



Welcome to the October edition of the ASTL Newsletter.

We are focusing on two main themes in this issue – our upcoming Annual Conference and the

FCA's Debt Respite Scheme Regulations, which are commonly known as Breathing Space.

We also have news of a new lender member and information about The Business Moneyfacts Awards, which could help put our members in a stronger position to be recognised at the ceremony.

We hope you find the newsletter interesting and informative. We love to hear from you so, if you have any comments, or would like to register your interest to contribute in the future, please contact Alex Hammond ([alex@alsocomms.com](mailto:alex@alsocomms.com)).

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## ASTL UPDATES

### Not long now until our Annual Conferences

We are now just days away from the ASTL Annual Conference, which takes place on Thursday 20th October 2022 at RSA House in Central London.

We've prepared a packed speaker programme for the conference, which includes:



- An overview of the market and current ASTL activity
- Introduction of the Benson Hersch Memorial Bursary
- Launch of the ASTL White Paper on Bridging Finance
- Launch of our Short Term Lending Educational Programme

- Julian Healey, CEO of NARA Association of Property and Fixed Charge Receivers talking about recovery in the current environment
- Adrian Maloney, Group Intermediary Director at OSB Group, talking about the market from a lender's viewpoint
- Lucian Cook, Head of UK Residential Research at Savills, talking about the outlook for property and the future make-up of the high street

You should hopefully already have received your invitation to attend. Places are limited and if you have not yet registered, please do so as soon as possible to avoid disappointment. You can view the full agenda and register online now at <https://astlconference.co.uk>



## Breathing Space

We would like to inform you that we are currently in dialogue with both the FCA and the Department for Business, Energy and Industrial Strategy regarding the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) Regulations that were introduced last year.

We have written to both, our letters have been acknowledged and we are now confirming a meeting where we can discuss the matter further. An extract from the letter is included in this Newsletter for your information and we will update on any progress with our discussions.

Later in this Newsletter, Jonathan Newman, Senior Partner at Brightstone Law provides his thoughts on the regulations and their impact on our sector.

*“We write to you on behalf of the Association of Short-Term Lenders (ASTL), regarding some significant issues arising out of the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) Regulations that were introduced last year.*

*Firstly, let us place on record, that we recognise the motivation and context behind the legislation which very much aligns with the principles of ASTL.*

*However, the real-life practice experience of our members suggests that a positive customer outcome is rarely achieved, and worse still, many customers find themselves disadvantaged at the end of the process for diverse reasons, some of which we set out below. For the purpose of this letter, we will not go into significant detail, but are happy to engage in further consultation as appropriate.*

*The Regulations, which are commonly referred to as “Breathing Space”, came into force on 4th May last year following the end of the moratorium. The Regulations provide eligible individuals an initial 60 days’ ‘breathing space’, during which during creditors and their agents are prevented from issuing demands and progressing enforcement.*

*Data published by The Insolvency Service for the first year of Breathing Space shows that during this period, across all areas of lending, there were 51,207 completed cases, with a mean average time of 60 days – the maximum allowable period. Of these 49,017 (nearly 96%) simply ran out of time. A further 906 ended where the client had not met Breathing Space obligations, and on 668 the borrower had started using a debt management solution. On only 222 cases, was the borrower able to find a way to pay the debt.*

*This whole of market data very much reflects the experience of our members, for whom the overwhelming majority of Breathing Space cases have failed to end with a successful rearrangement of finance, served only to delay*

an inevitable outcome, and resulted in the customer being left with significantly increased debt.

The main headline results of our member survey are as follows:

- Debtors are abusing the spirit of the scheme, using it as a delaying tactic, where there is no realistic prospect of a re-organisation of their finance, so as to repay their debt. It is invariably the case that the scheme is utilised by disingenuous debtors only where the recovery process is in progress, and as an extra-judicial device to circumvent the authority of the courts who already have inherent powers under the Administration of Justice Act, to suspend orders for feasible repayment arrangements.
- Members report wide-scale abuse by regulated debt advisors who have the power to make applications without notice which bind creditors. Members report that the debt advisors do not engage with creditors before, during or after the process, do not properly consider whether applications are appropriate on a case sensitive basis, and have little regard to customer impact if no debt solution is found.
- Breathing Space disproportionately impacts short-term lenders. In long-term mortgage lending, with interest accruing, a 60-day moratorium is manageable for a creditor over a term period of 15- 20 years. In short-term lending, when the term is often no more than 12 months, with interest accruing at much higher rate, and already typically expired at the point of issue, two months is disproportionately long, and likely to be critically damaging to the customer in terms of protecting a property asset or benefitting from equity within. By way of comparison, breathing space in short term lending is equivalent to a 5-year hiatus on a 30-year mortgage.

It is our belief that the Breathing Space Regulations as currently operated are being

misused to the detriment of customers.

In addition to the adverse customer impact, the regulations in their present form, and as currently operating, pose a real threat to the functioning of this specialist market, which continues to provide a vital source of capital to a wide selection of homeowners, property investors and SMEs.

We believe the above issues need to be addressed to reverse the adverse customer impact and to prevent current abuse, and are happy to consult with you in this regard."

## The Business Moneyfacts Awards 2023

The annual Business Moneyfacts Awards testimonial survey will open on Monday 10th October.

The ASTL are proud to be a supporter of these awards and members are able to direct their own broker and business contacts to submit testimonials towards a number of relevant categories.

Simply email the Business Moneyfacts awards team on [events@moneyfacts.co.uk](mailto:events@moneyfacts.co.uk) and they can provide a dedicated link and further information. The testimonial process closes 18 November with shortlists announced in the new year. The ceremony takes place 20 April 2023 in London.

## New Member Update

We have welcomed two new members to the ASTL in recent weeks – OSB Group and Hampshire Trust Bank.

OSB Group is a leading specialist lender, primarily focused on carefully selected sub-segments of the mortgage market, with lending brands that include Precise Mortgages, InterBay Commercial and Heritable Development Finance, as well as Kent Reliance for Intermediaries.

Hampshire Trust Bank is a specialist bank staffed by experts focussed on providing asset finance, specialist mortgages and development finance solutions. It offers a range of specialist buy to let

and semi commercial mortgages, residential and commercial bridging loans, as well as a full development finance proposition, all available through intermediaries.

Vic Jannels, CEO of the ASTL, says: *"I'm very pleased to welcome both OSB Group Hampshire Trust Bank as the latest lenders to join the ASTL. As an association, we have a growing membership that represents the vast majority of recognisable brands in the short-term property lending market. These most recent influential lenders to join our ranks and will help to give us a stronger voice in promoting the sector, engaging with policy makers and upholding standards."*



## HAVE YOUR SAY

### Breathing Space is being misused and is impacting your business - but it doesn't have to

*Jonathan Newman, Senior Partner at Brightstone Law & associate member of the ASTL*

Recently published Ministry of Justice figures illustrate that normality is returning to mortgage claims, orders, warrants and repossessions, in terms of numbers at least.

The latest data shows that all have increased

significantly compared to the same quarter last year and, with specific regard to bridging, the latest figures from the ASTL reflect this dynamic. The ASTL says that the value of loans in default is on the rise, increasing by 31.5% compared to March 2022, while the number of repossessions also increased again this quarter.

No lender wants to repossess, but enforcement is a statistical inevitability of a functioning lending market, and the current economic backdrop is likely to drive further increase in these statistics.

Post Covid, there is also an additional complexity to consider. The Debt Respite Scheme, commonly referred to as Breathing Space, came into force on 4th May last year. It was brought in as a post-script to the enforcement moratorium and is largely Covid motivated - offering enforcement protection for borrowers.

Case law is relatively light at the moment, but in the leading case of Axnoller, the purpose of the Regulations was set out:

- to allow individuals to enter into sustainable debt solutions
- to encourage more individuals to seek debt advice

The Regulations provide eligible individuals an initial 60 days' 'breathing space', during which creditors and their agents are prevented from issuing demands and progressing enforcement. This is effectively 'moratorium lite' and a moratorium does not cancel interest, fees or penalties in relation to a moratorium debt during the moratorium period.

In long-term lending, with interest accruing, 60 days is manageable for a creditor. In short-term lending, when the term is often no more than 12 months, and already typically expired, two months is disproportionately long, and likely to be crucial to the prospects of recovery. Comparing apples with apples, a breathing space in short term lending would amount to a 5-year hiatus on a 30-year mortgage.

So, if that's the purpose of Breathing Space, how is it being used, or abused?

Data published by The Insolvency Service for the first year of Breathing Space shows that there were 62,852 registered Breathing Spaces, of which only 546 were reviewed for eligibility - so the vast majority went through no process to assess whether the circumstances of the borrower were suitable.

In this first year of Breathing Space, there were 51,207 completed cases, with a mean average time of 60 days - the maximum allowable period. Of these 49,017 (nearly 96%) simply ran out of time. A further 906 ended where the client had not met Breathing Space obligations, and on 668 the borrower had started using a debt management solution. On only 222 cases, was the borrower able to find a way to pay the debt.

Anecdotally, I have encountered Breathing Space applications being made, in the vast majority of cases, at the point of enforcement. Only once had debtors previously exhausted every court application to forestall repossession. And, on how many cases have debtors in Breathing Space achieved the intended purpose, i.e., sustainable debt solution? The answer is none.

The level of sensible direct dialogue with debt advisors in respect of eligibility or suitability for Breathing Space ranges from poor to non-existent. At the same time, the statistics paint a stark picture and suggest widescale abuse of the regulations.

However, Breathing Space is challengeable, and some challenges have been successful.

Axnoller, whilst setting out the purpose of the Regulations, also described the circumstances that could be applied in challenging the imposition of Breathing Space - a process, which is a fait a compli, before the creditor is even made aware of the application. Principally, the court is there to assess unfairness to the creditor in a way that is balanced and fact sensitive. In doing so, the court acknowledges that there are cases where the post Breathing Space conduct of a debtor can turn a moratorium, which did not unfairly prejudice a creditor, into one that does.

So, the court does have a discretion to cancel Breathing Space for unfair prejudice, and it has done, for abuse. Where the abuse is extreme, there has also been instance of injunctions being granted to prevent further applications.

Breathing Space regulations have the potential to financially impact lenders, but they do not have to where use of Breathing Space is unjustified. The key is working with a partner that understands this sector, the dynamics of regulations, the workings of the courts and the best approach to ensure the optimum results for its clients.



## UNTIL NEXT TIME

We hope you have enjoyed the latest edition of the ASTL newsletter. Remember, we value your feedback, so if you have any comments, questions, or would like to register your interest to contribute in the future, please contact Alex Hammond ([alex@alsocomms.com](mailto:alex@alsocomms.com)).