

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

Author(s):
CPAG

Print publication date
Feb, 2024

This content was last updated:
2025-06-26

Print ISBN
978 1 915324 11 5

4. Emergency action

Preventing fuel disconnection
Preventing the home being lost
Preventing goods being taken control of by magistrates' court enforcement agents
Preventing goods being taken control of for council tax arrears
Preventing the local authority taking bankruptcy proceedings
Preventing goods being taken control of by county court enforcement agents

The need for debt advice often arises due to a priority creditor threatening to take immediate action against someone's fuel supply, home, essential assets or liberty. In such circumstances, you must always be prepared to take emergency action. In some cases, sufficient information and time are available to use one of the strategies outlined above. In other cases, neither time nor information is immediately available and action by the creditor needs to be halted or delayed. This may be possible by making a telephone call to a creditor explaining that the client has approached the agency seeking advice and assistance, and indicating when an offer will be made.

Sections 7.3.11R and 7.3.12G of the Financial Conduct Authority's *Consumer Credit Sourcebook* requires recovery action to be suspended for a 'reasonable period' (generally, 30 days) when the creditor has been informed that an adviser is helping a client to agree a repayment plan. However, this may not be the case when adjournments or delays have already been granted. In such situations, other emergency action must be taken. For example, consider whether a formal 'breathing space' would be appropriate for this client and whether that would prevent further recovery action in respect of the debt(s) in question (see here).

Preventing fuel disconnection

Note: Ofgem has published guidance, *Help with Bills - England and Wales - August 2022,* [1] to help front-line advisers give correct advice to clients who need support with higher bills and signpost them to where they can get help.

With effect from 15 December 2020, to support clients with prepayment meters and people with fuel debt Ofgem expects suppliers to:

- offer emergency credit to clients struggling to top up prepayment meters;
- offer clients 'friendly hours credit' provided overnight, at weekends and on public holidays when their meters have run out or are running low;
- offer extra prepayment credit to clients in vulnerable circumstances to give them time to make alternative arrangements to pay; *and*
- ensure they put clients in debt on realistic and sustainable repayment plans, including making

proactive contact with clients and setting repayment rates based on ability to pay.

The legislation governing the supply of gas and electricity states that supplies should not be disconnected while there is a genuine dispute about the amount due. [2] If there is any question about the amount claimed, such a dispute should immediately be registered with the relevant supplier and confirmed in writing. The supplier should be asked not to disconnect the supply until the dispute has been resolved.

Before being offered a prepayment meter, the client should have been offered some form of repayment option (including deductions from benefits) to pay the arrears and cover the ongoing consumption. If this breaks down, some suppliers automatically offer a prepayment meter as the only remaining option. You should consider explaining why the arrangement broke down (eg, it was unrealistic in the first place) and urge the supplier to enter into a new arrangement based on a financial statement.

Before disconnecting, the supplier must:

- have regard to Ofgem guidance on the fitting of prepayment meters (see here);
- comply with its code of practice (including providing information about reconnection);
- only fit a prepayment meter if it is 'safe and reasonably practicable' to do so (see here);
- provide seven days' notice of the date of disconnection;
- obtain a warrant of entry if the client refuses access;
- give a further seven days' notice of its intention to use it.

A warrant of entry is granted by the magistrates' court and allows the supplier to enter the client's home (by force if necessary) to disconnect the supply. Although the supplier must give the client written notice that it intends to apply for a warrant, it does not have to give the client notice of the actual application. You can, however, telephone the court in advance of an application, ask to speak to the magistrate who would deal with any application and make representations on behalf of the client – eg, that they are a vulnerable person and the supplier has unreasonably refused to agree to a repayment arrangement.

The client cannot be disconnected if:

- the bill is genuinely disputed;
- the debt is owed to a different supplier. A supplier who wants to retain the power to disconnect should object to the supply being switched;
- the debt is due from a previous occupier and the client has agreed to take over the supply;
- the debt is for something other than the supply of gas or electricity – ie, it does not relate to fuel consumption. **Note**: the supply can be disconnected for non-payment under a 'green deal

plan' for energy efficiency improvements to the property made under the Energy Act 2011;

- a repayment plan has been agreed. Under its licence conditions, when arranging a repayment plan, the supplier must take into account the client's ability to pay;
- the client has agreed to have a prepayment meter fitted and it is safe and reasonably practicable to do so. The meter should be calibrated to recover the arrears at the rate the client can afford, taking into account their ability to repay;
- the client has an existing vulnerability which relates to their mental capacity and/or psychological state and the experience of being disconnected (or having a prepayment meter forcibly installed) would be severely traumatic and make their condition significantly worse; [3]
- it is between 1 October and 31 March, and the supplier either knows or has reason to believe there is someone of pension age living either alone in the property or with others over pension age or under 18;
- it is between 1 October and 31 March and someone living in the property is either severely disabled or chronically sick, unless all other reasonable steps have been taken to recover the arrears.

Clients in the last two categories are likely to be on the Priority Services Register.

Energy UK (the trade association for the UK energy industries) has drawn up *The Vulnerability Commitment*, a voluntary agreement under which signatories commit to:

- 'only use HCEOs to recover debts where appropriate for a vulnerable customer, taking account of any wider vulnerabilities that may be exacerbated by Court enforcement action';
- 'never knowingly disconnect a vulnerable customer at any time of year where the household has children under the age of 6 (or under the age of 16 during the Winter Moratorium – ie between 1 October and 31 March inclusive) or where for reasons of age, health, disability or severe financial insecurity that customer is unable to safeguard their personal welfare or the personal welfare of other members of the household';
- 'never knowingly disconnect the non-domestic supply for reasons outside the domestic household's control, if it is determined that a member of a domestic household, which takes its energy through a non-domestic supply is vulnerable';
- 'having a strategy and effective arrangements in place for signposting and referring customers to relevant third party support, including debt advice agencies'.

For more details, see energy-uk.org.uk.

No one who is prepared to have a prepayment meter or who is eligible for direct payments from their benefits or who can afford to pay for current consumption plus a payment towards the

arrears should ever be disconnected. Energy trust funds or other charities may be able to help with payment of bills or to prevent 'self-disconnection' – ie, if clients do not use gas or electricity because they cannot afford to pay. In the case of prepayment meters, self-disconnection can be as a result of arrears being recovered at too high a rate. Suppliers can always be asked to confirm how arrears are being recovered, and asked to recalibrate the meter if appropriate or proactively reconsider whether a prepayment meter is safe and reasonably practicable – eg, if the client is self-disconnecting.

If negotiations with the fuel supplier are unsuccessful, contact Citizens Advice or the Energy Ombudsman (see Appendix 1), which have the power to intervene when disconnection is threatened. See also CPAG's *Fuel Rights Handbook* for more information.

---

1 Available at ofgem.gov.uk/publications/energy-domestic-consumer-advice-autumnwinter-2022

2 Sch 6 EA 1989; Sch 2B GA 1986

3 Condition 28B.1 Standard Conditions of Supply Licence

Preventing the home being lost

When a possession order has already been granted and is followed by a warrant of possession (see here), you may need to make an immediate application to the court on Form N244 to suspend the warrant. If the eviction is not due to take place for several days, attempt to negotiate directly with the lender (or the lender's solicitor) or the landlord, to obtain a binding agreement that the property will not be repossessed. If this is not possible or appears unlikely, or the eviction is due to take place that day or the following day, submit Form N244 to the court.

Form N244 must state the grounds of the application and, if possible, include an offer of payment. The fee is court fee 2.7 – ie, £14 not £275 as some courts argue (court fee 2.4(a)). See here for how to apply for a remission. For further information about a warrant of possession, see here, and for how to complete Form N244, see here.

In the case of local authority or registered social landlord tenants, there is usually an internal procedure that must be followed before a warrant is applied for, which may involve considering representations from the tenant. Check that procedure has been complied with and challenge the landlord if it has not. [1]

An application to suspend the possession warrant always stops county court enforcement agents (bailiffs) executing it (ie, carrying out its instructions) until the court has heard the

application, although the court is usually very quick in arranging a hearing. The success of an application depends largely on:

- whether several arrangements have already been made but not kept to;
- your ability and the client's ability to present the case;
- how many previous warrants have been suspended;
- how long the client has been getting help from an advice agency;
- the client's ability to pay.

If the debt is a moratorium debt and the client is in a breathing space, the creditor should have informed the court of this fact so that further enforcement action can be stayed. However, when a warrant is, or has been, issued you should contact the court and notify it of the breathing space. If it is too late to make the application to the court because the enforcement agents are already on their way to carry out the eviction, phone the creditor immediately and negotiate with the enforcement agent, on the doorstep if necessary, for more time. Enforcement agents normally have a mobile phone with them and so can be contacted right up to the point of eviction.

---

1 See B Fisher, 'Eviction appeal panels' and D Durden, 'A landlord's perspective', *Adviser* 114

Preventing goods being taken control of by magistrates' court enforcement agents

Enforcement agents working for the magistrates' court cannot act without a warrant of control. That is a document issued by the court allowing enforcement agents to take control of goods belonging to the client, which can then be sold and the money used to pay the unpaid debt.

If a warrant of control has been issued by a magistrates' court because of arrears in the payment of fines, and enforcement agents are about to take control of the client's goods, it is not clear whether magistrates can hear an application to give further time to pay (see here).

Occasionally, enforcement agents agree to give a debt adviser a few days in which to produce an offer of repayment. If the client is vulnerable, try to persuade the bailiff to return the warrant to the court, citing paragraphs 70–78 of the *Taking Control of Goods: national standards* (April 2014). [1]

See Chapter 15 for further details of enforcement agents' powers.

---

1 gov.uk/government/publications/bailiffs-and-enforcement-agents-national-standards

Preventing goods being taken control of for council tax arrears

If a court grants a local authority a liability order, it can use enforcement agents to take control of goods belonging to the client, which can then be sold and the money used to pay the council tax arrears.

Different local authorities give different instructions to their enforcement agents (bailiffs). In some areas, a clear code of conduct exists, preventing a client's goods being taken control of if they are on benefit or in certain other circumstances. The June 2013 *Council Tax: guidance to local councils on good practice in the collection of council tax arrears* issued by the Department for Housing, Communities and Local Government, has been updated as *Council tax collection: best practice guidelines for local authorities* (August 2021). [1] This shares the experience of innovative authorities and the methods they use when collecting council tax. These include investing in clear communication, supportive recovery techniques and proactive engagement with the debt advice sector. The section entitled 'Making effective use of enforcement action' is of particular relevance and makes reference not only to identification of vulnerable situations but also how people in these circumstances should be dealt with. The guidelines also reference the Ministry of Justice's *Taking Control of Goods: national standards*, which are relevant both to a local authority's own responsibilities as creditors and the standards expected of their enforcement agents, particularly if the client is a 'vulnerable person' (see here).

Citizens Advice and the Local Government Association have produced the *Council Tax Protocol* (reissued in June 2017), which they recommend advisers and local authorities should adopt. The protocol [2] contains practical steps to prevent clients getting into arrears but, if they do, suggests procedures to ensure enforcement agents act appropriately, including a requirement that local authorities should have a process for dealing with cases in which the client is identified as vulnerable.

Local authorities should actively manage their contracts with enforcement agents, including having arrangements to safeguard against them entering into 'punitive' arrangements with clients, and should be prepared to deal directly with individuals at any point. The guidance reminds local authorities that: 'It is perfectly within their gift to call action back from the enforcement agents at any time and when there is a case to do so they should consider such action.'

Complaints against enforcement agents should be investigated properly and not just referred back to the enforcement agent. The guidance reminds local authorities that enforcement agents

are working on their behalf and they remain responsible for the bailiffs' actions. [3]

You should know what rules (if any) the local authority uses. If an action by enforcement agents breaches these, contact the local authority immediately so that its order to the enforcement agents can be withdrawn. The guidance recommends the use of dedicated contacts accessible on direct lines and by electronic means so that issues can be taken up quickly.

Even if there is no clear policy, contact the local authority and ask it to consider withdrawing the warrant from the enforcement agents or, if that is not possible, instructing the enforcement agents to accept a lower payment offer. Enforcement agents themselves may occasionally agree to delay action, but this is unlikely. There may be no need for the client to let the enforcement agents into their home. See here for the rules about enforcement agents' powers to enter property.

In the absence of the warrant being withdrawn, arguably, paying the debt direct to the local authority but not including payment of the enforcement agents' fees does not prevent the enforcement agents attempting to recover their fees (although if the warrant is withdrawn, it appears the enforcement agents would have to look to the local authority for payment). [4]

As noted above, in appropriate cases, the local authority could be asked to write off council tax arrears.

---

1 gov.uk/government/publications/council-tax-collection-best-practice-guidance-for-local-authorities

2 citizensadvice.org.uk/global/Citizensadvice/campaigns/council%20tax/citizens%20Advice%20Council%20Tax%20Protocol%202017.pdf

3 See M van Rooyen, 'Complaints about bailiffs and local authority debts', *Quarterly Account* 54, IMA

4 This seems to be the effect of reg 17(1) and (2) TCG(F) Regs

Preventing the local authority taking bankruptcy proceedings

Many local authorities now use bankruptcy proceedings to recover council tax arrears from homeowners if the total outstanding balance due under the liability order or orders is £5,000 or more. There is no government guidance on this. However, local authorities should bear in mind the principles of proportionality and reasonableness in deciding whether to use bankruptcy proceedings, particularly the client's potential liability for substantial costs. [1] A charging order is

likely to be a more proportionate recovery method, given the sums involved, and should not be rejected purely on the basis that the court may not order a sale in the event of payment not being forthcoming.

Consider making a complaint to the Local Government and Social Care Ombudsman (LGSCO) in order to challenge a local authority's decision to resort to bankruptcy proceedings. The LGSCO has made the following points. [2]

- Bankruptcy should only be used as a last resort and local authorities should have a policy to this effect.
- Local authorities should record their reasons for not pursuing alternative collection methods.
- Local authorities should send letters containing clear and detailed warnings of the potential consequences of bankruptcy for the client in terms of not only the costs of the petition itself and possible loss of the home but also the far greater costs that would be incurred if a bankruptcy order were made.
- The policy should also deal with charging orders and require them to be considered as an alternative to bankruptcy. Charging orders should not be rejected on the grounds that they do not provide a practical recovery method.
- Local authorities must act proportionately and take into account the client's personal circumstances.
- Local authorities must proactively make enquiries about vulnerability.

The Ombudsman is likely to find maladministration if a local authority: [3]

- does not have a formal published debt recovery policy;
- has not gathered and considered information about the client's circumstances;
- does not include in its debt recovery policy the steps it must take before deciding on bankruptcy, committal or charging orders;
- pursues bankruptcy without clearly recording that each of these steps has been taken.

Local authorities must also take account of their duties under the Equality Act 2010, particularly if the client may have mental health issues.

You should therefore obtain the local authority's collection policy to ensure it complies with the Ombudsman's recommendations and point out any shortcomings. Use the recommendations to challenge any inappropriate use of bankruptcy proceedings by local authorities. [4]

Note: while complaining to the LGSCO (or the Public Services Ombudsman for Wales) is a cheap remedy, it is an after-the-event remedy and is not quick. Because of restrictions on its jurisdiction, the Ombudsman can only investigate a local authority's actions up to the issue of

proceedings, although the Ombudsman retains the right to investigate in cases in which the client has unsuccessfully applied to annul a bankruptcy order as an application for annulment is not regarded as an 'alternative remedy' so the fact that an application has been made is not a bar to a complaint. [5] Outcomes of complaints about local authority council tax collection can be viewed at lgo.org.uk/decisions. If the client is eligible for public funding and the bankruptcy petition has not yet been issued, an application for judicial review could be considered. [6] See cpag.org.uk/jr for help with the judicial review process.

Bear in mind that, before the local authority can take bankruptcy proceedings, it must have a liability order for the amount in question and be able to prove the existence of that liability order to the satisfaction of the court. The local authority's own computer records are not sufficient for this purpose; it must be able to produce either a sealed copy of the liability order or a statement from the magistrates' court that an order was made. [7] However, unless there was evidence that the local authority's records were incorrect, the Ombudsman would probably accept (on the balance of probability) a local authority's computer evidence that a liability order was made.

Get specialist advice if a client has received either a statutory demand or a petition from the local authority, or if a bankruptcy order has been made on the local authority's petition.

---

1 See *Lock v Aylesbury Vale DC* [2018] EWHC 2015 (Ch) in which the High Court held that, for a petition based on unpaid council tax, there was burden on the council to show that making a bankruptcy order would achieve some useful purpose (Ms L did not work, did not own her home and did not receive any benefits). For further information, see the 'Caselaw & important decisions' section of Shelter's SDAS e-bulletin, March 2025

2 Complaint against Wolverhampton City Council (06/B/16600); complaint against Camden LBC (07/A/12661)

3 Local Government and Social Care Ombudsman, *Can't Pay? Won't Pay? Using bankruptcy for council tax debts*, October 2011, available at lgo.org.uk/make-a-complaint/fact-sheets/benefits-and-tax/bankruptcy

4 The Local Government and Social Care Ombudsman has also issued a factsheet, available at lgo.org.uk/make-a-complaint/fact-sheets/benefits-and-tax/bankruptcy. See also A Hobley, 'Using bankruptcy for council tax debts', *Adviser* 150.

5 Complaint against Newham LBC (08019113)

6 See R Barnwell, 'Local Government Ombudsman and complaints about bankruptcy', *Adviser* 131; R Low-Beer, 'Council tax arrears and bankruptcy', *Quarterly Account* 12, IMA

7 *Smolen v Tower Hamlets LBC* [2006] All ER(D) 48

Preventing goods being taken control of by county court enforcement agents

If a creditor has instructed the court to issue a warrant of control for an unpaid county court judgment, the client can make a combined application to the county court to suspend the enforcement action and to vary the judgment. This is usually done on Form N245. See here for details of how to do this and Chapter 15 for details of county court enforcement agents' powers. The application fee is £14 (see here for information about applying for fee remission).

Get specialist advice if the enforcement agent is threatening to take control of goods subject to a hire purchase or conditional sale agreement or bill of sale.

Preventing goods being taken control of by High Court enforcement officers

High Court enforcement officers enforce High Court judgments (including county court judgments transferred to the High Court for enforcement). They are enforcement agents authorised by the court to enforce debts in the High Court. See Chapter 15 for details of the powers of High Court enforcement officers.

Get specialist advice if an enforcement officer is threatening to take control of goods.

Preventing goods being taken control of by tax enforcement agents

Officials from HMRC have the powers of enforcement agents to take and sell goods to pay unpaid tax debts. [1] If they are unable to gain access to a property, they can apply for an order to force entry. Normally, an enforcement agent accompanies the collector on such visits.

It is possible to negotiate with the collector directly and either suggest a repayment arrangement or submit a late return if the client does not agree with the amount of the debt and it is outside the normal time limit for appealing (see Chapter 16). If the client has no goods, the collector is likely to seek an alternative means of enforcement, such as court action or bankruptcy.

---

1 s127 Finance Act 2008

Preventing imprisonment

Magistrates' courts have the power to imprison people who refuse to pay 'financial penalties', maintenance, council tax or non-domestic rates. **Note**: debtors can no longer be imprisoned in Wales for arrears of council tax and non-domestic rates. See Chapter 14 for the circumstances in which they can use this power and the arguments to use against them.

Warrant with bail

When a client has failed to attend a court hearing, or sometimes just failed to keep up the payments, a warrant can be issued for their arrest by magistrates. In most cases, this is a warrant with bail which requires the client to surrender themself and be given a time and date for a court hearing.

Warrant without bail

Occasionally (usually if previous warrants have been ignored), a warrant without bail is issued. This requests the police or specially licensed enforcement agents to arrest the client and hold them in custody until a court hearing can be arranged (within 24 hours).

If a warrant without bail has been issued, the client should report to the court at a time, depending on local circumstances, when it is likely not to be busy so that they will not be held in the cells for too long. This may be after lunch, if the court sits then, or first thing in the morning before other prisoners have been brought from police stations. Some courts demand that people surrender themselves to the police station rather than the courts, but there is no legal foundation for this and you should ensure that police and other court staff accept a client's surrender in court buildings.

Committal hearing

Most magistrates' courts do not imprison people until they have been given a number of opportunities to pay by instalments. Whenever someone is brought before court after the issue of an arrest warrant, they should be represented, if possible. They cannot be lawfully imprisoned if legal representation has not been made available. If a solicitor (perhaps from the duty solicitor scheme) is to provide representation, an advice agency should brief them first and provide a full

financial statement, as it is common for unrealistic offers to be made by solicitors, which then cause the client to be brought back before the court and treated with even less sympathy because they have broken a previous undertaking to pay. In some courts, probation officers can obtain adjournments to produce a statement of the client's means for the court. For further information about committal hearings, see here.

After imprisonment

If magistrates have imprisoned someone for debt, they may have done so improperly, in which case a judicial review application should be made immediately. A bail application pending a hearing can also be made (to a High Court judge in London). The application must be made by a solicitor or barrister specialising in this field. The most likely improprieties are procedural irregularities (eg, if the court failed to consider the question of wilfulness, culpability or alternatives to imprisonment) or unreasonableness (eg, if the court expected someone on income support to pay £20 a week towards a fine), natural justice (eg, if legal representation was denied) or acting *ultra vires* (eg, if the resolution setting council tax was not signed by the appropriately authorised officer of the council).