 

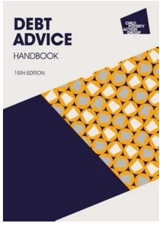


The content

## Debt Advice Handbook 15th edition

**Description**

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?
It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?
The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?
Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

**Properties**

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# 1. Professional debt advice

Debt advice is a set of tools and strategies used to help clients with financial difficulties. Debt advice provides help to clients by:

- explaining the implications of non-payment of each of their debts and, on this basis, deciding which are priorities;
- establishing whether or not they are liable for their debts, and assisting them to challenge their creditors if appropriate;
- enabling them to maximise their disposable income;
- assisting them to plan their budgets;
- helping them choose a strategy that will minimise the effects of their debt on their financial, social or personal wellbeing;
- providing impartial, independent and confidential advice to enable them to make an informed choice about the options available;
- preserving their home, essential goods and services, and liberty;
- assisting by advice or representation with the implementation of whatever strategy is chosen.

Debt advice is a professional activity. A package of attitudes, skills and strategies is part of any debt advice service. This guarantees consistency and quality assurance.

Debt advice can be provided by specialists or by professionals whose job primarily involves other activities – eg, housing officers. It can be provided by paid or voluntary workers. In recent years, there has also been a growth in debt management companies, which charge clients a fee for setting up and handling debt repayment programmes.

## Ensuring good practice



A professional debt adviser needs a mixture of skills, knowledge and attitudes, which together form the basis of good practice.

### Institute of Money Advisers qualification

The Institute of Money Advisers (IMA) is the professional association for full-time, part-time or volunteer/trainee debt advisers in England, Wales and Northern Ireland who deliver or promote free, confidential, impartial and independent debt advice services. In partnership with Staffordshire University, the IMA has a Certificate in Money Advice Practice (CertMAP). [1] The qualification is offered to IMA members with at least 12 months' full-time (or the equivalent part-time) experience in debt advice casework or related activity. CertMAP is worth 15 higher education credits and broadly equivalent to an NVQ level 4. CertMAP is part of the IMA accreditation scheme.

The award is gained by studying a combination of skills and knowledge based on the national occupational standards for legal advice. The course is delivered online and involves different modules, each ending with an assessment. Finally, an examination is taken online. It is supported by a continuing professional development requirement to ensure advisers keep their skills and knowledge up to date.

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1 See i-m-a.org.uk/learning-development/certificate-money-advice-practice

## Debt Advice Quality Framework

The Money and Pensions Service (MaPS) is responsible for its Debt Advice Quality Framework, which has the aim of raising the quality and consistency of debt advice. It comprises two parts: an organisational quality framework and an individual quality framework. The framework enables quality standards, membership codes, training and qualifications used by the money advice sector to be independently assessed and accredited. Debt advisers working in agencies holding a MaPS-accredited quality standard or membership code must be able to show that they meet the requirements of the Quality Framework for Individuals for the type of activites they undertake. Agencies must therefore review the training or qualifications undertaken by all their staff involved in delivering debt advice to ensure this is accredited. **Note:** it is the agency, rather than the individual adviser, which is accredited. In 2021, MaPS published its *Money and Pensions Service Standards* which are FCA-approved and set out, at a high level, the principles for delivering the MaPS advice and guidance functions. [1]

In April 2023, MaPS launched its Independent Quality Assessment Service (IQAS) (delivered by Recognising Excellence) which independently assesses compliance with the *Standards* across Money Helper pensions and money guidance, Pension Wise and MaPS-funded regulated debt advice providers. The aims of IQAS include to:

- provide meaningful information that can be used to improve customer outcomes and reduce customer detriment; *and*
- provide MaPS with assurance that the services it funds are compliant with its *Standards*; *and*
- deliver value for money.

Information items provided to the IMA's Networking and Information Project (which ended on 31 March 2021) continues to be available to IMA members on the IMA's website and in existing Shelter information resources. Shelter continues to provide its monthly ebulletin, including consultancy case studies, news and legal roundups, articles by the Specialist Debt Advice Service team, and new Shelter Legal pages on debt topics including 'Enquiry of the Month' and 'Spotlight' articles. Shelter also provides regular training webinars, which are subsequently made available in the project's resources directory on the IMA website for advisers. The directory also continues to host the MaPS *Good Practice Toolkit*, which includes sample letters and forms, templates and prompt lists, and income maximisation resources, together with guidance on when and how advisers should use these resources. Updates are made and new materials added as they become available. In the project's discussion forum advisers can share information and news, ask questions and raise social policy issues.

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**1** Available at maps.org.uk/en/about-us/money-and-pensions-service-standards

## Second tier support from Shelter

Shelter's Specialist Debt Advice Service provides free, expert guidance on most client debt cases. The service is available to all local Citizens Advice, local authorities, housing associations, IMA members, AdviceUK members and other free sector agencies. The service is for advisers only. Advisers can use webchat to contact an adviser or submit an online enquiry at shelter.org.uk/professional_resources/debt_advice or call 0330 058 0404, 9am to 5pm, Monday to Friday.

## Financial Conduct Authority

The provision of debt advice is a regulated activity, which generally requires the adviser (or their employer) to be authorised by the Financial Conduct Authority (FCA). Guidance on good practice is in the FCA's *Consumer Credit Sourcebook* (abbreviated to CONC), which is part of the *FCA Handbook* available at handbook.fca.org.uk). CONC and other parts of the *FCA Handbook* are referred to in this *Handbook* where relevant. [1]

 

 

For many years, the FCA consulted on a new Principle 12 known as the 'consumer duty' (a firm must act to deliver good outcomes for retail customers). It published the final rules together with guidance in July 2022 as PRIN 2A of the *FCA Handbook*. Firms providing free-to-client debt advice, as well as fee-chargers, are required to apply the duty to existing as well as new cases from 31 July 2023. The rules are at fca.org.uk/publication/policy/ps22-9.pdf and the non-handbook guidance is at fca.org.uk/publication/finalised-guidance/fg22-5.pdf. The FCA has also published a 'Dear CEO' letter, *Implementing the Consumer Duty for the Debt Advice Portfolio,* which you can read at www.fca.org.uk/publication/correspondence/consumer-duty-letter-debt-advice.pdf. 'Dear CEO' letters have also been published by the FCA in relation to implementation of the duty in relation to closed services that you can view at www.fca.org.uk/publication/correspondence/dear-ceo-letter-implementing-consumer-duty-closed-products-services-all-other-firms.pdf. Annex 1 is particularly useful as it contains a definition and overview of the rules on closed products and services. For further information, see here.

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**1** *FCA Handbook*, CONC 8. 'Debt advice' applies to debt counselling, debt adjusting and providing credit information services, by both profitmaking and not-for-profit bodies. Local authorities and members of the legal profession are exempt from the requirement to be authorised. See also P Madge, 'Debt advice rules - OK?', *Adviser* 175.

## The client's best interests

In any situation where money is owed, there are two parties whose interests may conflict. As a professional debt adviser, you should know that you cannot advise both parties in such a situation, and so you must be clear that you are working only for the interests of the client. This is true even if your employment is funded by the finance industry or another creditor, such as a local authority, or if you work for an organisation that seeks to be impartial.

The FCA's *Consumer Credit Sourcebook* makes it clear that all advice given and action taken must consider the client's best interests and take into account: [1]

- their financial circumstances; *and*
- their personal circumstances, including the reasons for their financial difficulty and whether they are temporary or long term; *and*
- any other relevant factors, including any known or reasonably foreseeable changes in the client's circumstances.

You should also take into account whether the client is a vulnerable person, the powers of the creditor and whether interest or other charges have been frozen. [2] A useful resource on treating clients in vulnerable situations fairly, *Vulnerability: a guide for advice agencies*, is available at the Money Advice Trust website, moneyadvicetrust.org.

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1 *FCA Handbook*, CONC 8.3.2R(1) and 8.3.7R(2)

2 *FCA Handbook*, CONC 8.2.7R and 8.2.8G. See also A Chisholm, 'Consumer vulnerability', *Adviser* 176, and G O'Malley, 'Advising vulnerable clients', *Quarterly Account* 41, IMA.

## A professional attitude

As a professional debt adviser, you should be aware of past experiences from which you may have developed a judgemental attitude towards some clients and/or creditors. Consciously avoid any personal bias and adopt a professional approach to the work.

You should also offer a high-quality, accessible service to all groups in society and should work towards understanding that debt can affect clients from different backgrounds in different ways.

## A commitment to social policy

As a professional debt adviser, you should not allow the same recurring problems you encounter with clients to adversely affect the lives of others also, but should make known the lessons that can be learnt from your work to as wide an audience of policymakers as possible.

## A sound knowledge of law and procedures

As a professional debt adviser, you should be knowledgeable and imaginative about the ways in which the law can be applied to mitigate the effects of debt. You should be able to offer and explain these to your clients.

Judgments can be found on the *Find case law* website at caselaw.nationalarchives.gov.uk and at bailii.org.

## A commitment to developing the service

As a professional debt adviser, you should regularly enhance your skills through training, research and education, and should participate in offering this to others, so that the practice of debt advice continues to be refined and developed.

You should subscribe to periodicals (see Appendix 2), such as *Quarterly Account*, to keep up to date with developments in debt advice law and practice. Try to attend your local Money Advice Group meetings. These usually have updating and information exchange sessions, as well as presentations by creditors or representatives from other relevant organisations.

## A systematic approach

As a professional debt adviser, you should apply a single systematic approach to each individual client. Also ensure that the advice you give is:

- in the best interests of that particular client;
- appropriate to their individual circumstances;
- realistic;
- where an offer of payment is made, sustainable and based on a true and accurate assessment of the client's circumstances.

## An ability to involve the client in informed choices

As a professional debt adviser, you should always try to involve the client, ensuring that they understand the implications of their situation and the steps you propose be taken. You can assist the client to make an informed choice by giving them all their available options and explaining their consequences before anything is done. Do not assume that a client is seeking a particular outcome, but establish what they want and recognise that it may not necessarily be realistic or achievable.

Many advisers tend to put pressure on themselves to solve their clients' problems, and clients' expectations can add to this. Although advisers should always do the best they can for their clients, there may be times when the options are limited because matters have simply gone too far and you cannot make the problem go away. You should not feel that you have somehow 'failed' the client, as they are still likely to need supporting through the situation.

Many debt cases involve distressing facts, so make sure you can share and discuss these sorts of issues with colleagues and your supervisor/manager.

## Clients with mental health problems

Guidance on dealing with clients with mental health problems

There is a clear link between debt and mental health issues. According to the Royal College of Psychiatrists, it has been estimated that one in four adults living in the UK experience a mental health problem every year. When combined with financial difficulties, mental health problems can affect not only the individuals concerned, but also the organisations with which they have relationships.

Many mental health conditions have no physical signs, and fluctuations in the severity and effects of an illness are common. In many cases, creditors are not aware that there is a mental health issue until payments have been missed and the collections process has reached an advanced stage. Even then, it may not be apparent whether the client is capable of conducting a financial transaction (see here). Debt advisers and creditors are not trained to diagnose mental health problems and often do not understand the implications. However, once a creditor is aware of the issue, it should have processes and systems in place to take account of the situation, and should respond fairly and appropriately.

See CPAG's *Mental Health and Benefits Handbook* for an overview of mental health conditions and for help with supporting and giving advice to people with mental health problems. It is available online free at cpag.org.uk/handbooks.

## Guidance on dealing with clients with mental health problems

The FCA's *Consumer Credit Sourcebook* provides information on common potential causes of limited mental capacity [1] and specific indications that should alert a lender to a client's condition. [2] Creditors should have practices and procedures for dealing with credit applications from such customers. [3] They should document the steps they take to assist people to make informed borrowing decisions and to ensure they make informed and responsible lending decisions. [4] It recommends that creditors present clear, jargon-free information to explain credit agreements and consider presenting information in more user-friendly formats. [5]

The *Consumer Credit Sourcebook* also requires creditors to establish and implement clear, effective and appropriate policies and procedures to ensure that particularly vulnerable clients are treated fairly and appropriately, and it acknowledges that clients with mental health problems or mental capacity limitations may fall into this category. [6]

However, a creditor may not be in a position to know whether a client has some form of limited mental capacity and not be able to assess their level of understanding of any explanations – eg, if there is no face-to-face interaction or the internet is used for transactions.

To address this issue, the Royal College of Psychiatrists and the Money Advice Trust published *Lending, Debt Collection and Mental Health: 12 steps for treating potentially vulnerable clients fairly.* [7] This provides information to creditors on how to take a proactive approach to identify and address vulnerable clients, including those with mental health issues. However, it recognises that not every client with a mental health problem is automatically vulnerable or unable to manage their money, and explains how creditors and debt collectors can take clients' mental health into account in both lending and collection situations.

In addition, the Money Advice Liaison Group has produced *Good Practice Awareness Guidelines for Helping Consumers with Mental Health Conditions and Debt*. [8] Both of these publications are available from malg.org.uk/resources/malg-mental-health-and-debt-guidelines and are endorsed by the *Consumer Credit Sourcebook*. [9] They include the following.

- Creditors, debt collectors and advisers should have procedures in place to ensure that people with mental health problems are treated fairly and appropriately.
- If a creditor has been notified of a mental health problem, an adviser should be allowed a reasonable period to collect evidence and send it to the creditor. This could be extended, if the relevant evidence was not collected by the end of one month.
- If creditors sell debts once a mental health issue has been advised, they should monitor the debt purchaser to ensure compliance with the guidelines.
- If there is a an imminent or serious threat of enforcement action being taken in these circumstances, advisers should consider if a mental health crisis breathing space application is appropriate (see here).
- If a client has a serious mental health problem, creditors should only start court action or enforce debts through the courts as a last resort and only when it is appropriate and fair for lenders to do so.
- Creditors should consider writing off unsecured debts when a client's mental health problems are long term and unlikely to improve, and if it is highly likely they will be unable to pay outstanding debts.
- Disability benefits (personal independence payment, disability living allowance and attendance allowance) should be recognised as specifically awarded for meeting mobility and care needs. It is the client's decision whether to include any of these benefits as disposable income in the financial statement.

**Note:** these guidelines only apply to managing debt problems and not to the stage when the debt was incurred. However, the guidelines suggest that creditors may wish to 'flag' the files of clients who have explained the effect of a mental health problem on money management and debt issues. In addition, a client and someone holding a power of attorney for them could voluntarily add information about their mental health problems to their credit reference file so that creditors who carry out a search as part of a credit application are aware of the position. This can be done by a 'notice of correction' (see here). [10]

Much of the guidelines deal with obtaining evidence to demonstrate the effect of a client's mental health on their ability to deal with their debt problems. The Money Advice Liaison Group has produced a debt and mental health evidence form (DMHEF) to assist advisers in this process. The form and guidance notes for advisers and creditors (which should be read before using it) can be downloaded from moneyadvicetrust.org/creditors/Pages/DMHEF-advisers.aspx. The guidance states that, before using the DMHEF, advisers should consider:

- whether further evidence actually needs to be collected; *and*
- if so, whether alternative evidence is available that could do the same job as the DMHEF – eg, copies of prescriptions or patient letters.

The form has three questions to be completed by a health or social care professional who knows the client, which provide information about:

- how the client's mental health problem affects their ability to manage their money; *and*
- how the client's ability to communicate is affected by their mental health problems; *and*
- anything else the professional can say which would help the client – eg, condition severity or duration, any relevant treatment being received or whether the client is in a mental health crisis.

UK Finance and the Credit Services Association have advised their members to accept any suitable evidence and only ask for the DMHEF as a last resort. Where the DMHEF is used, the client must explicitly consent to a health and/or social care professional completing the form. GPs in England have agreed not to charge for completing the form.

There are, however, some issues.[11]

- The form does not specifically address the question of whether or not the client was able to understand the contract they originally entered into. This is relevant to the enforceability of the contract and, therefore, the client's liability for the debt. This is a matter that advisers should consider first of all (see here).
- The client must give their written consent to the form being used. However, a third party authorised to act on behalf of the client can complete and sign the consent form.

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**1** *FCA Handbook,* CONC 2.10.6G

**2** *FCA Handbook*, CONC 2.10.8G

**3** *FCA Handbook*, CONC 2.10.11G

**4** *FCA Handbook*, CONC 2.10.12G

**5** *FCA Handbook*, CONC 2.10.14G

**6** *FCA Handbook*, CONC 7.2.1R and 7.2.2G

**7** This was originally published in April 2014 and expanded to cover vulnerability more widely to reflect the FCA's increasing attention to this issue

**8** Originally published in November 2007, the current (third) edition was published in 2015

**9** *FCA Handbook*, CONC 7.2.3G

**10** A recommended form of words agreed by the credit reference agencies is at para 4.16 of the guidelines

**11** See C Trend, C Fitch and A Sharp, 'Debt and Mental Health: tools of the trade', *Adviser* 160