



Neutral Citation Number: [2024] EWHC 3339 (Ch)

Case No: CH-2024-000014

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**CHANCERY APPEALS LIST**  
**ON APPEAL FROM THE DECISION OF HHJ BAUCHER**  
**AT THE CENTRAL LONDON COUNTY COURT 2<sup>ND</sup> JANUARY 2024**  
**CLAIM NUMBER F4PP1142**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 20/12/2024

**Before :**

**SIR ANTHONY MANN**

**Between :**

**Seculink Limited**

**Claimant/  
Appellant**

**- and -**

**Mr David James Terence Forbes**

**Defendant/  
Respondent**

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**Tom Morris** (instructed by **JMW Solicitors LLP**) for the **Claimant/Appellant**  
**Martin Westgate KC** and **Angharad Monk** (instructed by **T V Edwards Solicitors LLP**) for  
the **Defendant/Respondent**

Hearing date: Thursday 17<sup>th</sup> October and Friday 18<sup>th</sup> October 2024

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**APPROVED JUDGMENT**

This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on the National Archives and other websites.

The date and time for hand-down is deemed to be 2pm on Friday 20<sup>th</sup> December 2024

**Sir Anthony Mann :**

1. This is an appeal, with the permission of Bacon J, from an order of HHJ Heather Baucher sitting in the County Court at Central London dated 2nd January 2024, based on a judgment delivered in three parts. For these purposes I can treat the judgment as one judgment on three points. The issues before her arose out of the lengthily entitled Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020, which I shall call “the Regulations”. Those Regulations provide for a debtor to seek a moratorium in respect of debts which are “qualifying debts” and the main question before the judge below was whether the county court had jurisdiction in the proceedings before her to decide whether a debt was a “qualifying debt” or whether that function was to be carried out purely by a “debt advice provider” (“DAP”) who is given various functions under the Regulations. She decided that the county court did not have jurisdiction, and then went on to consider other more shortly advanced points as to whether the proceedings before her could or should be allowed to proceed in the circumstances. Essentially the creditor lost in this case, and it is the creditor who appeals.
2. On this appeal Mr Tom Morris appeared for the appellant and Mr Martin Westgate KC led for the respondent.

**The facts giving rise to the dispute, and the decision below**

3. The facts before the judge were not in dispute and I can take them from the appellant’s skeleton argument. The Appellant advanced a bridging loan of £260,000 (the “Loan”) to the Respondent on 12th October 2018 for a term of four months, secured by way of charges over five of the Respondent’s properties. The Loan was not repaid and the Appellant commenced possession proceedings in respect of all five properties. They were consolidated into a single claim and settled by Tomlin Order dated 17th June 2021. The Respondent breached the terms of the settlement agreement in the Schedule to the Tomlin Order and the Appellant applied on 18th April 2022 to enforce the terms. The appellant sought payment and possession of the properties in accordance with the terms of the Tomlin order.
4. At the first hearing of the enforcement application the respondent (Mr Forbes) claimed that he had the benefit of a moratorium under the Regulations. As will appear, there are two types of moratorium - a “breathing space moratorium”, which is short term (60 days) moratorium, and a mental health crisis moratorium which is capable of lasting for a lot longer (there is no built-in specific duration). The process requires notification to the Secretary of State who in turn notifies relevant creditors. The appellant had been sent a notice under the moratorium procedures specifying that a breathing space moratorium had been initiated. The appellant initially did not think it had received such a notice, but later conceded that it had.

5. There is an oddity about what happened (or did not happen) next. Although the appellant received notice of a breathing space moratorium, the moratorium that had actually been initiated was a mental health crisis moratorium. The appellant has not pursued a process based on a complaint that the wrong sort of notice was served and that it did not have proper notice of the actual moratorium, though Mr Morris says that his client reserves the right to challenge the notice as such. It accepts that the time limit for challenge under the Regulations has passed because it is not geared to the receipt of a valid notice (it is geared to another procedural step, as will appear). Instead, the appellant has chosen instead to run an argument in the existing proceedings to the effect that the debt in question did not qualify for protection under the Regulations (it was not a “moratorium debt”).
  
6. After some more interlocutory skirmishing which is not relevant in its detail, directions were given for the determination of that issue by a judge. The issues which were to be tried were determined by HHJ Freeland KC in an order of 4th July 2023 as follows:

“a. whether a mental health crisis moratorium was validly initiated under the [Regulations];

b. whether the Defendant's debt to the Claimant falls within the scope of the [Regulations]

c. the Claimant's application dated 18 April 2022, pursuant to Regulation 10 of [the Regulations]”.

Those are the issues that arrived before Judge Baucher. The appellant has in fact accepted the valid initiation of a moratorium, so the first question no longer arises for determination.

7. Judge Baucher did not decide whether or not the debt was a moratorium debt, or a qualifying debt, because she held that that was not a matter for the court; it was an issue which the Regulations consigned to the debt adviser with functions in relation to such matters. Whether or not that is right is the principal issue which arises on this appeal. There were then issues as to other procedural avenues said to be open, and she held they were not. I explain those below.

## The Regulations and their scheme

8. It will be necessary to refer extensively to the Regulations in this judgment in order to deal with submissions as to the effects of cross-referencing. Relevant parts of the Regulations are set out in the Appendix to this judgment, to which reference should be made for detail where appropriate, though from time to time it will be necessary to set out parts in this judgment. At this point I provide an overview of how the Regulations operate to assist in navigating what follows later in this judgment.
9. The scheme of Regulations is as follows. Section 7 imposes a moratorium in relation to “moratorium debts”, which means that a creditor may not take any enforcement steps (defined in paragraph 6) during a “moratorium period” without the permission of the court. The forbidden steps are steps to require the payment of interest accruing during the moratorium period, steps to require the payment of fees, penalties or charges, taking “enforcement action” (defined in paragraph 7) or instructing an agent to take those steps. If proceedings are pending at the start of the moratorium period then those proceedings may continue up to and including judgment - section 10. There is a dispute as to whether the court’s permission is required for that.

10. The moratorium applies to a “moratorium debt”, which is defined in Reg 6:

- “6. A “moratorium debt” is any qualifying debt—
- (a) that was incurred by a debtor in relation to whom a moratorium is in place,
  - (b) that was owed by the debtor at the point at which the application for the moratorium was made, and
  - (c) about which information has been provided to the Secretary of State by a debt advice provider under these Regulations.”

11. That definition takes one to the definition of “qualifying debt” in Reg 5(1):

- “(1) A “qualifying debt” means any debt or liability other than non-eligible debt.”

Paragraph (3) identifies certain particular debts which are to be included; they do not matter here. From there one goes to the definition of “non-eligible debt” in Reg 5(4). That is defined as including a whole raft of debts, including:

- “(a) secured debt which does not amount to arrears in respect of secured debt ...”

As I understand it that is the provision which raises the issue in this case as to whether the appellant's debt is a qualifying, and therefore a moratorium, debt. It is pertinent to observe that the extensive list which follows is capable of raising legal questions for the non-legally qualified DAP (debt advice provider).

12. As I have already indicated, there are two types of moratoria - a breathing space moratorium and a mental health crisis moratorium. I will focus on the latter because that is the moratorium which was applied for and which was initiated in this case. It is available to a person who is receiving "mental health crisis treatment" (Reg 28(1), and the treatment is defined in paragraph (2)). In the present appeal there is no issue about the fulfilment of that condition. That person (or others on his/her behalf) applies under Reg 29 to a "debt advice provider" ("DAP") for the moratorium. A DAP is an authorised person with permission to carry on debt-counselling under the Financial Services and Markets Act (Reg 3). He/she is not necessarily a lawyer. The DAP receives the application, relevant information and a declaration from a mental health professional that the debtor is receiving mental health crisis treatment (Reg 29(3)). Among the details to be provided are details of debts to which the debtor is subject at the date of the application, and contact details of the creditors (Reg 29(4)). This becomes an important factor in the notification process.

13. The DAP then carries out an assessment under Reg 30. Under Reg 30(1) the DAP is required to :

“(a) assess whether the debts included in the application are qualifying debts”.

This is a key provision for the purposes of this appeal, because the case of the respondent is that, subject to a review by the court (see below) this provision, in its statutory context, gives the DAP the exclusive jurisdiction to carry out that assessment in the first instance to the exclusion of the courts, and the only recourse to the courts thereafter is via the statutory review just referred to (and perhaps judicial review in certain limited circumstances).

14. Reg 30 then provides for the DAP to obtain relevant information from at least one credit reference agency, and then he/she has to "initiate" a moratorium if certain criteria are met. Those criteria are that the debtor:

“(a) is an individual,

(b) owes a qualifying debt to a creditor,

(c) is domiciled or ordinarily resident in England or Wales,

(d) is not subject to a debt relief order,

(e) is not subject to an interim order or individual voluntary arrangement,

(f) is not an undischarged bankrupt, and

(g) is not subject to a breathing space moratorium or a mental health crisis moratorium.”

15. The other eligibility criteria which the DAP has to consider include that the debtor:

“(b) owes a qualifying debt to a creditor” (Reg 30(3)).

Whether the DAP is the sole determinant of that question is the central issue in the main part of this appeal.

16. Paragraph (4) contains other conditions to be fulfilled before the DAP initiates a mental health crisis moratorium, including whether the debtor is unable, or is unlikely to be unable, to repay some or all of their debt as it falls due.

17. Reg 31 provides that the initiation process is done by the DAP providing information to the Secretary of State. That information includes that the eligibility criteria have been fulfilled, which in turn include the fact that the debtor owes a moratorium debt (via para (a)(i) and the cross-reference to Reg 30(3)), and (optionally - “may”) include information as to the debtor’s debts - (para (1)(b) and the cross-reference to Reg 29(4)). By the end of the next working day the Secretary of State must cause an entry to be made in a register maintained by him/her, and send a notification of the start of the moratorium to (inter alia) creditors whose contact details have been provided.

18. There is a procedure (Reg 15) for notifying an “additional debt”, which is a debt of which the DAP becomes aware after notification by the Secretary of State of earlier debts. Under Reg 15 the DAP has to “consider whether an additional debt is a qualifying debt” (para (2)), and if so he/she notifies the Secretary of State who then pursues the same process of registration and notification as in relation to the original initiation. That is significant in the present case because the appellant’s debt was notified as an “additional debt”, not as one of the original debts in the initiation by the DAP.

19. That notification then triggers an opportunity for a notified creditor to challenge the moratorium. Reg 17 provides that opportunity. It provides:

“17.—(1) Subject to paragraph (4), a creditor who receives notification of a moratorium under these Regulations may request that the debt advice provider who initiated the moratorium or (as the case may be) the debt advice provider to whom the debtor has been referred since the start of the moratorium reviews the moratorium to determine whether it should continue or be cancelled in respect of some or all of the moratorium debts on one or both of the following grounds, namely that—

(a) the moratorium unfairly prejudices the interests of the creditor, or

(b) there has been some material irregularity in relation to any of the matters specified in paragraph (2).

(2) The matters in relation to which a creditor may request a review on the ground of material irregularity are that—

(a) the debtor did not meet the relevant eligibility criteria when the application for the moratorium was made,

(b) **a moratorium debt is not a qualifying debt**, or

(c) the debtor has sufficient funds to discharge or liquidate their debt as it falls due.

(3) A request under paragraph (1) must be made within the period of 20 days beginning with the day on which the moratorium started.”

20. In the case of an additional debt (as in the present case), the creditor has to the same right to request a review and the same period of 20 days applies from the date on which the moratorium took effect in relation to that debt.

21. It should be noted that one of the express grounds for review on the basis of irregularity is that the debt in question is not a “moratorium debt” - Reg 17(2)(b) - emphasised above.

22. Reg 18 requires the DAP to carry out a review under Reg 17 within 35 days from the date that the moratorium started, or the date on which the moratorium took effect in relation to the additional debt of the creditor. Paragraphs (2) and (3) provide for what is to happen on the review, with an important qualification in paragraph (3):

“(2) A debt advice provider must cancel a moratorium in respect of some or all of the moratorium debts if the debt advice provider considers that the creditor has provided sufficient evidence that—

(a) the moratorium unfairly prejudices the interests of the creditor, or

(b) there has been some material irregularity in relation to any of the matters specified in regulation 17(2).

(3) A debt advice provider is not required to cancel a moratorium under paragraph (2) in respect of a moratorium debt if the debt advice provider considers that the debtor’s personal circumstances would make the cancellation unfair or unreasonable.”

23. Reg 19 provides for an application to be made to the court by a creditor disappointed by the review of the DAP. Where the moratorium has not been cancelled:

“(1) ... then the creditor may make an application to the county court on one or both of the grounds in regulation 17(1).”

24. The application must be made within 50 days of the start of the moratorium (para (2)). Para (3) provides for what the court may do, and para (4) provides an additional power apparently not available to the DAP:

“(3) Where on an application under this regulation the court is satisfied as to either of the grounds in regulation 17(1), it may do either or both of the following, namely—

(a) cancel the moratorium in relation to a moratorium debt owed to the creditor who made the application to the court,

(b) cancel the moratorium in respect of any other moratorium debt.

(4) Where a court has cancelled a moratorium in relation to a moratorium debt under paragraph (3), the court can require the debtor to pay any interest, fees or charges that accrued during the moratorium period in respect of the debt.”

### **Principles of statutory interpretation**

25. The exercise in this matter involves construing the Regulations. Mr Morris’s case was that the respondent’s case (and the judge’s decision) involved removing the right of the subject to have access to the courts. *R (Unison) v The Lord Chancellor* [2020] AC 869 encapsulated the right of the subject to have access to the courts and that that right was not to be excluded except by clear words. Thus it was said by Lord Reed:

“In more modern times, many examples can be found of judicial recognition of the constitutional right of unimpeded access to the courts (as Lord Diplock described it in *Attorney General v Times Newspapers Ltd* [1974] AC 273, 310, and again in *Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corpn Ltd* [1981] AC 909, 977), which can only be curtailed by clear statutory enactment. Thus, in *In re Boaler* [1915] 1 KB 21, where the question was whether a statutory prohibition on vexatious litigants instituting legal proceedings extended to criminal proceedings, the Court of Appeal held that it did not. Scrutton J said at p 36 that although a statute might deprive a subject of the right to appeal to the courts, “the language of any such statute should be jealously watched by the courts, and should not be extended beyond its least onerous meaning unless clear words are used to justify such extension.”



26. Similarly, in *Chester v Bateson* [1920] 1 KB 829, where delegated legislation prohibited the bringing of certain legal proceedings without a minister's consent, the Divisional Court held that the regulation was invalid. Avory J stated that "nothing less than express words in the statute taking away the right of the King's subjects of access to the courts of justice would authorize or justify it" (p 836). To similar effect was the decision of the House of Lords in *R & W Paul Ltd v The Wheat Commission* [1937] AC 139, where an arbitration scheme established by delegated legislation disapplied the Arbitration Act 1889, under which arbitrators could state a special case for the opinion of the court on a point of law. That element of the scheme had not been expressly authorised by the enabling legislation, and was held to be ultra vires. As Viscount Simonds observed in *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1960] AC 260, 286:

"It is a principle not by any means to be whittled down that the subject's recourse to Her Majesty's courts for the determination of his rights is not to be excluded except by clear words."

27. Mr Morris also relied on the "principle of legality", to the effect that clear words, and not merely possible implication, are necessary to remove fundamental rights, and in the present case those clear words were missing and there was an insufficient implication to remove the rights to have courts decide legal issues arising out of disputes between subjects of the realm. He cited Bennion, Bailey and Norbury on Statutory Interpretation at paragraph 27.1:

"(1) It is a principle of legal policy any interference with established rights and principles recognised by the common law should be expressed in clear terms. This principle forms part of the context against which legislation is enacted and, when interpreting legislation, a court should take it into account.

(2) This gives rise to a more specific presumption that 'fundamental' common law rights cannot be overridden by general words but only by express words or necessary implication."

He submitted that those criteria were not satisfied in this case with the effect that the subject's right to resort to the court to enforce legal rights was not impeded by the Regulations and that his client could raise its challenge in these county court proceedings.

28. Mr Westgate did not dispute these principles as principles but submitted that they did not assist much in determining whether the Regulations, as a matter of interpretation or construction, excluded the normal jurisdiction of the court to determine legal issues placed before it in conventional proceedings. The question was whether these Regulations actually achieved that result. For his part he pointed to *Autologic Holdings*

*plc v IRC* [2006] AC 118 as demonstrating that it would be an abuse of process for the courts to allow proceedings to by-pass or side-step a special procedure for determining particular disputes (in that case taxation disputes) and submitted that that is what is being attempted in this case. That is a point to which I will come, so far as necessary, later in this judgment.

29. So far as Mr Morris's point is concerned, I will approach the main interpretation question in this dispute with his principles in mind, but observe at this point that the rigour with which they need to be applied is tempered by the fact that this is not a case where it might be said that Parliament has sought to remove the fundamental right of access to the courts full stop. The Regulations themselves provide access to the courts through the Reg 19 application to the county court. There is a route to the court. The question is whether that is an exclusive route or not. That does not raise quite the same questions about fundamental rights as some of the rights considered in the authorities, because a right (and route) still exists. The more helpful principles in this context appear from *British Telecommunications plc v IRC* [2023] EWCA Civ 1412. In that case Falk LJ, with whom the other two Lords Justices agreed, drew the strands of authority together in this way:

“35. Drawing some threads together:

(a) The question is one of statutory construction: what did Parliament intend? As in other cases this will be determined by the words used, read in their context and having regard to the purpose of the provision.

(b) Bearing in mind that remedies may be excluded even if they have not yet been established, I find it more helpful to frame the enquiry as being whether Parliament intended the statutory provision in question to provide the exclusive or sole remedy, rather than asking whether an alternative remedy (or at least a particular alternative remedy) was intended to be ousted.

(c) Put very shortly, the question can be formulated as whether Parliament intended the statutory remedy to be exclusive, or whether it intended that remedy to co-exist with any other remedy.

(d) In the absence of an express exclusion, Hickinbottom LJ's judgment in *Southern Gas* sets out some helpful indicators that assist in determining the answer to that question. Ultimately the answer is likely to depend on whether the statutory scheme is incompatible or inconsistent with the availability of other remedies.”

30. In that context and in the light of that reference by Falk LJ it is appropriate to cite what Hickinbottom LJ said in *Southern Gas Networks plc v Thames Water Utilities Ltd* [2018] 1 WLR 5977 at paragraph 37:

“It is unnecessary to quote at length from the cases to which I have already referred. The following propositions can be drawn from them.

(i) Where Parliament has legislated for a statutory remedy to apply in certain circumstances, whether that remedy ousts any common law remedy which would or might have arisen on the same facts depends upon whether, on the true construction of the particular statutory provisions, Parliament intended that provision to oust, or co-exist with, the common law remedy. The courts will not maintain a common law remedy in the case of an evident intention of Parliament to displace it (see, eg, *Johnson v Unisys Ltd* [2003] 1 AC 518 at para 58, per Lord Hoffmann, and para 80, per Lord Millett, *Deutsche Morgan Grenfell Group Plc v Inland Revenue Commissioners* [2007] 1 AC 558, para 19 per Lord Hoffmann, and *CPAG* [2011] 2 AC 15, para 27, per Dyson JSC).

(ii) Where that intention is not express, the threshold for inferring ouster of common law rights is high; but it is not helpful to approach the question on the basis that there is a presumption against ouster. Nor, before common law rights are displaced, does ouster have to be a necessary implication, in the sense that the common law remedy is only displaced if, as a matter of logic, it cannot co-exist with the statutory regime (although, of course, common law remedies can be ousted by such necessary implication) (*CPAG*, para 31, per Dyson JSC).

(iii) Whether common law remedies are ousted is dependent upon the true construction of the particular statutory provisions. However, where the statutory remedy covers precisely the same ground as the common law remedy, the latter will almost certainly have been excluded by necessary implication (above, at para 33). Furthermore, where the statutory regime provides a special or qualified remedy, it may (although not necessarily will) be inferred that Parliament intended to exclude any common law remedy that would or might arise on the same facts (see, e g, *Deutsche Morgan Grenfell* at para 19 per Lord Hoffmann, and at para 135 per Lord Walker of Gestingthorpe).

(iv) The identification of some differences between the statutory scheme and the common law remedy will not necessarily lead to an inference that Parliament intended the former to oust the latter. As Dyson JSC put it in *CPAG* [2011] 2 AC 15, para 34:

“The question is not whether there are *any* differences between the common law remedy and the statutory

scheme. There may well be differences. The question is whether the differences are so substantial that they demonstrate that Parliament could not have intended the common law remedy to survive the introduction of the statutory scheme. The court should not be too ready to find that a common law remedy has been displaced by a statutory one, not least because it is always open to Parliament to make the position clear by stating explicitly whether the statute is intended to be exhaustive. The mere fact that there are some differences between the common law and the statutory positions is unlikely to be sufficient unless they are substantial ... The question is whether, looked at as a whole, a common law remedy would be incompatible with the statutory scheme and therefore could not have been intended by [sic] coexist with it.” (Emphasis in the original.)

Rather than “incompatible”, in *Revenue and Customs v Total Network SL* [2008] AC 1174, para 130, Lord Mance used the phrase “positively inconsistent”.

### **The decision below on interpretation**

31. Having considered the Regulations, the judge declined to consider that she was bound by the decision of HHJ Dight in *Kaye v Lees* [2022] EWHC 1151, in which she said no-one took the point about the court’s jurisdiction, and preferred the assistance given by two other cases involving the same debtor, which, like her, I will describe by reference to their dates or their neutral citations - [2022] EWHC 3326 and [2023] EWHC 758. From the *Lees 2022* case (Swift J) she found she was assisted by the strict application of the time limits for a Reg 19 application - Swift J held the court did not have jurisdiction to extend time. She also emphasised that the DAP’s initiation could be challenged under Reg 17, and that one of the grounds of challenge was that the debt of the challenging creditor was not a moratorium debt. She considered that that express reference would be otiose if the moratorium for any given debt could be challenged on that ground anyway, and came to the conclusion that the only route of challenge was via Regs 17 and 19, so that in the hearing before her (which was within the mortgagee possession proceedings) the court had no jurisdiction to determine the matter (para 40 of her judgment).

### **The authorities related to the point of interpretation**

32. There are several authorities which are said to bear on the point, and both sides of the argument claim some comfort from various of them.
33. Mr Westgate’s best authority was the 2022 *Lees* case. In that iteration of the litigation a creditor had failed to seek a Reg 17 review, and therefore a Reg 19 reference to the court, within the time limits specified. The court was asked to extend the time for making an application to the court out of time, and Swift J held that it had no jurisdiction to do so. Swift J held:

“24 ...The 2020 Regulations establish a scheme for the time within which review proceedings may be initiated, may be determined by the debt advice provider, and for any subsequent application to a court. The language used is prescriptive. I can see no reason to go behind the ordinary and clear meaning of those words. As made, the timetable the Regulations set serves a clear and obvious purpose – to ensure that any review is conducted promptly following the decision to make the moratorium ... The court has no power to extend time to allow an application to be made, and since that is the position, there is no need to consider the further submission made, that there was good reason to exercise the power to extend time.”

He also held that an application to the court under Reg 19 would fail because there had been no prior application to the DAP under Reg 17 (para 27).

34. Mr Westgate prayed this in aid as demonstrating that the Regulations provided a complete code for applying to the court. I agree that it is certainly consistent with that, at least in terms of timing, but the point was not actually addressed head-on as it is in the present application.

35. In the 2023 iteration of the litigation ([2023] 1 WLR 3527) the creditor (Mr Kaye) sought to obtain an injunction to restrain the debtor from making a further application for a moratorium against a background of successive applications and initiations. The application failed before David Lock KC (sitting as a judge of the High Court). Mr Lock held:

“45. I have considerable sympathy for Mr Kaye but on reflection it seems to me that, on this basis, his application for an injunction has to be dismissed. Parliament has given debtors an unfettered right to apply to a debt advisor for a BSM or a MHCM and, even where a moratorium is set aside by the court, have not placed constraints on debtors applying for a new moratorium. On each occasion on which an application is made, the debt advisor undertakes a quasi-judicial decision-making process in order to decide (a) whether the statutory criteria are met and (b) whether it is appropriate to grant the requested moratorium. The primary decision maker on this matter under the Regulations is the debt advisor, not the court. If a moratorium is granted, the Regulations provide that, as a consequence, it will affect the right of the creditor to take enforcement action.

46. In my judgment, given that parliament has given these unfettered rights to a debtor and has allocated primary decision making to the debt advisor, it would not be right to grant an injunction which sets up a different decision-making structure. I consider that a creditor cannot properly ask the

court to remove these statutory rights from the debtor for a period of time or to subject the exercise of those rights to judicial supervision when that is not part of the statutory scheme ....”

36. Mr Westgate relied particularly on the reference to the DAP being the “primary decision-maker” and submitted that this case established that it was not for the court to go behind the statutory decision-making regime. I do not consider that that case is of so much assistance to him. What it establishes is that the court is not entitled to restrain a debtor from invoking the moratorium regime because that is a right that Parliament has given to that person. It is apparent that the main argument of the applicant creditor in that case was predicated on the fact that a compliant, not a non-compliant, application for a moratorium might be made by the debtor, on facts unknown to the creditor (see para 44). The premise of the application seems to have been that the debtor would make an application which might lawfully be granted - see paragraph 44 again. The correctness of restraining such an application does not raise the same questions as would a potential application which was non-compliant. A decision on the latter would speak more to the issues which arise on the present appeal because the court would be, or could be, embarking on a consideration of issues going to the statutory validity of the moratorium. As it is, the case just concerns the right to apply with no consideration of the lawfulness of a potentially resulting moratorium. That raises different points. I would also observe that there are suggestions in the judgment in that case that the result might have been different had it been possible to establish that a proper moratorium could not have been granted - see the decision in paragraph 59. That was not considered as a factual scenario, but it is another reason for not considering that the case establishes that the court has no jurisdiction to consider the validity of a debt as a moratorium debt in proceedings outside the regime of the Regulations. It would also appear that Mr Lock considered it possible that a validity point could be raised on judicial review even though Regulation 19 provided for a statutory review, and that that would be an alternative remedy (paras 52 and 53). That might be thought to be inconsistent with the Reg 19 being the sole route of challenge to a moratorium. Mr Lock may be right or may be wrong about that (as he himself acknowledged) but again it is another pointer away from this case deciding something which assists Mr Westgate.

37. Mr Morris relied on two cases said to support him. In *Axnoller Events Ltd v Brake* [2021] 1 WLR 6218 HHJ Paul Matthews (sitting as a judge of the High Court) was asked to make an order debarring litigants (the Brakes) from defending some claims and pursuing others if certain costs orders were not paid, and one of those litigants had the benefit of a mental health crisis moratorium. Some of the costs liabilities were incurred before the moratorium and some of them afterwards. For the purposes of deciding which debts were caught by the moratorium Judge Matthews considered he had to decide whether they were moratorium debts or not. He had no difficulty in embarking on that exercise despite the fact that he did not have a referral under Reg 19 before him, or a prior review by the DAP on this particular aspect. The debtor took the point that in the absence of a request for a review under Reg 7 the judge should not consider the point:

“62. The Brakes however object to my reaching this conclusion, for a number of reasons. First, they say that, as the Guy Parties have not applied under regulation 7(2)(b) , it is procedurally wrong for the Guy Parties to be able to argue that moratorium debts do not include debts incurred after the moratorium begins. Second, they rely on the opinion given to them by their debt advice provider, who has told them in letters dated 11 and 12 August 2021 that the later costs orders were notified on 17 May 2021 and 4 June 2021, and therefore by implication that future debts are included in the concept of moratorium debt.”

38. As to this the judge said:

“63. As to the first objection , I do not consider that regulation 7(2)(b) (the terms of which I quoted above) has anything to do with the matter. That provision is concerned with giving permission to a creditor to take one of the prohibited steps. Asking the court to decide whether a particular debt is a moratorium debt is not a prohibited step. More importantly, the arguments which the Guy Parties put forward, both in their application under regulation 19 and in their application for an unless order, as well as the arguments put forward by the Brakes in resisting those applications, depend upon the relevant debts being moratorium debts. The court therefore necessarily has to decide whether they are such debts, and for that purpose it is necessary to consider whether the way in which future debts are dealt with is through the provision for “additional debts”. Accordingly, there is nothing in this objection.

64. As to the second objection , there is nothing in this either. The debt advice provider is perfectly entitled to express an opinion as to whether future debts are or are not within the concept of moratorium debts. But that provider is not empowered to decide the point as between the Brakes and the Guy Parties. Indeed, even if the debt advice provider had some kind of adjudicative power under the 2020 Regulations, it could not have been properly exercised, because the Guy Parties were not, and had no opportunity to be, involved. That would be contrary to natural justice. But I do not rest my decision on that ground. The point is that it is the court that decides the law, and not the debt advice provider. In my view the debt advice provider's (implicit) opinion was incorrect. I can understand the Brakes' frustration at having been told by a debt professional that the law is one thing, and then to have the court say another. But I cannot help that. Even if the party's own lawyer advised that that was the law, it could not bind the court.”

39. The judge then went on to consider which of the debts were moratorium debts and which were not. :

“70. Accordingly, I reach the conclusion that moratorium debts cannot include future debts. Applied to the present case, I am satisfied on the material before me that the debts constituted by the costs orders of 13 April 2021 and 21 April 2021 are covered by the moratorium. Indeed, at the hearing the Guy Parties accepted as much. On the other hand, it is equally clear to me that the debts constituted by the costs orders of 17 May 2021 and 4 June 2021 are not covered by the moratorium, because neither of them was incurred before the moratorium came into effect. Although it appears that an additional debt was notified to the Guy Parties by a letter of 2 June 2021, which might have been meant to include the first of these two costs orders (but the letter does not specify the debts concerned), in any event they are both future debts, and future debts cannot be additional debts. Accordingly, regulation 7(2) does not apply to the debts constituted by the costs orders of 17 May 2021 and 4 June 2021, and cannot prohibit the Guy Parties from applying for an “unless” order in respect of them.”

40. Mr Morris relied on this case as supporting his argument. Mr Westgate submitted that the issue before me did not arise in that case and did not appear to have been argued, and therefore the decision did not help me. He also suggested that the evidence as to whether the debt was notified by the Secretary of State was unclear.
41. I do not consider that Mr Westgate is necessarily right about this. The first objection taken by the Brakes would seem to be the equivalent of the point raised in the present case. He had to decide whether a given debt was a moratorium debt or not, albeit that there was a different reason in that case for saying it was not, when compared with the present case (a future debt in that case, as opposed to the nature of the debt in the present one). Nor is it clear to me what the lack of clarity in the evidence might have been. The evidence as to how the debts were incurred was clear enough. I consider that this case is one in which it is apparent that the judge decided in his particular circumstances that he could decide the quality of a debt for the purpose of deciding whether a debt was a moratorium debt or not. It may well be, however, that he did not have the full argument that I had on the point.
42. Nonetheless, I do not regard myself as necessarily bound by this decision because of potential tension (as Mr Morris himself put it) with the cases relied on by Mr Westgate, and because of the probably fuller argument that I have had on the point.
43. Last of the cases cited to me was a decision of HHJ Dight, again sitting as a judge of the High Court in another *Lees v Kaye* case [2022] 1 WLR 512. In that case the debtor brought an action claiming that a transaction with her flat (a sale under a charging order) was null and void and made an application seeking relief to that effect. In response to



that application the creditor raised various points, including one to the effect that the debt he was trying to enforce was a non-eligible debt because it amounted to damages for personal injury (an excluded liability under the Regulations). The judge considered that defence and rejected it on the footing that the damages did not fall within that category. This is again a case in which the judge proceeded on the footing that he could decide that point within the scope of the proceedings with which he was seised, though it does not appear that a point was taken as to whether it should have been raised via Regs 17 and 19, as Mr Westgate pointed out. Since Mr Westgate's point was not expressly taken, argued and decided, it might be thought that as an authority the case is weakened, but as will appear below its facts, and in particular the manner in which the point arose, is in my view informative as to the scope of any "exclusivity" of the Reg17/19 regime.

### **The parties' main arguments on jurisdiction**

44. Mr Westgate's starting point was to look at the whole of the regime set up by the Regulations which he said showed a self-contained scheme with its own definitions and its own mechanism for resolving disputes about moratoria - the Reg 17 and Reg 19 routes. He adopted the description of the position of the DAP from Mr Lock's *Lees* case as to the DAP being a quasi-judicial position and the DAP as being the "primary decision maker". There were strict time limits on challenges which generated certainty in an area in which certainty was called for, and submitted that it should not be possible to set that regime at naught by allowing a creditor to challenge the status of debts at any time that suited him/her outside that regime. There would, he submitted, be a perverse incentive for a creditor to bide his/her time because in the review process interest, fees and charges accruing due under a moratorium are not recoverable, subject to a discretion given to the court under Reg 19(4), whereas if challenges took place outside the regime of the Regulations such items would be recoverable. In short, the Regulations set up a special regime which necessarily excluded the jurisdiction of the court to determine questions which would necessarily be determined by the DAP in the first place.
45. According to Mr Westgate, this reading is supported by how the definition of "moratorium debt" falls to be read in Reg 6. What determines whether a debt is included in a moratorium as a "moratorium debt" depends on what is notified to the Secretary of State by the DAP and what is registered. The register is conclusive and if a debt is notified as a moratorium debt then that is what it is, subject only to a challenge under the review mechanism in the Regulations. This reading is said to be supported by Reg 24 in relation to breathing space moratoria, under which the DAP is expressly required to consider whether a debt is a qualifying debt. It follows that the notification to the Secretary of State must be of debts which the DAP considers (determines) to be qualifying debts (Reg 24(2)(c)). It would not be practical to require notification of only those debts which are actually in law qualifying debts; all that can be notified is what the DAP considers to be qualifying debts. That demonstrates the primacy of the DAP's judgments. The position in relation to mental health crisis moratoria is similar. Debts, so far as known, are notified to the DAP by the applicant (who might not be the debtor himself) - Reg 29 - and the DAP has to consider whether the debts included in the

application are qualifying debts, and a determination that debts to be included in the moratorium are qualifying debts has to be reached by the DAP (Reg 30(2)). When there is a notification under section 31 it must be (can only be) of debts which the DAP considers are qualifying debts, and the moratorium then applies to those, and that again must be irrespective of whether the debts are actually in law moratorium debts. The DAP is the primary decision maker even if wrong.

46. This analysis was said to be consistent with the judge below's determination that if the question of a moratorium debt could be determined in any proceedings outside the scope of a Reg 17/19 review then the reference to "moratorium debt" in Reg 17(2)(b) was otiose. That provision provides that the "material irregularit[ies]" on the basis of which a creditor can seek a review by the DAP under Reg 17(1) (and thus a review by the court under Reg 19) include that "a moratorium debt is not a qualifying debt". It is said that it would be unnecessary to have that provision if the question could simply be decided in parallel legal proceedings.
47. In order to reconcile these provisions with the definition of qualifying debt Mr Westgate proposed an extended reading of Reg 6. He said that the Regulations could be made to make overall sense, showing the primacy of the DAP as a decision maker, if words were inserted into the definition of moratorium debt such as:

"a 'moratorium debt' is any qualifying debt *which has been identified as such by the debt advice provider under these Regulations*" (my emphasis to show the additional implied wording).

That enables the system to work and also makes sense of the reference to moratorium debt in Reg 17(2). The reference to moratorium debt in that provision (allowing a challenge to the status of a "moratorium debt" in a review) can only mean one that has been notified. It contemplates that a notified debt may not be a true moratorium debt after all, but it is still called a moratorium debt in that Regulation. Sense can be made of that by reading the definition in the way suggested.

48. Mr Morris's case started from the position that Regulations 6 and 7 meant what they said. A qualifying debt was carefully defined and a "moratorium debt" was defined as meaning a "qualifying debt" as thus defined with other additional qualifications (incurred by the debtor, pre-existing and about which the Secretary of State has been notified). A debt is either a qualifying debt or it is not, and the DAP's consideration and determination did not make a debt a qualifying debt if it was not one in the first place. That means that its status can be determined in proceedings whenever it is in issue, and any prohibited steps simply do not apply to a debt which is non-qualifying. To hold otherwise does unacceptable violence to the effect of that definition.

49. He submitted that a contrary conclusion would have surprising and unfair results. Reg 8, which extends the limitation period for moratorium debts to 8 weeks from the end of the moratorium (if it would otherwise have expired before then) would not apply to a non-qualifying debt which was otherwise notified, and the debt would become statute-barred at a time when it was not enforceable because of the moratorium. I am not convinced by this example. If Mr Westgate is right then the debt would be a moratorium debt by virtue of registration and notification and the period would be extended whether or not it was a “true” moratorium debt within the strict words of Reg 6.
50. Mr Morris also submitted that unless he was right interest would be unfairly lost on a moratorium debt. His reasoning went thus. Interest and fees in relation to something found by the DAP to be a qualifying debt, and duly notified and registered, could not be recovered - see Reg 7(6)(a) which prevents steps being taken to recover (inter alia) interest and fees accruing. Under Reg 7(2) a court can give permission for proceedings to be taken, but that opportunity does not exist in relation to the interest and fees because it is forbidden by Reg 7(3). Reg 7(10) goes further and imposes a bar on the recovery of interest, fees, penalties and charges on the moratorium debt during the moratorium period. If a review is sought under Reg 17, and the DAP reverses his/her decision, and the debt ceases to be a moratorium debt, then there is no provision for the recovery of interest/fees and that money will be lost even though it has now been determined that the debt is not a moratorium debt. The wrongfulness of that effect is compounded by the fact that under Reg 18 the DAP has a discretion not to cancel the moratorium in respect of a moratorium debt if to do so would be unfair or unreasonable. Contrast the position where there is a further review by the court, where the court has a discretion (but only a discretion) to reinstate interest and fees (Reg 19(4)). Mr Morris submitted that it would be quite wrong in principle for these consequences to follow from the wrongful inclusion in a moratorium of a debt which turned out not to be a moratorium debt. Significant sums of money may be at stake here, because while the first review by the DAP under Reg 17 ought to be quick, a further recourse to the county court may take considerably longer. The answer to all that is to treat the debt as a non-moratorium debt for all purposes, including the bar on taking recovery steps.
51. This point would seem to have some force. It is one thing to suspend interest and the like on a moratorium debt properly so called, but another to suspend it on something which is not a moratorium debt in the first place. The force of this point has to be considered in the context of a consideration of the shape of the Regulations as a whole.

### **Decision on the “jurisdiction” point**

52. In my view, and despite the cogent submissions of Mr Westgate, I am not satisfied that the Regulations contain the only court-based route for challenging a moratorium in

relation to a debt which can be seen to be not a moratorium debt in the first place. There are a number of reasons for this.

53. I do not start from Mr Morris's point that a fundamental right of access to the courts would be taken away by the contrary conclusion. Rather, the question is akin to that in the *BT* case, which is one of the proper interpretation of the Regulations without resort to any presumption against ouster. I have set out the approach in that case above. The question which arises in this case is whether Parliament has provided a route to the court for deciding a legal question in place of the normal route, or whether the two routes can exist in parallel.
54. I have taken into account the following factors.
55. The Regulations do not contain an express provision to the effect that the only challenge to the status of an alleged moratorium debt is via their own mechanism (which is a significant factor - see the *BT* case above). That is, of course, merely part of the inquiry and not determinative.
56. The Reg 17/19 mechanism is capable of covering the same ground as the normal common law applications to the court. That is a significant pointer towards exclusivity - see the *BT* case. There is an express reference to the determination by the DAP of whether a debt is a qualifying debt, which reinforces this point. This is the "otiose" point relied on by the judge. However, in my view it is not necessarily otiose if one considers the possibility (which is real) that what Regulations 17 and 19 do (and particularly Reg 17) is provide a simpler and potentially straightforward route for a creditor who wishes to try to avoid pure court proceedings if possible.
57. It might be said that there is one plain element of exclusivity built into the Regulations' regime on any footing. One of the grounds for a review is that the moratorium unfairly prejudices the interests of the creditor (Reg 17(1)(a)). That is a feature of the Regulations with no equivalent in the common law, and it may be the case that the only route for raising that point is via a Reg 17 review. It can be said that if there is exclusivity as to that, there should be exclusivity as to the decision-making process of the other items which the DAP has to decide, which include whether there is moratorium debt. As against that it can be said that exclusivity of jurisdiction in relation to something which is not otherwise justiciable in a court is different from issues which would be justiciable by the court irrespective of the jurisdiction given to the DAP.
58. Those are factors arising more or less directly out of the structure of the Regulations which are capable of pointing towards or away from the court having a parallel

jurisdiction with the DAP to decide whether something is a qualifying debt (and therefore a moratorium debt). The most telling pointer within the Regulations pointing against exclusivity is the definition of “moratorium debt” itself in Reg 6. This point is central to Mr Morris’s case. On the wording of Regulation 6 a moratorium debt is subject to the moratorium, and a moratorium has to have 4 qualities, the first of which is that it has to be a qualifying debt. That is a starting point. On to that over-arching qualification there are then imposed three other qualifications (incurred by the debtor, owing at the time of application for the moratorium and about which information has been provided to the Secretary of State). The argument is that if a debt is not a qualifying debt it should never get past the starting gate, as it were, and it never is a qualifying debt whatever a DAP may consider and whatever time periods have elapsed. It remains non-qualifying at all times and can therefore never be the subject of a moratorium. If that is right then it retains that status and a court can determine that point whenever it may arise.

59. That seems to me to be a powerful point. The consequences of deciding otherwise are, as Mr Morris pointed out, odd, and he would say to the point of being unfortunate and unlikely to have been intended by Parliament. A moratorium period starts the day after the Secretary of State makes an entry on the register (which should be the day on which he/she sends out notification to creditors) - Reg 32(1). At that point it affects “moratorium debts”. Those debts cannot include non-qualifying debts because of the definition of “moratorium debt”, no matter what the DAP may think or have notified. So at that point a non-qualifying debt is not covered by the moratorium. In due course the creditor will receive notice, but that does not affect whether or not the debt is a moratorium debt. It remains a non-moratorium debt. It retains its status thereafter, and it would be wrong to treat it as a qualifying debt, and therefore a moratorium debt, just because a DAP has wrongly treated it as such.

60. Mr Westgate’s answer to this point is to add a gloss to Reg 7 in the form of the implication identified above - one reads into Reg 7 the additional feature of a qualifying debt “identified as such by a debt advice provider and notified accordingly” (or some such words - that is the concept). I do not find that to be a satisfactory implication. It is a very significant qualification which qualifies a clear objective qualification by reference to the subjective views of an individual, and one who is likely to be a non-lawyer. In my view there would have to be very clear indicia for such a qualification to be introduced, and I do not consider that they are there.

61. That proposal would also have some significant practical consequences. The first is foreshadowed above. Let it be assumed that Mr Westgate’s implication is correct and that a DAP wrongly identifies a non-qualifying debt as a qualifying debt. The creditor will be duly notified. During the moratorium period interest, fees and charges are not recoverable, even though the debt is not a qualifying debt (Reg 7(10)). In the event of a review by the DAP, if the review is successful the moratorium is cancelled in respect of that debt, but only with effect from the day after the Secretary of State enters the cancellation on the register - Reg 18(7). There is no provision for undoing the effect of

Reg 17(10) for the preceding period. During that period the debt was a moratorium debt because the DAP considered it to be one. That would be a strange state of affairs, and unlikely to have been intended by Parliament. True it is that if there is an application to the County Court under Reg 19 that court can order the payment of interest and the like under Reg 19(4), but that power is only discretionary, does not exist in the hands of a DAP and will never arise for consideration if the cancellation is by the DAP and the matter never gets to the County Court.

62. There is another consequence which would seem to follow. Under Reg 18 the DAP must cancel a moratorium in respect of all or some of the moratorium debts if there has been a “material irregularity”, which would include a given debt not being a moratorium debt (Reg 17(2)). However, that is qualified by the express reference to paragraph (3), which gives the DAP power to maintain the moratorium if cancelling would be unfair or unreasonable. If Mr Westgate’s addition to Reg 6 is correct then the power to maintain the moratorium would remain in relation to a debt even if were a non-qualifying debt because, having determined in the first place that it was qualifying debt, the debt technically remains a “moratorium debt”. That would be a strange state of affairs. It would not be an answer to the interpretation point that a DAP should not exercise his/her discretion in that way for a non-qualifying debt. The interpretation point still remains.

63. I therefore consider that Mr Westgate’s attempt at rationalisation by reading words into Reg 6 fails. The words of the definition are clear and there are insufficient justifications for introducing words into such a clear (and necessary) definition.

64. Having said that, and for the sake of completeness, I would acknowledge that the wording of Reg 17 contains some difficulties, and it would appear that the Regulations do use the expression “moratorium debt” in that Regulation in a way which is not consistent with the definition. In that regulation it is said that a material irregularity for which a moratorium can be cancelled includes the fact that “a moratorium debt is not a qualifying debt”. Under the definition in Reg 6 something which is not a qualifying debt in the first place cannot be a moratorium debt, so in strict terms Regulation 17(2)(b) does not make sense. In that paragraph the expression must be taken to mean something which had hitherto been treated as a moratorium debt even though it was not. It is true that Mr Westgate’s attempt to modify Reg 6 would mean that the revised meaning of Reg 17(2)(b) which I have proposed would not be necessary, but I consider that his proposal perpetrates more violence to the Regulations than my reading of Reg 17.

65. The rejection of Mr Westgate’s gloss on Reg 6 does not necessarily mean that he fails on the main question, which is whether Reg 17 is the only avenue to determining whether something is a qualifying debt or not. That point still remains to be decided even if he is wrong, as I find he is. I therefore turn to consider whether the points that I have made above, and the rest of the context of the Regulation, indicate the sort of

exclusive jurisdiction, or exclusive route, proposed by respondent and found by the judge below, is the correct view.

66. For these purposes I respectfully do not vest the wording of Reg 17(2)(b) with the same significance as the judge below. She considered that unless the DAP was the sole route to determining whether something was a qualifying debt or not the provision was otiose. That is not necessarily the case. The provision (and Reg 19 with it) can be regarded as a helpful additional route to having the question determined. A creditor who has been notified of a moratorium in respect of his/her debt might choose to have the DAP consider whether the debt is a qualifying debt or not as being a potentially simpler and quicker route than applying to the court from the outset. Reg 17(2)(b) gives him/her that opportunity. It does not follow that he/she should be prevented from getting to the court via a different route if that is appropriate.
67. One circumstance in which it might be thought to be appropriate would be where a moratorium intervenes during existing proceedings about the debt, as in the present case and as in *Axnoller*, and where the creditor says that the debt is not a qualifying debt. If the Reg 17/19 route is the only route to having the point decided then the court has to halt its process until the (legally unqualified) DAP decides the matter, and then the matter gets referred back to the court in the light of that decision. If the point goes against the creditor then the creditor would have to mount a Reg 19 challenge and the matter ends up back before the county court in that application, which would seem to be a waste of time. Furthermore, as the question might well require some tricky legal points (as in *Axnoller*) the first step would appear to involve a decision by a person who is not (with all due respect to the DAP) particularly well placed to decide it. Furthermore, one wonders what the debtor could do about it if the point went against him/her before the DAP. This point was not elaborated in the hearing before me, but it is not clear what route other than “normal” court proceedings the debtor would have available to him/her. The debtor might be able to have the point decided in the extant county court proceedings, and it would be a bit one-sided (and wasteful) to have a situation in which the debtor could raise the point there but the creditor could not. I consider that it is unlikely that Parliament intended to foist such undesirable scenarios on the parties by requiring all challenges to the quality of the debt by the creditor to go through the Reg 17 gateway.
68. Mr Westgate was entitled to pray in aid, as he did, the fact that Parliament has laid down strict time limits in a process which was apparently intended to bring about certainty, and he submitted that certainty was justifiable and required where a moratorium was concerned. I acknowledge the point as one that has to be considered, but I do not consider that it means that in no circumstances can a court decide the legal point arising out of the nature of a debt as qualifying or not unless there has first been an in-time application to the DAP.

69. Taking all these points together, I consider that Parliament cannot have intended to exclude the jurisdiction of the court to decide legal points about qualifying debts in favour of their being first decided by a non-qualified DAP within Reg 17. A debt is either a qualifying debt or it is not, and if a question arises as to whether it is then I consider that a court can decide it whenever it arises (subject to the abuse argument which is dealt with below).

### **The status of the debts as qualifying or non-qualifying**

70. In the light of that determination it would be logical to go on to consider whether the appellant's debt in this case is qualifying or non-qualifying. That point was not decided by the judge below, no doubt because it did not arise given her decision on jurisdiction. However, the point does now arise, and the parties before me were anxious that it should be decided in this court on this appeal rather than its being remitted to the court below. Mr Westgate's skeleton argument told me that a decision on a similar point was awaiting permission to appeal in the Court of Appeal, and if it were to be decided in this case then the respondent would wish to try to have a decision on the point in this case determined there at the same time, if possible (and obviously subject to permission from the Court of Appeal). Mr Morris went along with this idea.

71. Unfortunately there was no time to have the point argued at the hearing before me. In those circumstances the parties were content to bring it back for argument if the jurisdiction point made it relevant. Given my decision above, it is now relevant, so the appeal will have to be restored so that I can decide it. I shall so order.

### **Abuse of process**

72. In his Respondent's Notice the respondent raised a new argument based on abuse of process. This was not a point taken below, and again it did not arise on the basis of the judge's finding. Mr Morris did not object to its being taken on this appeal, and given the potential importance of the point in relation to other cases I will decide it.

73. Mr Westgate's point can be shortly stated. It is said that even if the court, outside a Reg 19 challenge, has jurisdiction to decide the status of a debt as qualifying or non-qualifying, it is an abuse of process to have such a point determined in non-Regulation 19 proceedings because Parliament has provided a special procedure which it would be wrong to by-pass or side-step. Reliance was placed on *Autologic Holdings Plc v IRC* [2006] AC 118 and *Senel Ahmed v David Paul Tatum* para 27 per Newey LJ.



74. In *Autologic* the House of Lords was called upon to consider whether it was permissible to bring a claim for restitution and damages against the IRC in relation to corporation tax when there was a special statutory procedure providing for such disputes which the taxpayers did not invoke. It was held that the actions should be struck out as an abuse of process. Lord Nicholls held:

“12. Clearly the purpose intended to be achieved by this elaborate, long established statutory scheme would be defeated if it were open to a taxpayer to leave undisturbed an assessment with which he is dissatisfied and adopt the expedient of applying to the High Court for a declaration of how much tax he owes and, if he has already paid the tax, an order for repayment of the amount he claims was wrongly assessed. In substance, although not in form, that would be an appeal against an assessment. In such a case the effect of the relief sought in the High Court, if granted, would be to negative an assessment otherwise than in accordance with the statutory code. Thus in such a case the High Court proceedings will be struck out as an abuse of the court's process. The proceedings would be an abuse because the dispute presented to the court for decision would be a dispute Parliament has assigned for resolution exclusively to a specialist tribunal. The dissatisfied taxpayer should have recourse to the appeal procedure provided by Parliament. He should follow the statutory route.

13. I question whether in this straightforward type of case the court has any real discretion to exercise. Rather, the conclusion that the proceedings are an abuse follows automatically once the court is satisfied the taxpayer's court claim is an indirect way of seeking to achieve the same result as it would be open to the taxpayer to achieve directly by appealing to the appeal commissioners. The taxpayer must use the remedies provided by the tax legislation. This approach accords with the views expressed in authorities such as *Argosam Finance Co Ltd v Oxby* [1965] Ch 390, *In re Vandervell's Trusts* [1971] AC 912 and, more widely, *Barraclough v Brown* [1897] AC 615.”

75. It is not clear to me that those principles have a direct application in this case. *Autologic* proceeds on the footing that the only proper way in which the taxpayer could claim what it needed was via the statutory procedure. What the case held was that in those circumstances it would be an abuse to try to get the same result by dressing up a claim in common law/equitable clothes and claiming appropriate remedies. That does not apply in the present case. I have held that the Reg 17/19 mechanism is not an exclusive mechanism. So it would not be an abuse per se to get the relevant point decided in another way.

76. In the *Ahmet* case Newey J considered something closer to the present case. At paragraph 26 he observed:

“26. The mere fact, however, that, as a matter of statutory construction, it cannot be seen that Parliament intended a statutory regime to be exclusive does not necessarily mean that it is always proper to resort to common law remedies instead ...”

And he went on to give an example:

“27. Company law provides an illustration. Chapter 1 of Part 11 of the Companies Act 2006 (“CA 2006”) sets out a procedure to be followed where a shareholder wishes to bring a “derivative claim”, ie one “(a) in respect of a cause of action vested in the company, and (b) seeking relief on behalf of the company”: see section 260. The provisions do not produce a statutory bar on shareholders including claims for relief in favour of their companies in “unfair prejudice” petitions under section 994 of CA 2006 , and it can be perfectly proper to do so. However, it could potentially be an abuse of process to seek relief in favour of a company by way of an unfair prejudice petition if that were the only relief sought or if, although the petition also contained a claim for relief which was available exclusively in unfair prejudice proceedings (such as an order for the purchase of shares), it could be discerned that the petitioner was not genuinely interested in obtaining such relief and was, instead, trying to bypass the filter for which Part 11 of CA 2006 provides: see *Ntzegekoutanis v Kimionis* [2024] Bus LR 339 at para 55.”

77. However, this case, too, proceeds on the footing of something generally compulsory - the “filter” of the rules about derivative actions. That is not present in the present case either. On the basis of my determination above, there is nothing compulsory about the Reg 17/19 regime.

78. It is therefore not immediately apparent that resorting to a “common law” remedy (as Mr Morris put it) would be an abuse of process, at least in relation to the determination of a legal point of the kind which arises in this case. However, it is wrong to seek to trammel the abuse jurisdiction with hard line barriers because the nature of potential abuses varies (see per Lord Diplock in *Hunter v Chief Constable of the West Midlands* [1982] AC 529 at p 536), so I would not say that court proceedings to determine these questions can never be an abuse of process. Nevertheless, in the present case I would say that seeking a determination of the issue in the county court proceedings would not be an abuse, on the facts of this case.

79. There are some separate facts, not outlined above, which Mr Westgate drew to my attention on this issue. When the notice of the (wrong type of) moratorium was

received, the appellant did not seek a Reg 17 review. However, it did write to the DAP's firm at Mental Health and Money on 22nd August 2022 raising a query (I was not shown the letter) but not seeking a review. At this point the appellant was out of time for seeking a review, as Mr Morris conceded. The appellant was referred to Regulations 17 and 19, and Mental Health Money and Advice offered to provide a review outcome to provide a base for a county court referral, but that offer was not taken up. (At that point in time the *Lees* 2023 decision - that of Mr Lock KC, finding that there was no jurisdiction to extend the time limits in Regs 17 and 19 - had not been decided). Mr Westgate prayed this in aid and submitted that it would be an abuse of process to allow the point to be determined in the present proceedings when the statutory procedure was available and an opportunity to invoke it was not taken up.

80. I do not accept that argument. Whatever the position may be where there are no extant proceedings at the time the moratorium arises, in circumstances where a point about the eligibility of a debt arises during the course of proceedings I do not consider that it is an abuse of process to seek to have the point decided in those proceedings. It must be remembered that the notification was of an additional debt, and it came during the present proceedings. If Mr Westgate were right the proceedings would have to stop while a review was sought of the DAP (who, it is right to point out again, is not legally qualified), and then, if the decision goes against the creditor, there would have to be a separate application to the county court under Reg 19. So in those circumstances the matter would end up back at the same court anyway. If the point goes against the debtor there is no clear avenue for him to have the point legally determined other than an ordinary application to the county court. Assuming that to be possible (it is not provided for in the Regulations) the matter would be back in the county court again. Bearing all that in mind, I do not see how deciding the point in the existing county court proceedings as and when it arises can be an abuse. If an arguable legal point arises it would be a waste of time and effort to go through the hoops of the Regulations only to end up in the same court. It would be a pointless exercise.

81. I therefore find that Mr Westgate's abuse point fails.

**Whether permission is required to continue the present action.**

82. The next point which arose before the judge below was, given that the debt in this case was treated as a moratorium debt, whether the permission of the court was required to pursue the enforcement application to judgment. This requires a consideration of how Regs 7 and 10 inter-relate. The judge was faced with the unenviable position of having to decide this less than straightforward point without knowing it was coming in the form in which it was advanced, because Mr Morris apparently changed position at the hearing. He originally accepted that permission was required, but in his oral submissions he changed that position and mounted a case based on Reg 10(3) to the effect that it was not required. So the judge had to deal with an unflagged case advanced with no notice.

83. The point is this. Reg 10 is apparently directed to what the court has to do when it learns of a moratorium. Reg 10(2) imposes a mandatory stay on any bankruptcy petition, and:

“(b) the court or tribunal must deal with any other action or proceeding in relation to a moratorium debt in accordance with this regulation.”

84. Reg 10(3) is then the provision on which Mr Morris relies:

“(3) Subject to paragraph (5), if at the start of a moratorium any action or proceeding that relates to a moratorium debt is pending in a court or tribunal then such action or proceeding may continue until the court or tribunal makes an order or judgment in conclusion of such action or proceeding.”

85. Paragraph (5) prevents the enforcement of judgments thereafter.

86. The source of the dispute then lies in paragraph (8):

“(8) This regulation is subject to regulation 7(2)(b)”

87. There is therefore a cross-reference to the provision which restrains a lot of activity to enforce moratorium debts. I will come to its provisions shortly.

88. The judge’s conclusion on this interaction, expressed understandably shortly in the circumstances, was as follows:

“47. In my view the use of the word ‘may’ indicates the proceedings may continue until the court or tribunal makes an order or a judgment. I agree with Miss Monk that Mr Morris’s primary argument was the correct one, namely that he needs permission from the court. If I am wrong and somehow Regulation 7(2)(b) has the effect Mr Morris argues then I consider, taking a step to collect a moratorium debt from a debtor would, and must include, obtaining a judgment otherwise it would make a nonsense of the other provisions which are clearly designed by the Parliamentary draftsman to think of every conceivable other form of action which somebody could take while a moratorium was in place, including for instance installing a prepayment meter. Whilst there is no express reference to a judgment in Regulation 7(7), I am satisfied that it would include a judgment because that would be a step in the process of collecting a moratorium debt. I am therefore satisfied that discretion applies.”

89. It would seem from her reference to collecting a moratorium debt that she was saying that the restraint on proceedings arose from Reg 7(7)(a).

90. Mr Morris’s case before me was that that conclusion was wrong. He submitted that the “may” in Reg 10(3) was a generally permissive one and imported no element of requirement of permission, as in paragraph (4) which is obviously permissive in relation to judgments on admissions. The purpose of the application of Reg 7(2)(b) was to ensure that notwithstanding the apparently absolute terms of Reg 10(5), judgments could still be enforced with the court’s permission, which is the case under Reg 7 itself. He further criticised the court’s apparent finding that pursuing an action would be within Reg 7(7)(a).

91. Mr Westgate accepted that the word “may”, by itself, in Reg 10(3) does not import the court’s discretion into the continuation of an action up to judgment, but he submits that when read with other provisions the court’s permission is in fact needed. He gets there via Reg 10(8) which makes the whole of Reg 10 subject to Reg 7(2)(b), and when one looks at the restraints created by the rest of Reg 7 the continuation of an action would be “enforcement action” which is an activity falling within Regs 7(6) and (7) and which is therefore prohibited without the permission of the court. He supports his submissions by reference to the width of the general concept of the expression “enforcement action” used in Reg 7, published government guidance and the fact that the Tomlin Order itself (para 9(c)) permitted the appellant to “take enforcement action immediately by restoring the existing possession proceedings”. His submission was that the present case fell within the prohibition in Reg 7(7)(a) and (c), which prevent enforcement of securities.
92. I consider that Mr Westgate is right in his acceptance that the use of the word “may” in Reg 10(3) does not of itself import a permission requirement. Taken by itself it is apparently a general provision which a creditor can take advantage of. If there is to be a restraint on that apparent facility it must come from the apparent application of Reg 7(2)(b), which is the main restraining provision in the Regulations.
93. It therefore seems logical that although the starting point for this argument below seems to have been Reg 10(3), as it was before me, it is better to start by considering whether there is anything in or arising from Reg 7(2)(b) which restrains the continuation of a pending action. If there is not then Reg 10(8) does not import anything of use to Mr Westgate.
94. Reg 7(2) provides:
- “(2) Subject to paragraph (3), during a moratorium period a creditor may not, in relation to any moratorium debt, take any of the steps specified in paragraph (6) in respect of the debt unless—
- i. these Regulations specify otherwise, or
- ii. the county court or any other court or tribunal where legal proceedings concerning the debt have been or could be issued or started has given permission for the creditor to take the step.”
95. Three things are significant about that paragraph, for present purposes. First, it is a bar on “steps” (specified later); second, the bar does not apply if the Regulations specify otherwise; and third, the county court can give permission for the “step”.
96. Paragraphs (6) and (7) then identify the “steps”. The relevant “step” here is first defined generally by paragraph (6)(c):
- “(6) The steps mentioned in paragraph (2) that a creditor is prevented from taking are any steps to—
- ...

(c) take any enforcement action in respect of a moratorium debt (whether the right to take such action arises under a contract, by virtue of an enactment or otherwise) ...”

97. “Enforcement action” is then defined in paragraph (7) with these introductory words:

“(7) A creditor or agent takes enforcement action if they take any of the following steps in relation to a moratorium debt – “

98. There then follows a long list of activities, some described generally and some very specifically. The whole provision is set out in the Appendix to this judgment, and I do not need to set it out here. Its extensiveness and particularisation is relevant to the question of whether the list is exclusive or whether it is permissible to find other steps to be “enforcement action” even if they do not fall within any of the particular subparagraphs. Mr Westgate submitted that the list was not exclusive and one could indeed bring other non-specified acts within it. I disagree. It does not state a general description and then say it “includes” what follows. It identifies all steps which are to be treated as “enforcement action” without any scope for general broadening (some of them are quite broad within themselves anyway).

99. Mr Westgate submitted that the facts and decision in *Axnoller* tended to support him in saying that the list was not exclusive. I do not think they do. In that case what was sought was an unless order in relation to an order for costs which had already been made. The application was for an order with the effect that unless those costs were paid then further proceedings could not be brought. What the judge held was that in a practical sense that was enforcement of an order which was prohibited by Reg 7(7)(b) (“a step to enforce a judgment or order issued by a court”). His decision was very much geared to a specifically prohibited step rather than some general conception of “enforcement action”.

100. It is therefore necessary to identify under which of the specified enforcement steps the continuation of a pending action up to judgment would fall. It is not without significance that none of those steps would seem expressly to cover that situation, even though they do specifically cover the commencement of proceedings (step (f)) and the enforcement of judgments (step (b)). The absence of a reference to continuing existing proceedings is a striking omission, bearing in mind that it could easily, and naturally, have been included either specifically, or simply by adding the words “start or pursue an action [etc]” in step (f). Furthermore, Parliament and the draftsman can be taken to be live to the concept of a stay subject to permission to continue in other legislation – for example, the insolvency legislation – and the continuation of pending actions was actually in mind as is demonstrated by the presence of Reg 10(3) itself.

101. In the absence of an express prohibition it is necessary to consider whether any of the more generally expressed steps cover it. The only candidates are steps (a) and (c). The judge relied on (a), apparently. Step (a) is:

“(a) take a step to collect a moratorium debt from a debtor”.

102. In some contexts this expression could well include pursuing a pending action, but if that is right then one wonders why there is specific reference to starting proceedings and enforcing judgments, leaving out pursuing current proceedings. To that can be

added the express bar on applying for a default judgment (step g), which would be unnecessary if there were a general bar in (a). I consider the more likely intention to be that it is a general expression referring to non-court related steps not otherwise expressly covered.

103. Mr Westgate also relied on step (c) –

“(c) enforce security held in respect of a moratorium debt”

104. I consider that treating this as covering steps in a pending action to enforce a security would be a strained interpretation in the context in which this provision appears. If, as Mr Westgate’s submission involves, it applied to security enforcement actions, it would only apply to such actions, with no requirement to seek permission to continue other pending actions. That would seem to be an irrational distinction for the Regulations to adopt. I consider it more likely that this refers to out of court enforcement actions. I do not think that Mr Westgate’s case on this point is assisted by his pointing out that the Tomlin Order permits “enforcement action”. A statutory instrument is not construed by reference to how parties have subjectively described their actions in inter partes documents. Sub-paragraph (c) means what it means irrespective of wording used by the parties in their documents.

105. A conclusion that Reg 7 does not seem to present a bar on continuing pending proceedings, derived from the terms of Reg 7(7), gains some support from the presence of Reg 10(3) itself. Its effect would seem to be directly contrary to any idea that continuing an action until judgment is an “enforcement step” within Reg 7(7) which requires permission. Rather, Reg 10(3) expresses the contrary - the action may continue until judgment. If Parliament’s intention was that such actions could only proceed with the court’s permission one would have expected Reg 10(3) to be expressed differently, and to refer to the ability to give permission or perpetuate a stay. It is not expressed in that way. Reflecting a requirement of permission would require the addition of only a couple of words.

106. It therefore seems to me that the Regulations do not impose a general bar on continuing pending actions without the permission of the court. However, having said all that, it is necessary to test those conclusions by asking what work Reg 10(8) does. Mr Westgate’s case presents a clear enough answer to that question. On his analysis continuing pending proceedings is a prohibited step (without leave). Reg 10(3) tells the court what it can do, but to make sure that permission is still required notwithstanding its terms, Reg 10(8) makes it clear (via the application of Reg 7(2)(b)) that permission is still required. It is apparent how that chain of logic works. However, it depends on the first step, that is to say on establishing that continuing a pending action (up to judgment) is a prohibited enforcement step within Reg 7(7), which it seems to me is not correct. If it were then I think his case on the point would succeed.

107. Mr Morris’s case provides a different answer. His answer is that the effect of Reg 10(8) is to modify the apparently absolute terms of the Reg 10(5) bar on the enforcement of judgments by reinforcing, or reimposing, the ability to grant permission which Reg 7(2) allows. That is plausible, though I confess not wholly satisfactory. It may do other work as well, which has not yet appeared as a matter of analysis. However, in my view, what it does not do is to introduce a requirement to obtain permission to continue a pending action where that activity is not within Reg 7(7) in

the first place. Reg 7(2)(b) specifically refers to “steps”, which throws one into a consideration of the extent of Reg 7(7).

108. For those reasons I respectfully differ from the decision of the judge below, which I suspect was reached after much thinner argument than I have had, and I would allow the appeal on the point. I consider that the court’s permission is not required to pursue the present action to judgment even if it involves a moratorium debt.

### **The actual exercise of discretion**

109. Having decided that the court’s permission was required to progress the action, the judge considered an application for the exercise of her discretion to allow that to happen. She ruled that she would not do so. She determined that insofar as the charged properties included the debtor’s home then enforcement would be to his detriment. At a time when he was under a disability the debtor would be required to provide evidence responding to the debt and provide instructions for attending court proceedings. The whole purpose of the moratorium was to provide a breathing space and to be protected during that period. She therefore declined to allow the action to proceed.

110. This point only arises where the debt is a moratorium debt, and that has not yet been determined. It also only arises if I am wrong in my finding that permission is needed in respect of such a debt. It is therefore a remote question at the moment, and I decline to deal with it. I would adjourn it to be considered if and when it turns out to matter.

### **Conclusion**

111. I therefore conclude:

(a) The appeal against the judge’s decision on jurisdiction should be allowed and the question of whether and to what extent the creditor’s debt in this case is a moratorium debt can be decided by a court and is not confined to the DAP.

(b) The appeal against the judge’s decision as to the need for permission to continue the present action to judgment is allowed.

(c) The appeal in relation to the exercise of any discretion to allow or prevent the action to proceed to judgment is adjourned.

112. Directions on the further pursuit of outstanding questions on this appeal will be given after the hand-down of this judgment.



## Appendix – Relevant parts of the Regulations

### PART 1 General provisions

#### **Interpretation**

2.— (1) In these Regulations—

“

“debt advice provider” has the meaning given in regulation 3;

(

“moratorium” means, unless otherwise stated, a breathing space moratorium or a mental health crisis moratorium;

“moratorium debt” is to be construed in accordance with regulation 6;

“moratorium period” means the period from the start of a moratorium to the end of the moratorium;

“non-eligible debt” has the meaning given in regulation 5(4);

“occupation contract” has the meaning given in section 7 of the Renting Homes (Wales) Act 2016;

“qualifying debt” is to be construed in accordance with regulation 5;

“register” means, unless otherwise indicated in this paragraph, the register of matters relating to moratoria maintained by the Secretary of State under regulation 35(1)(b);

#### **Meaning of debt advice provider**

3.—

(1) In these Regulations a “debt advice provider” is—

(a) an authorised person who has Part 4A permission to carry on any regulated activity of the kind specified in article 39E (debt-counselling) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, or

(b) a local authority.

#### **Qualifying debt**

5.—

(1) A “qualifying debt” means any debt or liability other than non-eligible debt.

#### **Moratorium debt**

6. A “moratorium debt” is any qualifying debt—

(a) that was incurred by a debtor in relation to whom a moratorium is in place,

(b) that was owed by the debtor at the point at which the application for the moratorium was made, and

(c) about which information has been provided to the Secretary of State by a debt advice provider under these Regulations.

#### **Effect of a moratorium**

7.—

(1) A moratorium has the effect specified in this regulation in relation to moratorium debt during a moratorium period.

(2) Subject to paragraph (3), during a moratorium period a creditor may not, in relation to any moratorium debt, take any of the steps specified in paragraph (6) in respect of the debt unless—

(a) these Regulations specify otherwise, or

- (b) the county court or any other court or tribunal where legal proceedings concerning the debt have been or could be issued or started has given permission for the creditor to take the step.
- (3) A court or tribunal may not give permission for a creditor or agent to take any of the steps specified in paragraph (6)(a) or (b).
- (4) Subject to paragraph (5), for the purposes of paragraph (2)(b), a court or tribunal may—
- (a) determine an application for permission to take a step specified in paragraph (6)(c) or (d) in any way that it thinks fit,
  - (b) give permission subject to such conditions as it thinks fit, and
  - (c) make such orders as may be necessary to give effect to the determination of the application.
- (5) A court or tribunal may only grant permission under paragraph 2(b) for a creditor or agent to take a step specified in paragraph (6)(c) or for a creditor to instruct an agent to take a step specified in paragraph (6)(c) where the court considers that—
- (a) it is reasonable to allow the creditor or their agent to take the step, and
  - (b) the step will not—
    - (i) be detrimental to the debtor to whom the moratorium relates, or
    - (ii) significantly undermine the protections of the moratorium.
- (6) The steps mentioned in paragraph (2) that a creditor is prevented from taking are any steps to—
- (a) require a debtor to pay interest that accrues on a moratorium debt during a moratorium period,
  - (b) require a debtor to pay fees, penalties or charges in relation to a moratorium debt that accrue during a moratorium period,
  - (c) take any enforcement action in respect of a moratorium debt (whether the right to take such action arises under a contract, by virtue of an enactment or otherwise), or
  - (d) instruct an agent to take any of the actions mentioned in sub-paragraphs (a) to (c).
- (7) A creditor or agent takes enforcement action if they take any of the following steps in relation to a moratorium debt—
- (a) take a step to collect a moratorium debt from a debtor,
  - (b) take a step to enforce a judgment or order issued by a court or tribunal before or during a moratorium period regarding a moratorium debt,
  - (c) enforce security held in respect of a moratorium debt,
  - (d) obtain a warrant,
  - (e) subject to regulation 12(4)(d), sell or take control of a debtor's property or goods,
  - (f) start any action or legal proceedings against a debtor relating to or as a consequence of non-payment of a moratorium debt,
  - (g) make an application for a default judgment in respect of a claim for money against the debtor,
  - (h) take steps to install a pre-payment meter under paragraph 7(3)(a) of Schedule 2B to the Gas Act 1986 or paragraph 2(1)(a) of Schedule 6 to the Electricity Act 1989 to take payments in respect of a moratorium debt, or use a pre-payment meter already installed to take such payments, unless a debtor had provided their consent for the installation of the pre-payment meter before the moratorium started,
  - (i) take steps to disconnect a debtor's premises from a supply of gas under paragraph 7(3)(b) of Schedule 2B to the Gas Act 1986 or electricity under paragraph 2(1)(b) of Schedule 6 to the Electricity Act 1989 unless the debtor had taken the supply of gas or electricity illegally,
  - (j) serve a notice to take possession of a dwelling-house let to a debtor on grounds 8, 10 or 11 in Schedule 2 to the Housing Act 1988 or take possession of a dwelling-house let to a debtor having served such a notice,

- (k) serve a notice to take possession of a dwelling let to a debtor or take possession of a dwelling let to a debtor having served such a notice—
- (i) on the ground of breach of contract specified in section 157 of the Renting Homes (Wales) Act 2016 where that breach relates to rent arrears, or
  - (ii) on the grounds specified in section 181(2) of the Renting Homes (Wales) Act 2016, or
  - (iii) on the grounds specified in section 187(2) of the Renting Homes (Wales) Act 2016,
- (l) contact a debtor for the purpose of enforcement of a moratorium debt,
  - (m) make an application in respect of a debtor for commitment to prison under regulation 16 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 or regulation 47 of the Council Tax (Administration and Enforcement) Regulations 1992, or
  - (n) take any of the steps in this paragraph in relation to a joint debtor.
- (8) For the purposes of paragraph (7)(f), legal proceedings against a debtor includes a bankruptcy petition.
- (9) Where a moratorium debt is a secured debt, paragraph (6)(a) applies only to interest that accrues on any arrears on the debt during a moratorium period.
- (10) After the end of a moratorium period, neither a creditor nor their agent is entitled to—
- (a) require a debtor to pay interest, fees, penalties or charges referred to in paragraph (6)(a) and (b) that accrued during the moratorium period, or
  - (b) treat the non-payment during the moratorium period by the debtor of interest, fees, penalties or charges as a default by the debtor under, or a breach of, the agreement between the debtor and the creditor.
- (11) Subject to paragraph (13)(c), to the extent it applies to a moratorium debt, during a moratorium period, the Secretary of State and the Commissioners for Revenue and Customs must not direct that a new arrangement should be put in place for a debtor's benefit to be paid, wholly or in part, to a third party under regulation 35 of the Social Security (Claims and Payments) Regulations 1987.
- (12) Any action taken contrary to this regulation shall be null and void.
- (13) Nothing in this regulation affects the following to the extent that they relate to a debtor—
- (a) a charging order made before the start of the moratorium under the Charging Orders Act 1979 or regulations 50 and 51 of the Council Tax (Administration and Enforcement) Regulations 1992,
  - (b) an attachment of earnings order made before the start of the moratorium under the Attachment of Earnings Act 1971 or regulation 37 of the Council Tax (Administration and Enforcement) Regulations 1992,
  - (c) a deduction from earnings made under—
    - (i) Parts 8 or 8A of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988,
    - (ii) Part 3 of the Social Security Administration Act 1992, or
    - (iii) Part 6 of the Social Security (Overpayments and Recovery) Regulations 2013, where a deduction notice has been served before the start of the moratorium under that Act or those Regulations, or
  - (d) the debtor's universal credit paid, wholly or in part, to a third party under regulation 60 of and Schedules 6 and 7 to the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013.
- (14) In this regulation, "benefit" means any payment made to a debtor under the Social Security Contributions and Benefits Act 1992, the Jobseekers Act 1995, the Welfare Reform Act 2007 or the Welfare Reform Act 2012.
- (15) This regulation is subject to regulation 11.

### **Extension of limitation periods because of a moratorium**

#### **8.—**

(1) This regulation applies where—

- (a) a limitation time limit relates to a right of action in respect of a moratorium debt,
- (b) a moratorium in relation to the debt starts before the limitation time limit expires, and
- (c) if not extended by this regulation, the limitation time limit would expire before the end of the period of eight weeks beginning with the day on which the moratorium ends.

(2) For the purposes of bringing an action in respect of a moratorium debt, the limitation time limit expires instead at the end of the period of eight weeks beginning with the day on which the moratorium ends.

(3) Where more than one limitation time limit applies in relation to a right of action in respect

### **Existing legal proceedings at the start of a moratorium**

#### **10.—**

(1) If at the start of a moratorium a creditor to whom a moratorium debt is owed has a bankruptcy petition or any other action or other proceeding in any court or tribunal pending in relation to a moratorium debt, then the creditor must notify the court or tribunal of the moratorium.

(2) After a court or tribunal has received a notification referred to in paragraph (1) or is otherwise made aware of a moratorium—

(a) any bankruptcy petition in relation to a moratorium debt must be stayed by the court until the moratorium ends or is cancelled, and

(b) the court or tribunal must deal with any other action or proceeding in relation to a moratorium debt in accordance with this regulation.

(3) Subject to paragraph (5), if at the start of a moratorium any action or proceeding that relates to a moratorium debt is pending in a court or tribunal then such action or proceeding may continue until the court or tribunal makes an order or judgment in conclusion of such action or proceeding.

(4) Where a debtor makes an admission before or during a moratorium in connection with an action or other proceeding relating to a moratorium debt, a creditor who is a party to the action or proceeding may enter judgment in that action or proceeding during the moratorium if they would otherwise be entitled to do so.

(5) Subject to paragraph (7), during a moratorium a court or tribunal must take all necessary steps to ensure that any action or proceeding to enforce a court order or judgment concerning a moratorium debt does not progress during the moratorium period.

(6) For the purpose of paragraph (5), the progression of an action or proceeding includes (but is not limited to)—

(i) holding a hearing during a moratorium period,

(ii) making or serving an order or warrant, writ of control, writ of execution or judgment summons, and

(iii) instructing an enforcement agent to serve an order, warrant, writ of control, writ of execution or judgment summons.

(7) This regulation does not prevent a court or tribunal from sending notices or correspondence to a debtor in relation to an action or proceeding.

(8) This regulation is subject to regulation 7(2)(b).

### **Creditor search for additional debt**

#### **14.—**

- (1) A creditor who receives a notification of the start of a moratorium under these Regulations must as soon as reasonably practicable undertake a reasonable search of their records to identify—
  - (a) debt owed to the creditor by the debtor to whom the moratorium relates, and
  - (b) any creditor by assignment.
- (2) Where a creditor search identifies a debt owed by the debtor that was not included in the notification referred to in paragraph (1), the creditor must provide details of the debt to the debtor's debt advice provider.
- (3) Where a creditor search identifies a creditor by assignment, the creditor must—
  - (a) notify the creditor by assignment of the moratorium, and
  - (b) provide contact details of the creditor by assignment to the debtor's debt advice provider.
- (4) Any creditor who fails to comply with paragraph (2) or (3) as soon as reasonably practicable will be liable for any losses caused to the debtor or (as the case may be) the creditor by assignment as a result.
- (5) A debt advice provider who receives details of a debt from a creditor in accordance with paragraph (2) must take the relevant steps specified in regulation 15.
- (6) Where a debt advice provider receives contact details of a creditor by assignment in accordance with paragraph (3)(b) the debt advice provider must, by the end of the following business day, provide the contact details to the Secretary of State.

#### **Application of moratorium to additional debt**

##### **15.—**

- (1) This regulation applies where a debt advice provider has initiated a moratorium under these Regulations and subsequently—
  - (a) receives details under regulation 14(2) of a debt not specified as a moratorium debt in a notification from the Secretary of State referred to in regulation 14(1), or
  - (b) otherwise becomes aware of a debt that is owed by a debtor in relation to whom a moratorium is in place but which was not included in the information provided to the Secretary of State under regulations 25(1)(b) or (c) or 31(1)(b) or (d), (an "additional debt").
- (2) Where this regulation applies, a debt advice provider must consider whether an additional debt is a qualifying debt.
- (3) Subject to paragraph (4), if a debt advice provider considers that an additional debt is a qualifying debt, the debt advice provider must provide to the Secretary of State details of the additional debt, including contact details of the creditor to whom the debt is owed.
- (4) For a breathing space moratorium, if a debt advice provider receives details, or becomes aware, of an additional debt after the period of 45 days beginning with the day on which a moratorium started, the debt advice provider may provide to the Secretary of State the information required under paragraph (3) in relation to the additional debt if the debt advice provider considers it appropriate for the moratorium to apply in respect of the additional debt.
- (5) Where the Secretary of State receives information under paragraphs (3) or (4), the Secretary of State must, by the end of the following business day, provide a notification of the moratorium to those creditors whose contact details have been provided to the Secretary of State in accordance with those paragraphs.
- (6) Paragraph (5) is subject to regulation 38.
- (7) A moratorium has the effect specified in regulation 7 in relation to an additional debt from the earliest of the date that the creditor to whom the additional debt is owed—
  - (a) received a notification of the moratorium under paragraph (5), or
  - (b) is deemed under regulation 37(4) to receive the notification under paragraph (5).

(8) This regulation does not affect the date on which a moratorium starts or ends under these Regulations.

### **Creditor's request for review of a moratorium**

#### **17.—**

(1) Subject to paragraph (4), a creditor who receives notification of a moratorium under these Regulations may request that the debt advice provider who initiated the moratorium or (as the case may be) the debt advice provider to whom the debtor has been referred since the start of the moratorium reviews the moratorium to determine whether it should continue or be cancelled in respect of some or all of the moratorium debts on one or both of the following grounds, namely that—

(a) the moratorium unfairly prejudices the interests of the creditor, or  
(b) there has been some material irregularity in relation to any of the matters specified in paragraph (2).

(2) The matters in relation to which a creditor may request a review on the ground of material irregularity are that—

(a) the debtor did not meet the relevant eligibility criteria when the application for the moratorium was made,

(b) a moratorium debt is not a qualifying debt, or

(c) the debtor has sufficient funds to discharge or liquidate their debt as it falls due.

(3) A request under paragraph (1) must be made within the period of 20 days beginning with the day on which the moratorium started.

(4) Where an additional debt is included in a moratorium in accordance with regulation 15, the creditor to whom the additional debt is owed may request a review of the moratorium in relation to the additional debt in accordance with this regulation.

(5) A request under paragraph (4) must be made within the period of 20 days beginning with the day on which the moratorium took effect in relation to the additional debt under regulation 15(7).

(6) Any request made under this regulation must—

(a) be made in writing to the debtor's debt advice provider, and

(b) contain the following—

(i) a statement of the ground or grounds on which the review is requested, and

(ii) evidence which supports the statement.

### **Review and cancellation of a moratorium as a result of a creditor request**

#### **18.—**

(1) Having received a request for a review in accordance with regulation 17, a debt advice provider must conduct the review and carry out the steps in paragraph (4) before the end of the period of 35 days beginning with—

(a) the day on which the moratorium started, or

(b) in respect of an additional debt, the day on which the moratorium took effect in relation to the additional debt under regulation 15(7).

(2) Subject to paragraph (3), having carried out a review in response to a request from a creditor, a debt advice provider must cancel a moratorium in respect of some or all of the moratorium debts if the debt advice provider considers that the creditor has provided sufficient evidence that—

(a) the moratorium unfairly prejudices the interests of the creditor, or

(b) there has been some material irregularity in relation to any of the matters specified in regulation 17(2).

- (3) A debt advice provider is not required to cancel a moratorium under paragraph (2) in respect of a moratorium debt if the debt advice provider considers that the debtor's personal circumstances would make the cancellation unfair or unreasonable.
- (4) The steps referred to in paragraph (1) are that a debt advice provider must—
- (a) inform the creditor who requested a review of the outcome of the review, and
  - (b) if the debt advice provider considers that a moratorium should be cancelled in respect of some or all of the moratorium debts—
    - (i) consult the debtor to whom the moratorium relates prior to doing so to the extent that the debt advice provider is able to do so, and
    - (ii) if, after acting in accordance with paragraph (i), the debt advice provider remains of the view that the moratorium should be cancelled in respect of some or all of the moratorium debts, notify the Secretary of State and the debtor of the cancellation.
- (5) Where the Secretary of State receives a notification under paragraph (4)(b)(ii), the Secretary of State must, by the end of the following business day—
- (a) cause an entry to be made on the register, and
  - (b) send a notification of the cancellation of the moratorium to each creditor and agent in respect of whom the cancellation takes effect.
- (6) Paragraph (5) is subject to regulation 38.
- (7) The cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (5)(a).
- (8) A notification sent to a creditor or agent in accordance with paragraph (5)(b) must—
- (a) state the reason for the cancellation, and
  - (b) specify the date on which the cancellation takes effect.
- (9) A review carried out under this regulation in respect of a breathing space moratorium may be carried out as part of a midway review.

### **Court application by creditor for cancellation of a moratorium**

#### **19.—**

- (1) If a debt advice provider has carried out a review of a moratorium following a request made by a creditor under regulation 17 and the moratorium has not been cancelled under regulation 18 in respect of some or all of the moratorium debts as a result, then the creditor may make an application to the county court on one or both of the grounds in regulation 17(1).
- (2) An application under this regulation must be made before the end of the period of 50 days beginning with—
- (a) the day on which the moratorium started, or
  - (b) in respect of an additional debt, the day on which the moratorium took effect in relation to the additional debt under regulation 15(7).
- (3) Where on an application under this regulation the court is satisfied as to either of the grounds in regulation 17(1), it may do either or both of the following, namely—
- (a) cancel the moratorium in relation to a moratorium debt owed to the creditor who made the application to the court,
  - (b) cancel the moratorium in respect of any other moratorium debt.
- (4) Where a court has cancelled a moratorium in relation to a moratorium debt under paragraph (3), the court can require the debtor to pay any interest, fees or charges that accrued during the moratorium period in respect of the debt.
- (5) In any case where a court cancels a moratorium in relation to a moratorium debt under paragraph (3) or requires a debtor to pay interest, fees or charges under paragraph (4), the court—
- (a) may give such supplemental directions as it thinks fit, and

(b) must notify the creditor, the debtor and the Secretary of State that the moratorium has been cancelled in relation to the moratorium debt.

(6) Where the Secretary of State receives a notification under paragraph (5)(b), the Secretary of State must, by the end of the following business day—

(a) cause an entry to be made on the register, and

(b) send a notification of the cancellation of the moratorium to each creditor and agent in respect of whom the cancellation takes effect.

(7) Where a court cancels a moratorium under paragraph (3) the cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (6)(a).

### **Application for a breathing space moratorium**

#### **23.—**

(1) A debtor may apply to a debt advice provider for a breathing space moratorium.

### **Debtor eligibility for a breathing space moratorium and debt advice provider obligations**

#### **24.—**

(1) A debt advice provider must consider any application for a breathing space moratorium made to them by a debtor.

(2) Having considered the application, the debt advice provider must initiate a breathing space moratorium in relation to the debtor if the debt advice provider considers that—

(a) the debtor meets the eligibility criteria in paragraph (3),

(b) the conditions in paragraph (4) are met, and

(c) the debts to be included in the moratorium are qualifying debts.

(3) The eligibility criteria referred to in paragraph (2)(a) are that, on the date of the application for a breathing space moratorium, the debtor—

(a) is an individual,

(b) owes a qualifying debt to a creditor,

(c) is domiciled or ordinarily resident in England or Wales,

(d) is not subject to a debt relief order,

(e) is not subject to an interim order or individual voluntary arrangement,

(f) is not an undischarged bankrupt,

(g) is not subject to another breathing space moratorium and, if they have previously been subject to a breathing space moratorium, that moratorium ended more than 12 months before the date of the application, and

(h) is not subject to a mental health crisis moratorium.

(4) The conditions referred to in paragraph (2)(b) are that, in light of the information provided by the debtor under regulation 23 and any other information obtained by the debt advice provider—

(a) the debtor is unable, or is unlikely to be able, to repay some or all of their debt as it falls due, and

(b) a breathing space moratorium would be appropriate.

(5) For the purpose of paragraph (4)(b), when considering whether a breathing space moratorium is appropriate the debt advice provider—

(a) must consider whether—

(i) the debtor has sufficient funds or income to discharge or liquidate their debt as it falls due,

(ii) it would benefit the debtor to enter into a debt solution,

(iii) the debtor may be eligible to enter into a debt solution during a moratorium or as soon as reasonably practicable after the moratorium ends, and



- (iv) the moratorium period is necessary in order for the debt advice provider to assess which debt solution would be appropriate for the debtor, to advise the debtor on which debt solution would be appropriate or for a debt solution to be put in place, and
- (b) may have regard to any other factor that the debt advice provider considers relevant, including but not limited to whether—
  - (i) it is necessary for the debtor to enter into a debt solution in order to discharge or liquidate their debt,
  - (ii) it is necessary for the debtor to enter into a debt solution without delay and the debtor is in a position to do so, or
  - (iii) the debtor is already subject to an appropriate debt solution.

### PART 3 Mental health crisis moratorium

#### **Meaning of mental health crisis moratorium**

##### **28.—**

- (1) A mental health crisis moratorium is a moratorium under this Part in respect of a debtor who is receiving mental health crisis treatment.
- (2) In these Regulations, a debtor is receiving mental health crisis treatment when the debtor—
  - (a) has been detained in hospital for assessment under sections 2 or 4 of the Mental Health Act 1983,
  - (b) has been detained in hospital for treatment under section 3 of that Act,
  - (c) has been removed to a place of safety by a police constable under sections 135 or 136 of that Act,
  - (d) has been detained in hospital for assessment or treatment under sections 35, 36, 37, 38, 45A, 47 or 48 of that Act, or
  - (e) is receiving any other crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service in relation to a mental disorder of a serious nature.
- (3) In this regulation “specialist mental health service” means a mental health service provided by a crisis home treatment team, a liaison mental health team, a community mental health team or any other specialist mental health crisis service.

#### **Application for a mental health crisis moratorium**

##### **29.—**

- (1) Any of the following persons may submit an application to a debt advice provider for a mental health crisis moratorium in relation to a debtor—
  - (a) the debtor,
  - (b) the debtor’s carer,
  - (c) an approved mental health professional,
  - (d) a care co-ordinator appointed in respect of the debtor,
  - (e) a mental health nurse,
  - (f) a social worker,
  - (g) an independent mental health advocate appointed in respect of the debtor for the purposes of arrangements made under sections 130A(1) or 130E(1) of the Mental Health Act 1983,
  - (h) an independent mental capacity advocate appointed in respect of the debtor for the purposes of arrangements made under section 35(1) of the Mental Capacity Act 2005,
  - (i) a relevant person’s representative,
  - (j) an approved mental capacity professional approved under paragraph 39 of Schedule AA1 to the Mental Capacity Act 2005, or

- (k) an appropriate person as specified in paragraph 42(5) of Schedule AA1 to the Mental Capacity Act 2005.
- (2) The application must include the following information—
- (a) sufficient information to identify the debtor, and
  - (b) evidence from an approved mental health professional that the debtor is receiving mental health crisis treatment.
- (3) For the purpose of paragraph (2)(b), evidence from an approved mental health professional must include the following—
- (a) sufficient information to identify the debtor,
  - (b) the name and contact details of the approved mental health professional,
  - (c) the name and contact details of the debtor’s nominated point of contact,
  - (d) a declaration by the approved mental health professional that the debtor is receiving mental health crisis treatment, and
  - (e) a signed statement by the approved mental health professional that the evidence is, to the best of their knowledge and belief, correct.
- (4) In addition to the information specified in paragraph (2), the application may include the following information where it is known by the person submitting the application, is relevant and has not already been provided in accordance with paragraph (2)(a)—
- (a) the debtor’s full name, date of birth and usual residential address,
  - (b) the trading name or names and address of any business carried on by the debtor,
  - (c) details of the debts to which the debtor is subject at the date of the application and the contact details of the creditor to whom each debt is owed, and
  - (d) details of any enforcement agent or other agent instructed by the creditor for the purpose of collection or enforcement of the debt including the agent’s contact details.
- (5) The nominated point of contact referred to in paragraph (3)(c) may be the approved mental health professional who provided the evidence referred to in paragraph (2)(b).
- (6) An application to a debt advice provider under this regulation may include an application for non-disclosure of the debtor’s usual residential address under regulation 38.
- (7) In this regulation—
- (a) “adult” means a person aged 18 or over;
  - (b) “carer” means an adult who—
    - (i) provides care for another adult, and
    - (ii) is in receipt of carer’s allowance or an award of universal credit of an amount under regulation 29 of the Universal Credit Regulations 2013;
  - (c) “carer’s allowance” means an allowance paid to a person in accordance with section 70 of the Social Security Contributions and Benefits Act 1992;
  - (d) “relevant person’s representative” means a person appointed in respect of the debtor in accordance with paragraph 137 of Schedule A1 to the Mental Capacity Act 2005 or that provision as it continues in force by virtue of any transitional or savings provisions made in connection with its repeal by the Mental Capacity (Amendment) Act 2019.

**Debtor eligibility for a mental health crisis moratorium and debt advice provider obligations**

**30.—**

- (1) When considering an application for a mental health crisis moratorium made under regulation 29, a debt advice provider must—
- (a) assess whether the debts included in the application are qualifying debts, and
  - (b) obtain information relevant to the financial standing of the debtor from at least one credit reference agency.

- (2) Having considered an application for a mental health crisis moratorium, a debt advice provider must initiate a mental health crisis moratorium on behalf of a debtor if the debt advice provider considers that—
- (a) the debtor meets the eligibility criteria in paragraph (3),
  - (b) the conditions in paragraph (4) are met, and
  - (c) the debts to be included in the moratorium are qualifying debts.
- (3) The eligibility criteria referred to in paragraph (2)(a) are that the debtor—
- (a) is an individual,
  - (b) owes a qualifying debt to a creditor,
  - (c) is domiciled or ordinarily resident in England or Wales,
  - (d) is not subject to a debt relief order,
  - (e) is not subject to an interim order or individual voluntary arrangement,
  - (f) is not an undischarged bankrupt, and
  - (g) is not subject to a breathing space moratorium or a mental health crisis moratorium.
- (4) The conditions referred to in paragraph (2)(b) are that, in light of the information provided in accordance with regulation 29(2) and (4) and any other information obtained by the debt advice provider—
- (a) the debtor is unable, or is unlikely to be able, to repay some or all of their debt as it falls due,
  - (b) a mental health crisis moratorium would be appropriate, and
  - (c) an approved mental health professional has provided evidence that the debtor is receiving mental health crisis treatment.
- (5) For the purpose of paragraph (4)(b), when considering whether a mental health crisis moratorium is appropriate, the debt advice provider—
- (a) must consider whether the debtor has sufficient funds or income to discharge or liquidate their debt as it falls due, and
  - (b) may have regard to any other factor that the debt advice provider considers relevant.
- (6) In this regulation, “credit reference agency” means a person who carries on by way of business an activity of the kind specified by article 89B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

### **Initiation of mental health crisis moratorium**

#### **31.—**

- (1) In order to initiate a mental health crisis moratorium a debt advice provider must provide to the Secretary of State—
- (a) confirmation that—
    - (i) the debtor meets the eligibility criteria in regulation 30(3), and
    - (ii) the conditions in regulation 30(4) are met,
  - (b) the information provided in accordance with regulation 29(2)(a) and (4),
  - (c) the name and contact details of the debtor’s nominated point of contact, and
  - (d) information identified by the debt advice provider about any other qualifying debt.
- (2) Where the Secretary of State receives the confirmation and information referred to in paragraph (1), the Secretary of State must, by the end of the following business day—
- (a) cause an entry to be made on the register, and
  - (b) send a notification of the start of the mental health crisis moratorium to—
    - (i) the debtor’s nominated point of contact, and
    - (ii) those creditors and agents whose contact details have been provided to the Secretary of State in accordance with paragraph (1)(b) and (d).
- (3) Paragraph (2) is subject to regulation 38.

### **Duration of mental health crisis moratorium**

#### **32.—**

- (1) A mental health crisis moratorium starts on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with regulation 31(2)(a).
- (2) A mental health crisis moratorium ends on the earliest of—
  - (a) the end of the period of 30 days beginning with the day on which the debtor stops receiving mental health crisis treatment,
  - (b) the end of the period of 30 days beginning with the day on which a debt advice provider makes a request to the debtor's nominated point of contact in accordance with regulation 33 and during which period the debt advice provider does not receive a response,
  - (c) the day on which cancellation of the mental health crisis moratorium takes effect under regulations 18, 19 or 34, or
  - (d) the day on which it ends in accordance with regulation 21 as a result of the death of the debtor.
- (3) Paragraph (4) applies where a debtor's nominated point of contact—
  - (a) notifies the debtor's debt advice provider that the debtor has stopped receiving mental health crisis treatment, or
  - (b) provides confirmation that the debtor has stopped receiving mental health crisis treatment in accordance with regulation 33.
- (4) Where a debt advice provider receives a notification or confirmation under paragraph (3), the debt advice provider must, by the end of the following business day, notify the Secretary of State of the date on which the debtor stopped receiving mental health crisis treatment.
- (5) Where a mental health crisis moratorium ends in accordance with paragraph (2)(b), the debt advice provider must, by the end of the following business day, notify the Secretary of State that the moratorium has ended.
- (6) Where the Secretary of State receives a notification under paragraphs (4) or (5), the Secretary of State must, by the end of the following business day—
  - (a) cause an entry to be made on the register, and
  - (b) send a notification to each creditor and agent who received notification of a mental health crisis moratorium under this Part.
- (7) Paragraph (6) is subject to regulation 38.

### **Cancellation of mental health crisis moratorium**

#### **34.—**

- (1) Subject to paragraph (2), a debt advice provider must cancel a mental health crisis moratorium if—
  - (a) the debt advice provider considers that the evidence from an approved mental health professional referred to in regulation 29(2)(b) contains inaccurate, misleading or fraudulent information, or
  - (b) the debtor requests that the debt advice provider cancels the moratorium.
- (2) A debt advice provider is not required to cancel a mental health crisis moratorium if the debtor's personal circumstances would make the cancellation unfair or unreasonable.
- (3) Paragraph (2) does not apply in circumstances where the debtor requests that the debt advice provider cancels the mental health crisis moratorium in accordance with paragraph (1).
- (4) In order to cancel a mental health crisis moratorium, a debt advice provider must—
  - (a) consult the debtor prior to doing so to the extent that the debt advice provider is able to do so, and
  - (b) notify the Secretary of State and the debtor of the cancellation.

- (5) Where the Secretary of State receives a notification under paragraph (4)(b), the Secretary of State must, by the end of the following business day—
- (a) cause an entry to be made on the register, and
  - (b) send a notification of the cancellation of the moratorium to each creditor and agent in respect of whom the cancellation takes effect.
- (6) Paragraph (5) is subject to regulation 38.
- (7) The cancellation takes effect on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with paragraph (5)(a).
- (8) A notification sent to a creditor or agent in accordance with paragraph (5)(b) must—
- (a) state the reason for the cancellation, and
  - (b) specify the date on which the cancellation takes effect.

### **Information about a debtor held on the register**

#### **36.—**

- (1) The register maintained by the Secretary of State in accordance with regulation 35(1)(b) must include the following information relating to a moratorium—
- (a) information provided by a debt advice provider under these Regulations concerning—
    - (i) the identification details of the debtor to whom the moratorium relates, including the debtor's full name, date of birth and usual residential address,
    - (ii) the trading name or names and address of any business carried on by the debtor,
  - (b) the date on which the moratorium started, and
  - (c) where a moratorium has ended, the date on which the moratorium ended or was cancelled in accordance with these Regulations.
- (2) This regulation is subject to regulation 38.