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Introduction

1. The Bankruptcy and Diligence (Scotland) Bill was introduced in parliament on 27 April 2023 and includes an enabling power to introduce a mental health moratorium (MHM).

2. This group was set up to focus on the operational practices required to implement a MHM in Scotland. A summary of the group’s recommendations made in this report can be found at Annex A.

Background – a mental health moratorium and mental health crisis breathing space

3. Moratorium against diligence was introduced by the Bankruptcy and Debt Advice (Scotland) Act 2014 which amended the Bankruptcy (Scotland) Act 1985 and has since been consolidated into Part 15 of the Bankruptcy (Scotland) Act 2016.

4. A statutory moratorium on diligence provides a period of protection during which creditors cannot take any formal recovery action (diligence) against a debtor for debts owed. Moratorium protection can be requested by debtors who are seeking to access an appropriate statutory debt solution but who require more time to seek advice and consider their options.

5. In 2019, Scottish Ministers committed to undertake a wide-ranging policy review of Scotland’s statutory debt solutions which included the consideration of a moratorium specifically for those individuals with mental health issues. The commencement of the policy work associated with the wider review was interrupted by the on-set of the coronavirus pandemic.

6. In 2020 it was agreed that the review should consist of three stages. The first stage was for immediate changes which could be made and they were introduced through the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021.
7. The second stage of the review was undertaken by stakeholder-led working groups who considered ways of improving the existing statutory debt solutions. The working groups drew on a wide range of expertise and knowledge from representatives of all sectors involved in the debt landscape. The introduction of a MHM in Scotland was recommended by the stage 2 working group.

8. In their report ‘Robbing Peter to pay Paul: Low income and the debt trap’, the Social Justice and Social Security Committee also recommended introducing such a moratorium which has received overwhelming support in public consultations.

9. In May 2021, the UK Government introduced the Debt Respite Scheme in England and Wales – aimed at providing breathing space for those seeking debt resolution. Two types of breathing space were introduced – a standard breathing space and a mental health crisis breathing space (MHCBS). A MHCBS includes the following:

   - to be eligible the applicant must be receiving mental health crisis treatment as defined by regulation 28 of The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium)(England and Wales) Regulations 2020
   - evidence of the treatment must be provided by an approved mental health professional (AMHP)
   - moratorium lasts for the length of the mental health crisis treatment plus a further 30 days
   - interest and charges accrued on qualifying debts (e.g unsecured debts and arrears on secured debt due at the date of entering the MHCBS) during the moratorium period are not required to be paid - i.e. frozen
   - eligibility needs to be confirmed every 30 days by an AMHP otherwise it will end. the moratorium can be cancelled if ongoing liabilities are not paid during the period.
10. Stakeholders, including those who use the MHCBS in England and Wales, recommended engaging with mental health experts and other key stakeholders while developing the MHM process.

11. As a result of this recommendation, a working group was formed to look at possible ways the MHM could work in practice. The membership includes mental health professionals, representatives from the debt advice community and the creditor sector.

Aspects of the mental health moratorium

12. From the outset, the group discussed what aspects of the moratorium were important to consider in creating a framework for the process. They agreed the following were the most important areas to resolve:

- entry criteria
- period of the moratorium
- levels of protection provided by the moratorium
- exit from the moratorium

13. They also acknowledged that it was important to learn lessons from the MHCBS introduced in England and Wales and the importance in considering the following for a Scottish MHM:

- defining the problem we are trying to solve
- what is a mental health crisis
- how the mental health sector works in practice
- defining a mental health professional and mental health treatment

14. Through discussions about the mental health landscape and the spectrum of mental health issues, the group believe the MHM should provide protection to those who are receiving treatment with a compulsory element for their severe mental
health issues and are unable to address their debt problems which may be impacting on their mental health. The purpose of the moratorium should be to provide the individual with space and time to focus on addressing their mental health issues.

15. In considering the purpose of the MHM, the group believe that any proposal in this report which is introduced should be subject to review. After a reasonable period of time has lapsed from the introduction of the MHM which can determine whether the moratorium has met its primary objective, each aspect of the process should be reviewed and amended where appropriate. Drafting the detail of the moratorium process in secondary, rather than primary, legislation will mean it is easier and quicker to make any necessary amendments which have been identified from the ‘real world’ experience of the MHM. This may include the widening, or narrowing, of the entry criteria or increasing, or reducing, the protection periods.

Entry criteria

Discussion

16. The current entry criteria for MHCBS were discussed. It was highlighted that, in its first year, the number of MHCBS were significantly lower than predicted. There is a belief that the lower numbers were due to certain aspects of the entry criteria being too restrictive -- such as only allowing an AMHP to sign the evidence form. A further view is that as lenders regulated by the Financial Conduct Authority have a regulatory obligation to support vulnerable customers, appropriate forbearance support for customers in mental health crisis care is being provided by lenders without the need for invoking the legal protection. It was also acknowledged that there are other factors which could have had an impact such as a lack of awareness and the IT system. While the group recognised concerns around restricting access to those who would benefit from the moratorium’s protection, they also believed it was important for the entry criteria not to be too open. Therefore, it would appear sensible to align eligibility with conditions that already exist in current mental health legislation.

17. It was suggested that using a list of mental health treatments under current legislation may be most appropriate when setting out the entry criteria for a MHM
application. Particularly as the group believe the initial protection period should focus on the individual's mental health treatment. It was noted that definitions of different treatments exist across various pieces of legislation and reference to these could be pulled together.

18. Following further discussion, the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) was highlighted as the key piece of legislation in Scotland relevant to the type of individuals the moratorium should seek to help.

19. The group agreed that the entry criteria should be linked to sections of this particular Act which relate to treatments that allow medical professionals to detain a person with a mental disorder. ‘Detained’ in this respect meaning a person is receiving non-voluntary (compulsory) treatment whether that be in hospital or in the community rather than being physically detained.

20. There are three main treatments (with compulsory aspects) within the 2003 Act:

- Part 5: ‘Emergency detention certificate’ – can last for up to 3 days
- Part 6: ‘Short-term detention’ – can last for up to 28 days
- Part 7: ‘Compulsory treatment order’ (CTO) – can last up to 6 months. It can be extended for a further 6 months and then for periods of 12 months at a time. A tribunal must grant any extension.

21. The group agreed that either the short-term detention or the CTO would be the more appropriate eligibility criteria for a MHM as the emergency detention only lasts for 3 days and tends to lead onto one of the other types of treatment.

22. It was also highlighted by the group that there are treatments with similar compulsory aspects under the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) which should be considered as providing eligibility for a MHM application. These would be defined as forensic patients rather than the civil patients whose orders are listed under paragraph 20 of this report.
23. The treatments (with compulsory aspects) within the 1995 Act considered were:

- Section 52D – Assessment Order
- Section 52M – Treatment Order
- Section 53 – Interim Compulsion Order
- Section 57A – Compulsion Order
- Section 59A – Hospital direction

24. In addition to the civil and forensic patients who fall under the 1995 Act and the 2003 Act, the group considered whether individuals who experience severe mental health crisis but receive in-patient care and treatment on a voluntary basis, should also be included in the eligibility criteria. After further discussion, the group agreed that this would be difficult to manage. There are too many variables to apply every eventuality and there was concern that having the criteria too open in this way could have unintended consequences. Therefore, there was agreement that voluntary in-patients should not be included in the eligibility criteria at this time, but this could be reviewed once the MHM has been introduced and a reasonable period of time has lapsed to assess if changes are required.

25. In addition to considering the mental health criteria for a MHM, the group also considered the debt criteria aspect. After a discussion on the matter, the group did not believe a set figure should be fixed which would require to be met in order for the individual to apply for the moratorium. Instead, the group believed the approach adopted for the MHCBS seemed sensible which would be a statement from the adviser confirming ‘the applicant is unable, or is unlikely to be able, to repay some or all of their debt as it falls due.’ While the group did not believe a set figure of debt was required for the eligibility criteria, they did believe the type of debt should align to the debts which qualify for a standard moratorium’s protection.

26. The group considered the practical steps in applying for a MHM. They believe that it should be the responsibility of a mental health professional to sign a statutory
form which confirms the individual meets the criteria for the MHM – i.e. they are receiving one of the listed treatments.

27. In considering the content of the statutory form, the group believe it should not be overly complicated and mirror the content of an established form such as the Debt and Mental Health Evidence Form or the Debt Respite Scheme form. The Debt and Mental Health Evidence Form is already in circulation in Scotland and widely used by advisors, however, concerns were raised regarding the fee which is sometimes charge for signing this specific form. The group believe if the Debt and Mental Health Evidence Form is not used as the statutory form for the MHM a similar format should be drafted.

28. The group understood that a Mental Health Officer (MHO) is assigned to every individual receiving treatment under the 2003 Act, however, they did not believe the list of mental health professionals eligible to sign the form should be restricted to an MHO. The group believe other registered mental health professionals involved in the treatment process would be acceptable in confirming eligibility such as: a Responsible Medical Officer (RMO) and a Community Psychiatric Nurse (CPN).

29. Future proofing such a list was also considered by the group. An issue was raised about the list being too prescriptive as job titles change which has been a concern with the MHCBS. Therefore, the group thought it would be more appropriate to include a MHO, RHO, CPN and a definition of the other professionals involved with the treatment process rather than having a specific list of professionals.

30. The group would expect the mental health professional to confirm the mental health aspect of the criteria and to establish whether the individual does not have the capacity to agree to the application. It should be assumed the individual has capacity to apply unless otherwise stated.

31. It is believed the individual should be required to sign their agreement to the moratorium application. Although it was expected the individual would be required to agree to the moratorium application, the group understood that a power of attorney
or a guardianship order with the necessary powers should also be eligible to sign the application on behalf of the individual.

32. It was understood that the mental health professional may not always initiate the need for an application as it may be a debt adviser who is the first point of contact for the individual, however, it must always be the mental health professional who determines whether the individual meets the mental health eligibility criteria for the moratorium and has the capacity to agree to the application.

33. For the pilot of the MHCBS in England and Wales, one organisation called Rethink Mental Illness, was contracted and funded by the Money and Pensions Service to provide the referral process. A procurement process is under way for a wide scale roll out which may result in more than one organisation referring the MHCBS applications. The group discussed whether to go down the route of procuring one organisation in Scotland to refer or apply for a MHM but agreed it should remain open for all debt advice agencies but subject to consultation, recognising that a dedicated unit experienced in dealing with MHM may be able to deliver a better and more efficient service for the customer given the potential complexities of MHM cases. The Accountant in Bankruptcy (AiB) have a list of approved money advisers that could potentially be utilised by mental health professionals.

34. The group also reflected on the importance of raising awareness of the MHM prior to the legislation being introduced. As this had been considered a possible factor in the lower than expected numbers for MHCBS, the group believe awareness of a MHM in Scotland could be a vital aspect to its success in helping those who need the protection it can provide. Therefore, the group suggested that every individual who falls under the mental health aspect of the entry criteria should be made aware of, and automatically offered, access to a MHM from the outset of their treatment.

Recommendations
• **Recommendation 1** - The group recommends the individual applying for a MHM must be receiving treatment under one of the following provisions:
  
  o Part 6 of the 2003 Act – Short-term detention
  
  o Part 7 of the 2003 Act – an interim Compulsory Treatment Order and a Compulsory Treatment Order
  
  o Section 136 of the 2003 Act – Transfer of prisoners for treatment for mental disorder
  
  o Section 52D of the 1995 Act – Assessment Order
  
  o Section 52M of the 1995 Act – Treatment Order
  
  o Section 53 of the 1995 Act – Interim Compulsion Order
  
  o Section 57A of the 1995 Act – Compulsion Order
  
  o Section 59A of the 1995 Act – Hospital direction

• **Recommendation 2** - The group recommends that a debt adviser should submit an application to AiB for a MHM. The adviser would log into the IT system and submit the application on behalf of the individual. The debt adviser should not be able to charge a fee in connection with the moratorium.

• **Recommendation 3** - The group would also recommend the application must include supporting evidence (a statutory form confirming the mental health treatment signed by the mental health professional) and confirmation of debts due (signed by the adviser) as well as a signed agreement from the individual (or power of attorney, where appropriate).

**Period of protection**

**Discussion**

35. Having considered the approach taken with the MHCBS in England and Wales and the purpose of a Scottish MHM, the group believe it would be appropriate for the moratorium to include two consecutive protection periods. The first period should allow the individual time to focus solely on their mental health crisis.
Therefore, it would seem sensible for this to align with the length of their mental health treatment.

36. The group acknowledged the importance of those in a MHM not immediately being pressured by their financial problems on completing their treatment. Therefore, members agreed that any individual in a MHM should be provided with an additional period of protection after completing their treatment which will allow them to focus on their debt problems.

37. The group discussed the length of this additional period and agreed it should not be less than the initial 30 days which is currently offered for the MHCBS in England and Wales. However, a total protection period of 60 days is possible (an initial 30 days that can be extended by a further 30 days if the debt adviser is continuing to develop a plan with the customer). They believe it should be long enough for a person to obtain an appointment with a money adviser. Considering the money advice sector resource is currently stretched, a prescriptive time may potentially hinder this while overburdening the sector.

38. The group considered automatically ‘switching’ the person from a MHM into the standard moratorium on completion of their treatment, however, there were concerns that an individual may return to a CTO or short-term detention during the additional protection period which would make the ‘switching’ between the two moratorium processes overly complicated. Therefore, the MHM and the standard moratorium should remain separate.

39. There was a belief among some members of the group that the additional protection period should only align with the period of a standard moratorium rather than ‘switching’ to it. Given the purpose of the additional protection period is to provide the individual with time to focus specifically on their debt problems, those members consider it reasonable that this should mirror the period of time attributed to everyone who can apply for a standard moratorium. Those same members believe the protections provided during the initial ‘flexible’ period should continue into the additional ‘fixed’ period as the individual will require time to adjust following their treatment. Although the compulsory nature of their treatment may be over, their
treatment may, in fact, continue and the individual may require time to adjust and ‘find their feet.’ Other members were, however, of the view that at the end of the MHM, the individual would be able to access a standard moratorium and benefit of the protections relevant to that legislation. This would not prevent creditors from proving additional support to the individual over and above the statutory protections afforded by the standard moratorium (such as the waiver of interest and fees). Potentially the legislation could be changed so that anyone exiting a MHM that wants and needs to access a moratorium is not limited to one every 12 months.

40. The standard moratorium protection period is currently 6 months which causes some concern among other members of the group. Some believe that 6 months may be too long and could potentially delay debt resolution. There were also concerns at such a length of protection potentially including the interest and charges not being required to be paid. This may have an undue impact on creditors and would not incentivise an individual from seeking to resolve their financial difficulty.

41. It was acknowledged that the current 6 month moratorium was increased from previously being 6 weeks. The increase was a policy decision by the Scottish Government because of the coronavirus pandemic and the subsequent cost of living crisis which remains to date. It was also highlighted that this particular timescale is subject to review and may reduce in the near future, however, there remained concerns from some members that the reduction in this particular time period was not assured. It was also acknowledged that in stage 2 of the wider review into Scotland’s statutory debt solutions the most appropriate time period for a standard moratorium was considered. Although that review did not result in a consensus on the time period, there was strong support for the moratorium period not reverting back to the original 6 weeks with those who expressed a preference to amend the moratorium period favouring 12 weeks.

42. Regardless of the differing opinions on the time period, there was a consensus within the group that this additional ‘fixed’ protection period was for the purpose of allowing the individual to deal with their debts and whichever time frame is chosen, it should reflect that purpose.
43. The group also considered the interaction between the MHM and the standard moratorium. As the group believe each of these moratoria should be distinct from one another they believe a MHM would supersede a standard moratorium if one were in place. Further to this point, the group did not believe there should be the same limitations to a MHM as there is with a standard moratorium. Similar to the approach for the MHCBS, the group believe an individual who meets the appropriate criteria should be entitled to apply for a MHM multiple times in a 12 month period.

Recommendations

- **Recommendation 4** - The group recommends that the length of a MHM should be split into two separate but continuous time periods. The first period would be flexible and align to the period of time the individual is receiving a compulsory aspect to their treatment. The purpose of this protection period is specifically for the individual to focus on their mental health issues.

- **Recommendation 5** - The group recommends the second period of protection commences on completion of the compulsory aspect of the individual's treatment. They agreed that the purpose of this protection period is for the individual to focus on dealing with their debt problems and should be for a fixed period of time. However, there was not a consensus from the group on what that time period should be. The majority of the group believe it should align to the timescale of a standard moratorium. Other members had concerns to this approach as the current standard moratorium is 6 months.

Levels of protection

Discussion

44. From the outset, the group were clear that any protections provided by the MHM should only apply to debts incurred prior to the moratorium application. These debts should be similar to those in a standard moratorium (such as unsecured debts not incurred through fraud etc and only arrears on a secured debt). Ongoing liabilities, such as rent and council tax, should continue to be paid by the individual as the protections in the MHM should not apply to ongoing liabilities.
45. The group considered the current standard moratorium in Scotland as a sound base from which to build additional protections which may apply in a MHM. Therefore, a starting point for the protections in a MHM would be to prevent diligence from commencing, on a par with the standard moratorium. The group highlighted potential issues with diligences which have commenced prior to the moratorium and continue during the moratorium period. One scenario presented was the potential award of a creditor petition bankruptcy while the individual was on a CTO or short-term detention. Therefore, the group considered whether a diligence which has commenced prior to the MHM should also be prevented from continuing.

46. The group discussed the protections provided in the MHCBS and whether preventing diligence from continuing was one of those protections. It was highlighted that a court order may tend to overrule protections provided by MHCBS. Therefore, there was uncertainty as to whether a moratorium in Scotland could supersede an order granted by a sheriff such as a wages arrestment or an eviction.

47. The group considered other protections provided in the MHCBS and whether they should be replicated in a Scottish MHM. Some members believe that interest and charges on qualifying debts incurred prior to the moratorium not requiring to be paid is essential. As there is the potential for a person to be in a MHM for a prolonged period of time, they believe it is important that their debt is not worsened. Additionally, the stress of interest and charges could prohibit or hinder the individual’s recovery. As stated previously, there were concerns raised by some of the group about the additional protection period of 6 months which would be further increased by interest and charges not being paid for such a period of time. Again, other members of the group believe aligning to the period of time for a standard moratorium reflects the purpose of this particular protection period, i.e. to allow the person time to focus on dealing with their debts.

48. It was also highlighted that interest and charges are not frozen in a standard moratorium and this could potentially lead to people feeling they are being treated differently. However, it was understood why different approaches would be taken.
49. In terms of other protections, most members of the group agreed that creditors should be prevented from contacting individuals to enforce or collect on the qualifying debts during the MHM period. Contact by creditors was highlighted as of particular concern as it is seen as a potential driver to escalating the individual’s mental health crisis. Therefore, the protection from such contact was believed to be a necessary provision by most members of the working group. It has been highlighted that lenders have a legal obligation to contact customers who are in arrears on a credit agreement under the Consumer Credit Act 1974 or Financial Services and Markets Act 2000 (FSMA rules). Therefore, it would be appropriate to allow lenders to continue to send such communications to meet their statutory duties.

50. As part of the group’s discussions, it was highlighted that some creditors may already apply some of the proposed protections being suggested for a MHM. Therefore, some may question the need for such statutory protections. Credit lending organisations are required under the Financial Conduct Authority handbook to have a ‘vulnerable customer’ policy. However, the group recognised that this does not apply to non-lending creditors, such as public sector creditors. Therefore, a consistent approach to all creditors would be beneficial and could be addressed by statutory protections.

51. With respect of ensuring creditors adhere to the protections afforded by the MHM, the group do not believe anything beyond the requirements by the Financial Conduct Authority or the guidance under the MHCBS would be appropriate. It was agreed that the circular issued to creditors subsequent to the granting of the MHM should include reference to the obligations of the creditor as stipulated in legislation. Guidance should also be published on the MHM which states ‘if the individual or anyone else believes that a creditor is not applying the protections, the debt adviser can be notified directly. They will take action to remind the creditor of their obligations during a MHM and, where appropriate, may inform the AiB or other relevant authorities or regulatory bodies about the creditor’s conduct.’

52. The group considered how a joint and severally liable debt should be addressed with respect of protections. One particular scenario highlighted involved
multiple tenants within a property and one of the tenants is in a MHM. Should the individuals not in the MHM be afforded the same protections as the person in the MHM? Some members of the group did not believe that was appropriate, however, they did not believe it was appropriate to evict the individuals as this would result in the individual in the MHM being evicted. The group discussed the approach adopted under the MHCBS and believed it to be reasonable. Therefore, the group believe joint debts should be included in the MHM, even if only one party applies for the moratorium. Diligence protections should be applied to the other people who owe that joint debt. Interest or fees could still be charged to the other people, and the moratorium should not affect the other people’s debts and liabilities in their own names. From this particular discussion the group concluded that the individual in the MHM should also be protected from eviction during their moratorium period which would also align to the approach taken in the MHCBS.

53. While the group recognise the importance of applying protections from creditor actions during the moratorium period, they also acknowledge the possible need for obligations to be applied to the individual in the moratorium. Concerns were raised with the group on the potential for the individual obtaining further credit during the moratorium period due to the potential creditor being unaware of the individual’s circumstances.

54. Following this, the group considered how a MHM should be registered. Currently information on an individual in a standard moratorium is publicly available on the Register of Insolvencies. Thereby, providing the creditor with an opportunity to check an individual’s eligibility for credit. However, the group believe taking a similar public register approach to a MHM requires caution. There were concerns with information being publicly available which would potentially identify a person as receiving mental health treatment and a special category of data under GDPR.

55. Taking this into consideration, the group agreed that the standard moratorium should be distinct from the MHM. The standard moratorium should remain unchanged on the Register of Insolvencies while the MHM should be on a separate IT system that money advisers can access to submit applications and upload supporting documentation.
The risk to a potential future creditor was acknowledged and the group considered whether there should be an obligation on the individual in a MHM not to obtain credit while they are receiving the protections of the moratorium. It was acknowledged that there will be situations where the individual will need credit. It was also noted that excessive spending can be a compulsion for some people and part of their mental health condition. It may therefore be unfair to put them in the position of their MHM being revoked for something outwith their control. A possible solution would be for the individual to have similar obligations to an individual in bankruptcy with respect of obtaining credit. Currently, in bankruptcy, an individual must not obtain credit of more than £2,000 unless they notify the person from whom the credit is obtained about their bankruptcy status. Some of the group considered it appropriate to have an equivalent obligation on an individual in a MHM and, therefore, referring to the relevant section of the Bankruptcy (Scotland) Act 2016 would provide equality and simplicity.

Recommendations

- **Recommendation 6** - The group recommends that, when creditors are notified of the MHM, there will be no requirement on the individual in the MHM to pay interest and charges on the qualifying debt which would accrue during the moratorium period for debts incurred prior to the granting of the moratorium. Interest and charges on the debt could only recommence after the moratorium has ceased.

- **Recommendation 7** - The group recommends that on being notified of the moratorium, creditors should cease any contact with the individual which relates to the pursuit of that debt during the moratorium period.

- **Recommendation 8** - The group recommends that on being notified of the moratorium, creditors should not commence or continue with any form of diligence during the moratorium period.
• **Recommendation 9** – The group recommends that it should not be possible to evict an individual who has been granted an MHM during their moratorium period.

• **Recommendation 10** - The group recommends that joint and severally liable debts be included in the MHM. Diligence protections should be applied to the other party or parties not in the MHM but who owe that joint debt. Interest or fees could still be charged to those party or parties, and the moratorium should not affect their debts and liabilities in their own names.

• **Recommendation 11** – The group recommends that the MHM is distinct from the standard moratorium. The MHM should be recorded on a separate IT system from the standard moratorium and not publicly registered on the ROI unlike the standard moratorium.

• **Recommendation 12** – The group recommends the individual in the moratorium is obligated to adhere to section 218(13) of the Bankruptcy (Scotland) Act 2016 and not obtain credit above the limit in this section unless they notify the person from whom the credit is obtained about their moratorium.

**Exit process**

**Discussion**

57. As stated previously the group believe having two consecutive protection periods is the most appropriate approach to a MHM in Scotland. In accordance with the 2003 Act, medical officers are required to notify a prescribed list of individuals on completion of the compulsory aspect of the patient’s treatment. The working group believe it would be appropriate for the prescribed list to include AiB and, potentially, the debt adviser. This would allow a smooth transition into the additional protection period.

58. The review process in MHCBS in England and Wales was discussed by the group to consider whether this should be implemented into the Scottish process.
Members thought this would depend on the purpose of the review. If the review was to distinguish that the treatment (crisis) period was over then this should be decided by the mental health professional.

59. In accordance with the 2003 Act, an MHO is required to undertake a review of the individual if the order is to be extended beyond the legislative time limits (for example 6 months for a CTO). The MHO must submit their review to the Tribunal who are required to review the MHO’s determination. If the order is to end, the MHO must notify a list of individuals and organisations that the individual’s order has ended.

60. If the review was on the individual’s financial situation, then this should be undertaken in the second stage of the moratorium by a debt adviser. It was agreed that the individual’s financial situation should not be reviewed, unless instigated by the individual, until the initial crisis period had finished and was noted, by some, that it should not add to the individual nor the money adviser's burden.

61. It was, however, recognised that a review could provide creditors with comfort by confirming the individual was attempting to address their debt issues after the initial crisis period. In addition, it was acknowledged that communication between creditors and advisers should be required during this additional protection period, however, advisers and individuals under a MHM must be given space, time and compassion to readjust after the individual’s treatment.

62. Some members of the group have suggested that there needs to be an ability for creditors to challenge the MHM or request it be cancelled. While they acknowledge the in-built review process to a CTO, for example, they still believe it is necessary for creditors and the courts to be able to make a decision that is in the interests of all parties concerned with the MHM and would suggest this is further considered during the development of the MHM in Scotland.

63. On completion of the additional protection period, and the MHM, creditors would be entitled to pursue the individual for the debt and charges due as well as
apply interest, if this is a protection provided in the extended 6 months, unless the individual has obtained further protection through the following:

- entered a statutory debt solution
- applied for a debt solution and is awaiting the outcome of their application
- entered into an agreement with those creditors

Recommendation

- **Recommendation 13** - The group recommends the 2003 Act is amended to require an MHO to contact AiB, and the debt adviser, on completion of the individual's CTO or short-term detention where they are in a MHM.

Group membership

64. With thanks to the members of the group who provided their valuable time and expertise and led this work.

- Roger Smyth, Royal College of Psychiatrists
- Becca Stacey, Money and Mental Health Policy Institute
- Charis Scott, Christians Against Poverty
- Abbey Fleming, Money Advice Scotland
- Nick Clater, Social Work Scotland
- Jennifer Rezendes, Social Work Scotland
- Debbie Smith-Hands, Association of British Credit Unions
- Sarah-Jayne Dunn, Citizens Advice Scotland
- Sharon Bell, StepChange Debt Charity Scotland
- Ian Fiddeman, UK Finance
- Les Robertson, COSLA
- Jonathan Sharma, COSLA
• Kira McDiarmid, Change Mental Health
• Paula Fraser, VOX Scotland
• Kathleen Taylor, Mental Welfare Commission
• Lee Knifton, Mental Health Foundation
• Tommy Taylor, Accountant in Bankruptcy
• Brian Kennedy, Accountant in Bankruptcy
• Russell Haddow, Accountant in Bankruptcy
Annex A - Summary of recommendations

The group make the following recommendations as part of this report:

Eligibility criteria

- **Recommendation 1** - The group recommends the individual applying for a MHM must be receiving treatment under one of the following provisions:
  
  - Part 6 of the 2003 Act – Short-term detention
  - Part 7 of the 2003 Act – an interim Compulsory Treatment Order and a Compulsory Treatment Order
  - Section 136 of the 2003 Act – Transfer of prisoners for treatment for mental disorder
  - Section 52D of the 1995 Act – Assessment Order
  - Section 52M of the 1995 Act – Treatment Order
  - Section 53 of the 1995 Act – Interim Compulsion Order
  - Section 57A of the 1995 Act – Compulsion Order
  - Section 59A of the 1995 Act – Hospital direction

- **Recommendation 2** - The group recommends that a debt adviser should submit an application to AiB for a MHM. The adviser would log into the IT system and submit the application on behalf of the individual. The debt adviser should not be able to charge a fee in connection with the moratorium.

- **Recommendation 3** - The group would also recommend the application must include supporting evidence (a statutory form confirming the mental health treatment signed by the mental health professional) and confirmation of debts due (signed by the adviser) as well as a signed agreement from the individual (or power of attorney, where appropriate).
Period of protection

- **Recommendation 4** - The group recommends that the length of a MHM should be split into two separate but continuous time periods. The first period would be flexible and align to the period of time the individual is receiving a compulsory aspect to their treatment. The purpose of this protection period is specifically for the individual to focus on their mental health issues.

- **Recommendation 5** - The group recommends the second period of protection commences on completion of the compulsory aspect of the individual’s treatment. They agreed that the purpose of this protection period is for the individual to focus on dealing with their debt problems and should be for a fixed period of time. However, there was not a consensus from the group on what that time period should be. The majority of the group believe it should align to the timescale of a standard moratorium. Other members had concerns to this approach as the current standard moratorium is 6 months.

Levels of protection

- **Recommendation 6** - The group recommends that, when creditors are notified of the MHM, there will be no requirement on the individual in the MHM to pay interest and charges on the qualifying debt which would accrue during the moratorium period for debts incurred prior to the granting of the moratorium. Interest and charges on the debt could only recommence after the moratorium has ceased.

- **Recommendation 7** - The group recommends that on being notified of the moratorium, creditors should cease any contact with the individual which relates to the pursuit of that debt during the moratorium period.

- **Recommendation 8** - The group recommends that on being notified of the moratorium, creditors should not commence or continue with any form of diligence during the moratorium period.
• **Recommendation 9** – The group recommends that it should not be possible to evict an individual who has been granted an MHM during their moratorium period.

• **Recommendation 10** - The group recommends that joint and severally liable debts be included in the MHM. Diligence protections should be applied to the other party or parties not in the MHM but who owe that joint debt. Interest or fees could still be charged to those party or parties, and the moratorium should not affect their debts and liabilities in their own names.

• **Recommendation 11** – The group recommends that the MHM is distinct from the standard moratorium. The MHM should be recorded on a separate IT system from the standard moratorium and not publicly registered on the ROI unlike the standard moratorium.

• **Recommendation 12** – The group recommends the individual in the moratorium is obligated to adhere to section 218(13) of the Bankruptcy (Scotland) Act 2016 and not obtain credit above the limit in this section unless they notify the person from whom the credit is obtained about their moratorium.

**Exit process**

• **Recommendation 13** - The group recommends the 2003 Act is amended to require an MHO to contact AiB, and the debt adviser, on completion of the individual's CTO or short-term detention where they are in a MHM.