





## 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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## Interest-only payments (for mortgages and secured loans)

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A large proportion of secured borrowing is repaid by monthly payments that combine interest with a repayment of capital. In such cases, a client can reduce the payments if the creditor agrees to accept payment of only the interest without any capital repayment. If a client can only afford to pay the interest which is accruing on an agreement, creditors need to be persuaded that a request to make interest-only payments is not asking for anything that is either out of the ordinary or generous.

Payments towards the capital can be resumed if the client's financial circumstances improve in the future. Some creditors are prepared to wait until a property is sold for the capital to be repaid. Creditors need to be satisfied either that the arrangement is a temporary one and that the client will be able to resume making the full contractual payments or that they will be able to repay the capital in some other way.

### When applicable

Paying interest only is appropriate if the client cannot afford to pay both the interest and capital. <sup>1</sup> Some mortgages allow for a 'payment holiday' of a couple of months, but if this is either not applicable or not appropriate, the lender may consider an interest-only arrangement as an alternative. Interest-only payments cannot be used for:

- any agreement in which the total interest has already been added at the beginning of the loan period and the whole amount secured against the property, because no interest is accruing on a daily basis (but see reduced payments, on here); *or*
- an endowment mortgage, because payments are already for interest only and the capital is repaid in a lump sum at the end of the period of the loan by an endowment insurance policy (see here).

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<sup>1</sup> In *Green v Southern Pacific Mortgages Ltd* [2018] EWCA Civ 854, the court held that the

lender was not required by the Equality Act 2010 to offer an interest-only mortgage to a disabled borrower as a 'reasonable adjustment'

## Advantages

- It is easily accepted by priority creditors as a temporary forbearance measure.
- It prevents further action.
- It may avoid a bad credit rating.

## Disadvantages

- The debt may take longer to clear than it would if full payments were maintained, or if a reduction in capital or charges could be negotiated, and so the client may pay more in the long run.
- The Administration of Justice Act 1973 requires mortgage arrears to be cleared in a 'reasonable time'. <sup>1</sup> Although the court could use its powers to order an adjournment or a suspended possession order to allow payments of interest only, <sup>2</sup> this is only possible for a short period (eg, six months), after which time an increased payment is necessary to clear the arrears in a reasonable time (see here). Similarly, the court cannot make a time order in respect of a secured loan on this basis as it would not provide for payment of the loan (see here and here).

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<sup>1</sup> s8(2) AJA 1973

<sup>2</sup> s36 AJA 1970

## Useful arguments

- Most mortgage and other secured lenders have policies that allow interest-only payments on a temporary basis (perhaps six months). These can often be arranged by telephone (although any arrangement must be confirmed in writing and a financial statement may be required).

## Checklist for action

- Telephone or write to the creditor to propose the strategy and request written confirmation that the strategy is accepted.

- Explain the cause of the client's inability to pay – eg, because of a change of circumstances, or economic factors such as high interest rates.
- Advise the client of how much to pay and when.
- Consider advising the client to set up a direct debit or standing order to ensure payments are kept up.

## Change from an endowment to a repayment mortgage

When applicable

Advantages

Disadvantages

Useful arguments

Checklist for action

An endowment mortgage is a secured loan on which only interest is payable, accompanied by an endowment life insurance policy which is intended to pay off the capital borrowed either at the end of the agreed term or on the death of the borrower (whichever is the sooner).

For the borrower in debt, it is essential that the full amounts of both the endowment insurance payments and the interest on the loan itself are repaid on, or shortly after, the due date. The creditor relies on the insurance company to repay the capital amount lent at the end of the loan period and, if payments to the insurance company stop, the creditor is likely to call in its loan on the basis that its security is at risk, unless an acceptable proposal for repayment of the capital at the end of the loan can be made. If, on the other hand, payments to the creditor are not kept up, the amount outstanding on the loan increases and is likely to become more than the amount that will be produced by the insurance policy at its maturity. Endowment mortgages are therefore less flexible than repayment ones.

To have flexibility to capitalise arrears, extend the period of a loan or negotiate repayment of arrears over several years, an endowment mortgage needs to be changed to a repayment mortgage. The creditor does this automatically for some clients once the endowment premium is significantly in arrears.

However, to cease paying, surrender or sell an endowment policy is a major financial decision and should not be taken without specialist advice from an independent financial adviser.

### When applicable

- A client is in arrears with an endowment mortgage, or is likely to go into arrears, and therefore a renegotiation of the terms of the mortgage is necessary.

- A client is unable to maintain the payments on the endowment policy.
- A client is facing a substantial period of low income and needs more flexibility.
- If the endowment policy has been running for several years, it may be beneficial to cash it in or sell it and use the lump sum to pay off arrears. Advice from an independent financial adviser should always be taken before surrendering an endowment policy. Some insurers charge significant fees for early surrender and, in addition, the value of the policy depends on the state of the stock market. The surrender value of a policy is frequently much less than the amount of the payments made into it to date. A sale of the policy instead usually produces a better return. However, even if a client changes to a repayment mortgage, it is better, if possible, to keep the endowment policy (without making any new payments into it) until it matures.
- The client can afford the new repayments.

## **Advantages**

- Increased flexibility in the long term.
- Ensures that the home is not lost.
- Possible reduced monthly outgoings.

## **Disadvantages**

- There may be an arrangement fee to convert the mortgage to a capital repayment type.
- The client must arrange separate life insurance cover.
- Some or all of the money already invested in the endowment policy may be lost (especially if it is relatively new).
- If a policy is 'assigned' to the lender, the surrender/sale value may be taken by it in full (although negotiation is possible).
- Possible increased monthly outgoings.

## **Useful arguments**

- Creditors may be sympathetic if this is the only way of paying the mortgage, as it ensures the loan is repaid.

## **Checklist for action**

The client should get independent advice from a specialist in this field (but not from a broker who was involved in setting up the endowment mortgage as they may be motivated by the knowledge



that they will probably lose commission if an endowment policy is cancelled).

If, after taking financial advice, the client decides on this course of action, do the following.

- Telephone or write to the creditor to propose the strategy and request details of new instalments and the surrender/sale value of the endowment policy.
- Advise the client of how much to pay and when.
- If disposing of the endowment policy, ensure the full surrender value of the policy is paid to the client. Selling it rather than merely surrendering it may produce a larger sum.
- Advise the client to take advice to arrange new life insurance cover for the mortgage, if necessary.

## Reduced payments

When applicable

Advantages

Disadvantages

Useful arguments

Checklist for action

A creditor can be asked to renegotiate the contract that has been made so that a client can afford the payments. There are three main ways in which payments can be reduced.

- Ask the creditor to reduce interest/charges, either for a period of time (eg, the next year) or for the rest of the loan, even if interest has already been added to the amount payable over the whole period of the loan.
- Ask the creditor to agree to reduce or write off the interest/charges that have already accrued on the loan so that the future payments are affordable by the client.
- Ask the creditor to allow repayments to extend over a longer period, thereby reducing the capital portion of the repayments. There must be sufficient equity to allow this – the amount of equity can be calculated by deducting the total amount of all loans secured on the property from the market value of the property.

### When applicable

- The client cannot meet their original contractual obligations.
- If interest rates have risen significantly since the contract was taken out, or if the interest originally charged was significantly higher than available elsewhere or if, despite a general fall in interest rates, a high rate of interest continues to be charged. This is particularly true if a time order would be appropriate (see here).

- The outstanding balance includes capitalised arrears of interest/charges, particularly if these have accrued at a high rate.
- Adverse publicity would be attracted by a repossession.
- If the property market is slow and, therefore, repossessed properties are unlikely to be saleable.

This strategy is not appropriate for endowment mortgages.

## Advantages

- It reduces the amount payable and protects the client's home and essential goods.

## Disadvantages

- It is difficult to gain agreement to this as a long-term strategy from creditors, particularly if the loan is more than fully secured.
- The lender may only defer interest and so the client may be faced with substantially higher payments at the end of the arrangement, which may lead to further default in the future.
- Repaying an interest-bearing debt over a longer period may result in additional interest being paid, unless the payments are sufficient to cover this or the rate of interest is reduced accordingly.

## Useful arguments

- If a time order is possible (see here), a creditor may prefer to negotiate changes voluntarily rather than have them imposed by the court, especially if adverse publicity is likely to be attracted by a case.
- Point out any failure by the creditor to prevent the build-up of arrears, to send the client regular statements of account or to inform the client of the need to increase payments to cover the ongoing arrears/charges.
- If the alternative for the creditor is to repossess the property, point out that under section 13.3 of the Financial Conduct Authority's (FCA's) *Mortgages and Home Finance: Conduct of Business Sourcebook*, repossession of the client's property must be a last resort, having explored all other possible options. The strategy being offered may be cheaper, as possessing and reselling a property is time-consuming and, therefore, expensive.
- In the case of regulated mortgage contracts, section 13.4.4R of the *Mortgages and Home Finance: Conduct of Business Sourcebook* requires the lender to contact the client within 15 days of their account falling into arrears and to provide them with prescribed information,

including the likely charges that will be incurred should the arrears not be cleared. Any failure to comply with this could be pointed out to the lender if it has contributed to the build-up of arrears.

- In order to support arguments for reduced payments, in all cases, point out any mis-selling of any part of the loan, such as payment protection insurance, or any failure to assess the client's ability to repay. For example, if payment protection insurance has been mis-sold, it may be possible to argue that the client should have a rebate of some or all of the premium, and that the amount of interest charged should be repaid or adjusted, or that the loan agreement itself is unenforceable (see here).
- Payments are more likely to be maintained if set at a lower level, which the client can afford.

## Checklist for action

- Telephone or write to the creditor to propose the strategy and request written confirmation of its acceptance.
- Advise the client of how much to pay and when.
- Consider a time order in Consumer Credit Act and regulated mortgage contract cases (see here and here).

## Capitalise arrears

When applicable

Advantages

Disadvantages

Useful arguments

Checklist for action

If arrears have built up (particularly on a repayment mortgage), a creditor can be asked to add these to the capital outstanding and simply charge interest on the new capital amount. This can then be rescheduled over the remaining period of the mortgage, although it may be possible to extend the repayment period, either instead of or as well as capitalising the arrears.

## When applicable

- This strategy is particularly useful when there is an improvement in the client's circumstances following a period in which arrears have built up. For example, if a client has recently become employed after a period of unemployment or returned to work after a long period of sickness, provided their payment record was previously satisfactory, most creditors will agree to capitalise the arrears.

- Creditors only capitalise arrears if the market value of the property is significantly greater than the amount of capital currently outstanding. They do not usually do so if it would lead to the capital outstanding being more than the value of the property.

## Advantages

- It regularises the situation.
- It prevents further action.
- It can avoid a bad credit rating as the client no longer has arrears.
- The repayments are affordable.

## Disadvantages

- The repayments on the loan will be increased if the loan is to be repaid within the original contractual period.
- The debt may take longer to pay off, in which case the client pays more.
- If interest charges rise, the effect is greater than when the capital was less.
- Interest is, in effect, paid on the arrears throughout the term of the mortgage.

## Useful arguments

- Some creditors only consider capitalising arrears after a trial period in which a client makes regular repayments, particularly if there is little prospect of an improvement in their circumstances. You can, therefore, suggest that the lender review the strategy after an agreed period in which the client is able to demonstrate that they are able to maintain the repayments.

## Checklist for action

- Telephone or write to the creditor to propose the strategy and request written confirmation that this is agreed.
- Advise the client of any change in repayments.

## Scheduled payment of arrears

Secured loans

Rent, fuel and council tax

When applicable

Advantages

Disadvantages

Useful arguments

Checklist for action

## Secured loans

Arrears may be able to be repaid over a period of time. This may be a set amount each month, calculated to repay the arrears over a period of time acceptable to the creditor/lender and/or court. In one case, the court said that it is acceptable to repay arrears over the amount of time remaining until the end of the loan. <sup>1</sup>

However, you should be imaginative in your suggestions for repayment schedules. A staggered offer, in which initially a smaller amount is offered towards the arrears, followed by increased payments, is useful if it is anticipated that the client's circumstances will improve. Such an arrangement may be made directly with the creditor or may need to be ratified by the court if proceedings have already started.

If there is no spare income immediately available, so that only the normal contractual payment can be met, creditors can sometimes be persuaded to accept no payments towards the arrears for several months, particularly if there is plenty of equity (see here) in the property. In extreme circumstances, they may be persuaded to accept no payments at all for one or two months if the client's inability to pay is clearly temporary.

Some mortgages may allow for a payment holiday (usually for no more than a few months), but may require the client's payments to be up-to-date at the start of the period. Interest continues to accrue during any period of non-payment and is added to the outstanding balance, so that the client pays more in the long term in return for taking advantage of this concession.

In the case of loans, interest accrues not only on the capital outstanding but also on the unpaid arrears so that, unless the creditor agrees to freeze interest and other charges, the repayments will continue beyond the original contractual period, sometimes, on unregulated agreements, at a penalty rate which is higher than that normally charged. Check the agreement to find out if this is the case.

Many creditors have their own internal rules about the time period over which they will spread the repayment of arrears on secured borrowing, but these periods can generally be increased by contacting regional or head offices, or formally complaining when necessary. Most lenders are subject to codes of practice which require them to treat clients 'sympathetically and positively'. The *Mortgages and Home Finance: Conduct of Business Sourcebook* requires lenders to make reasonable efforts to reach an agreement with clients over the method of paying any arrears (having regard to the desirability of agreeing an alternative to repossessing the property) and to allow a reasonable time for the arrears to be repaid. <sup>2</sup> If you believe a creditor is allowing a

policy to stand in the way of its duty to consider every case individually, you should advise your client to consider using the creditor's complaints procedure and referring the matter to the Financial Ombudsman Service, if appropriate.

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1 *Cheltenham and Gloucester v Norgan* [1996] 1 All ER 449

2 *FCA Handbook*, MCOB 13.3.2A (1) and (3)

## Rent, fuel and council tax

Creditors use various criteria to decide whether the repayments are acceptable, including the level of arrears, the client's previous payment record and the likelihood of the client remaining as a tenant, consumer or council tax payer in the same location. Under Ofgem rules, electricity and gas suppliers must take into account a client's current financial situation when agreeing payments towards arrears. That applies whether or not the client is paying for their supply through a pre-payment meter.

## When applicable

- After there has been an improvement in financial circumstances.
- After a debt adviser has helped the client to prioritise payments of debts.

## Advantages

- Provided the income is available to repay both contractual payments and something towards the arrears, this should be readily acceptable to creditors.
- It prevents further action.

## Disadvantages

- It increases the client's outgoings at a time when their financial difficulties may not be over.

## Useful arguments

- Creditors need to understand why payments have not been made in the past and why they are now possible.
- Explain any changes of circumstances and the fact that the client has now reorganised their financial affairs to give priority to these debts.

- Explain to creditors that ability to pay needs to be the guiding factor in deciding on repayment of arrears. Point to any relevant code of practice which supports this. A carefully drawn up financial statement is your most useful tool.
- The strategy is considered appropriate by a reputable debt advice agency.
- If the creditor or court is reluctant to accept that payments will be made, the arrangement can be made subject to a review after a set period (eg, six months), so that the creditor's position is not prejudiced.

## Checklist for action

- Telephone or write to the creditor to propose the strategy and request written confirmation of the repayment schedule.
- Advise the client of how much to pay and when.
- If necessary, make the appropriate application to court.

## Mortgage rescue schemes

### Mortgage rescue and bankruptcy

#### When applicable

#### Advantages

#### Disadvantages

#### Checklist for action

Welsh local authorities may have funds available that they can use to prevent repossessions and the potential costs of rehousing and resettling clients. The local authority decides whether to help clients with mortgage rescue and what eligibility criteria to use. Some registered social landlords in Wales also run mortgage rescue schemes. Check with the client's local authority to see whether any schemes are available in the area.

However, these schemes require the client to be facing repossession and homelessness. In November 2023, the Welsh Government announced the 'Help to Stay Wales' scheme which will provide homeowners who are struggling to afford their mortgage repayments and at risk of repossession with the option of partial repayment of their existing mortgage via a low-cost equity loan secured by a second charge on the property, thereby reducing their mortgage repayments to a level they can afford. The minimum loan is £10,000 and the maximum is 49 per cent of the property value (maximum value £300,000). The household income must be no more than £67,000 a year. The loan is interest free for five years and is then charged at two per cent above the base rate for the next 10 years after which the capital must be repaid. The client must have evidence of having received debt advice and must be referred to the scheme by a mortgage

adviser. You can view the detailed guidance at: [tinyurl.com/27urwd5](https://tinyurl.com/27urwd5).

## Mortgage rescue and bankruptcy

**Note:** mortgage rescues are no longer available in England but the risk to the property from earlier rescues in the event of bankruptcy remains.

If a mortgage rescue has involved the sale of the client's property to a registered social landlord and the client went bankrupt in the five years following the transaction, the trustee in bankruptcy may challenge the arrangement as a transaction at an undervalue (see here). This could put the client's home at risk as the new owner may decide to sell it to pay off the trustee.

However, the Insolvency Service has said that a mortgage rescue scheme would be unlikely to give rise to a transaction at an undervalue if the client entered the scheme before bankruptcy and the registered social landlord paid the market value. However, if the client received a lump sum and used this to clear unsecured debts, the question of a preference may arise (see here). If the property was repossessed and sold at any time after the bankruptcy order was made, any shortfall would be a bankruptcy debt (although if the lender only agreed to mortgage rescue on the basis of the client entering into a new arrangement to pay the shortfall, questions of fraud arise if the client entered into the arrangement with the intention of going bankrupt and avoiding payment). The reduction in housing costs may increase the chances of an income payments agreement/order being made (see here–here).

Entering a mortgage rescue scheme post-bankruptcy and while undischarged would not give rise to a transaction at an undervalue, but the trustee in bankruptcy would need to be satisfied that the market value was paid for the property. Any surplus would be an asset and be claimed by the trustee. If the lender only agreed to the scheme post-bankruptcy on condition that the client entered into new arrangements to pay any shortfall, the trustee should not object, provided the client took independent advice (as should have been the case).

## When applicable

- The client can no longer afford the mortgage or secured loan payments and no other strategy is available.

## Advantages

- It enables the client to remain in their home.

## Disadvantages



- The client will have less security of tenure as a tenant.

## Checklist for action

- Check availability of local schemes.

## Sale and rent-back schemes

When applicable

Advantages

Disadvantages

Checklist for action

These are commercial, non-government schemes that allow an owner-occupier who is unable to meet their mortgage repayments and who is possibly facing repossession to sell their home and remain in the property as a tenant. Since 1 July 2009, such schemes have been regulated by the FCA.

If a client has a complaint, this can be considered by the Financial Ombudsman Service in accordance with its normal rules (see here).

If the proposed sale price of the property is below market value, the client should consider the implications were they to go bankrupt in the foreseeable future (see here).

## When applicable

- The client can no longer afford the mortgage or secured loan payments and no other strategy is available.

## Advantages

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## Disadvantages

- The client will have less security of tenure as a tenant.

## Checklist for action

- Check availability of local schemes.

## Sale of the property

Negative equity

When applicable

Advantages

Disadvantages

Useful arguments

Checklist for action

There are a number of circumstances in which it may be advisable to sell a home in order to repay priority creditors.

This strategy, although superficially tempting, is not generally applicable merely to repay priority debts. When other circumstances make the sale of the home inevitable or even desirable, however, debts can be cleared in this way and there may even be sufficient capital to make a full and final offer to non-priority creditors (see here). As it is such a major decision, it is important that the client and their family reach it for themselves. You should ensure that the advantages and disadvantages of this strategy are understood and that the client has time to consider all the implications.

If the client is a former local authority tenant who has exercised their right to buy, it is worth checking whether the local authority or the housing organisation to whom its stock is now transferred operates a 'buy-back' scheme, whereby the owner sells the home back to the local authority and remains there as a tenant. Check whether the client is still within the discount repayment period. If so, a proportion of the purchase price needs to be repaid to the local authority.

If the client will become homeless and in need of rehousing, you or the client must explain the circumstances to the local authority in advance and gain its approval of the strategy, in writing, and its acceptance that homelessness is inevitable rather than intentional. For further details, see the *Manual of Housing Law* (see Appendix 2).

## Negative equity

'Negative equity' occurs when the value of a client's property falls below the amount due under their mortgage or other loans secured on it. This means that, even if their property were sold, the client would not be free of debt and would still owe an amount (the negative equity) to the creditor. If a client wants to sell a property in negative equity, they need the permission of any secured creditors who are not going to be repaid fully out of the sale proceeds. Section 13.3.1R of the *Mortgages and Home Finance: Conduct of Business Sourcebook* requires FCA-authorised lenders to treat clients 'fairly'. If a creditor unreasonably refuses to agree to a sale, the court can overrule it. <sup>1</sup> In this situation, you should obtain specialist advice.

Many lenders now offer support to clients so that they can sell their homes and so avoid repossession. These schemes are known as 'voluntary' or 'assisted voluntary' sales. The National Homelessness Advice Service has produced guidance for advisers. <sup>2</sup>

If houses cannot be sold easily, creditors may not want to repossess and a sale by the client could be undesirable or impossible. However, you should not necessarily rely on this, as lenders sometimes decide to cut their losses and repossess regardless.

If possible, it is important to reach an agreement to avoid such a situation. Section 13.3.2A(5)R of the *Mortgages and Finance: Conduct of Business Sourcebook* says that, if a payment arrangement cannot be made, the lender should consider allowing the client to remain in the property in order to sell it.

Negative equity affects whether some of the following strategies in this chapter apply. However, in most circumstances, the approach remains the same, either because a lender is prepared to ignore the negative equity or because it becomes an unsecured and non-priority debt (see Chapter 9).

**Note:** for what to do if there is a 'mortgage shortfall' or a claim from a mortgage indemnity insurer, see here. These debts, although non-priority at present, must be dealt with because they represent a potential future problem if an attachment of earnings, bankruptcy or charging order were to be used at a future date.

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<sup>1</sup> s91 LPA 1925. See *Crowther v Arbuthnot Latham & Co Ltd* [2018] EWHC 504 (Comm).

<sup>2</sup> National Homelessness Advice Service, *How to exit homeownership through a voluntary or assisted voluntary sale (VAS)*, April 2018

## When applicable

There are circumstances in which the loss of a home may be inevitable and, indeed, the best option.

- A client has somewhere else to live as well as the property in question.
- A client has considerable equity in the home, but now the property is too large or in the wrong place for their current requirements and a more suitable home could be purchased at a lower price.
- Repossession is inevitable – eg, if the client's available income is too low to make an acceptable repayment proposal, a better price may be paid to an owner-occupier than to a

mortgagee in possession. This can give a client equity, but their need for a suitable home must be paramount (see the disadvantages here).

## Advantages

- It is easily accepted by priority creditors and courts. If necessary, time may be given for the sale to go through.
- It prevents further action.
- It may avoid a bad credit rating.
- It may release capital that can be used to deal with other debts or used for other purposes.
- It is an alternative to bankruptcy proceedings, as part of either an individual voluntary arrangement (see Chapter 10) or an informal arrangement with creditors.
- It may avoid court costs if the strategy is agreed before repossession action.
- It can be seen by the client as an opportunity for a fresh start.

## Disadvantages

- The client is forced to move home. This is costly and disruptive.
- Unless the client has a buyer, it may be seen by the creditor and the court as a way of delaying possession/eviction proceedings.
- If rehousing by a local authority is required, it may be difficult to persuade it that the client has not made themselves intentionally homeless.
- It may not be possible to find alternative suitable housing.
- The client may lose money if the housing market is depressed and they have only recently bought the property.

## Useful arguments

- Creditors prefer to avoid repossessing and selling property and so can be persuaded of the advantages of not having to sell an empty property. A property is likely to sell more quickly if inhabited.
- The loan will be repaid in full. If the full amount will not be repaid and the creditor is unreasonably refusing to agree to a sale, the court can override the creditor's objections. <sup>1</sup>

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<sup>1</sup> *Palk v Mortgage Services Funding* [1993] 2 WLR 415

## Checklist for action

- Ensure that the client has suitable alternative accommodation.
- Inform the creditors of the proposed strategy.
- Advise the client to put the property on the market. If a quick sale is required, the client should explain this to the estate agent.
- Discuss with the client how much to pay, if anything, towards the mortgage until the property is sold, particularly if there is negative equity.

## Refinancing

When applicable

When refinancing is not applicable

Advantages

Disadvantages

Useful arguments

Checklist for action

Refinancing means taking out a loan or other credit agreement to repay an existing debt.

Refinancing should be distinguished from rescheduling existing repayments, which does not involve taking on (further) credit. The FCA has made changes to its affordability checks to assist so-called 'mortgage prisoners' – ie, people who have been unable to remortgage to a cheaper deal because they did not meet affordability requirements, even though they are up-to-date on their current, more expensive payments (see here). While clients cannot benefit if they have had arrears within the past 12 months, those paying but struggling with other debts may find the measures helpful.

### When applicable

- It is common for possession of homes to be sought by second mortgagees (who may have lent money for home improvements, such as double glazing) from clients who had always managed to pay their first mortgage. The repayments on a medium-term loan from a finance company (particularly a 'non-status loan') may be greater than those on a mortgage from a high street lender. In these circumstances, the first mortgagee may be sympathetic to the client and will not want to lose their business simply because they have become unable to repay the high rate of interest charged by the second mortgagee.
- Even though possession action is not threatened, it may be obvious that a client's financial problems are caused by excessive repayment of a particular priority debt. Refinancing may,

therefore, be more appropriate than asking the creditor to capitalise arrears, as this could result in higher repayments than if the loan were refinanced.

- When a cheaper form of borrowing is available to replace a priority debt. A variety of credit products can be used – eg:
  - an unsecured loan;
  - an additional advance from an existing secured lender;
  - a secured loan from a new lender;
  - a remortgage;
  - a transfer of balances to a credit card. Some credit card companies offer 0 per cent interest for a temporary period on balances transferred from other creditors.
- It should only be considered if:
  - the client's monthly outgoings will be reduced; *and*
  - the client can afford the new repayments; *and*
  - the client will also be able to meet their essential expenditure and any other financial commitments.

## When refinancing is not applicable

Many advertisements for refinancing or debt consolidation also promote the 'feel-good factor' by suggesting that people can borrow extra spending money in addition to paying off their debts.

Many people do this and, for those in financial difficulties, the effect is to exacerbate their problems. The 'churning' of loans (ie, debts being consolidated and then consolidated again) can be very expensive because of the way the interest is apportioned; the amount of capital paid off is small and so the debt increases. The churning of loans could give rise to an 'unfair relationship' (see here).

## Advantages

Clients can benefit from refinancing or consolidating their debts on more advantageous terms – ie:

- lower interest rates;
- lower monthly payments;
- having to deal with only one creditor.

## Disadvantages

Refinancing or debt consolidation is often seen as an easy way of obtaining more credit or as a short-term solution to debt problems. The possible long-term implications may not always be understood and, without clear information on the costs involved, problems can occur – eg:

- the costs of settling existing loans (eg, early settlement charges) and finding and arranging new loans (eg, a broker's fees) can be significant;
- clients can pay more for their credit overall and have a larger debt for a longer period if the new loan is spread over a longer period of time.

## Useful arguments

- If the first mortgagee is being asked to refinance a second secured loan, whenever possible emphasise the client's good payment record.
- Point out the business advantages to the creditor of refinancing the loan rather than allowing another secured lender to take possession.
- If they will not agree immediately, it is worth advising creditors to review their decision after three to six months of regular payments.

## Checklist for action

- Advise the client to obtain independent financial advice and get full details of the refinancing, including new monthly instalments, arrangement fees, interest rates and the annual percentage rate.
- Inform the existing creditor of the proposed action.

## Time orders

When applicable

Advantages

Disadvantages

Useful arguments

Checklist for action

A time order is granted by the county court and sets new repayment terms and possibly lower interest rates/charges for an agreement if the court believes that the original terms should be altered. See here for further details.

## When applicable

- A time order can only be granted for loans, credit cards, overdrafts and any other type of

agreement regulated by the Consumer Credit Act 1974, including secured loans treated as regulated. <sup>1</sup>

- Time orders are most likely to be granted if the borrower's circumstances have changed during the period of the loan. Time orders are usually granted if the change in circumstances is expected to be temporary, but can be made for a longer period if the court accepts that it is 'just' to do so. <sup>2</sup>

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<sup>1</sup> s129 CCA 1974; R Rosenberg, 'Calling time on time orders', *Quarterly Account* 40, IMA; R Rosenberg, 'Mortgages and time orders', *Quarterly Account* 50, IMA

<sup>2</sup> *Director General of Fair Trading v First National Bank* [2001] UKHL 52

## Advantages

- The agreement of the creditor is not required if the court can be persuaded that an order should be made.
- Any possession order is suspended by the court on the terms of the time order.
- Once made, the creditor can take no further action, provided payments are maintained.
- It can reduce interest rates/charges (possibly retrospectively) and set payments at an affordable level.

## Disadvantages

- Time orders are difficult to get and, because they are still rarely applied for, many judges are not familiar with the principles. Courts are required to draw a distinction between a 'deserving' and an 'undeserving' client. <sup>1</sup>
- The client must wait until the creditor issues an arrears notice or a default notice, or takes court action, before applying for a time order.
- Creditors' costs may be added to the debt.

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<sup>1</sup> See T Lett, 'Time orders, secure CCA agreements and reposessions', *Adviser* 166

## Useful arguments

See here.



## Checklist for action

See here.

## Voluntary charge

When applicable

Advantages

Disadvantages

Useful arguments

Checklist for action

Most unsecured debts are not priorities. However, very occasionally it may be advisable to offer to turn an unsecured debt into a secured one – eg, if there is a real risk of a creditor applying to make a client bankrupt. This is achieved by offering the creditor a voluntary charge secured on the client's property. Many advisers routinely dismiss creditors' requests for a voluntary charge without considering whether it would be in the client's best interests to agree. <sup>1</sup>

It is essential that the client obtains legal advice before signing a voluntary charge in order to safeguard their position should the creditor decide to enforce the charge and apply for an order for sale. As a minimum, you should ensure that the charge document is worded so that the creditor's right to do so is removed altogether (or is at least restricted), so that the property cannot be repossessed and sold against the client's wishes. In addition, almost always the client must ensure that the creditor agrees to freeze interest so that the charge is against a fixed sum that will not swallow up the equity.

Agreement also needs to be reached about whether any instalments are required by the creditor in addition to the charge.

All the above issues need to be agreed before a voluntary charge is made, and must be part of a written agreement.

If a property is jointly owned and the joint owner has no liability for the debt, their agreement may also be required, and they should be advised to get independent advice.

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<sup>1</sup> For a further discussion, see J Wilson, 'Consultancy corner', *Adviser* 95

## When applicable

Although often requested by creditors, a voluntary charge is only very rarely in the client's best interests. The only circumstances in which it may be advisable are the following.

- It is the only means to stop someone issuing undesirable bankruptcy proceedings. **Note:** although many creditors threaten bankruptcy proceedings, including issuing a statutory demand (see here), this very rarely results in an actual petition for bankruptcy. However, a statutory demand should always be taken seriously and should never be ignored.
- It is essential to the client that no county court judgment is made – eg, because they would lose their job if this happened. **Note:** a time order may be a more appropriate way of stopping a county court judgment. A Tomlin order can also be a way of avoiding a county court judgment if it would affect a client's job. This is a form of 'consent order' in which the client and the lender come to an agreement that county court proceedings will be stayed indefinitely provided agreed payments are made. If the agreement is breached, court proceedings will resume and a county court judgment will be issued.
- The creditor refuses to accept any other strategy and if the creditor obtains a county court judgment, it is likely that the court will make a charging order (see here).
- The creditor has an automatic right to impose a charge – eg, in some circumstances, the Legal Aid Agency can register a charge on the client's home to recover their legal aid costs, which can be higher than a voluntary charge (currently, simple interest at 8 per cent a year is charged).
- It is known that when a person's current home is sold, they will not need the proceeds of sale – eg, if they have a terminal illness. In this situation, a voluntary charge could reduce the stress of lengthy negotiations with creditors.

## Advantages

- A voluntary charge is likely to satisfy a creditor and therefore mean that no further action is taken.
- Once their capital outlay is secured by a voluntary charge, many creditors will agree to add no further interest/charges until the property is sold, and to accept the client's repayment offer or even no (or only token) payments.
- Lenders can be persuaded to agree not to enforce their charge – ie, not to force a sale but to wait for payment until the client sells the property (or remortgages).

## Disadvantages

- By changing the status of a debt, a client is potentially putting their home at risk.
- The client may incur costs in getting legal advice to ensure a watertight agreement is drawn

up.

- If the client has a partner who is a co-owner of the property, the partner needs to sign the charge document and so put their share of the equity at risk.
- The creditor may still insist on payments being made in addition to the charge.

## Useful arguments

From the client's point of view, the voluntary charge is only ever the lesser of two evils. You may need to put the following arguments to the creditor.

- In practice, it is the only way the creditor will get any money.
- Making people bankrupt does not often produce money, but a voluntary charge does.
- If property prices increase, so too will the equity against which the charge is made.

## Checklist for action

- Consider whether any other strategy would be more appropriate – eg, a time order.
- Advise the client to obtain full details of the terms of the charge in writing from the creditor.
- Ensure the client receives legal advice about the agreement before signing.
- Check that interest is frozen and all the other terms are acceptable.

## Deductions from benefits

Factors to consider

Advantages

Disadvantages

Checklist for action

**Note:** from 1 April 2023, suppliers must get consent from clients before requesting new or increased deductions from benefits for ongoing fuel consumption. Clients can still make such requests and suppliers can still apply for deductions for arrears of fuel costs. <sup>1</sup> There is no corresponding moratorium on third-party deductions in favour of water companies.

For legacy benefits, the Social Security (Claims and Payments) Regulations 1987 provide that the DWP can only make a third-party deduction for fuel or water arrears and ongoing usage if it is of the 'opinion it would be in the interests of the family'. The High Court has held that the DWP has been operating the scheme unlawfully. There was no way of being certain as to whether the utility company could provide the decision maker with all of the relevant information or that the decision maker was apprised of all the relevant information unless and until the benefit claimant was given an opportunity to make representations and provide information, if they wanted to,

before the decision was made. The DWP's written guidance to decision makers was unlawful because it did not make this clear. <sup>2</sup> Although the decision does not specifically refer to universal credit (UC), it should also apply to UC as the relevant legislation is drafted in similar terms.

Deductions can be made from the client's benefits and paid to third parties to pay **arrears** of: <sup>3</sup>

- housing costs for specified mortgage arrears;
- rent;
- gas or electricity;
- water charges;
- council tax;
- child support maintenance;
- certain loans.

Deductions can also be made to pay:

- county court fines;
- debts to the DWP.

Deductions can also be made for ongoing liability for water charges, gas and electricity but only while the claimant is in arrears for these charges. Deductions for ongoing liability for child support can be made even if the claimant is not in arrears.

Deductions can be taken from entitlement to UC, income support (IS), income-based jobseeker's allowance (JSA), income-related employment and support allowance (ESA) and pension credit (PC). In limited circumstances, deductions can be made from other benefits. See CPAG's *Welfare Benefits and Tax Credits Handbook* for further information.

Consent for third-party deductions from UC is only required when deductions are for fuel and water liability and arrears that exceed 25 per cent of the standard allowance.

For UC, the usual deduction rate for arrears is 5 per cent of the client's UC standard allowance. Deductions for rent arrears are at a rate of at least 10 per cent and up to 20 per cent of the standard allowance. Deductions for arrears of child maintenance are £8.40 a week. Deductions for ongoing child support maintenance are £8.75 a week.

For benefits other than UC, deductions for arrears are in general £3.75 a week.

Deductions from a claimant's benefit entitlement for ongoing liability for water charges, gas and electricity are set at a level that prevents the claimant falling into further arrears.

Deductions for rent arrears are only possible if the client is receiving the housing costs element in their UC (or lives in exempt accommodation and gets housing benefit) and they occupy the property to which the arrears apply. Deductions for rent arrears are at a rate of at least 10 per cent and up to 20 per cent of the standard allowance.

Deductions for court fines are at a rate of 5 per cent of the standard allowance. <sup>4</sup> See [cpag.org.uk/jr](https://askcpag.org.uk/jr) for information on challenging decisions on deductions from UC for court fines.

No more than three of the following deductions can be made from UC entitlement:

- housing costs;
- rent arrears;
- fuel charges;
- water charges;
- repayment of certain loans;
- council tax arrears;
- magistrates' court fines.

**Note:** other deductions are not subject to this limit.

For UC claimants, in most instances, the maximum amount allowed for all the arrears listed below is 40 per cent of a claimant's standard allowance. In practice, the DWP currently operates a maximum rate of 25 per cent of a claimant's standard allowance for most deductions from UC entitlement, including those for debts listed below as well as those incurred by sanctions, benefits offences, recovery of overpayments of benefits and recovery of advanced payments. Deductions for ongoing liabilities are ignored in calculating this limit. The limit may be exceeded where deductions are made for arrears of rent, housing costs, gas or electricity and the DWP considers it would be in the claimant's best interests.

For UC, if the deductions would be more than the maximum amount of 40 per cent of the standard allowance, they are paid in a set order of priority as follows: <sup>5</sup>

- housing costs (from April 2018, these are restricted to service charges);
- rent arrears (and related charges), if the amount of the deduction is 10 per cent of the standard allowance;
- fuel;
- council tax arrears;
- fines;
- water charges;

- child support maintenance;
- repayment of social fund payments;
- recovery of hardship payments;
- penalties instead of prosecution for benefit offences;
- recovery of overpayments of benefits or tax credits caused by fraud;
- loss of benefit for benefit offences;
- recovery of overpayments of benefits or tax credits not caused by fraud;
- repayment of integration loans;
- repayment of eligible loans;
- rent arrears (and related charges), if the amount of the deduction is more than 10 per cent of the standard allowance.

Deductions for arrears of housing costs, rent, gas, electricity and water charges cannot begin if the client (and, if relevant, their partner) earns more than the work allowance which applies in their case in the last assessment period and stop if earnings exceed the applicable work allowance in the three previous assessment periods. <sup>6</sup>

For non-UC claimants, if the client has more debts than can be paid from their benefit, they are paid in a set order of priority, as follows: <sup>7</sup>

- housing costs – eg, service charges, including for repairs and improvements;
- rent arrears;
- fuel charges (in the case of both gas and electricity arrears, the DWP chooses which one to pay);
- water charges;
- council tax arrears;
- fines, costs and compensation orders;
- child support maintenance;
- repayment of integration loans;
- repayment of eligible loans made by certain not-for-profit lenders – eg, credit unions;
- repayment of tax credit overpayments and self-assessment tax debts.

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<sup>1</sup> The Social Security Benefits (Claims and Payments) (Amendment) Regulations 2023 No.232

<sup>2</sup> See *R (Timson) v SSWP* [2022] EWHC 2392 (Admin), paras 213-215 and 292. This

decision has been upheld by the Court of Appeal at [2023] EWCA Civ 656.

**3** Reg 60 and Schs 6 and 7 UC,PIP,JSA&ESA(C&P) Regs

**4** The Fines (Deductions from Income Support) (Miscellaneous Amendments) Regulations 2021 No.1077 apply from 29 October 2021 replacing what was previously DWP guidance

**5** Sch 6 para 5 UC,PIP,JSA&ESA(C&P) Regs

**6** Sch 6 para 3 UC,PIP,JSA&ESA(C&P) Regs

**7** Note, that child support payments under the 2012 system are always payable, regardless of what other deductions are being made

## Factors to consider

- Child support deductions cannot be made for both ongoing maintenance and arrears at the same time. If deductions for child support are being made, an additional £1.40 a week is taken for the Child Maintenance Service's (CMS's) collection service fee. Although the CMS's preference is for parents on benefits to have direct deductions (which attracts the £1.40 a week fee), such parents can arrange to make payments of ongoing maintenance and/or arrears direct to the other parent and should be advised to do so if possible.
- Deductions can also be made for the cost of home loans, loans for repairs and improvements and other housing costs, and paid to the lender.
- Direct deductions from benefit are useful if the alternative is an impending eviction.
- Because of the statutory maximums on the amount that can be deducted for arrears, it is often a cheaper method of paying off arrears than a repayment schedule, or prepayment meters recalibrated to recover arrears along with current consumption. Gas and electricity suppliers often seriously overestimate current use and request an amount from the DWP far in excess of the amount actually required to cover consumption. If they do, advise the client to take daily or weekly meter readings. The DWP decides how much to deduct for current consumption – the client can ask for a lower deduction based on their own readings. If refused, they can appeal to the First-tier Tribunal.
- Gas and electricity suppliers must take into account the client's financial situation when deciding how much should be paid towards the arrears. If the client cannot afford the deduction from benefit, the supplier should be asked to accept a lower amount.

## Advantages

- If the client fits the criteria for deductions from benefit, and they can afford the amount of deductions, it is a simple and quick way to ensure that no further action is taken by the

creditor and that arrears are paid at a relatively modest rate – particularly if money is owed to several creditors (but see below).

- Creditors are assured of payments.

## Disadvantages

- Only certain debts can be paid for in this way (and council tax only at the request of the local authority with a liability order, fines at the request of the magistrates' court and eligible loans at the request of the lender). If the client has more than one such debt, deductions may not be made for all of them. If this happens, there is a set order of priority.
- Reducing subsistence-level benefits reduces the flexibility with which a claimant can juggle their weekly budget and may cause a deficit budget or make a deficit budget worse.
- Fuel suppliers may demand a large amount for current liability, although since 1 April 2023, suppliers must obtain the client's consent for deductions for ongoing usage or for an increase in payments for ongoing usage.
- If the client is likely to stop claiming benefit in the near future (even if only temporarily), direct payments must be replaced with another strategy. The client may be faced with a demand for the full amount when their benefit ends.

## Checklist for action

- Contact the creditor to find out how much is required and, if the client can afford this amount, try to obtain the creditor's agreement to payments by deductions from benefit if this is what the client wants.
- Assist the client in their request for the DWP to arrange deductions.

## Gas and electricity prepayment meters

When applicable

Advantages

Disadvantages

Useful arguments

Checklist for action

Electricity and gas companies must offer the option of a prepayment meter to a customer to prevent disconnection of their supply, if it is safe and practicable to do so. <sup>1</sup> Ofgem has issued guidance to suppliers on the interpretation of 'safe and reasonably practicable'. <sup>2</sup> If someone has arrears on fuel bills, a prepayment meter collects money not just for the fuel used, but also towards the arrears. See also here for Ofgem guidance on the fitting of prepayment meters and



the switching of smart meters to prepayment mode without the client's consent. See CPAG's *Fuel Rights Handbook* for more about meters.

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1 Condition 27.6 SLC

2 Ofgem, *PPM Guidance (Safe and Reasonably Practicable)*, September 2023, view at [tinyurl.com/287efmd3](https://www.ofgem.gov.uk/consult/condocs/ppm/ppm_guidance/PPM_Guidance_SRP.pdf)

## When applicable

- Prepayment meters allow arrears to be collected over a period of time and are a way of avoiding disconnection.

## Advantages

- A client continues to have some access to fuel supplies and is not pressed further for the debt.
- Prepayment meters can assist budgeting.
- Smart meters can help monitor energy use.

## Disadvantages

- 'Self-disconnection' is a problem if a client cannot afford to top up a prepayment meter and faces intermittent or extended periods of disconnection. This may happen because the client cannot afford to pay the arrears at the amount the meter has been calibrated to collect them. The supplier should only ask clients to pay an affordable amount towards the arrears.
- In some cases, the amount of money recovered towards the arrears varies in relation to the amount of fuel used and so, in winter, not only does a client have to spend more money on fuel, they also have to contribute more towards their arrears.
- There may be costs incurred (eg, bus fares) in buying top-ups, it may be difficult for the client to get to a charging point or point of sale (eg, in the case of illness), or such places may be closed.
- A prepayment meter is not always technically possible. This applies if gas appliances have pilot lights that could go out when the prepayment ends and are not protected by a fail-safe device when payment is resumed.
- Prepayment meters should not be installed if the client is at risk of leaving appliances turned on after the credit has run out, or is incapable of operating the meter or obtaining top-ups.

## Useful arguments

It may be necessary to argue with a supplier about the level at which the arrears will be collected through the prepayment meter. If a client is on UC, IS, income-based JSA, income-related ESA or PC, the amounts deducted by the DWP from benefit should be used as a maximum level of recovery, but if a client cannot afford to pay this much, the supplier should agree to an amount that is affordable for the client (see here).

## Checklist for action

- Check exactly what type of meters are available locally.
- Contact the fuel supplier to request that a meter be installed, if this is what the client wants after being made aware of the risk of self-disconnection.
- Check whether the client is eligible for the Warm Home Discount, winter fuel payment or cold weather payments.
- Advise the client to monitor fuel consumption to check the calibration of the meter. This involves asking the client to make a note of how much comes off their credit when they top up to establish how much is being paid towards the arrears.

See also Chapter 4.

## Writing off debts

When applicable

Advantages

Disadvantages

Useful arguments

Checklist for action

Both the magistrates' court (in respect of fines and council tax) and the local authority (in respect of non-domestic rates and council tax) have powers to remit (ie, write off) amounts owing in cases of hardship. HMRC can also remit taxes (although it does not formally write them off). Clients with severe financial difficulties (eg, deficit budgets) can apply for discretionary relief from council tax under section 13A of the Local Government Finance Act (LGFA) 1992. Councils must consider each case on its merits and should not refuse on grounds of financial impact for the council. Appeals can be made to valuation tribunals.

Generally, successful tribunal appeals have been on the grounds that:

- the local authority has acted unreasonably in setting the boundaries of section 13A

applications; <sup>1</sup> *and/or*

- the client has taken all reasonable steps to increase income/reduce expenditure and can demonstrate financial hardship. (The test is: does the client have any realisable assets and/or disposable income? If so, the appeal is likely to be unsuccessful.)

Remember that tribunals have the right to question the client and can ask for evidence – eg, bank statements. Tribunals are not bound to accept figures that are acceptable under ‘standard financial statement’ spending guidelines and may query or request a breakdown of items of expenditure.

The Local Government and Social Care Ombudsman has recently decided that the formal application referring to ‘s13A relief’ is not strictly necessary, provided the client makes clear that they are experiencing financial hardship and are asking the council if it would be possible to reduce the debt. <sup>2</sup>

**Note:** some clients can apply for an exemption from council tax if they have a ‘severe mental impairment’ – ie, they have a permanent mental health issue such as dementia or severe learning disabilities. Another person living with them could then get a single person’s discount. They must be eligible for (and have claimed) a qualifying disability benefit – eg, personal independence payment or UC with the limited capability for work/limited capability for work and work-related activity element included. Clients should contact the local authority to apply and ask about backdating. See CPAG’s *Council Tax Handbook* for more information and other groups who are exempt – eg, certain carers, students and apprentices.

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<sup>1</sup> *Complaint against Burnley Borough Council* (22 010 977)

<sup>2</sup> *Complaint against Northumberland CC* (20 006 305)

## When applicable

- The client is experiencing financial hardship or is unable to meet their essential expenditure and the situation is unlikely to improve in the foreseeable future.

## Advantages

- It reduces or removes the debt.

## Disadvantages

- The client will often need to attend a means enquiry (if it is a debt being dealt with by the magistrates' court) (see here).
- The magistrates must consider whether there has been 'wilful refusal or culpable neglect' (see here) and may therefore look at other alternatives to remittance, such as imprisonment.

## Useful arguments

- **Non-domestic rates.** The closure of a business may adversely affect the amenities or employment prospects of an area.
- **Fines.** Magistrates need to see how the client's circumstances have changed since the fine was imposed or that their financial situation was not taken into account when the fine was originally set. Guidelines state that when the amount of a fine is set, it should be possible for the client to pay in a reasonable period, and that two to three years is exceptional.
- **Council tax.** Local authorities have complete discretion and should be encouraged to use it in all cases of hardship which fall outside the exemption, discount and council tax reduction scheme rules. **1 Note:** assistance from a local authority under section 13A LGFA 1992 is treated as 'public funds' under immigration legislation and so would not be an available option for a client who has no recourse to public funds. According to the Valuation Tribunal for England (VTE) in *Appellant v Royal Borough of Greenwich*, discretionary council tax reductions under section 13A(1)(c)(i) LGFA 1992 are **not** public funds in contrast to reductions under council tax reduction schemes under section 13A(1)(a) and (b) which are expressly stated to be public funds in the Immigration Rules. Although VTE decisions are not binding on the Home Office, it has confirmed that the Immigration Rules do not refer to council tax reduction discretionary payments or council tax reduction hardship payments and, therefore, payments under such schemes would not be deemed to be public funds for immigration purposes. However, you do need to be careful when advising clients who are subject to the no recourse to public funds immigration requirement on applying for council tax relief. In such cases any application must refer to discretionary relief under section 13A(1)(c) or a hardship payment in order to avoid your client being inadvertently in receipt of public funds as a result of a payment being made under a scheme falling with section 13A(1)(a) or (b). Similarly, if such a client has made a claim for council tax relief, you should establish exactly what relief is being considered by the council. If there are any concerns, you should advise your client to seek immigration advice before making any applications for council tax relief to avoid possibly compromising their immigration status. **2**
- **Tax.** Remission is usually only available if the client is on a low income and has no, or insignificant, savings. HMRC must be satisfied that the client's financial circumstances are unlikely to improve sufficiently to make future recovery action worthwhile. It is unlikely to be offered to a client who is currently self-employed, although collection could be suspended in

cases of serious illness.

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**1** *SC & CW v East Riding of Yorkshire Council* [VTE appeals 2001M113393/CTR & 2001M117053/CTR, 27 May 2014]

**2** See further, 'Council tax enforcement and assisting clients with no recourse to public funds' in the 'Spotlight' section of Shelter's SDAS ebuletin, August 2022

## Checklist for action

- Write to the creditor to request remittance.
- Enclose a financial statement.
- Point out any additional factors – eg, terminal illness, severe medical conditions or disability.

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Please be aware that welfare rights law and guidance change frequently. This page was printed on Friday, October 17, 2025 and may go out of date.