





## 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. Introduction

Inaccurate calculations

Consider the options

This chapter looks at various ways of minimising debts, including challenging or reducing liability – eg, by checking whether or not the creditor is legally liable to enforce the debt.

It is essential to accurately identify each debt before attempting to deal with it. Chapter 4

covers the most common types of credit or debt that advisers are likely to encounter. Debts fall into two groups: those covered by the Consumer Credit Act 1974 (known as regulated credit debts) and those not covered.

You should first check whether the client is legally liable to pay the debts claimed by their creditors. In general, a debt is only owed if:

- there is a valid contract between the client and creditor. This does not necessarily have to be a written agreement (see here); *or*
- money is owed because of particular legislation – eg, council tax or water charges; *or*
- the client has been ordered by a court to make payments to someone, or to the court itself, and there are no grounds to challenge the court order.

In addition, if the contract is a regulated credit agreement and therefore regulated by the Consumer Credit Act 1974, the creditor must comply with the Act's provisions when relevant (see Chapter 5).

## Inaccurate calculations

You should check that the amount of any debt is correct and should not assume that the amount owed by a client has been accurately calculated by the creditor.

Check the client's records of payments and ensure that all payments have been credited to the account. If in doubt, request a full statement to confirm this.

Request that any recovery action be suspended while the matter is being investigated. <sup>1</sup> Contacting a creditor's regional or head office may be necessary if negotiations with the local branch are unsuccessful. If the creditor is not being co-operative in supplying information and the debt is a credit agreement regulated by the Consumer Credit Act 1974 (see here), you should write to the creditor asking for a full statement of account under sections 77 (for fixed sum agreements) and 78 (for running account agreements) of the Consumer Credit Act 1974 and enclose a payment of £1. If the creditor fails to comply with the request within 12 working days, the debt is unenforceable unless and until the information is supplied. <sup>2</sup> See here for more details.

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<sup>1</sup> See also *FCA Handbook*, CONC 7.14.1R

<sup>2</sup> ss77-79 CCA 1974

## Consider the options

Although the decision to give one debt priority over another is to some extent a subjective one, you should always discuss with the client the range of options available and the possible consequences. Workthrough the following list of tasks.

- In the case of secured loans, hire purchase/conditional sale agreements and loans secured by bills of sale, check whether the client has payment protection insurance to cover the repayments in the event of sickness or incapacity, unemployment, accident or death. If the client does have insurance and the policy covers their situation, advise the client to make a claim. If the claim is refused, consider whether this can be challenged and/or also whether the policy may have been mis-sold (see here). If the policy does not cover client's situation, also consider whether the policy may have been mis-sold – eg, the client's circumstances were such that they could never have made a claim. If the agreement is regulated by the Consumer Credit Act 1974 and the client says that taking out payment protection insurance was a condition of being granted the credit, the agreement may be unenforceable (see here).
- In the case of secured loans, hire purchase/conditional sale agreements and loans secured by bills of sale, investigate whether the lender complied with its duty to assess the client's ability to repay in accordance with guidance produced by the appropriate regulator – eg, the *Irresponsible Lending Guidance* produced by the former Office of Fair Trading (if the loan was made before 1 April 2014), section 5 of the Financial Conduct Authority's (FCA's) *Consumer Credit Sourcebook* (if the loan was made after 1 April 2014) or sections 11 and 11A of the FCA's *Mortgages and Home Finance: Conduct of Business Sourcebook* (if the secured loan is a regulated mortgage contract made on or after 21 March 2016: see here).
- As well as the above, in the case of both secured and unsecured credit debt, check whether the lender has provided appropriate forbearance to the client in accordance with the FCA's tailored support guidance relevant to the particular debt (see Chapter 4 for further details).
- In the case of tax, VAT or tax credit overpayments, consider what method of enforcement HMRC is using or threatening to use. Bear in mind in the case of tax credit overpayments that recovery from an ongoing award or by amending the client's pay as you earn code reduces the amount of surplus income the client has available to make offers to other creditors.
- Consider whether the client has any other grounds for challenging either the debt or the creditor's conduct (see Chapter 5 and below).
- Consider telephoning the creditor as soon as possible, even if the client does not have all the necessary information on which to base a strategy. This may help prevent further action and alert the priority creditor to the involvement of an independent agency. Invoke the 30-day 'hold on action' provisions referred to in the *Consumer Credit Sourcebook*. <sup>1</sup>

- If necessary, take emergency action to prevent the immediate loss of home, liberty, essential goods or services (see here).
- Negotiate the amount, manner and time of repayments.
- Ensure the client is clear about who to pay, when to pay and how much to pay.
- Encourage the client to seek further assistance from you if they are facing practical difficulties with repayment arrangements.
- Monitor the initial strategy with the client. If the client's circumstances change or the original strategy is unsuccessful, you and the client must decide whether to adopt a new strategy or to modify the details of the original strategy.

Consider carefully the amount of income included as 'available' to the client. The fact that a debt is a priority may influence how a partner's income is treated. A partner may not wish to pool their income and liabilities if only non-priority debts have been accrued (and there is no need to – see here). However, if serious consequences, such as loss of home, could be experienced by the client's partner, they may wish to contribute towards repaying a debt for which they are not legally liable. This situation can also occur when a debt arose while someone was with a previous partner. <sup>2</sup>

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<sup>1</sup> *FCA Handbook*, CONC 7.3.11R and 7.3.12G

<sup>2</sup> See P Madge, 'Till debt do us part', *Adviser* 71