

5 - Understanding the process for getting debt advice

Debt advisers always aim to come up with solutions that are realistic and long-lasting. To do this, they need not only to understand your situation, but also to understand what creditors can and cannot do.

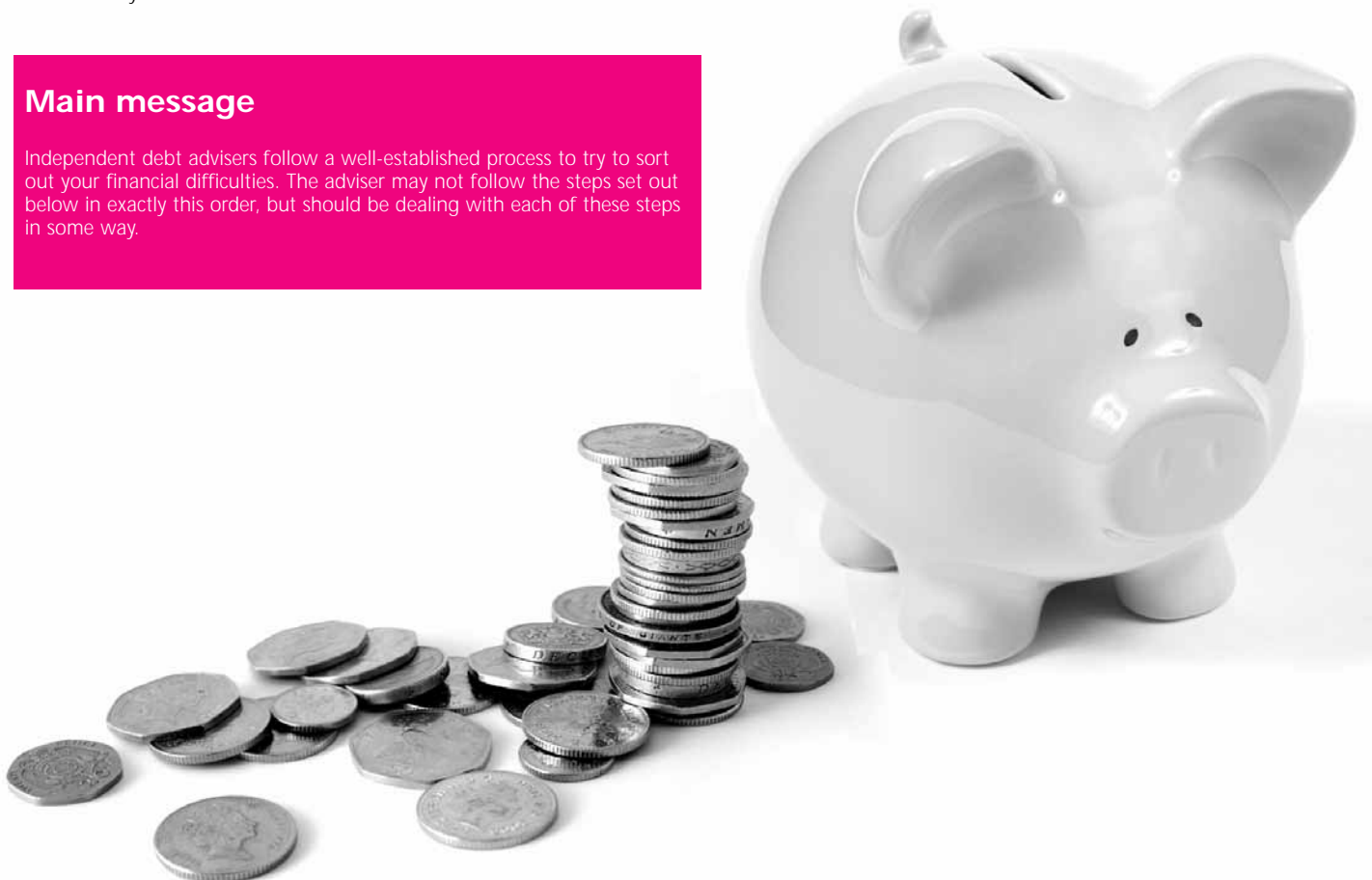
This leaflet helps you to understand why debt advisers have the priorities they do, and give the advice they do, and how to make the most of their advice.

What will help my adviser?

- The more honest and open you are with your adviser, the better they will be able to help you.
- Give your adviser as much information as you can. Don't avoid telling them about some of your debts because you are embarrassed, or because you think you can cope with them. If they don't have a full picture of your debt, the advice they give might not really be right for you.
- Keep in touch with your adviser throughout the process. Tell them if you hear from your creditors.

Main message

Independent debt advisers follow a well-established process to try to sort out your financial difficulties. The adviser may not follow the steps set out below in exactly this order, but should be dealing with each of these steps in some way.



Steps in the process for getting debt advice

Preparing a financial statement

This is almost certainly the first step an adviser will take. It is discussed in leaflet '4 – Preparing for your appointment for getting debt advice'.

Dealing with emergencies

The adviser will identify whether any of the problems need to be dealt with as an emergency – for example, because there is a deadline or court hearing coming up.

Bailiffs at the door?

Should you worry about a visit from the bailiffs? Ask yourself the following four questions.

- ✓ **Are they really bailiffs?** It is easy to confuse debt collectors with bailiffs. And debt collectors are quite happy for you to be confused. But debt collectors who come to your home never have any rights to enter your home, take your goods or insist that you pay them. Read any papers carefully – debt collectors aren't allowed to call themselves bailiffs, but bailiffs will always say what they are. **Debt collectors have no power to enter your home.**
- ✓ **What sort of debt are they collecting?** Bailiffs have the power to force their way into your home if they are collecting magistrates' court fines, but they have to be reasonable, especially if you are vulnerable. They also have the power to evict you if your home has been repossessed. **But most bailiffs, most of the time, have no power to force their way into your home, and you can refuse to open the door or to let them in.**
- ✓ **What do I have that bailiffs could take?** Bailiffs may be able to remove goods that are outside your home, including vehicles. Because they can't force their way into your home most of the time, vehicles are an easy target. Bailiffs can seize a car by putting wheel clamps on it.
- ✓ **Have they been inside before?** Bailiffs who have been inside your property and started the process of removing your goods are allowed to return and finish. But, except in the circumstances described above, **if you have never let them in before, you can continue to refuse to let them in.**

Remember the following.

- ✓ Bailiffs will only be at your door to enforce some kind of court order that you have broken. Your debt adviser will be making arrangements for your debts that you can afford, and this will keep the bailiffs away.
- ✓ Bailiffs cannot take you or send you to prison.
- ✓ Bailiffs sometimes, but very rarely, call the police. The police are called 'to prevent a breach of the peace' (to stop an ugly scene). Threats to call the police are intended to frighten you. But police being there does not make you a criminal. Police will not be there to break the door down, to arrest you, or to help to remove your goods.

What you should do

- ✓ **If the bailiffs do not have the power to force their way in to your house, then refuse to let them in.** Don't even let them put their foot in the door. Don't even be persuaded if they want to 'have a discussion' or 'sort the paperwork'. Keep windows shut. Keep outbuildings locked. If you are expecting bailiffs to visit, make sure friends, family members and relatives don't open the door to them.
- ✓ **In all cases, whether or not bailiffs have the power to force their way in, stay calm and be practical.** Get their names. Ask for their paperwork. Record what they say and do. Get a witness if possible. Call for advice if necessary. If goods are being listed or removed, tell them clearly about any goods that don't belong to the person who owes the money.

Making the most of your income

The adviser will consider whether there is any way of increasing your household's income, including in particular through claiming benefits and tax credits.

Checking your liability – that is, do you really owe the money?

The adviser will consider whether there is any possible argument that you do not really owe the money or should not have to pay it back. There are a range of reasons why you might not have to repay any or all of what they thought you owed.

Priority debts

The adviser will first make arrangements for debts which are more important because of what happens if you don't pay. We call these 'priority debts'. This leaflet explains why debt advisers treat certain debts as a priority and not others. See 'Understanding priority and non-priority debts' below.

Non-priority debts

Non-priority debts are dealt with last. How much you offer or whether you offer anything depends on whether you have any available income, or how much available income you have after dealing with everything else. The adviser will aim to reschedule the debts so that your income matches your outgoings, and so you can spread your repayments over a longer period. It often surprises people which kind of debts are considered not to be a priority.

This leaflet explains why debt advisers treat certain debts as a priority and not others. See 'Understanding priority and non-priority debts' below.

Understanding priority and non-priority debts

Debt advisers make a basic but very important distinction between priority and non-priority debts.

- Many people are surprised to discover that what they thought was a priority is in fact not a priority. Some of the creditors who are most persistent and aggressive in demanding that you pay back their money are actually not a priority.
- Debt advisers also consider your essential costs for running your household as a priority, even though these are not debts. These costs include food, clothing, toiletries and other necessary spending.
- Whether something is a priority or not depends on when it needs to be paid. Priority debts are paid first, non-priority debts are paid only out of what is left over.
- This approach is justified by the court process, which broadly follows the same approach. So, you know that what you are treating as a priority is what a court would treat as a priority, what you are treating as a non-priority is what a court would treat as a non-priority, and the amount that you are offering is consistent with what a court would order.

Main messages

Your priority is to make payments which have serious consequences if you do not pay. This may be:

- ✓ because of what the creditor can do to you (like apply for you to be sent to prison for not paying council tax);
- ✓ because the spending is essential for running your household (such as your food bill); or
- ✓ both (such as the payment for where you live, because you need somewhere to live and because of the possibility of losing your home).

The possibility of being taken to court does not, in itself, make something a priority. For this reason, most credit debts are not priorities.

Priority spending

Mortgage

A 'mortgage' is where you have offered your home as a guarantee (known as 'security') that you will pay back money you are borrowing. People usually use 'mortgage' to refer in particular to money they have borrowed to buy the home itself.

Mortgages are a priority both because you are paying for an essential item, and because there are serious consequences of falling behind with the payments (for example, you could lose your home). Both the mortgage payments themselves and any arrangement to pay off debts should be treated as a priority.

Secured loans

Many debts other than a mortgage can be secured on your home. They include:

- second mortgages used for home improvements, or for expenses completely unrelated to your home (holidays, weddings and so on);
- 'consolidating loans' (where all your debts are put together into a single loan); and
- any kind of debt that has become secured as a result of the creditor successfully applying to the court for a 'charging order'.

Like mortgages, secured loans are a priority, because of the risk of losing your home.

Rent

There are different issues if you do not own your home but you pay a landlord. Rent and rent arrears (payments you have missed) are priorities because of the risk of losing your home, and because it you are making a payment for an essential outgoing.

Council tax

There are lots of different ways of making you pay your council tax. Most of them are only possible after the council has taken you to court and been given a 'liability order'. After that, they may try to use bailiffs, take direct deductions from benefits or from earnings, or ultimately apply for you to be sent to prison. So, for this reason, you should treat council tax as a priority.

Gas and electricity

Gas and electricity bills and payments you have missed in the past are considered a priority, both because heating and energy are basic household costs and because of the threat of being disconnected.

Utilities companies offer a number of alternatives to having your supply disconnected. Some are more helpful than others. Prepayment meters, for example, regularly disconnect themselves when they run out of money, so you should treat gas and electricity as a priority.

Magistrates' court fines and child support

These are considered as a priority because of the possibility of you being sent to prison if you have to go back to court for not making the payments.

TV licence

It is a criminal offence to use a TV without a valid licence. Because of this, you should treat this as a priority.

Water

You can no longer be disconnected for not paying your water bill. But as water is an essential service for your household, your current water rates may be considered a priority.

Living expenses

The proposals you put to your creditors will be based on your financial statement. This sets out the amounts that you are allowing for all of your priority spending. This, in turn, affects how much you are offering your creditors, and so they may look carefully at your financial statement. Some of the items of spending that creditors may question are:

- housekeeping;
- television packages;
- phone costs;
- insurance costs;
- travel costs;
- health-related costs; and
- pocket money.

Your debt adviser can give you advice and assistance on appropriate budgeting for these costs.

Non-priority spending

Debt advisers consider many debts not to be a priority, mainly because of the limited powers creditors have to make you pay.

Very often, these creditors will threaten to do a number of things, including taking you to court, using bailiffs, taking payments straight from your wages and so on.

Even if your creditor threaten to do these things, and even if they are possible, that does not make these debts a priority.

The reasons why the possibility of court action does not make something a priority is that if you respond appropriately to court proceedings, the court can make orders that actually help you, and that are better for you than doing what the creditor is asking for.

Also, because you know what a court can do to help you, you may be able to negotiate a similar deal with the creditor and avoid the courts altogether.

Consumer credit debts

Most non-priority debts are consumer credit debts. These are amounts you borrow under agreements regulated by the Consumer Credit Act. Examples include:

- credit cards;
- store cards;
- bank loans;
- overdrafts;
- moneylenders; and
- hire-purchase agreements.

Hire-purchase agreements can cause problems, as not everything that you think is a hire-purchase agreement is necessarily one. With a true hire-purchase agreement, the debt is secured against the goods you bought under the agreement. Depending on whether the goods themselves were essential and how much you have paid off, it might be appropriate to treat a hire-purchase agreement as a priority.

Old debts on priority spending

Sometimes, amounts that you owe for things that would originally have been a priority are no longer a priority. Some examples are set out below.

- **Owing rent for your old property.** If you are no longer living in the property, it is no longer possible for you to be evicted.
- **Mortgage shortfall debts.** This is where your mortgaged property has been repossessed and sold, but you still owe money on it. Because you cannot be evicted from the property, this amount is no longer a priority.
- **Owing money on water bills.** You cannot be disconnected for not paying your water bills, and so these amounts are not a priority.
- **Utility debts to a previous supplier.** This means gas and electricity in particular. You cannot be disconnected by your current supplier for debts you owe your previous supplier, so these are not a priority.

Other debts

It is not possible to list all the other possible debts that you may have. Here are some of them.

- Unpaid bills from businesses or for professional services, such as solicitors bills.
- Money you have borrowed from friends and relatives.
- Benefits you have been overpaid.
- An amount a court has ordered you to pay as part of a dispute. That is, someone has taken you to court and won (or you have taken someone to court and lost), and you have been ordered to pay them money.
- Debts from a former business.

Most other debts, including the examples just listed, are not likely to be a priority. Sometimes, they raise special issues. For example:

- it can be difficult not to consider a debt to a family member as a priority, because of the nature of family relationships; and
- any amount of benefit you have been overpaid can be taken direct from your next payment of benefits. This means that you never see the money, and that these amounts are treated as a priority even though a debt adviser would not consider them as one.

Longer-term arrangements

While it is possible to negotiate with each creditor individually, there are a number of options that an adviser will consider for dealing with all of the debts together. These arrangements may suit different people in different circumstances.

Independent debt advisers should always consider whether any of these all-in-one solutions are best suited to meet your needs. However, not all debt-advice agencies can help you through these processes, so they may refer you to other organisations. In particular:

- some agencies will not offer advice and help through the bankruptcy process; and
- individual voluntary arrangements can only be managed by authorised people called insolvency practitioners.

Some agencies will develop payment plans for you free of charge.

Although consolidating loans are an example of an all-in-one solution, your debt adviser is unlikely to recommend them as being in your best interests. In those rare circumstances where they are in your best interests, the independent advice agency will not offer the solution themselves.

We explain some of the main longer-term solutions below.

Bankruptcy

This is a formal procedure which involves making an application to the court. A 'trustee in bankruptcy' is appointed to manage your money. They are expected to claim back as much money as possible for the creditors. If you have assets such as a home, the trustee in bankruptcy will look at using your home to pay the debts.

Generally, if you are made bankrupt you will be 'discharged' from bankruptcy after a year. This means that any debts you still have will be written off, and you may be able to make a 'fresh start'.

Individual voluntary arrangements (IVAs)

IVAs are also formal arrangements. An insolvency practitioner manages an IVA with your creditors' approval. IVAs can also lead to you having your debts written off at the end of the arrangement.

IVAs cost a lot to manage, and so are generally appropriate only if you have a large amount of debt and a large amount of available income.

Administration orders

Administration orders are where a county court orders you to pay it a certain amount, which it then distributes among your creditors. You can apply for a 'composition order' to limit the number of payments you are ordered to make.

You can only apply for an administration order if your total debts (which may include your mortgage) are below £5,000 and you already have a county-court judgment against you. Creditors can object to being included on an administration order.

Debt repayment plans

The idea here is that you offer to make a payment to each of your creditors. But instead of you having to make the arrangements to pay each creditor, you pay the organisation and they pay the creditors for you.

Debt management plans

Organisations that arrange and manage debt repayment plans for you include the following.

The Consumer Credit Counselling Service (CCCS)

Phone: 0800 138 1111

Website: www.cccs.co.uk/

CCCS is a charity set up to help people who have debt problems. Its services are free. As well as its debt management plans, CCCS has detailed online information, a facility called 'Debt Remedy' for providing anonymous advice which is tailored to meet your needs, and a telephone advice line.

Payplan

Phone: 0800 917 7823

Website: www.payplan.com

Payplan provides free debt-management services, funded by the credit industry.

An independent debt adviser might refer you to either CCCS and Payplan for help with managing your debts. Other commercial organisations also offer this service. If you are considering using these commercial organisations, please read our leaflet '2 – Why do I need independent debt advice?'

Your adviser will work through this process with you, helping you work out what your priorities are and what you can afford to pay. Leaflet 6 tells you more about dealing with creditors yourself after you have finished getting advice.

This leaflet is part of a series of eight leaflets.

- 1 – Making money go further
- 2 – Why do I need independent debt advice?
- 3 – How do I get independent debt advice?
- 4 – Preparing for your appointment to get debt advice
- 5 – Understanding the process for getting debt advice
- 6 – After debt advice – dealing with creditors on your own
- 7 – After debt advice – do you need more help?
- 8 – Debt advice – other sources of information

Produced by Birmingham Law Centre and the University of Salford for Face2Face Debt Advice. A Financial Inclusion Fund initiative funded by the Department of Business, Enterprise and Regulatory Reform

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