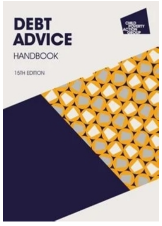
ASK CPAG



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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Print publication date
Feb, 2024

This content was last updated:
2025-06-26

Print ISBN
978 1 915324 11 5

1. Choosing a strategy

The majority of a client's debts are likely to be non-priority ones. They may vary from an unpaid bill of a few pounds to a loan of several thousand pounds. Non-priority debts do not usually include any of the debts listed in Chapter 8. [1] For most non-priority creditors, the remedy for non-payment is to take county court proceedings against the client and enforce the judgment through the courts if payment is not made in accordance with the court order (see Chapter 12).

When giving advice to a client on non-priority debts, take account of:

- the nature of the debt;
- the client's financial position;
- the powers of the creditor;
- whether interest or charges on the debt have been frozen or reduced.

Once a sufficiently full assessment of the client's financial situation has been carried out, all options that are available to them, given their individual circumstances, must be discussed with them. [2] These include:

- the advantages/disadvantages;
- any eligibility criteria;
- the debts covered
- any costs and risks associated with each option.

If the clients are members of a couple, a strategy suitable for one partner may not be suitable for the other, requiring different strategies to be considered. It is not usually an appropriate option for the client to do nothing, although occasionally doing nothing is in the client's best interests. For example, if a debt is about to become 'statute-barred' (ie, unenforceable because of its age), it is not in the client's best interests to acknowledge the debt by sending a holding letter to the creditor and so start time running again (see here). Doing nothing, however, usually leaves the client uncertain as to the status of the debt.

Occasionally, a client will have not only a large amount of non-priority debt but also a high disposable income. It is not usually in their best interests to put such a client through the debt advice process discussed in this *Handbook*. [3] They may just need to be provided with some financial capability guidance on budgeting to reduce their monthly outgoings. It is probably not in any client's best interests for an adviser to contact creditors (except when dealing with an emergency), even by sending holding letters, until the extent of the debt problem has been investigated, as some creditors may react inappropriately – eg, by terminating facilities and registering defaults with credit reference agencies.

A number of criteria are important when deciding which strategy is the most appropriate for dealing with each of these debts.

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1 If a client with a tax credit overpayment has migrated to UC and HMRC transfers recovery to the DWP, the debt will be recovered as if it were a benefit overpayment and so strictly can be considered a non-priority debt as it will continue to be recovered as if it were a benefit overpayment, even if no benefit is in payment.

2 *FCA Handbook*, CONC 8.3.2R, 8.3.3G, 8.3.4R and 8.3.7(5)

3 See J Phipps, 'It's debt Jim, but not as we know it', *Adviser* 88

Availability of income

Insurance

Once a financial statement (see here) has been produced, you will know whether any income is left over for non-priority debts after payments have been arranged with priority creditors and all other essential items of expenditure have been taken into account. You should ask for explanations not only if expenditure is particularly high but also if expenditure is particularly low. In many cases, there is not enough income, even after it has been maximised, to meet essential expenditure, but in others a significant amount may be available. 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 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).

Insurance

In the case of credit debts, check whether the client has payment protection insurance (PPI) to cover the repayments in the event of sickness or incapacity, unemployment, accident or death. If the client has PPI and their situation is covered by the policy, advise them to make a claim.

If the claim is refused, consider whether this can be challenged and a complaint made which could potentially be escalated to the Financial Ombudsman Service. If the agreement is a regulated credit agreement and the client says that taking out PPI was a condition of being granted the credit, the agreement may be irredeemably unenforceable if it was made before 6

April 2007 (see here).

Availability of capital

It should have been established at the initial interview whether a client has any significant capital or savings available. These can include:

- bonds, savings certificates and shares;
- money put aside for specific items – eg, a holiday;
- capital that will become available in the near future – eg, a tax-free payment from a pension provider, expected redundancy pay and proceeds from the sale of a property or business;
- legacies under a relative's will.

Realisable assets

A client may have assets which are reasonable to realise. These are valuable items that could be sold to raise money – eg, antiques or works of art, cars and life insurance policies with an appreciable surrender value. Such a list should only include items of a non-essential nature. For example, a recently acquired and fairly new car that is only used for weekend trips may be a realisable asset, while one that is necessary for work is not. However, creditors must not pressurise clients to raise funds to repay the debt by selling assets (or by borrowing or increasing their existing borrowing). [1]

The client must be adequately advised about their options before coming to a decision about disposing of their assets – eg, to ensure that a car is not subject to a bill of sale or a hire purchase or conditional sale agreement, or that sale or surrender of an insurance policy is in the client's best interests. The client should be advised to obtain independent financial advice if appropriate.

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1 *FCA Handbook*, CONC 7.3.10R(3) and 7.3.10AG. See also P Connearn, 'The ABC of money advice - pension freedom and paying debts - parts 1 and 2', *Quarterly Account* 53 and 54, IMA.

Equity in the home

The equity in a person's home is the total value of the property less the amount required to pay any loans or debts secured against it, including any 'charges' (such as a mortgage, secured loan or charging order) and the costs of a sale.

Example

To calculate the equity on a property on sale for £145,000:

Deductions	Amount
Deduct solicitor's fee on sale	£2,000
Deduct first mortgage (building society)	£115,000
Total deductions	**£133,400**

Total equity = £145,000 – £133,400 = £11,600

If the property is jointly owned, the equity is divided in proportion to the share each person owns (usually equally).

In many cases, there may be no equity in the property and the amount owed may exceed the property's value, particularly if the client has defaulted on a high-interest, non-status secured loan – ie, a loan with high interest because the client has an impaired credit rating. In other cases, however, the equity position will likely be favourable, particularly if the property has no outstanding mortgage.

It is important to establish whether or not there is equity at an early stage, since many creditors now seek to secure their debts (eg, by obtaining a charging order – see here), while others seek preferential status by resorting to threats of bankruptcy (see here). For this reason, you should stress to clients the urgency of dealing with any court papers. Although enquiries from creditors about equity do not necessarily mean that a client should sell their property, they should bear in mind that, unless the circumstances are exceptional, creditors are unlikely to agree to, for example, writing off a debt (see here) if there are realisable assets or equity in the home. A creditor may accept, for example, a token payment (see here) on the basis that the amount due will be repaid from the sale of the asset/property in due course.

Change of circumstances

It is important to know whether the client's current circumstances are likely to change. For example, if a client's income was until very recently quite high, but has now been reduced by a period of illness that is not expected to last very long, this must be taken into account. Similarly, if someone is about to retire or begin a new job with higher wages, these factors are vital to the strategy selected.

The amount owed

The choice of strategy is affected by the amount owing. Some strategies cost money to set up (eg, a voluntary charge – see here) and are too expensive for a small debt. In addition, large companies often have policies to write off small amounts owed if they are not paid after a final warning. Very large debts may also be written off in appropriate cases. Do not assume that very large debts 'simply must be paid'; creditors do write off sums of several thousand pounds.

It is sometimes obvious, particularly where a small debt is concerned, that a large company has already written off an amount owed because it has not communicated with the client for several years and the client has not been contacted by a collection agent acting on behalf of the creditor. In such circumstances, it is probably best to take no action and assume that the creditor has decided not to pursue the debt. However, there has been a tendency for some creditors to sell on debts if there has been no contact for many years. This practice is in breach of the Financial Conduct Authority's *Consumer Credit Sourcebook*. [1]

Note: if there has been no contact for more than six years, the debt may be unenforceable (see here).

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1 *FCA Handbook*, CONC 7.15.9R

Type of debt

Some debts, although not priority debts (see Chapter 8), do not fit into the usual debt advice process and so cannot be treated as straightforward non-priority debts (see here). Separate strategies may need to be made for such debts.

Repayment period

In the case of instalment arrangements, you should always take into account the length of the repayment period - the shorter the repayment period, the more likely it is that the strategy will have a successful outcome. [1] The longer the repayment period, the more likely the client's circumstances are to change (and possibly deteriorate) and the more disheartened the client is likely to become. Although the *Consumer Credit Sourcebook* says that creditors should allow clients in financial difficulties reasonable time and opportunity to repay the debt, [2] consider whether it is in the client's best interests to propose open-ended repayment arrangements or whether to request that there should be a time limit on the repayment period. [3]

It should always be explained to the client how long it will take them to become debt free when explaining the option of paying their debts in full. The number of years it will take can be calculated by dividing the total amount of debt by the surplus income and dividing the answer by 12. It should also be explained that this is how long it will take provided creditors agree to freeze interest and/or charges throughout the lifetime of the strategy.

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1 *FCA Handbook*, CONC 8.2.2G(2)

2 *FCA Handbook*, CONC 7.3.5G

3 See also J Kruse, 'The death of pro rata?', *Adviser* 115

Enforcement issues

If a debt is legally unenforceable, the client is in a strong negotiating position, as they can decide whether or not to repay the debt and, if so, on what terms. This may make income available for payment of other debts. On the other hand, if the creditor is in a position to take enforcement action, or has already done so, the client could be at risk of losing their home or essential goods. For example, a creditor may have obtained a charging order on the client's home which has substantial equity, but the client has little available income with which to make a reasonable offer. This debt may have to be treated as a priority debt because the creditor may be able to apply for an order for sale (see here).

Even if a debt is legally enforceable, it may be possible to persuade the creditor to write off some or all of it. Point out:

- any mis-selling of any part of a loan, such as PPI; *or*
- failure by a lender to assess the client's ability to repay; *or*
- 'churning' of loans (see here).

out of date.