





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.

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Author(s):
CPAG

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1. Exploring the debt problem

Obtaining information from the client

Debt advisers must create a trusting and safe environment where clients can talk about their personal and financial affairs. This may take some time to develop, but should start at the beginning of the process, when you make it clear that any information the client provides will be treated in confidence, that you will not judge them and are on their side.

Explain the role and boundaries of the agency (eg, that it does not offer court representation), what you can and cannot do and why. Obtain as much detail as possible about the client, other members of the household, the debts and the financial situation. It is important to make the client feel as comfortable as possible so that they feel able to provide the detailed information needed to advise them properly. When collecting information, you are not intruding unnecessarily into the client's affairs, but you need that information to help them decide a strategy and/or negotiate with creditors. It is important to tell the client that such information is confidential and explain how the agency's confidentiality principles operate. Often, people seek advice about a specific debt and are reluctant to discuss other debts they are managing to pay or if they feel the creditor has been particularly helpful. However, dealing with a particular debt in isolation is often impossible. This stage can therefore include a discussion of the whole position. ¹

Advisers should gain an understanding of what has led to the client's debt situation (often a change of circumstances) and whether the situation is likely to be temporary or long term. They should also enquire about any potential future changes that may impact the client's available debt solutions – eg, expected changes in income and/or outgoings due to the birth of a baby, retirement, redundancy or relationship breakdown.

¹ See also W McShane, 'Debt exploration Part 1', *Adviser* 178 and 'Debt exploration Part 2', *Adviser* 179

Obtaining information from the client

Obtain as much information as possible from the client on all their debts at the first interview, and record this clearly and concisely. In practice, many clients do not bring all the required information at the outset and so much of it may have to be obtained later, possibly from other sources – eg, from a client's creditors for outstanding balances or credit reference agencies for details of the client's creditors. It is also worth checking to see whether any previous case notes have been closed to ensure a full picture of the client's situation is obtained.

If you are conducting the first interview by telephone, the client must subsequently bring or send any information to the advice agency (and a signed authority to act obtained before creditors can be contacted).

It is essential to obtain sufficient information at the earliest opportunity, as otherwise:

- income/expenditure details and, consequently, the financial statement may be inaccurate and payment offers unsustainable, leading to the client failing to maintain the arrangement;

- you may give incorrect advice, leading the client to choose one option when another option might have been more appropriate;
- opportunities to maximise income may be lost.

Use a pro forma to record the information, which could also remind you what to ask the client to establish the full facts of the case. An example of a pro forma is in the Money and Pensions Service (MaPS) *Good Practice Toolkit*, available to members of the Institute of Money Advisers (IMA) in the Resources Directory of the Networking and Information section of the IMA website, i-m-a.org.uk. Clients often only reveal the debts they are worried about. Therefore you must go through all their priority commitments, whether or not they are in arrears, and then move on to the non-priority commitments. Advice should be given in each area on the consequences should the client default. Be realistic about the outcome and always be honest with the client.

Check that any agreements have been drawn up correctly and ensure any applicable time limits are complied with.

The first letter after the interview should confirm all the advice given (including the consequences of non-payment), the client's available options and their advantages/disadvantages. Outline the agreed action and the expected timescale. It is good practice to include details of any action you have agreed to take and any action the client has agreed to take at the start of the letter, so even if the client does not read all of the letter, it is clear what they/you need to do next to process their case. The MaPS *Good Practice Toolkit* contains examples of template confirmation of advice letters.

Keep clients informed and involved at each stage, so that they will be able to deal with the case themselves once it is closed. Remind clients to keep you informed of any change in circumstances throughout the life of the case.

Once all the work is completed on the case, send a closure letter detailing the work carried out and the outcome, and giving general advice on how to deal with the various creditors in the future.

2. Dealing with urgent issues

There is usually something that triggers a client in financial difficulties to seek debt advice. Often this is an emergency situation and is the first matter raised by the client with an adviser (the 'presenting issue'). After the administrative preliminaries have been carried out in accordance with the agency's policies and procedures (including the Money and Pensions Service common initial assessment, where appropriate – see here), you should always check whether there is an emergency, regardless of whether or not the client has already referred to it.

An emergency is a situation that will have a detrimental effect on the client if it is not dealt with

immediately. In relation to debt, this is a threat to the client's home, essential goods and services or their liberty. When considering whether goods or services are essential, you should always take the client's personal circumstances into account.

Examples of an emergency include the following.

- Enforcement agents (bailiffs) have either threatened to visit the client's home, or have already visited and have threatened to return and/or remove goods.
- The client is facing the imminent loss of essential goods – eg, if hire purchase goods that the client needs are about to be repossessed.
- The client is about to be evicted from their home.
- The client is about to lose an essential service – eg, their fuel supply is about to be disconnected.
- A warrant has been issued for the client's arrest – eg, for non-payment of a fine.
- The client has been served with a statutory demand or creditor's petition (see here and here), or other enforcement action has been taken through the courts and there is a deadline for responding.
- The client is unable to buy essential items or pay essential bills – eg, because money has been, or is about to be, taken from their bank account.

In many cases, immediate action is required and so there is not sufficient time to explore the client's situation in detail. If you are unable to provide the necessary assistance and/or advice to deal with the client's situation, you may need to refer them to another agency. In other cases, a phone call to the person dealing with the case is usually needed to ask for the matter to be put on hold while you make the necessary enquiries to enable you to give the client proper advice. For example, in the case of credit debts, creditors should allow a 30-day 'breathing space'. ¹ If possible, let the person know when you expect to be able to contact them again.

Sometimes creditors insist on an offer being made at this stage. Although you should try to avoid having to do so, if necessary you can prepare a 'quick and dirty' budget on which to base an offer, but should make it clear that this is subject to a full assessment of the client's financial situation. Any agreement made by telephone should be followed up by confirmation in writing – eg, a letter or email. You should ensure that the client is clear on what action(s) they are required to take (if any) and the timescale.

For more information on how to deal with common emergency situations, see here.

¹ *FCA Handbook*, CONC 7.3.11R and 7.3.12G; ss6-8 Financial Guidance and Claims Act 2018

3. Listing creditors and minimising debts

The creditors

The debts

The threats

Action to be taken

After obtaining the client's personal and background details, including any health or disability issues, vulnerability or mental health problems, you then need the details of the debts and the creditors, including those with no arrears or creditors with whom the client has already negotiated lower payments.

A client may not have all the necessary information with them on the first visit to enable you to complete the creditor list. It is therefore important to agree how the missing information will be collected, by whom and when. The client's credit reference file may be a useful information-gathering tool if the client has no, or incomplete, paperwork.

The creditors

Record the following details about the client's creditors.

- **The name, address and telephone number of each creditor.** Exact company names are important, as the proliferation of credit has led to a number of creditors with very similar names.
- **Account/reference numbers.** Most creditors use reference numbers to access information about their clients, so these must be included.
- **Letter references and contact details.** If the client has received correspondence from the company, any letter reference should be noted, together with any contact details.
- **Agents' details.** Solicitors or commercial debt collectors are often used. Record details of these (and their references) separately. Record details of the person who has made most recent contact with the client. Check whether the collector has actually bought the debt (in which case they are now the creditor) or whether the agent is acting on behalf of the original creditor (in which case they are accountable to that creditor). Creditors should inform clients when debts are either passed on to collectors or sold to third parties.

The debts

Note the following details about the client's debts.

- **Age of debt.** Find out when any credit was first granted. The length of time the agreement has run or a bill has been unpaid can be a factor in negotiation (and might even be grounds for challenging the debt). For instance, a creditor is more likely to be sympathetic if payments have been made for some time than if a new agreement is breached. The legal position on some agreements depends on when they were made. See [here](#) for credit agreements made before 6 April 2007. An old debt may also be 'statute-barred' – ie, unenforceable through the courts (see [here](#)).
- **Reason for debt.** It is important to ask the reason for the debt – eg, to refute suggestions that the debt was unreasonably incurred.
- **Priority of the debt.** Note whether the debt is a priority or a non-priority. Chapter 8 explains the criteria for making this decision. If possible, check any documents or agreements to confirm this information, as clients can be unsure or may describe debts incorrectly – eg, 'hire purchase' is often used to mean 'credit sale agreement', and 'parking fine' is often used to mean 'parking charge', but they have different legal consequences (see Chapter 4).
- **The written agreement.** Check whether the debt is based on a written agreement and, if so, whether or not the client has seen it and if it has been photocopied for future reference. Ensure agreements are checked for defects that may affect their enforceability. Obtain a copy from the creditor if necessary. If there is no written agreement, it might be unenforceable. See Chapters 6 and 11 for more information.
- **Liability.** Check whether the client is responsible for the debt. Note in whose name(s) agreements were made and/or whose name(s) is/are on the bill (although this is not necessarily conclusive). This may either be the client alone, the client and a partner, or a friend or relative who acted as a guarantor. This ensures that all debts listed can be challenged where appropriate. See Chapter 6 for more information.
- **Payments.** Note:
 - the amount currently owing. State whether the figure is approximate or exact;
 - contractual payments under any original agreement and any subsequent amendment to them;
 - the existence of arrears in payments, although initially these need only be approximate;
 - the payment method.

The client may need advice about coping with doorstep collectors, changing or cancelling standing orders, direct debit arrangements or continuous payment authorities, or opening a new bank or building society account (see [here](#)) if the current bank or building society is one of the client's creditors. However, a client should not be advised to stop or reduce contractual payments to creditors before a repayment arrangement is agreed with them, unless it is clearly in their best

interests to do so – eg, if they have insufficient available income after meeting essential expenditure and/or making payments to priority creditors (see Chapter 8). When deciding what expenditure, goods and services are 'essential', you should always consider the client's personal circumstances. The date and amount of the last payment made are needed, especially for priority debts, to assess the urgency of any action.

- **Insurance cover.** Many people take out insurance (known as payment protection insurance) with a mortgage or credit agreement – eg, against sickness, death and redundancy. Sometimes, such insurance is given by the creditor as part of the contract. Always check whether a particular debt is insured and that the insurance has been correctly sold, so that this important way of minimising the debt is not overlooked (see here).

The threats

You need to know the status of the debt – ie, what the creditor has already done to obtain repayment of the debt and what threat is posed to the client by the recovery action.

- **Warnings.** The first stage of recovery action is normally a reminder letter. Record the date of this. The exact details of further action should be noted. For example, regulated credit agreements (see here) may require a default notice to be served before any further action is taken. Other creditors must issue different warnings – eg, a notice of a proposed disconnection of fuel or notice of an intention to seek possession of the client's home.
- **Court action.** If court action has begun, a claim form will have been issued. The date and type of claim should always be recorded. Record the court case number. Refer to the claim form to note whether a solicitor is now acting for the creditor. If so, you must deal with the solicitor, rather than the creditor, until further notice. If a date for a hearing has been set, this should be noted. In many cases, a court will already have made an order and details of the judgment, including its date, the payment or action ordered, and the time or amounts required, should be recorded. See Chapters 11, 12 and 13 for further information on court action, including what action should be taken if a judgment has been made.
- **Enforcement action.** After judgment, enforcement can mean enforcement agents (bailiffs) action (see Chapter 15), a third-party debt order (see here), an attachment of earnings order (see here) or a charging order (see here). Note whether any of these have begun, with dates and full details.

Action to be taken

- **By the client.** Any action required of a client relating to a particular debt should be noted on the list – eg, 'get exact balance'. This section will normally be completed once the strategy has been decided.

- **By the adviser.** Record the action required on each debt. This can be crossed through when it has been carried out. If the case is complex and likely to involve a lot of work, prepare a case plan, summarising the action to be taken, who is responsible for any action and the timetable.

4. Listing and maximising income

Whose income to include

What income to include

Capital

Maximising the client's income

After identifying and dealing with any emergencies and obtaining details of the client's creditors (including checking liability), the next stage is to list all possible income for the client and, if applicable, their family.

Whose income to include

Creditors are likely to expect the income and debts of a couple (particularly if they are married or civil partners) to be dealt with together, although there is no basis in law for this expectation (unless they are jointly liable for the debt). The overriding consideration must be the best interests of the client – the final decision rests with them.

A decision must eventually be made about whether to include the income of a partner or spouse or, rarely, someone else living in the client's household (although any contribution they make to the household expenditure shown in the financial statement must be taken into account). This depends on several factors.

- If all the debts are in the name of one person only (or are in the joint names of the client and a previous partner) and they have little or no income or property against which action could be taken, the other person may be unwilling to contribute from their income.
- If one person has a number of debts and a partner also has a number of debts, it might be more convenient to deal with both partners' debts in one set of strategies.
- If only one person has sought advice without the knowledge of their partner, find out why and encourage both partners to be involved. The person who seeks advice may not know details of their partner's income or may not want their partner to know about the debts – eg, if they fear violence from them. If there is a jointly-owned property, it is important to stress the possibility of a creditor applying for a charging order and, as the court contacts the client's partner, the likelihood of them finding out.

- Many partners wish to pool their income and help with each other's debts, irrespective of their legal liability – eg, if they themselves could face dire consequences (eg, eviction) if they failed to do so or if all members of the household have benefited from the debt being incurred. At this stage it is, therefore, important to note the income of all household members if possible, so that a decision can be made later about which to use to implement any strategy.

What income to include

Capital

- All benefits and tax credits. **Note:** a client may decide not to use any disability benefit they get (eg, personal independence payment, disability living allowance and attendance allowance) to make payments to creditors, as these benefits are intended to meet only the additional costs of disability. However, any disability benefit should be included in the list of income and in the financial statement. Usually, the disability benefit is offset by associated items of expenditure, such as mobility or care costs.

The decision whether or not to use any unallocated disability benefit to make offers to their creditors is ultimately the client's, not the adviser's.

The fact that the client is in receipt of a disability benefit should always be disclosed to creditors, as the fact that they are a disabled person is likely to be a relevant factor.

- Earnings – ie, net pay from full-time and part-time work.
- Self-employed earnings, net of estimated tax and national insurance contributions.
- Regular maintenance/child support payments received. Include for what and for whom they are paid.
- Investment income – eg, from savings.
- Contributions from other household members – eg, adult children living with the client.
- Occupational and other pensions.
- Any other income received by the client.

If income has recently been unusually high or low, this should be noted and the basis on which it is assessed should be clear – eg, the average of wage slips for a representative period. Only include regular sources of income. If the chosen strategy is to pay the debts, any offer of payment must be realistic and sustainable.

The Financial Conduct Authority (FCA) requires advisers to take reasonable steps to verify the client's income. It says that what is reasonable depends on the circumstances and the type of service the agency offers. ¹ For instance, advisers working at court duty desks or providing telephone or email advice will, in practice, be unable to do this.

Verifying the client's income may also disclose that deductions are being made to pay off debts – eg, benefit or tax credit overpayments that the client has not previously disclosed, because they did not regard this as a 'debt'. It is usually possible to ask the creditor to reduce the rate of deductions where it can be demonstrated that these are currently unaffordable and are leaving the client unable to meet their essential expenditure.

Note any future changes to the client's income and/or circumstances, such as any benefits recently claimed but not yet awarded, or if a member of the household is about to start or end paid employment.

1 *FCA Handbook*, CONC 8.5.4R and 8.5.5G

Capital

The client may have capital or potential capital in the form of realisable property or other assets that it would be reasonable for them to use. Discuss this with them and make a separate note of any such items. Unless the circumstances are exceptional, creditors are unlikely to accept that a client is unable to pay their debts if they have capital, and may even refuse to accept nil or token offers of payment if they believe it would be reasonable to expect them to dispose of an asset.

Clients who are aged 55 or over may be entitled to take money out of their pension and may consider using some, or all, of this to either pay off their debts in full or make an offer in full and final settlement (see here). A client considering this should be advised to obtain financial advice first – eg, from Pension Wise. They must consider how much they will receive after tax and any other charges have been deducted and whether they will have enough money left for their retirement. FCA rules prohibit creditors from pressurising clients to raise funds to repay a debt, with specific reference to raising a lump sum from a pension scheme. ¹

1 *FCA Handbook*, CONC 7.3.10 and 7.3.10A

Maximising the client's income

Follow the advice in Chapter 7 to maximise the amount of money the client has coming in. Also check whether the client is eligible for a Warm Home Discount and whether they would benefit from switching fuel supplier. Check whether the client is eligible for a grant from local or national

charities or an energy company.

5. Listing expenditure

Items of expenditure

Housing

Childcare

Fuel

Furniture and bedding

Health costs

Transport

Hire purchase

Fines

Laundry and dry cleaning

Telephone, television and broadband

Other household items, toiletries and food

Clothing and shoes

Gifts, charitable donations, and religious and cultural activities

Other costs

Bank accounts

The next stage of the debt advice process is to list everything on which the client is currently spending their income. The client's expenditure should include the items listed on here.

The budget sheets used with the standard financial statement (see here) are comprehensive and useful as a checklist to ensure that nothing is missed. Most people spend money on different items in different periods of time, and it is important to standardise everything to a particular period – generally weekly or monthly. Predictable events such as Christmas, birthdays, holidays or school trips are not unreasonable items of expenditure, but they must be budgeted for.

The Financial Conduct Authority requires advisers to take reasonable steps to verify the client's expenditure and ask for explanations not only of any expenditure that is particularly high but also of any expenditure that is particularly low, but says that estimates are acceptable if precise figures are not available. Alternatively, industry-recognised standard expenditure guidelines (eg, the standard financial statement's spending guidelines (see here)) can be used as an indicator of the client's expected outgoings. However, the client's individual circumstances must still be taken into account. ¹ Although standard figures should not be used if actual figures or accurate estimates are available, they are useful as a 'benchmark' against which to test the client's level of expenditure and as a tool with which to challenge creditors who claim that the client's expenditure is too high.

By this stage, it should be clear why the debts have arisen, and how the client's circumstances have led to their financial difficulties. This information is essential when negotiating with creditors.

At this stage, you can also discuss overall income and expenditure with the client. Investigate examples of unusually high levels of surplus income (which may indicate that items of essential expenditure have been underestimated or possibly omitted altogether) as well as deficit budgets (which may well be due to low household income or deductions from income to pay debts, but could also indicate that income has been underestimated or possibly omitted altogether). Use Chapter 7 to increase their income wherever possible, and discuss which, if any, items of spending could be reduced, either permanently or temporarily. This should be done in a sensitive and non-judgemental way, and any items of high or unusual expenditure should be explained to creditors in a covering letter. Clients are not required, and should not be expected, to live on the breadline and are entitled to a reasonable standard of living. However, although it is not part of the adviser's role to dictate to clients how to spend their money, clients should be warned that excessive expenditure is likely to be challenged by creditors. If you know that creditors are likely to challenge an item of expenditure and it cannot be justified, point this out to the client and explain that, as a consequence, creditors or the court are unlikely to accept the client's offer based on it. In addition, be aware of what a court may consider reasonable for the client to spend on a particular item if it is being asked to agree to the client paying the debt at a particular rate – especially, for example, in possession proceedings where the client's home is at risk (see Chapter 13).

See Chapter 6 for information on how to minimise debts.

1 *FCA Handbook*, CONC 8.5.4R and 8.5.5G

Items of expenditure

Housing

Childcare

Fuel

Furniture and bedding

Health costs

Transport

Hire purchase

Fines

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Telephone, television and broadband

Other household items, toiletries and food

Clothing and shoes

Gifts, charitable donations, and religious and cultural activities

Other costs

Housing

Costs include:

- rent/mortgage repayments;
- other secured loan repayments (there may be several);
- council tax;
- water charges;
- ground rent;
- service charges;
- an amount for household repairs and maintenance, based on a full year's expenditure if possible;
- household insurance for both buildings and contents;
- any insurance linked to a mortgage, if not already included in mortgage expenses.

Childcare

Full-time childcare may cost over £250 a week. Help with these costs may be available. See gov.uk/help-with-childcare-costs.

Fuel

Fuel costs include charges for electricity, gas and other fuels. In order to account for seasonal spending variations, take an annual cost and divide it into weekly or monthly figures.

If payments to fuel suppliers include an amount for items other than fuel (eg, payment for a cooker), these should be deducted and only the fuel expenditure listed here.

Furniture and bedding

Costs should be separately itemised. This item may require research by the client or discussion with others with whom they live.

Health costs

Costs include:

- prescriptions;
- dentistry;
- optical charges.

These are often high and you should check the client's entitlement to reduced or free treatment, and free prescriptions.

Transport

Costs include:

- public transport;
- the cost of owning a car or motorbike. In this case, the amount spent on tax, insurance, repairs, MOT and petrol should be included. If a car is essential (eg, for travel to work), the cost of its hire purchase (but not any credit sale) agreement should be included, with a note to explain why the item is essential.

Hire purchase

The hire purchase or conditional sale costs of any items that are essential for the individual family to own should be included, if their loss would cause serious problems – eg, a washing machine.

Fines

Instalments payable on fines should be included. See Chapter 14 for ways of reducing these.

Laundry and dry cleaning

Costs should be averaged over the previous couple of months.

Telephone, television and broadband

These costs should be converted into weekly or monthly figures.

Other household items, toiletries and food

The adviser should ensure that the individual circumstances of the client dictate the amount allowed for these items. Other household items, toiletries and food include:

- housekeeping;
- cleaning materials;
- meals outside the home, such as school lunches or meals at work;
- expenses incurred in children going to school or being given pocket money;
- nappies and baby items.

Clothing and shoes

These are often bought seasonally and so costs must be estimated annually and divided. It is important to include all small items in this category.

Gifts, charitable donations, and religious and cultural activities

Costs include:

- donations that are an essential part of a person's membership of a religious community;
- classes for children in religious institutions (particularly mosques).

This is potentially a sensitive area. If a person is committed to such payments, they should be protected to ensure that debt does not further exclude individuals or families from community life and support.

Other costs

Other costs include:

- maintenance/child support payments;
- self-employment costs not taken into account when calculating the client's net income;
- spending for exceptional circumstances – eg, special diets or extra heating because of illness. Apparent 'luxury' items need to be explained.

Bank accounts

It may be necessary to advise the client to change the bank account into which their wages are paid to prevent the bank (a non-priority creditor) taking control of their income by exercising its 'right of set-off'. ¹ If a client finds it difficult to open another account (eg, because of their credit reference details), they may find the MoneyHelper list of basic bank accounts useful. See

moneyhelper.org.uk/en/everyday-money/banking/basic-bank-accounts.

If it is not possible to open a new bank account immediately, the client may have to consider exercising what is known as the 'first right of appropriation'.² This gives an account holder the right to earmark funds paid into the account to be used for specific purposes. This process can also be useful as a temporary measure on overdrawn accounts in order to prevent the bank from appropriating the funds to the debit balance.

The client should inform the bank in writing (before funds are paid in) specifically where they should be applied – ie, how much and to whom. The bank must honour such instructions, but it will continue to charge interest on the overdraft and may refuse to undertake further transactions.

¹ See also S Edwards, 'Of some account?', *Adviser* 173

² See also J Wilson, 'First right of appropriation', *Adviser* 98

6. Drawing up a financial statement

Standard forms of financial statement

The common financial statement

The standard financial statement

Preparing a financial statement is an essential part of the debt advice process. The document presents financial information in a standard form and allows you to communicate that to a creditor (or court) in a structured way. A carefully drawn-up financial statement is probably your most important negotiating tool, because it forms the justification for any repayment proposal as well as for any request for non-payment.

A financial statement should present a sufficiently clear and complete picture of the individual (or family), their income and expenditure, details of their creditors and whether there is any surplus income with which to pay those creditors. It must be based on a true and accurate assessment of the client's circumstances, and any offers made must be realistic and sustainable. Provided the statement is stored electronically, it is easy to amend the financial statement as circumstances change. If there is more than one version of the financial statement on the case file, it should be made clear which is the current version. The financial statement can also be a useful budgeting tool for the client, especially if it is the first time they have reviewed their income and expenditure.

A financial statement based on either the income and expenditure of a single person or the joint income and expenditure of the client and their partner is straightforward to prepare. More

care is needed if it is based on the individual income and expenditure of a client in a couple. The financial statement should always reflect what happens in practice. For instance, if the client pays all the household bills from their own income and contributions from other members of the household, the financial statement should be drawn up on this basis. It might not be possible to identify who pays what because all income is pooled. In such cases, expenditure should be apportioned proportionately to income.

Standard forms of financial statement

Financial Conduct Authority (FCA) guidance states that the format of any financial statement sent to creditors should be uniform and logically structured in a way that encourages consistent responses from creditors and reduces queries and delays. It suggests using the 'common financial statement' (even though it is no longer in use), the standard financial statement or an equivalent or similar statement. Many agencies now use the standard financial statement, which replaced the common financial statement (see below).

Advisers should use all the information from the previous stages of the debt advice process outlined in this chapter when preparing the financial statement. It should include:

- client details;
- whether the statement includes income from other household members;
- a breakdown of all the income for the client or household;
- a breakdown of essential expenditure (it is acceptable to pool certain items of expenditure together. Cigarettes could be included in the amount for other household items rather than listed separately);
- payments towards priority debts;
- a comparison between income and expenditure.

If income exceeds expenditure, that is available income for non-priority creditors. If expenditure exceeds income, there is no available income for non-priority creditors.

Explain in a covering letter any unusual items of expenditure and any special circumstances or needs – eg, whether any member of the household has a disability.

It is an FCA requirement that clients confirm accuracy of financial statements before they are sent to creditors. It is good practice to ask the client to check and sign the financial statement to confirm that it is accurate to the best of their knowledge.

The common financial statement

The common financial statement was an initiative of the Money Advice Trust and British Bankers' Association and has been replaced by the standard financial statement. The common financial statement was withdrawn on 1 April 2018.

The standard financial statement

On 1 March 2017, the

standard financial statement was introduced to replace the common financial statement. ¹

The standard financial statement was developed by the Money Advice Service (now the Money and Pensions Service) in conjunction with major advice providers and creditors to provide a universal income and expenditure statement and a single set of expenditure or spending guidelines. The spending guidelines are updated on the first Monday in April each year. The standard financial statement is available at sfs.moneyadviceservice.org.uk.

If the client's expenditure exceeds the guidelines, advisers are required to provide a 'meaningful' explanation to 'enable consideration of exceptional circumstances'. Creditors have committed not to challenge financial statements when expenditure falls within spending guidelines and to accept an adviser's reasonable explanations, unless they have reasonable cause to believe that the client's financial statement may be incomplete or inaccurate. *The Standards of Lending Practice* and the *Finance and Leasing Association Lending Code* (see here) state that if an offer of payment is made via the standard financial statement, this should be used as the basis for pro rata distribution among the client's creditors (*The Standards of Lending Practice*) or as the basis for negotiating a repayment arrangement (*Finance and Leasing Association Lending Code*).

¹ See also G Harvey, 'Standard financial statement', *Quarterly Account* 43, IMA

7. Dealing with priority debts

The next stage of the debt advice process is to deal with priority debts. See Chapter 8 for more on this. This tries to ensure that the threat of homelessness, the loss of essential goods or services or the threat of imprisonment is removed. It is essential that arrangements for priority debts are agreed at this stage. This allows payments towards priority debts to be included in the expenditure, rather than showing in the financial statement as income available for non-priority creditors (see here).

Priority creditors might demand to see a financial statement when negotiating priority debts, and so this stage of the process can overlap with Stage six.

Explain each available strategy, with its advantages or disadvantages, to the client. They may need to consult with a partner or other family member, so provide the information in writing if possible. Once agreed, you can then implement the strategy by negotiation or a court application. The client must carry out their own agreed course of action – eg, start paying rent or set up direct debits. You must always confirm with the creditor, in writing, a strategy agreed verbally, and request a written acknowledgement. Advise the client to start making any agreed payments immediately and not wait for confirmation from the creditor.

8. Choosing a strategy for non-priority debts

You should know from the financial statement whether or not there is any available income or capital and of any likely changes in the client's circumstances. These factors will be relevant in deciding on a strategy for all non-priority debts. ¹ See Chapter 9 for more information.

The starting point should be what the client wants, and you must give them the full range of available options so that they can make an informed choice. All your advice should be accurate, timely, appropriate to the client's individual situation and in their best interests. Where the clients are members of a couple, a strategy which is suitable for one member of the couple may be unsuitable for the other member, requiring different strategies to be considered.

If the chosen strategy is to offer payments to creditors, advise the client to start making any payments offered immediately and not wait for confirmation from the creditor. If the creditor does not confirm that interest/charges have been frozen, press the creditor for a decision. If the creditor refuses to freeze interest/charges, ask for specific reasons and either urge the creditor to reconsider the decision or review the strategy with the client. If you think the creditor is not treating the client 'with forbearance and due consideration' in line with Financial Conduct Authority requirements, discuss with the client whether to complain.

By the end of this stage, the client will have made an informed choice of the strategy that is most likely to resolve their debt problem.

¹ See also L Oliver, 'Using deficit budgets', *Adviser* 180

9. Implementing the chosen strategies

Although you may have done some work with the client to deal with emergencies and other issues requiring immediate action, it is only when all the information is available and decisions have been made that the major work of implementing a debt advice strategy begins. Unless the client has chosen a formal debt solution (see Chapter 10), this is done by communicating with creditors by letter, telephone, email or sometimes in person or via the courts.

If a strategy is rejected for no apparent reason, contact the creditor(s) and specifically request the reason(s). Creditors usually reject clients' proposals for the following reasons.

- Insufficient information has been provided. Provide additional information/evidence to enable the creditor to understand the client's financial situation.
- The creditor has conflicting or different information. Clarify the position and point out that the creditor is incorrect – eg, because the client's circumstances have changed since the creditor obtained its information.
- The chosen strategy is inappropriate – eg, it is based on incorrect information. Consider the alternatives.
- The creditor's collection policies do not permit the proposal to be accepted. Either try to persuade the creditor to treat the client's situation 'with forbearance and due consideration' ¹ on an individual basis or consider whether there might be a more specific challenge. For example, the Financial Conduct Authority's (FCA's) *Consumer Credit Sourcebook* requires creditors not to pressurise clients to pay a debt in a single payment or unreasonably large amounts if this would have an adverse impact on the client's financial circumstances, or to raise money to pay the debt by selling their property, borrowing money or increasing existing borrowing. ²
- The creditor's collection system cannot deal with the proposal – eg, the case cannot be transferred to its debt recovery section until there are at least three months' arrears. Deal with a more senior person authorised to handle the proposal or transfer the case to someone who can.
- The client has a poor payment record or history of broken arrangements. Point out that previous payment arrangements were unrealistic (if this was the case) and that the current proposals are realistic and sustainable.
- Items on the financial statement are disputed. Either explain or justify them, and use supporting evidence where available.
- The creditor wants more money. Ask the creditor where the additional money will be found, given that other creditors are likely to object to reducing their payments. Also, highlight that

creditors should allow the client reasonable time and opportunity to repay the debt. ³

- The creditor is determined to take court action. Point out that parties are expected to act reasonably and to avoid unnecessary court proceedings. If the matter goes to court, the court, not the creditor, decides the rate of payment (see Chapter 12). In addition, creditors should not threaten court action to pressurise a client to pay more than they can reasonably afford. ⁴
- The creditor will not deal with the agency. Point out that this is a breach of the FCA's guidelines and could be the subject of a complaint. ⁵

Some reasons for rejection could also be a breach of a code of practice. If appropriate, you should find out what trade association a creditor belongs to (see here) and check with the relevant code of practice – eg, *The Standards of Lending Practice*. Familiarise yourself with the FCA's *Consumer Credit Sourcebook*. Complaints under a code or the FCA rules and/or guidance can be made to the Financial Ombudsman Service (see here) or to the FCA. See Appendix 1 for details of these organisations.

If a creditor rejects a client's proposal for repayment, the client should usually make the payments regardless. If they decide not to pay, you should be able to demonstrate a good reason for this and that it was in the client's best interests. ⁶

¹ 'with forbearance and due consideration' is used in *FCA Handbook*, CONC 7.3.4R. It replaces 'sympathetically and positively', which was used in various guidance but never defined. CONC 7.3.6G contains examples of what the FCA regards as treating clients with forbearance.

² *FCA Handbook*, CONC 7.3.10R

³ *FCA Handbook*, CONC 7.3.6G

⁴ *FCA Handbook*, CONC 7.3.18R

⁵ *FCA Handbook*, CONC 7.12.2R

⁶ *FCA Handbook*, CONC 8.6.1R

