proposals, as stated under question 9, it has been recommended that no fees can be charged for access to the Mental Health Moratorium. By including the DMHEF into the Mental Health Moratorium process, it has the additional positive bonus of removing such barrier of fees attached the DMHEF for the purposes of entering the Mental Health Moratorium. Moreover, it widens access to not only the Mental Health Moratorium but all the additional forbearance benefits, as mentioned above, that can come with use of the Debt and Mental Health Evidence Form.

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<sup>4</sup> CAEDIN-CASE-212435



**Rather than re-inventing the wheel, simply expanding it by incorporating the use of the DMHEF in alignment with the Mental Health Moratorium is a better approach.** To treat these two potentially effective and much needed tools separately rather than cohesively could likely lead to confusion as well as requiring individuals to fill out one form for the Mental Health Moratorium and then another for the DMHEF which could be used for additional forbearance. It would be better for all parties concerned, especially the individual to only have one form covering all scenarios.

The DMHEF is that form as it is already in the debt advice and mental health professionals' psyche.

*Q2: Do you agree that no minimum debt level should be set for the eligibility criteria?*

CAS agree that there should no minimum debt level set for the eligibility criteria. Following Stage 2 Review of Statutory Debt Solutions, it was recommended and accepted by Scottish Government to remove the minimum debt threshold for Minimum Asset Procedure Bankruptcy. The very arguments and reasoning for such a positive step forward in the debt landscape are the same for having no minimum debt level for the Mental Health Moratorium.

Moreover, CAS have found that in practice clients worry regardless of their debt levels. Removing the need to have a minimum debt level will remove the stigma that they are not "indebted enough" or that their situation isn't serious enough as to qualify for a Mental Health Moratorium.

*Q3: Do you agree there is no need to establish the individuals financial position at the application stage?*

CAS agree that establishing the client's financial position should not be a priority at the application stage. There is no requirement to do this when applying for a Statutory Moratorium and the same expectation should be applied to the Mental Health Moratorium. As reasoned, it would be challenging for the debt adviser or mental health professional to do this at the outset given the individual is likely to be in a mental health crisis. Clients may not be able, because of their situation, to furnish an adviser with any information regarding their debt or income and not being able to do so should not stop them from being able to apply for a Mental Health Moratorium.

**As the policy aim of the Mental Health Moratorium is to provide individuals with *Time, Space and Compassion* (as endorsed by the Scottish Government's Mental Health and Suicide Prevention Strategies) to focus on their mental health recovery followed by a period of time to deal with their debt situation once they are in a better place to do so.**

Such recommendation would afford the individual this opportunity.

CAS believe that it is important that at the application stage, the debt adviser should only have to state that the client has debts which are due and cannot pay. They should not have to confirm these debts.

If they had to provide such details from the outset, it could potentially stop many individuals from taking it further as they are unable to provide these details or unwilling because it is seen as too onerous at a time of crisis. Such demands can further negatively exacerbate their mental ill-health, setting back their recovery even further as demonstrated in the following cases:

**CITIZENS ALERT:** East of Scotland CAB reports client's poor relationship with their GP has meant they are unwilling to explore further benefit options such as Severe Mental Impairment Council Tax Exemption or willingness to discuss the Debt and Mental Health Evidence Form. Client is a survivor of domestic abuse with PTSD<sup>5</sup>.

**CITIZENS ALERT:** West of Scotland CAB reports client, recently released from prison and in temporary accommodation. Client is struggling with severe mental health issues and cannot access support they need. Client is diagnosed with paranoid schizophrenia and struggles to manage their money. Client recently applied for a Community Care Grant to help get household items and clothing but this was refused as he was in temporary accommodation and advised to apply again once in permanent housing. Client has now bought the items from their last benefit payment but now has no money for food. Client has a support worker who is helping them cope with his accommodation but the stress of having no money and living in temporary accommodation is causing a deterioration in their mental health<sup>6</sup>.

**CITIZENS ALERT:** West of Scotland CAB reports a client with bipolar disorder, stress disorder, depression and anxiety. Client was initially referred to CAB via their community link work at their GP practice. Client lives alone in social housing property and in receipt of PIP but hasn't received Universal Credit for almost a year due to sanctions after not providing fit notes. Client's new GP refused to backdate the client's fit note as they only registered with this practice recently. Client's life is very chaotic and it was challenging for the adviser to establish the full facts due to the client's mental health issues. However, by failing to provide fit notes has resulted the client being hit with a sanction and overpayment of housing element. Client has agreed a repayment plan but this may not be sustainable. The client was not provided any mental health or social work support or offer with support in dealing with the overpayment. Instead, the client was left to agree to a repayment plan that they cannot afford<sup>7</sup>.

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<sup>5</sup> PERTH-CASE-121908

<sup>6</sup> CLYDESDA-CASE-38415

<sup>7</sup> GLASDRUM-CASE-59423



It should also be noted that, as stated in Q1A, the proposed simple statement that Scottish Government are seeking could be covered by the Debt and Mental Health Evidence Form (DMHEF)

The form itself is signed by the debt adviser thereby asserting that the individual has debts, the mental health professional to state that the individual's mental health issue is impacting on their ability to manage their finances and a consent form by the individual themselves. Again, by incorporating existing well-established tools into the new system, this embeds existing good practice rather than overlooking or potentially hampering engrained processes and forbearance.

## Application Process

*Q4: Do you think the proposed role of Mental Health Professional at the application stage is appropriate?*

CAS agree with the proposed role and definition of a Mental Health professional who can certify an individual's eligibility for a Mental Health Moratorium. We need the expertise of the Mental Health professional to establish the mental health issues that the client is experiencing.

Taking lessons from the English and Welsh Breathing Space system it is important not to have too narrow an approach on which Mental Health professionals can certify eligibility. In England and Wales, the only professional who can certify a Mental Health Crisis Breathing Space is an Approved Mental Health Professional (AMHP). However, these are a small pool of people which can be challenging when trying to find one to certify an individual who actually knows them and their condition. This creating an unintended barrier to support.

**The proposed definition for the Scottish Mental Health Moratorium should ensure this doesn't happen in Scotland and is future-proof for changing titles and systems.**

Again, it should be noted that the proposed simple statement the Scottish Government are seeking could and can be covered by the Debt and Mental Health Evidence Form thus embedding an already well-established process.

*Q4a: Do you think the proposed role of the Mental Health Professional at the application stage is practical?*

CAS agree that the proposed role of the Mental Health professional is practical. However, it would be for the Mental Health sector to dictate practicality given their expertise. This is best answered by the mental health sector themselves as our opinion would not be evidence based or appropriate.

That being said, CAS would like to highlight that access to Mental Health services especially in rural areas should be considered as this could have an impact on the

practicality and proposed roles of the Mental Health professionals under the consultation.



**CITIZENS ALERT:** North of Scotland CAB reports delays in getting mental health services in remote Highland areas can have an impact. Client recently lost their mother which added to their stress, along with dealing with a cancer diagnosis. Client has tried to access support services online and taken up exercise to help with their health issues but health continues to deteriorate. Unfortunately, due to the area client lives in, professional support is very limited and client is on waiting list for more specialist services<sup>8</sup>.



**CITIZENS ALERT:** North of Scotland CAB reports of how lack of mental health services in the Highland area can have a significant impact. Client recently moved from England and an internal referral was made. Unfortunately, this never materialised after being left under a locum psychiatrist. Client's health further deteriorated and in need of a medication review. Due to the lack of services, this has not been possible. CAB is supporting the client in making a complaint but this demonstrates how in certain rural areas, the Mental Health Moratorium could be severely impacted if there aren't the mental health services available to provide much needed support<sup>9</sup>.

Clients in these situations have an added barrier to support in terms of limited resources. Given the Mental Health Moratorium is reliant on working with mental health professionals, it is important capacity of these services are considered, especially in remote and rural areas which may be extremely limited. It is important that clients with mental health issues in rural areas are not unduly penalised and unable to gain the benefits of the Mental Health Moratorium due to lack of capacity in their area which is beyond their capability and control.

*Q5: Do you think the proposed role of the debt adviser at the application stage is appropriate?*

CAS agree that the proposed role of the debt adviser at the application period is appropriate. Scottish Government have clearly taken the approach to make the debt advisers' role at the outset as soft touch as possible.

This is the opposite of the Mental Health Crisis Breathing Space system in England and Wales where the debt adviser is expected to provide too much information in terms of debts and the individual's financial situation. **As stated in Q3, such onerous practices, even on the debt adviser could have the unintended consequences of the individual being unable or unwilling to take the Mental Health Moratorium further and as such having further negative impact on their mental ill-health.**

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<sup>8</sup> ROSSCROM-CASE-74823

<sup>9</sup> CAITHNES-CASE-88303

CAS would also further add that as well as the definition of the debt adviser under Regulation 8 of the Debt Arrangement Scheme (Scotland) Regulations 2011, the adviser should also have received appropriate training before being able to sign a Mental Health Moratorium. This would stop very new or inexperienced advisers who are employed by an approved agency from undertaking work they, as yet do not understand. A trained debt adviser would be able to identify the complexities of a client's debt situation regarding such matters as liability, statute barred debts etc. Whereas a new adviser may not.

*Q5a: Do you think the proposed role of the debt adviser at the application stage is practical?*

CAS agree that the proposed role of the debt adviser at the application stage appears practical.

That being said, it should be noted that the current capacity of the debt advice sector is already over-stretched. Given the reduced capacity of access to free debt advice in Scotland, the timeframe for clients/mental health professionals to meet with a new debt adviser may not be as timeous as they would hope.

**CITIZENS ALERT:** West of Scotland CAB reports whilst supporting a client with their Adult Disability Payment Review, that the overspill from COVID and its impact on provision of services has had a direct consequence on their client's mental health. Whilst services have since reopened, many clients have been unable to return or access mental health services. In this particular case, the client, who has issues with mental health and was being transferred onto Adult Disability, felt that their medical record didn't always reflect how the client felt their health impacts on them. However, to gain this insight, it was challenging for the adviser as the client would often digress onto different tangents and become repetitive making it difficult to gather information. The client's mental health since COVID has deteriorated and this was exacerbated by their support groups being cancelled. The client has been unable to resume these networks because they have become socially isolated and withdrawn. Additionally, they have physical health issues which impact on their mobility<sup>10</sup>.

**CITIZENS ALERT:** East of Scotland CAB reports client who has deductions in place from their benefit which client believes is due to historic overpayment from HMRC. Client has several mental health issues and although their living costs are shared with their partner, the additional costs due to their health needs and the deductions in place are causing severe hardship for the client. Client found the sudden onset of these deductions alarming and they have been unable to reach anyone to explain why this deduction is being made which has caused further distress. Client is unemployed and unable to work due to illness. The client has several debts including council tax arrears, former mortgage arrears, credit card debt and HMRC overpayment. Client is

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<sup>10</sup> GLASMARY-CASE-51924

keen to apply for bankruptcy but due to issue with former property, this may take some time to resolve before client is able to apply for bankruptcy which is adding to their poor mental wellbeing<sup>11</sup>.

**CITIZENS ALERT:** North of Scotland CAB reports case of how a client's mental health has limited their ability to understand their liability for council tax since moving into their new home. This case demonstrates how mental health impacts on every aspect of a person's life, in particular their day to day financial management. This adds complexity to cases and advisers caseload. In this case, the client was originally referred to CAB for assistance with their Adult Disability Payment and energy bills. Client lives alone in housing association property and assessed as Limited Capability for Work. Social Security Scotland requested further evidence of the client's engagement with Social Work which the client was unable to obtain as their social worker was on maternity leave. Client has several health issues including depression and anxiety as well as alcohol dependency. During their discussions with CAB, it transpired they also had Council Tax arrears for their current property and they were waiting on a Council Tax Reduction decision. However, this had been delayed due to issues with the client's mental health. Client was also concerned with future energy costs so tries not to use heating but will need to during the winter months. CAB has assisted client including offering energy advice and benefit check to ensure client is receiving full entitlement. The main focus was to support the client in progressing their Council Tax Reduction application because this will also help the client in reducing their council tax arrears. Adviser also supported the client in reconnecting with their alcohol support service. However, adviser recognised that due to client's health, they would need to tackle each issue in turn and allow the client to take their own time and for ease of reference<sup>12</sup>.

Again, whilst these cases does not necessarily speak directly to the Mental Health Moratorium in terms of processes and the recommendations under the consultation, it does highlight the level of complexity that may be evident in supporting a person with mental health and money issues. Clients can struggle with engagement, connecting with services, form-filling etc, and require intensive support. In these cases, what may have been simple straightforward solution can quickly turn into more complex situation when it became apparent that the client requires further support especially in terms of re-engaging with other services. It also demonstrates the time and commitment from advisers required to provide this support.

**The Mental Health Moratorium must have as soft touch and less labour-intensive approach for debt advisers as possible.** We understand the concerns raised in several sessions by the Economy and Fair Work Committee, that Scottish Government and Ministers must ensure debt advisers do not become gate keepers to the process. CAS wish to highlight that we do not expect this to become an issue as debt advisers work in the best of interest of their clients. Whilst we recognise the

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<sup>11</sup> PERTH-CASE-69214

<sup>12</sup> ABERDEEN-CASE-136826

burden on the public advice sector, it is important that debt advisers are not excluded from the process but are in fact provided with more resource and funding to allow them to continue to support clients to the best of their ability.

However as already stated in Q1A, the full extent of how the Mental Health Moratorium will work in practice will not become known until it is enacted. This is also true of understanding the full extent of how “burdensome” the Mental Health Moratorium will be on advisers and if their role is practical as suggested.

It is for this purpose that such provisions should remain in secondary legislation to allow amendments to be made as the Mental Health Moratorium develops in practice. At present, it is challenging to know the impact of the Mental Health Moratorium, until it has had a chance to be rigorously tested.

**CAS again urge Scottish Government and Ministers to build into the regulations a period of review of the overall Mental Health Moratorium process. Doing so will guarantee that such processes, definitions and roles are monitored and reconsidered in light of the Mental Health Moratorium working in reality.** If such evidence is shown that the provisions are not working to the policy aim and better processes can be installed, then such amendments should and could be made to the regulations.

*Q6: Connecting the Mental Health Professional to the debt adviser which option would you choose?*

CAS considered the pros and cons of each proposed option and are in support of Option A.

Option B, whilst not without merit in terms of having an expert organisation handling such niche applications, could lead to individuals being double handled aka “passed from pillar to post”. Through our Citizens Advice Network and support of individuals struggling not only with debt but also mental health issues, being handled and passed to another organisation can actively work against their recovery journey.

Additionally, Option A widens the net and allows greater access to the scheme which CAS believe is the best approach. **The wider the access, the more people knowing, understanding and learning about the Mental Health Moratorium and in turn able to gain access to it.**

As stated in Q5, the money advice sector is a limited resource in Scotland. By proposing Option A, and only having one debt advice organisation being responsible for the Mental Health Moratorium, it risks limiting this resource even further.

Moreover, Option B overlooks the fact that many of our debt advisers will have been working with these individuals for a period of time before the Mental Health Moratorium has come into force and have already established good relationships with these individuals, their support networks and families. Such established

relationships between a debt adviser/agency with a client suffering a mental health crisis would be seamless.

Although, it should be noted that the AiB have details of approved advisers within organisations, they do not have information on the agencies' capacity and clients may be cautious engaging with a government agency.

That being said, Option B also has the unintended consequence of undermining the skillset of the money advice sector. Debt advisers across Scotland and part of our Citizens Advice Network have Mental Health awareness training via the MATRICS system. This accredited and valued training programme ensures advisers are equipped to support individuals with mental health issues. It teaches advisers the impact and link between mental health and money worries covering the different types of treatment, available support and even how medication can impact on an individual's ability to manage their illness and money. Our advisers are well-versed in supporting individuals with mental health and money issues but need the Mental Health Moratorium to bolster their support.

Furthermore, CAS are concerned that any third party commissioned would need to be sufficiently aware of the debt advice sector in Scotland. Either CAS or Money Advice Scotland would likely be best placed to provide that link as both our organisations have details of debt advisers and agencies, as well as awareness of capacity. This would require funding in context of the extra work that would be required to be undertaken.

Finally, it should be noted that in the above explanation of how the system could work in practice and having two separate "webforms" which are then married together by the Accountant in Bankruptcy, such processes are unnecessarily bureaucratic. Instead, **this could be simplified by embedding the Debt and Mental Health Evidence Form. The form itself has all the elements as described in terms of signatures and necessary declarations from all parties involved.**

*Q7: Do you believe that specialist debt advice support is required for frontline debt advisers for their involvement with Mental Health Moratorium Process*

CAS do believe that specialist debt advice support will be required for frontline debt advisers.

As stated in Q6, most of this training is already provided by the MATRICS programme which includes a course on Debt & Mental Health. However, as the Mental Health Moratorium will be a new bespoke programme, the MATRICS provision will require additional funding resource to bolster existing support and cover additional work created by the Mental Health Moratorium in terms of training debt advisers.



This does not necessarily mean Scottish Government have to completely reinvent the training required to ensure specialist debt advice support but simply investing in current provisions so it is reinforced and financially supported.

Additionally, as stated in Q5, CAS reiterate the need that all debt advisers should have received appropriate training on Debt and Mental Health before advising on a Mental Health Moratorium.

*Q8: Do you agree that Mental Health Moratorium application should only be consented to by the individual, Power of Attorney or Guardianship Order*

CAS agree that the Mental Health Moratorium requires an element of consent either by the individual themselves or by their appropriate agent authorised by Power of Attorney or Guardianship Order.

**CAS are in agreement with the Mental Health Moratorium Working Group that it would not be appropriate to remove the individual's right to choose to enter the system or not. They will already be subject to compulsion under their Treatment Order and further compulsion would feel inappropriate.**

If an individual does not wish to enter the Mental Health Moratorium, they should not be forced into one. People with mental health issues lose their autonomy in other ways and the Mental Health Moratorium should, at minimum, afford them the ability to have some form of control over their own decisions (where possible). If a person lacks capacity but has a Power of Attorney or Guardianship Order, naturally their authorised agent should be able to make this decision on the individual's behalf.

Such recommendation aligns not only with modern thinking from within the mental health community following the recent Mental Health Law Review but also the Scottish Government's own Mental Health and Wellbeing Strategy which places the individual at the heart of its objectives.

*Q8a: If disagree, grateful for views on how MH application is made available to those who don't have capacity to consent*

*N/A*

*Q9: Do you have any other comments on proposed application process?*

CAS agree with the proposed application period in terms of notification of creditors and no fees being charged for either the work of the Mental Health Professional, debt adviser or Accountant in Bankruptcy.

Whilst it is not 100% foolproof in that certain creditors may potentially be missed, such as local authorities and HMRC, it should be simple enough once these creditors

become known to the individual or debt adviser for them to be advised of the Mental Health Moratorium in place.

To make this effective and ensure protections are fully provided to individuals, CAS would urge Scottish Government and Ministers to include an additional provision that once notified or become aware of the Mental Health Moratorium, **any interest or charges accumulated on the debt added by the creditor between the date of notification and the start of Mental Health Moratorium are retrospectively removed.**

For example, if a creditor is formally notified of a Mental Health Moratorium after the start date, any interest and charges accumulated from that date should be written off. This is to cover any creditors who may be notified several weeks or months after the Mental Health Moratorium start date.

**On the recommendation regarding fees, CAS fully support the Scottish Government's proposal that no fees are the appropriate approach.** The Statutory Moratorium does not charge a fee for access and if fees were charged for the Mental Health Moratorium, this would be in contradiction of the Equality Act 2010. To charge a fee for a process which is only accessible for those with a mental health issue and therefore a protected characteristic and act as a barrier to support would be discriminatory against individuals with mental ill-health.

Additionally, as stated in Q1 response, if the Debt and Mental Health Evidence Form is incorporated into the Mental Health Moratorium, this could have the additional benefit of removing fees which are currently charged by some health practitioners (mainly GPs) for completion of the Debt and Mental Health Evidence Form helping to remove an existing substantial barrier to support for those with mental health and money issues.

Finally, CAS would further add that aligning the Mental Health Moratorium only to the debts that qualify under a Statutory Moratorium as recommended by the AiB Working Group, would exclude any debts that are subject to recovery via non-diligence routes. For example, a Statutory Moratorium would not stop HMRC or the DWP from applying for a Direct Earnings Orders or Direct Earnings Attachment. This has long been a bone of contention for our clients who apply for Statutory Moratorium but still have their earnings or benefits garnished by HMRC or DWP. CAS would therefore strongly urge that all recovery stops for clients subject to a Mental Health Moratorium.

## **Period of Protection**

*Q10: Do you agree with proposed period of protection?*

Although, as part of the Mental Health Moratorium Working Group, CAS originally advocated for the recommendation that the second recovery period should align with the Statutory Moratorium, following review of the Scottish Government's rationale above, CAS agree with the second period being set at 6 months, initially.

As stated by the Scottish Government that between now and the Mental Health Moratorium coming into force, it is possible for the Statutory Moratorium to be reduced. This could be reduced to 12 weeks or even back down to the original period of 6 weeks. **Learnings from the English Breathing Space system show that most individuals entering a Mental Health Crisis Breathing Space would need longer than 12 weeks with many requiring as long as 6 months to deal with their finances post mental health crisis support.** This could mean those entering the Mental Health Moratorium are then limited in their support and at risk of exacerbating their ongoing mental wellbeing, further setting the back their recovery journey.

**CITIZENS ALERT:** West of Scotland CAB reports of client who struggles to reconcile their health issues with ability to work which is having a significantly negative impact on their wellbeing. Client alternates feeling incapable of working and being obligated to continue working. Client is being supported by physiotherapist who has encouraged the client to address their health concerns but found that their Jobcentre Plus work coach isn't clear on how they can support with these concerns in terms of their claimant commitment as they are still classed as a "job seeker". Client has previously taken part in other programmes but this made their mental health worse. Client has asked for support with their anxiety but then their issues worsened and client had a mental health crisis. Client stated that they feel they are "back on the merry-go-round" and don't know what to do to move forward. The client is still keen to commit to a job and is volunteering in a shop to gain experience but their biggest fear is being placed into a situation they cannot cope with. Client has experienced poor support in the past and felt professionals have lost their patience with them. This has made the client fear how they will be treated moving forward and even added barriers to claiming benefit entitlement<sup>13</sup>.

**CITIZENS ALERT:** North of Scotland CAB reports of client with significant mental health problem which arose from surviving domestic abuse. There are ongoing lengthy criminal investigations which continue to impact on the client's mental wellbeing. The client has been referred to psychiatry with suspected PTSD. However, whilst this is ongoing, client's Adult Disability Payment is due to be reviewed. This is despite the claim only being determined a year ago and it took 3.5 months for Social Security Scotland to determine their entitlement. The review will now take place in less than 8 months. The client is due to reach state pension age and any planned review will not increase their award. Client was awarded Adult Disability payment at enhanced rate and now under review. Client feels that the short review period seems to suggest that Social Security Scotland expect the client's difficulties to change in the shorter term due to possible changes to their mental health with the upcoming court actions. However, the client does not expect any significant progression by the planned review date and if anything, it is likely their mental health will deteriorate rather than improve. Client has been

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<sup>13</sup> GLASDRUM-CASE-60211

referred to psychiatrist for support and is currently waiting on an appointment<sup>14</sup>.

**CITIZENS ALERT:** West of Scotland CAB reports client who is attempting to access mental health support to enable them to manage their day to day living and ongoing criminal court case. However, court trial date has now been delayed by a year and leaving the client in limbo where they are unable to access the support they need. Client has had an anxiety spike surrounding the criminal court case against their abusive ex-partner in fear of retaliation and intimidation. Client no longer goes out and socialises and has been referred for mental health support by their GP. Client struggles with starting and finishing tasks due to the lethargy from their depression and anxiety often keeps them awake at night. This results the client has a low mood and low energy meaning they struggle to complete household chores without the assistance of their family. The client's anxiety is particularly pronounced due to the situation with their ex-partner and finds even small changes to their routine can leave them lying awake for hours, overthinking and trying to plan every little detail in case they meet their ex-partner. This means the client avoids going out as much as possible. Client is not able to engage socially and will only go out if someone can accompany them. This has made them seeking support extremely challenging<sup>15</sup>.

In terms of Mental Health Moratorium, these cases demonstrates the individualistic nature of the type of clients who may need to rely on the moratorium to provide them with the time and space to gain support. However, this is not as simple as ensuring the length of time is sufficient. It is about understanding the individual's needs and their own journey to recovery. These clients can have many health issues, both physical and mental which have an impact on how they approach services for support. Additionally, their past experiences with support services may not always have been positive and due to this, clients need to be able to go at a pace which is suited to their needs. It is therefore crucial that the Mental Health Moratorium is built with enough flexibility to account for these individual circumstances and the process does not become a "one size fits all".

The rationale explored by Scottish Government and Ministers in the proposed periods also recognises that Compulsory Treatment Orders tend to deal with the most acute symptoms and once this initial period of concentrated crisis has been stabilised, the second phase of recovery will need to be sufficient to allow individuals the **time, space and compassion** to deal with their debts and that this is very likely to be longer than those without mental health issues.

As stated, **many individuals will be at the very start of the debt advice journey just as they come out of compulsory treatment and will not necessarily be on a sound footing to immediately pick up the debt advice**

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<sup>14</sup> NAIRN-CASE-60153

<sup>15</sup> WDCAB-CASE-21777

**journey.** There will need to be a buffer period for transition as they may have to deal with additional factors such as applying for benefits and housing.

The proposed period of 6 months has been thoroughly and carefully considered by Scottish Government and Ministers. For this purpose, CAS again urge Scottish Government and Ministers to build into the regulations a period of review of the overall Mental Health Moratorium process. By doing so will guarantee that such processes covering period of protections are monitored and reconsidered in light of the Mental Health Moratorium working in reality. If such evidence is shown that the provisions are not working to the policy aim and better processes can be installed, then such amendments should and could be made to the regulations.

*Q11: Do you agree with proposed approach to qualifying debts?*

CAS agree with proposed approach to qualifying debts. CAS firmly believe excluding any debts goes against the policy aim of the Mental Health Moratorium which seeks to provide individuals struggling with their mental health and money, the **time, space, and compassion** to focus on their mental health recovery first and foremost.

**All debts owed by the individual should be included.** CAS agree with Scottish Government that no exclusions should be made on the grounds that the Mental Health Moratorium merely postpones the right to collect these debts, it does not seek to write them off completely.

At this stage, the primary concern is to allow for treatment and recovery. There will be cases where the capacity to deal with ongoing liabilities will be severely impaired or non-existent. This situation could lead to accruing debt which cannot be dealt with later, or is in formal enforcement, before the individual compulsory treatment order has expired.

There are certain conditions which impede cognitive ability to handle day-to-day affairs, particularly tasks like payments and routine financial management. People in this predicament should not be penalised due to their medical condition.

**CITIZENS ALERT:** East of Scotland CAB reports how a client's lack of access to mental health services in local area is impacting greatly on their mental health. Client sought advice from the CAB after receiving a Charge for Payment for their council tax arrears. However due to mental ill-health, client has been in and out of work. This has made managing their money extremely difficult. Client lives with partner in 2 bed social housing property. Partner works part-time and they are in receipt of benefits including Universal Credit and Adult Disability Payment. Client has been referred to psychology regarding their diagnosis for Bipolar but due to waiting list being so long, the client has yet to have treatment and their main area of support is their GP. Client is still trying to get medication to work for them. Adviser at CAB has tried to discuss potential debt solutions with client including bankruptcy but due to mental ill-health, client became stressed and angry and refused to

discuss further. Adviser has had to pause the case as not to aggravate the client's mental health further<sup>16</sup>.

This case clearly demonstrates how severe mental ill-health such as bipolar can have on a client's ability to progress with their debt case. In this instance, the client is waiting for treatment but due to waiting list, this has yet to materialise and as such greatly impacting on their mental health and ability to move forward in terms of their finances.

In the above circumstances, Ministers may wish to seek further guidance from Mental Health professionals on the appropriate scenarios and exceptions to the proposed ongoing payment rule. Allowing debts accrued, after the Moratorium award to be included, if it was deemed the individual's condition (seriously) affects their capability to maintain ongoing commitments.

*Q12: Do you agree that interest and charges should not be added to the individual's debt during the full period of the Mental Moratorium i.e. frozen*

CAS agree with the recommendation that interest and charges should not be added to the individual's debt during the full period of the Mental Health Moratorium. **CAS agree with the Mental Health Moratorium Working Group and strongly feel that to give the individual seeking a Mental Health Moratorium the security and reassurance that their debt situation will not worsen whilst they undergo treatment, interest and charges must be frozen.**

This is because an individual placed into a Treatment Order for the initial period may be under this for a significant period of time. If interest and charges were not frozen, all that would happen is that their debt situation would get worse with growing interest and charges.

Furthermore, it is important that when the Mental Health Moratorium finishes, creditors should not be allowed to apply increased interest and charges or claw back from the client any interest and charges frozen during the Mental Health Moratorium.

Local Authorities and other government agencies should be mindful of the Mental Health Moratorium and not proceed to recovery (non-diligence recovery) which will increase the client's debt level. For example, sending outstanding council tax debt to Summary Warrant.

This could have the unintended consequences on individuals rushing to end their treatment earlier than planned or requesting to end their Mental Health Moratorium

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<sup>16</sup> CARF-CASE-362686



for fear of worsening debts. This would significantly hamper their Mental Health recovery and exacerbate their mental ill-health.



**CITIZENS ALERT:** East of Scotland CAB reports a case with client who is struggling to communicate with Scottish Power regarding their ongoing charges. This is due to client receiving conflicting information from their supplier which has impacted not only on their mental health but they have caused further arrears as the client is unable to make required payments as client is not sure what to pay. Client originally sought advice from CAB for benefits and then referred to money advice after priority debts with council tax and gas came to light. Clients have no arrangement in place to pay ongoing liabilities and being threatened with enforced installation of Pre-Payment Meter. Client is unable to work due to ill health and their partner works part-time. Client suffers severely with anxiety and depression. In the past, they have had suicidal ideation. Client is being supported by a mental health nurse and local GP as well as referred for further support. CAB are attempting to assist client with further support including offers to be referred for specialist energy advice however due to client's mental health, client declined this referral as they felt it was too much at once and they struggled with dealing with too many people. CAB assisted client in applying for Moratorium because they needed time to review and consider their options. However, the client is struggling to communicate with their supplier regarding their ongoing charges which is overshadowing every other issue the client is facing and causing them to feel overwhelmed.

As the policy aim of the Mental Health Moratorium is to allow individuals suffering from severe mental ill-health and money worries, **the time, space and compassion** to focus on their recovery. This can only truly be achieved if interest and charges are frozen.

**Additionally, freezing interest and charges will also facilitate a smoother transition into the second period of the Mental Health Moratorium.** As debts will be set at the outset, and no interest and charges are added, thus debt amounts remain as they are, there will be less administration for the debt adviser. If interest and charges are not frozen, the debt adviser would have to re-establish the outstanding debt amounts and confirm balances which can take several weeks, even months to do so. This could in effect delay the individual seeking a debt solution until the debt balances are confirmed.

For example, if the individual is close to the maximum debt threshold for Minimum Asset Procedure Bankruptcy, and interest and charges are not frozen, it is possible that this option becomes no longer available as the debt balances may have increased and pushed the overall debt balance over the threshold.

**Overall, if interest and charges are not frozen, it will only perpetuate the vicious cycle of mental health and money worries.** By allowing debt to worsen due to interest and charges only exacerbates the situation and pushes resolution

further away. This is contradictory to the overall policy aim of the Mental Health Moratorium.

*Q12a: Grateful for views on possible costs to creditors by the freezing of interest and charges on debts during Mental Health Moratorium period*

Whilst CAS are not in a position to comment on the potential costs to creditors for freezing interest and charges, it is important to note that given the small number of applicants likely to be eligible for the Mental Health Moratorium, we would anticipate these costs to be relatively low. Moreover, as the numbers will be small, any costs to creditors will be offset against any cost incurred with having to employ or start collection/recovery processes.

*Q13: Grateful for views on possible practicalities of limiting creditors from contacting the individual during Mental Health Moratorium Period*

Whilst we understand the need for creditors to contact the individual during the Mental Health Moratorium period to fulfil certain legal and regulatory requirements, CAS agree with the proposal of limiting creditor communication. Except for statutory requirements under the Consumer Credit Act, there would be no need for the creditor to contact the client to chase their debt. The FCA also list creditor responsibilities under their Sourcebook (CONC). However, this may cause issues with government agencies/local authorities who aren't bound by the FCA so can take further non-diligence action without reference to the client or their situation.

The vicious cycle of mental health and money is well-established with debt often being the cause and consequence of poor mental health. The cost of living crisis in recent years has taken a significant toll on people's mental health.

Experts across all sectors have found that more and more adults are struggling with their bills and this is having a serious impact on mental wellbeing. The Money and Mental Health Policy Institute<sup>17</sup> found that 54% of UK adults are now feeling depressed, anxious, filled with dread or unable to cope due to concerns about their money.

This in turn is leading to 1 in 6 now experiencing suicidal thoughts or feelings due to the rising cost of living.

However, those in debt are at greater risk of suicide. 1 in 2 people who have fallen behind on more than one priority bill such as energy or housing costs have reported to have experienced suicidal thoughts as a result of the rising cost of living.

**The Money and Mental Health Policy Institute, on the back of these figures, found that repeated contact from creditors can be a trigger for suicidal thoughts, leaving many people feeling bullied and scared.** The Institute highlighted that in order to minimise the psychological damage from such

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<sup>17</sup> [https://www.moneyandmentalhealth.org/wp-content/uploads/2022/12/Bombarded\\_policy-note.pdf](https://www.moneyandmentalhealth.org/wp-content/uploads/2022/12/Bombarded_policy-note.pdf)

“bombardment” of communication, creditors should carefully consider how they communicate with customers with mental health and money issues. This includes understanding the potential negative impacts their communications can have on individuals and supporting those who have disclosed their mental health condition.

The following cases demonstrate how lack of support and communications from creditors is creating undue distress for client. Constant contact from creditors and clients having to repeatedly explain their situation can be a trigger for severe mental ill-health.

**CITIZENS ALERT:** East of Scotland CAB reports a client contacted after struggling with their finances. Despite emotional support from partner, client has not been sleeping as they are overwhelmed by their finances. During their appointment with their adviser, the client had to take several breaks and was visibly distressed. Client is unable to work due to ill-health which lead to debts further exacerbating their mental health issues. Client’s creditors are consistently contacting them which are causing extreme distress. Client feels they are not in control of their finances. Client was diagnosed with depression and anxiety as well as personality disorder. Client believes they have been mis-diagnosed and currently challenging this. Client is having ongoing support with their diagnosis and believes the main cause for their mental health issue is their debts and that both are closely linked aggravating each other. Due to mental health issues, adviser at CAB is supporting client to apply for a Debt and Mental Evidence Form to seek debt write off with creditors and in the meantime work with creditors to place a hold on the client’s debts to cease communications<sup>18</sup>.

**CITIZENS ALERT:** North of Scotland CAB reports disabled client who has depression and anxiety. Client lives with parents in their home and has profound physical disabilities as well as diagnosed with severe mental health issues. This means the client is unable to work and solely reliant on their disability benefits. Client took out a Buy Now Pay Later credit agreement but misunderstood the terms which has led to arrears. Client has made a complaint to the firm regarding the interest added to the account and to flag their financial difficulties and health concerns but this was not upheld. Client contacted the creditor to explain they were struggling and a hold was placed on the account which should have ceased further communications as well as interest and charges. However, the client received numerous calls from their creditor urging the client to make a payment as a matter of urgency as well as several letters explaining that their balance has increased. Client is constantly bombarded by creditors despite a hold being placed on their account. Client’s creditors are requesting high repayments which the client cannot afford and placing them in a persistent debt cycle and unable to afford

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<sup>18</sup> CARF-CASE-277627

basic necessities. These communications and demands are having a negative impact on the client's mental health. Client feels pressured by creditor to make large payments towards their arrears even though they cannot afford it. Client feels trapped in their debt<sup>19</sup>.

**Such serious impacts of experiencing suicidal ideations are particularly acute at points of mental health crises. Therefore, by limiting creditor communication can help mitigate any potential damage that could be done, even unintentionally.**

As stated, the policy aim of the Mental Health Moratorium is to provide **Time, Space and Compassion** to allow individuals to focus on their mental health recovery. Unnecessary communication from creditors must be avoided to allow this to happen.

Moreover, debt advisers noted on the Mental Health Moratorium application are more than equipped to know if the information provided by the creditor is important enough to be sent onto the individual or not. By sending communications to the debt adviser and not the individual provides that much needed buffer and allows the individual to focus on getting better.

*Q14: Do you agree with proposed approach to protections against diligence?*

CAS are not in agreement with Scottish Government and would urge that the additional protections as suggested by the Mental Health Moratorium Working Group are included.

Firstly, additional protections to prevent eviction of an individual who has been granted a Mental Health Moratorium during the period of the Moratorium are a necessity. Whilst there are other protections in places as highlighted by the Scottish Government, most of these protections require the individual to fight their case in a court or tribunal. **Given the Mental Health Moratorium is geared to those in crisis, the individual may not be in a fit position or mental health space in which to invoke these protections.** And whilst a lay representative may be able to appear on the individual's behalf, this would still require the individual to instruct the lay representative which may not be possible. Thus, having specific protections outlined in regulation that whilst under the Mental Health Moratorium, no evictions can take place on the individual, all that would be required is a copy of the Mental Health Moratorium being supplied to all parties including the court or tribunal to stop further action.

Moreover, this would resolve any practical issues that such evictions could impose. It may be challenging to evict an individual under certain treatment orders, especially if they have been detained under appropriate Mental Health legislation. If eviction is

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<sup>19</sup> TURRIFF-CASE-35749

simply not possible whilst they are under the Mental Health Moratorium, this issue is completely avoided.

As for the recommendation that where there are joint and severally liable debts included in the Mental Health Moratorium, **the diligence protections should extend to all those who are jointly and severally liable, again CAS would urge for this recommendation to be included.** On a practical basis, if the individual under the Mental Health Moratorium is the main earner within their household, additional stress could be placed on the household if such protections didn't extend to all those who are jointly and severally liable. This is because the individual who could resolve the issue may be too unwell to do so and are under the care of a Treatment Order (thus being eligible for the Mental Health Moratorium) and those left in the household, may not have the means to resolve the issue and are therefore penalised.

CAS would further add that any creditor advised of a Mental Health Moratorium should also inform their collection agents, including Sheriff Officers, to prevent them taking further diligence/recovery action. At present, Sheriff Officers are not obliged to check the Register of Insolvencies to see if a person they are taking diligence against has a Statutory Moratorium in place.

This should include non-diligence debt recovery including deductions from benefits, Direct Earnings Attachments, Deductions from Earnings Orders etc.

CAS would also like Scottish Ministers to consider whether existing fines from either civil or criminal courts should be included in a Mental Health Moratorium as currently it is not clear if they will be suspended.

Overall, if the policy aim of the Mental Health Moratorium is to provide sufficient breathing space for the individual to focus on their mental health recovery, all and any protections which afford them the ability to do this must be included. Failing to include these two vital additional protections weakens this focus and contravenes the policy aim being sought.

*Q15: Do you agree with proposed position on creditor consequences for not adhering to a Mental Health Moratorium?*

**CAS agree that this is a fair recommendation but urge the Scottish Government and Ministers to build in a period of review into the regulations.** Part of this review must focus on these creditor obligations in case there are creditors proven to not adhere to them. It is important to review the situation to establish if creditors are adhering to the Mental Health Moratorium. This may mean future regulatory powers are required to be implemented.

**CITIZENS ALERT:** West of Scotland CAB reports client with severe mental health issues having problems with creditors refusing to write off debts despite proof that client is unable to ever pay these off. The client was diagnosed with bipolar disorder which directly lead them to take out debts.

Adviser has been working with the client for over a year. The client is receiving support from local mental health team. They have good and bad periods. Despite evidence provided to creditors regarding the client's situation and that they have no disposable income, they have refused to write off the debt<sup>20</sup>.

Whilst private financial firms regulated by the Financial Conduct Authority have strict obligations and rules that they must adhere to, such as the newly introduced Consumer Duty. This does not extend to all creditors, particularly public sector debt which has grown significantly in recent years and often carry the most severe debt collection practices. Therefore, further regulatory powers may be required in future and must be kept under review.

To ensure success of the Mental Health Moratorium, CAS would urge Scottish Government to publish guidance for creditors, both public and private. This should be published as soon as the Mental Health Moratorium comes into force, so all creditors are fully aware of their obligations and expectations when supporting individuals struggling with their mental health and money worries.

*Q16: Do you agree with proposed position on creditor's right to challenge the granting of Mental Health Moratorium?*

CAS agree with the Scottish Government's recommendation not to include a right to challenge for creditors. To be eligible for the Mental Health Moratorium, a Mental Health Professional certifies their eligibility and has the expertise to do so. **Creditors do not have this expertise to determine whether a person is eligible or not. They are not Mental Health Professionals and are not qualified to challenge a client's mental health condition.**

As commented in the evidence sessions to the Economy and Fair Work Committee on the Bankruptcy and Diligence (Scotland) Bill, it is important that the values of trust and respect are at its core. The Mental Health Moratorium and creditors must respect and trust the professionalism of Mental Health workers and debt advisers.

**Allowing creditors, the right to challenge undermines this respect and trust.**

Moreover, by allowing the right to challenge, this could delay the much needed protections put in place by a Mental Health Moratorium at a time of greatest need. By not having such right to challenge would ensure an individual is afforded the protections they need as soon as this need has been identified. Any delay could have severe unintended consequences on the individual and goes against the policy aim of the Mental Health Moratorium.

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<sup>20</sup> CLYDESDA-CASE-16473



*Q16a: Do you think creditors should be able to request cancellation of an approved Mental Health Moratorium?*

As stated above in Q16 above, creditors do not have the mental health expertise to request a cancellation of an approved Mental Health Moratorium. An additional benefit of using the established system of the Mental Health (Care and Treatment) Act means such right to cancellation is not required.

The initial stage of the Mental Health Moratorium is effectively monitored by the system of review built into Treatment Orders. Once the “compulsory” part of the Treatment Order is no longer required and certified as such by the appropriate tribunal, the Accountant in Bankruptcy can be one of the statutory bodies notified of this development. This would end the initial stage of the Mental Health Moratorium and kick start the second stage focusing on debt recovery. There are no circumstances in which a creditor would learn of an individual being no longer eligible of a Mental Health Moratorium before the Accountant in Bankruptcy as this only ends when their compulsion has been lifted.

*Q16b: If you answered to Q16a, in what circumstances could they request a cancellation*

N/A

*Q16c: Further to Q16b, grateful for views on how cancellation process could work?*

N/A

## **Obligations on the Individual**

*Q17: Do you agree with proposed approach to the obligations on the individual?*

CAS agree that this is a fair recommendation regarding obligations on individuals under a Mental Health Moratorium as there is no more expectation being placed on them compared to any other statutory products.

It should be noted that practically, it may be challenging in certain circumstances where the individual’s mental health may mean they are unable to fully understand the obligations or their mental health conditions may lead to impulsive behaviours which overrides their ability to refrain from breaching said obligations.

In these circumstances, compassion, empathy and understanding should be applied to recognise such breaches are not done maliciously or even consciously.

CAS urge Scottish Ministers to be mindful of the individual’s ability to understand the limitations of the Mental Health Moratorium and any breaches should be looked at on an individual basis in terms of ascertaining their reasons for such a breach before removing the protection of the Mental Health Moratorium.

*Q18: Do you believe penalties should be applied to the individual for not following the rules of Mental Health Moratorium?*

As stated in Q13, the link between debt and mental health is intrinsic and well-established where debt is often the cause and consequence of poor mental health.

As such, there may be instances where obligations are breached, not due to malicious forethought or wish to abuse the system but simply because their mental illness has caused them to breach.

**Penalising individuals in these circumstances would go against the policy aim of the Mental Health Moratorium and the proposed criteria being ground in mental health sector ensures no one can abuse the system.**

CAS believe penalties will further exacerbate the client's situation. Being in debt should not be stigmatised and having a mental health condition should not be stigmatised. Clients may, because of their nature of their mental health condition, have little or no control over their actions and may act impulsively without regard to the rules of the Mental Health Moratorium.

As such if breaches do occur, it is likely to be a consequence of their mental health condition where impulsive issues may rise causing a breach of their obligations. For example, a person with psychosis or bipolar disorder may have difficulty controlling their impulsive nature and take out further debts, not out of malicious intent but simply because they cannot control their impulses.

In such circumstances, individuals who in the system are in desperate need of support and understanding, not penalties which would only exacerbate their condition. This is a compulsion due to their mental health condition and not seeking to abuse the system deliberately or maliciously.

*Q18a: If answered yes, views on what kind of penalty would be appropriate?*

N/A

*Q19: Do you agree there is insufficient justification to place restrictions on individual's access to credit?*

CAS agree there is insufficient justification to place restrictions on an individual's access to credit. As outlined by the Scottish Government, creditors have other means in which to make lending decisions. If creditors are doing their due diligence during the credit application process, they should be aware of any issues regarding capability to repay any credit applied.

If restrictions were placed on the individual under a Mental Health Moratorium when such restrictions are not placed on those under a Statutory Moratorium, this would give rise to cases of discrimination based on a person's mental health. As this is a protected characteristic, such discrimination would be a direct contravention of the Equality Act 2000.

Moreover, individuals are able to self-restrict access to further credit if they feel this is a necessary step for their recovery. This can be done by adding a Note of Correction to their Credit Reference File which can flag their mental health condition and even self-exclude themselves from further lending.

It is already commonly used by individuals with severe mental illness as a means to manage their money better. It is their personal choice and the individual has complete control over what is written and even if they wish to have it removed in future when they feel in a better place to do so. **Such self-restriction should be encouraged because it allows the individual to be in control. Whereas imposing these restrictions strips away that control.**

As there are other options available to both creditors and individuals in terms of access to further creditors, additional restrictions are not required under the Mental Health Moratorium.

*Q20: Do you believe other obligations should be placed on the individual in a Mental Health Moratorium?*

CAS agree that the proposal for individuals under a Mental Health Moratorium should meet their ongoing liabilities but do not agree that other obligations should be placed. Placing more obligations on any individual could create fear and stop them from applying for a Mental Health Moratorium.

On the surface such proposals appear fair to all parties as not everyone under a Treatment Order (as outlined for eligibility) will be detained and many individuals will be living in their communities and therefore have ongoing liabilities to meet.

It should be noted that in these cases, individuals should have a support network of Mental Health professionals and others to help manage their day to day finances. However, as demonstrated by some of our earlier case studies, this may not always be the case and **creditors should have compassion and understanding that individuals under a Mental Health Moratorium, at least initially, may struggle when trying to manage their ongoing liabilities.** This may require creditors to show extra forbearance to allow individuals an opportunity to manage their liabilities but with understanding that they may sometimes fall short of being able to do so.

On this basis, CAS would urge Scottish Government and Ministers to build into the Mental Health Moratorium a period of review to establish how such scenarios play out in practice. It may be after a period of review that it is apparent extra protections are required for individuals who struggle to maintain their ongoing

liabilities due to their mental health condition or creditors are failing to show the necessary compassion and forbearance to support individuals to so.

## Delivery Mechanism – Using DAS

*Question 21: Which Options would you choose as the delivery mechanism for the Mental Health Moratorium?*

- *Option 1 – Clone the underlying IT system in place for DAS to administer the MH Moratorium*
- *Option 2 – Enrol the individual into DAS with no Payments due*
- *Neither*

Whilst CAS were inclined to choose Option 1 where the system is cloned but sits distinctly separate from the Debt Arrangement Scheme (DAS). On reflection, neither Option 1 or 2, are appropriate and any system would need to be bespoke, simple and completely separate from the Statutory IT Systems currently in use so not to further complicate the process for all involved.

**The DAS is a debt solution, the Mental Health Moratorium is a pause on debt recovery and not a solution in itself.**

Option 1 is aligning it with the current statutory IT systems on AiB website and whereas it may be simple to set up, CAS's concern is that it would rely too heavily on "evidence" driven input by the debt adviser as is the current case for using eDEN or BASYS. Advisers may not have evidence of debts or income when applying for a Mental Health Moratorium. A Statutory Moratorium does not require confirmation of debts or income at the application stage.

Option 2 would be inappropriate as it is placing a client in statutory debt solution when neither the client nor adviser has had time or space to explore the client's debt options.

CAS have deep concerns around Option 2 being proposed where the DAS is used as a mechanism where an individual is placed automatically into a DAS on award of Mental Health Moratorium. This goes against everything CAS and our advisers would strive to achieve for the client in the debt advice process.

Firstly, the proposal that it would fit the "timeline" of the Mental Health Moratorium in terms of being revoked after 6 months of non-payment does not work. **There are two periods of the Mental Health Moratorium.** The first covers Mental Health Recovery, the second focuses on debt recovery. The second period is being proposed at 6 months and if this was the only period, perhaps this would fit the timeline. **However, this completely fails to consider the first period which also has interest and charges frozen. This period has no set timeline and could run for a significant period of time, depending on how long the person is under a Treatment Order (as stated in the eligibility criteria).** This is regularly reviewed but there is no set end date. CAS cannot see how the proposed

plan of placing an individual into a DAS in order for interest and charges to be frozen can effectively cover both these periods.

**Secondly, such a proposal skews the purpose and intent of the Mental Health Moratorium which is very clear in its policy aim.** The Mental Health Moratorium seeks to provide individuals with severe mental illness the **time, space and compassion** to focus on their mental health. Once they are recovered, they are then afforded time to focus on their debts.

Whilst CAS can understand the proposed practicalities of placing an individual in a DAS with zero expectation of payment in order to stop interest and charges, by doing so is putting "the cart before the horse". It sends the wrong message to individuals in these situations.

By placing individuals into a debt solution, which may not even be appropriate for them, from the outset, and in turn ends up being revoked, could have severe unintended consequences on how that is perceived by the individual.

It adds expectation of payment whilst other options including debt write off could be explored. Creditors could reject other offers and potential solutions as they expect payment from the individual now in a DAS.

**It places an individual into a debt solution before they have even had the benefit of debt advice.**

Moreover, it is expecting debt advisers to place a client into a debt solution before they have had a chance of reviewing their situation, a direct contravention of their Consumer Duty and FCA obligations.

Many individuals who will be placed under a Mental Health Moratorium may struggle to understand complex information, make informed decisions or even able to fully communicate their wants, needs and personal circumstances especially at point of crisis due to their mental ill-health, the suggestion that a debt adviser or mental health officer having to explain this process and what it means as well as the individual's obligations and expectations, could be challenging at best and more likely impossible.

Option 2 assumes an individual entering a Mental Health Moratorium will end up seeking a statutory debt solution when other informal debt solutions may be more suitable, depending on the individual's situation. This could include token offers, debt write-off or selling an asset.

**Not everyone entering a Mental Health Moratorium, or even Statutory Moratorium seeks a statutory debt solution.** A debt adviser will only be able to assess what is suitable for their client once that individual has recovered from mental ill-health.

Finally, Credit Reference Agencies, who already struggle to differentiate DAS from bankruptcy, would further struggle to identify the difference between a Mental

Health Moratorium and a “proper” DAS if Option 2 was used. This could have serious and unintended implications on the individual’s credit score.

Overall, whilst there may be a practical standpoints for Option 1 and 2, these are not options CAS can fully support. As recommended by the Mental Health Moratorium Working Group, CAS understands cloning certain elements of existing systems such as eDEN and BASYS to support the Mental Health Moratorium but any system for the Mental Health Moratorium must be distinct in its own right, bespoke, simple and completely separate from other systems. This is to ensure the process is not further complicated for all involved.

*Q21a: If selected neither, grateful for views on workable alternative which would meet MH Moratorium requirements*

As stated above in Q21, any system would need to be simple but robust so not to complicate further the process for all involved. It needs to be bespoke and separate from current statutory debt option systems.

### **Interaction with the Standard Moratorium**

*Q22: Do you agree with proposed position on how the Mental Health Moratorium will interact with Standard Moratorium?*

CAS are in agreement partially on the proposed position on how the Mental Health Moratorium interacts with the Statutory Moratorium insofar that should a Statutory Moratorium be in place when a Mental Health Moratorium is awarded, the Statutory Moratorium will immediately end and there should be no limit on the number of Mental Health Moratorium applications for individuals.

If the Statutory Moratorium is revoked because the client meets the criteria for Mental Health Moratorium, the previously revoked Statutory Moratorium should be excluded as if it hadn’t been applied for.

However, CAS do not agree with the proposal that there should be a period of at least 6 months between a Mental Health Moratorium and applying for a Statutory Moratorium.

**Individuals should be able to apply for a Statutory Moratorium as soon as a Mental Health Moratorium ends if they so require doing so. These Moratoriums are separate products and must be treated as such.** Individuals may require further time following the end of their Mental Health Moratorium and therefore applying for a Statutory Moratorium could be suitable.

Given the Statutory Moratorium does not freeze interest and charges, there is no detriment to creditors and there is no need for an arbitrary 6 month period between products. Whilst the current Statutory Moratorium lasts for 6 months, this period is subject to change and could be reduced in future. Therefore, any argument that



allowing individuals to “jump” from product to product could mean creditors are delayed in recovering debt for significant length of time is unfounded.

As stated, these products are separate and many in a Mental Health Moratorium may be able to resolve their debt solutions within the proposed 6 months for the second recovery period. However, as demonstrated by our earlier case studies, others with more complex needs and acute vulnerabilities may find the 6 months secondary recovery period simply eaten up by them sorting out their benefits and housing situations. Those with severe mental illness, especially if coming out of a period of detainment, can wait months before their situation stabilises to a point where they can start to consider their debt options.

Whilst the Scottish Government are suggesting a review of the Mental Health Moratorium, which CAS supports, there will be a time when all that is allowed to an individual to deal with their debts is that 6 months recovery period. This may not always be sufficient and being able to apply for a Statutory Moratorium to help them get to debt relief could be the difference between finding their feet or falling backwards to where they were before. **It may not be appropriate for them to apply for another Mental Health Moratorium as their mental health is not in an acute state which meets the eligibility criteria but by refusing them entry to a Statutory Moratorium could end up exacerbating a stabilised condition and pushing them back into mental ill-health.**

As stated, given the Statutory Moratorium doesn't freeze interest and charges, it is hard to see the harm to creditors that this would cause but by refusing to allow an individual to seek a Statutory Moratorium for at least 6 months after their Mental Health Moratorium, could cause the individual significant harm. It is for this reason that CAS cannot agree with this part of the recommendation.

## Additional Questions

### *Q23: Views on how best promote the Mental Health Moratorium?*

Given the importance of the Mental Health Moratorium within the debt landscape, CAS are keen to ensure Scottish Government promote its introduction far and wide.

This goes beyond simply informing the organisations that would be involved in both the mental health and money advice sectors. A coordinated National Campaign, working with a wide range of stakeholders and different media outlets is needed.

As with the rollout of the FCA's Consumer Duty, it is important that organisations that provide Mental Health support and debt advice agencies are involved in any decision on how to promote the Mental Health Moratorium. This should include training for all involved, a short advertising campaign through the Scottish Government including posters/flyers in locations such as GP surgeries and Citizen Advice Bureaux.

CAS would recommend Scottish Government working at a minimum with the following stakeholders and their networks:

- CAS and by extension the Citizens Advice Network
- Mental Welfare Commission
- SAMH
- See Me
- Change Mental Health and by extension the National Rural Mental Health Forum
- Poverty Alliance
- Money Advice Scotland
- Money and Pensions Service
- NHS Scotland and Public Health Scotland
  - This includes all 14 health boards, Integrated Joint Boards and Health & Social Care Partnerships
- COSLA
- IRRV
- Improvement Service
- Social Security Scotland
- Young Scot

CAS would recommend working closely with Social Security Scotland and the rollout of Adult Disability Payments as it is likely many applicants for this non-means-tested benefit may equally be in need of and eligible for a Mental Health Moratorium. **By promoting such mental health and money tools, along with other resources including the Debt and Mental Health Evidence Form, debt advice and other toolkits in operation, can start to build a holistic, person-centred approach where a benefit applicant may find out about other sources of support. This encourages a “Tell Us Once System”.**

CAS would also recommend working closely with other Scottish Government departments where the Mental Health Moratorium can complement other areas of policy work. This would ensure the work of the Mental Health Moratorium is taking a “Whole Government” approach, in particular the work of the Mental Health and Wellbeing Strategy and the Suicide Prevention Strategy.

CAS would also like to highlight the work of the Money and Pensions Service with their Money Guiders Programme and network which seeks to provide training to frontline professionals around money guidance and financial health. This free training provides frontline staff who work with people at risk of financial difficulties to gain money knowledge and confidence in approaching such conversations and refer their service users to specialist debt advice. The programme also contains access to the Knowledge Hub where the community of Money Guiders across Scotland and the UK can share resources, best practices and widen their own expertise. **By working closely with Money and Pension Service, on launch of**

**the Mental Health Moratorium, Scottish Government could spread the awareness of the new Moratorium across a wide ranging network.**

Finally, at all points across this awareness raising campaign, CAS would recommend Scottish Government creating a simple guidance document, tailored to each sector such as debt adviser, mental health professionals, money guiders etc, highlighting the purpose and processes of the Mental Health Moratorium. A good example of this would be the Money Advice Trust's page on the Debt and Mental Health Evidence Form, which provides a breakdown on the form for different audiences - <https://moneyadvicetrust.org/advice-services/dmhcf/>

This guidance along with information on how to access and use the Mental Health Moratorium should then be shared across the networks as mentioned above.

*Q24: Grateful for any further comments about Mental Health Moratorium which hasn't been raised in consultation?*

**As highlighted in Q1, CAS strongly urge Scottish Government and Ministers to include the Debt and Mental Health Evidence form into the Mental Health Moratorium, embedding its use and practice into the Moratorium's processes.**

CAS firmly believe that using the Debt and Mental Health Evidence form as one of the forms for triggering a Mental Health Moratorium will widen the access as many stakeholders are keen to see.

The Debt and Mental Health Evidence Form must be completed by a Mental Health Professional, certifying that the individual has a mental health condition which is impacting on their ability to manage their money.

**The Debt and Mental Health Evidence Form is an already existing form which is well-used by debt advisers when supporting individuals with debt and mental health issues.**

It was co-designed by creditors, mental health professionals and the money advice sector. It is used by debt advisers to support someone struggling with debt and mental health issues to provide evidence and facilitate disclosure of their mental health issue to creditors.

This existing form could be utilised as a "triggering point" opening the Mental Health Moratorium to a wider spectrum of individuals with mental health issues whilst still being grounded in the Mental Health professional sector.

Therefore, the purpose and policy aim of the Mental Health Moratorium will still be met.

The main purpose of the Debt and Mental Health Evidence Form is to trigger tailored support relating to the individual's vulnerability and can be extremely effective in supporting individuals as, on receipt of the form, creditors may offer longer

breathing space, appropriate forbearance measures or even debt write-off to support the vulnerable individual.

**As stated in Q1a, the form itself actually covers what is being sought by the Mental Health Moratorium in terms of certification and declaration. A Mental Health Professionals will “sign” the form to certify that the person named does indeed have a mental health condition which impacts on their ability to manage their money. It is also signed by the individual and by the debt adviser. It is widely used and accepted across the money advice and mental health sectors.**

By using this form as an additional triggering point to the Mental Health Moratorium, not only will it widen access as being sought by many concerned about the proposed narrow criterion, it removes the “discretionary” ambiguity that many in the mental health sector are concerned about as the form simply asks them to certify their service user does indeed have mental health issues impacting on their money management capabilities. The process is simple, recognised and well-established.

And it need not be an “either or” as both the criteria proposed by the Working Group and the Debt and Mental Health Evidence Form could be “triggering points”. The form should be used alongside the proposed criteria where the form is seen as an alternative route into the Mental Health Moratorium for those not subject to a Compulsory Treatment Order but where their mental health is acute and the individual desperately requires the **time, space and compassion** to get the support they need for their mental health, before being able to deal with their debts.

By embedding this already widely recognised form, this would recognise the policy aim of the Mental Health Moratorium where the focus should be on an individual’s mental health until such a time, they are in a position to deal with their debts.

Embedding the form may also have an additional benefit of removing barriers to the form’s usage. As stated in Q1a, medical professionals, mostly GPs, can charge for completing the form. Under the Mental Health Moratorium proposals, as stated under Q9, it has been recommended that no fees can be charged for access to the Mental Health Moratorium. **By including the Debt and Mental Health Evidence Form into the Mental Health Moratorium process, it would remove this barrier when the form is being used for the purposes of entering the Mental Health Moratorium.** Moreover, as highlighted, it widens access to not only the Mental Health Moratorium but all the additional forbearance benefits, as mentioned above, that can come with use of the Debt and Mental Health Evidence Form.

**Rather than re-inventing the wheel, simply expanding it by incorporating the use of the Debt and Mental Health Evidence Form in alignment with the Mental Health Moratorium is a better approach.** To treat these two potentially effective and much needed tools separately rather than cohesively could likely lead to confusion as well as requiring individuals to fill out one form for the

Mental Health Moratorium and then another for the additional forbearance as provided by the Debt and Mental Health Evidence Form. It would be better for all parties concerned, especially the individual to only have one form covering all scenarios.

The Debt and Mental Health Evidence Form is already in the money advice and mental health professionals' psyche.

It will remove any confusion on what the process should be used to support individuals and allows the Mental Health Moratorium to work in tandem with the Debt and Mental Health Evidence Form rather than against it or ignoring already existing tools into a newly formed system.

Finally, CAS believe that the Mental Health Moratorium could be aligned to the statutory moratorium legislation, which could be amended to include clients with mental health issues. The current legislation could be amended to include additional creditors (including DWP/HMRC/Local Authorities) and include non-diligence recovery. This would also align more with the Breathing Space process currently in England and Wales and allow more protection to all citizens of Scotland, not only those with Mental Health issues.

*Q24a: Happy for officials to contact to discuss response if want to explore comments in more detail?*

*Yes*