**Response to CJC's Enforcement Working Group's call for evidence**

My name is **Stephen Baister**. I practised as a solicitor for some 15 years (and latterly as an appointment-taking licensed insolvency practitioner) after which I served as a bankruptcy registrar of the High Court for 21 years, 12 of them as chief registrar. Since my retirement from that office in 2017 I have been engaged in work for litigation funder Manolete Partners plc, solicitors Wedlake Bell LLP, as a mediator [redacted] and as a deputy insolvency and companies court judge of the High Court. My connections with insolvency inevitably bring me into contact with the law relating to enforcement.

The purpose of this short response is briefly to address what I perceive to be unfairness in the operation and effects of **The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020** (SI 2020/1311), in particular as regards the mental health crisis moratorium.

Whilst a breathing space moratorium is limited in its scope, a mental health crisis moratorium is potentially unlimited in that it generally lasts as long as the individual's mental health crisis treatment, plus 30 days (reg 32). This provides a debtor with an exceptional level of protection which is not counterbalanced by an ability on the part of creditors (a) to make an informed judgment as to the basis on which the moratorium has been granted or (b) to obtain information with a view to applying for its discharge when it has been granted (or continued) in circumstances in which it should not have been. Whilst a mental health crisis moratorium is a good thing when used well to protect the interests of those in genuine need of its protection, it may create an inequality of arms as between debtor and creditor where it is abused; and it offers inadequate remedies against such abuse.[1]

In most cases where a party seeks protection by reason of a mental health or other medical condition, the other party will have an opportunity to assess (and challenge, where necessary) the evidence relied on by the party seeking protection.[2] This is not the case under the debt respite scheme: creditors have no access to the material on the basis of which the moratorium has been given.

There is almost no scope to challenge the existence of or continuation of the moratorium.[3] The creditor will rarely have the relevant information; the Regulation does not allow for an application for access to it. This is unfair and is in stark contrast to other legal procedures.

The main injustice is, however, that whilst the effect of the moratorium is to stay the creditor's hand, the debtor (notwithstanding his/her mental condition) retains considerable, indeed complete, freedom of action. Whilst the creditor is precluded from taking legal steps against him/her, or even making contact, the debtor is free to incur further debt, sell or encumber property and dissipate his/her assets.

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[1] That abuse is a real possibility is amply illustrated by the widely reported judgments of HHJ Matthews in the *Brake* litigation.

[2] See, for example, *Levy v Ellis-Carr* [2012] EWHC 63 (Ch), one of many cases on adjourning on the basis of medical evidence: both sides are heard.

[3] Regs 17 and 19, for example, are of limited efficacy in practice.

I respectfully suggest that consideration needs to be given to:

(a) creating greater transparency as to the debtor's condition in favour of the creditor(s);
(b) balancing against the inability of creditors to enforce or take other action against the debtor and/or his/her assets a restriction on the debtor's ability to dispose of them.

Stephen Baister

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