

MaPS Interim Communication April 2024

Breathing Space and Court Judgments with Unknown Creditors

MaPS has recently received submission queries regarding the assessment of 2a-vii where the customer has debts with unknown creditors and are entering into a Breathing Space.

Previously it has been assessed that, where the creditor is unknown and enforcement action has been taken, the contact details for the last known authority enforcing the debt and any known reference numbers would be listed in the Breathing Space application until the creditor details have been obtained. For example, where the customer has received enforcement action through the County Court, the court contact details would be added to application until the original creditor has been identified.

Following further review of this approach, specialist advice has been sought and confirmed the below:

Inputting a debt which lacks the creditor contact details (required under reg 23 (5)) does not impose a duty on the secretary of state under reg 25 (2) to notify the creditors and effectively start the moratorium for that additional debt. Therefore, legally, the moratorium protections would not apply in such a scenario because the Secretary of State would not be under a statutory duty to inform the creditors and trigger the moratorium.

With this information, MaPS has updated the assessment approach for 2a-vii in these scenarios to reflect the above. This is specific to customers who have a court judgment and have no details of who the creditor is. It is not expected that this debt is listed on the Breathing Space application until the creditor, or an agent of the creditor, has been identified and their contact details are known. It is still expected that advisors either:

- Advise the customer to find the creditor and their contact details so the debt can be added to the Breathing Space, or
- Take steps to find the creditor and their contact details on behalf of the customer so the debt can be added to the Breathing Space.

The advisor must consider the customer's capabilities and stage of enforcement when deciding whether to obtain the creditor's details on the customer's behalf or advise the customer to do this themselves.

Advisors are still expected to inform customers that the debt will not be included in the Breathing Space moratorium until the creditor or agent of the creditor is identified. Advisors must make the customer aware that they will not be benefiting from the moratorium protections for this debt until it has been added and so enforcement action may proceed in the meantime.

This approach will be implemented for any assessments carried out from 1st May 2024 onwards.

This change in approach will not impact how 2a-vii is assessed for advisors who choose to continue listing debts with unknown creditors in the Breathing Space application so long as they are taking steps to obtain the creditor's details and the customer has been made aware of the advice above. This must be evidenced in the case record for 2a-vii to be assessed as Met.