

# Dealing with debt - England and Wales

Information for families

England and Wales

Incorporating **The Lady Hoare Trust**

## Introduction

Most of us will have debts of one sort or another. However, some people can experience problems repaying the money they owe. There are lots of reasons why this may be the case. You may have had an unexpected change in your circumstances or an unplanned increase in your weekly outgoings.

Nine out of ten families with disabled children report some form of financial difficulty, ranging from having little money for treats to serious financial problems. It is estimated that, on average, bringing up a child with a disability costs three times more than bringing up a non-disabled child. Given this fact alone it is no surprise that many families struggle financially.

This guide is intended as an overview of what help is available – whether you have one debt that you are struggling to repay, or owe money to a number of different people and companies. It includes information about organisations you can contact for support in managing any debts you have.

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## Taking the first steps

### What are the warning signs that your debt is becoming unmanageable?

It's easy to move payments from one credit card to another for several months or keep up with minimum payments. This can make it feel like your finances are under control. However, an increase in the interest rates or some unexpected expenditure can suddenly cause problems. If the following warning signs apply it may be time to talk to somebody about the money you pay out:

- you have no savings
- you have skipped a regular payment you make
- you are making only the minimum payments each month
- you use credit cards to pay for basic items such as groceries
- an increasing amount of your total income is going towards debts
- you have more than two or three credit cards
- after paying some off each month you increase the balance again by the end of the month

- you're near the credit limit
- you're not sure how much you owe in total.

### Take action now!

No matter what your situation, it is important that you do not ignore your debt problems. The longer you wait before tackling your debt, the worse the problem is likely to become. Taking action at the earliest point can mean fewer problems to deal with in the future.

Try not to panic about your debts – free, confidential and independent advice is available.

### Resist the temptation of using debt to pay off debt

Resist the temptation to borrow more to get out of debt if you can. However, there are times when it

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may be worth switching to a new credit card, for example a card offering a lower percentage rate while you reduce your overall balance.

But be careful. Always be sure to read the small print as many of these low or zero per cent deals are introductory offers. They should only ever be a short term strategy to make sure the money you are repaying is going towards your debts, not to cover interest charges.

### **Contact a Family Debt Advice Project**

In some areas there are debt partnership projects between Contact a Family and Citizens Advice Bureaux where a debt adviser can visit you at home. To find out if there is a project in your area, please call our free helpline.

### **Paying off debts from a bank account**

Before you start talking to your creditors about what you can afford to pay, it is important you have a bank account with no loan or overdraft attached. This is because banks can take money from your account to repay any debts owing to them first, even if you explain your situation.

This can mean any money being paid into your account is swallowed up to repay an overdraft or loan. There is a way to stop this, called the 'first right of appropriation'. It is a complex area of law, so seek advice if this is happening to you.

### **Old debts**

If you have a debt that hasn't been paid for many years take advice before contacting the creditor or any

debt collector. The debt may no longer be legally enforceable. The law says most creditors have six years to start proceedings against you at the last address they have for you. If you make contact with the creditor verbally or in writing this six years time limit can be extended. Again, this is a complex area and you should seek advice if you think it applies to you.

### **Keep in touch with those you owe money to**

If the situation above doesn't apply and you are in debt it is very important you keep in touch with the people or companies that you owe money to – known as your **creditors**. The person who owes money is known as the **debtor**.

Often creditors send letters which are frightening and official, with threats of court action. It can be tempting to try and avoid contact with creditors, particularly if you can't afford to repay the money you owe and are preoccupied with caring.

But if you do this it is likely they will assume that you simply don't want to pay them and they are likely to take further action against you. For this reason it is very important that you contact your creditors to explain the fact that you are in financial difficulties.

### **Get help from a money adviser**

Get help from a money adviser to negotiate with creditors. An adviser will help you to look at your whole situation and help you work out if you're able to make any payments to your creditors,

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and if so how much. They will also help you identify which creditors should be paid first.

In addition, a money adviser will find out if there are any ways to increase your income. For instance they may be able to help you claim extra state benefits or apply for a grant from a charitable trust.

See section on 'How a money adviser will help' on page 12 to find out how to get free, confidential advice from a money adviser.

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## Checking if you are liable for the debt

Before you enter into any arrangements to pay off a debt, always check to make sure the law says you have to pay it. This is called being 'liable' for the debt. Sometimes people are asked to pay debts they are not legally liable to repay.

### When you are liable

You are liable if you've signed an agreement to get money, goods or services on credit. In this case you either:

- have 'sole liability'
- have 'joint and several liability'
- are a 'guarantor' for someone.

### Sole liability

If you signed an agreement alone, you have sole liability. This means that you (and nobody else) are liable to repay the debt.

### Joint and several liability

If you signed an agreement with someone else you have joint and several liability. This means that you and the other person each owe the full sum.

Joint and several liability also happens when legislation imposes it. For example, council tax legislation imposes joint and several liability on couples living together, and joint tenants or owners.

### Credit and loans regulated by the Consumer Credit Act 1974

Credit agreements are usually arrangements where goods, loans or services are paid for by instalments. The Consumer Credit Act 1974 regulates most credit agreements and provides some protection for people in debt. So, agreements which are regulated by the Act must contain certain terms and formalities.

If they have not been set up in accordance with the Act they may not be enforceable. For example, as a carer you may find it easier to shop by mail order catalogue. As it is regulated you should be sent a copy of a credit agreement to sign. If you haven't signed an agreement the debt may not be enforceable. Seek advice if this is the case.

**Note:** A credit agreement will usually be regulated under the Act if the amount is less than £25,000 and the loan or credit was taken out before 6<sup>th</sup> April 2008. After this date there is no upper limit for most types of consumer credit agreements to be regulated by the Act.

The limit of £25,000 for credit or loans taken out before April 2008 applies to the amount of credit only and not the total charge for credit, which can include interest rates, admin fees or late payment charges.

Before the implementation of the Civil Partnership Act 2004 in December 2005 same sex couples were not jointly and severally liable, so seek advice if this applies and you are being pursued for debts before this date.

### **Guarantor**

If you have signed an agreement as a guarantor for someone, this means you've accepted liability for the debt if the other person doesn't pay.

Take advice if you are in this situation. Check if there is any way of challenging your liability, for example, if you were misled or pressurised into signing the agreement.

### **When you are not liable for a debt**

Generally speaking, you are not liable for anyone else's debt unless you've jointly signed an agreement or acted as a guarantor.

Just because you live with someone, are married to them or have the same address doesn't necessarily mean you are liable for their debts. There are some exceptions for fuel or water debts so seek advice about these kinds of debts.

### **Death of the person owing money**

Generally speaking you are not liable for the debts of someone who has died, regardless of how close your relationship was.

There are exceptions in limited circumstances, for example if you were jointly and severally liable for a debt with the deceased person. Or if you

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inherit a property with an outstanding mortgage from the deceased (although this will often be paid off by a life insurance policy).

Money owed to creditors can be recovered from the estate of the person who has died so seek advice if this is the case.

The law says some people should be protected:

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## Children's debt

A creditor can't usually take action against a debt owed by a minor (someone aged under 18) because generally they can't enter into a contract. But there are exceptions if the contract is for 'necessities'. There is no standard definition of 'necessities' but examples include food and clothes. Seek advice if a creditor is trying to recover a debt from a minor.

## Incapacity

If someone wasn't able to understand what they were doing when they entered into an agreement, it may not be enforceable because of their incapacity.

Incapacity can be caused by mental illness, learning difficulties, drink or drugs. Get advice from an advice agency if you, or someone you are caring for, is in this situation.

## Undue influence

If you've been forced to sign an agreement against your will, for example by a partner or because you were misled, get urgent legal advice.

Seek legal advice also if you think someone has signed an agreement in your name without your knowledge.

## Is the amount owed correct?

It is always worth checking the amount the creditor says you owe. Sometimes they miscalculate the debt and ask you to pay back too much. Examples of this include:

- charging interest on an interest free loan
- overestimating fuel bills

- overlooking payments that you have made – try to remember to keep receipts of payments.

## Loans covered by insurance

Some loans may be covered by insurance against sickness or unemployment, paying all or some of the debt so long as the terms of the policy are met. This is often known as 'payment protection insurance'. You should always check to see if any of your debts are covered by an insurance agreement.

Seek advice if you think you are covered by a scheme but the insurance company are refusing to pay out.

## Managing your debts

### Make three lists

You may feel overwhelmed by your debts and lack of money to meet them. The process of dealing with debts includes looking at your income and seeing if it can be increased in any way. The section on 'Maximising income' explains more about the type of help that may be available. So the first lists you need are one for income and one for expenditure (money going out) – see below.

### Lists 1 and 2: work out your income and expenditure

It is important that you have a clear idea of how much money, if any, you have available to pay off some of the debts. This involves preparing a detailed list of your income and a detailed list of your expenditure to work out how much you can offer to creditors. These lists will be summarised in a 'financial statement' which can be sent to creditors

### **Use weekly or monthly amounts**

When you draw up lists of this sort it is important to decide whether to use weekly or monthly amounts – and keep to whichever you choose throughout your list.

to give them a picture of your financial circumstances. We've included an income/expenditure sheet on page 30 to help you do this.

### **An expenditure list is a realistic account of your regular living costs**

Listing your expenditure may also help you identify any potential savings you can make in your regular spending. When you make your list, don't include payments you make towards the debts, because this expenditure list is to see how much you need each week or month for your regular living.

Although it's important to see if some of your expenditure can be cut down, it is also crucial that you don't put down unrealistically low amounts. You need to have an affordable and sustainable budget to make sure your debt problems don't continue and you end up having to take out more credit.

### **Irregular spending**

Even though you may not spend money on clothes and shoes every week, these will be costs now and again so remember to budget for these items. Think about other occasional spending like haircuts, prescriptions and birthday presents as they all have to be built into your budget.

Often looking at old bank statements can help you realistically estimate how much you spend on these items over the course of a year.

### **Insurance costs**

Other important issues to consider are car and home insurance. You are obliged to pay car insurance by law. Insuring your home is also very important because of the consequences of fire or theft.

### **Disability related costs**

Try and make sure you list all the additional costs you face as a result of your child's disability.

Remember that benefits like Disability Living Allowance are intended to cover the care and mobility needs of your disabled child. While they need to be listed as income so your creditors are aware of your family situation, make sure an amount at least equal to your DLA is included as disability related expenditure.

This should help ensure that your child's DLA is not seen by your creditors as money available to repay your debts. If a creditor argues that it should be used to help pay debts, seek advice.

### **A money adviser will help**

A money adviser can help you complete an income/expenditure form and will check to make sure there are no important outgoings you've forgotten to mention.

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### List three:the debts

It is vital you have a complete picture of all your debts so you can decide how to manage them. You may owe money to a number of different people, so you will need to draw up a list of everyone you owe money to, and how much is owed to each one.

The list might include credit or store cards, catalogues, rent arrears, mortgage arrears, council tax arrears, bank or other personal loans.

Drawing up a list like this may sound daunting, but it is essential so you can deal with the debts efficiently and fairly.

Generally, debts which are a priority should be dealt with first before you try and pay off any non-priority debts, as the consequences of not paying priority debts are more serious.

### Identify priority debts

When you decide which debts to prioritise, the important factor is the possible consequences if the creditor decides to take formal action against you – not the amount you owe.

#### Priority debts include:

- mortgage arrears or any loan secured against your property – you could lose your home
- rent arrears – you could be evicted
- Council Tax arrears – your goods could be seized, deductions could be made from your wages or certain benefits. In rare circumstances, you could be imprisoned
- gas and electricity arrears – your fuel supply might be disconnected.



Seek advice about ways of spreading payments. There may be help available from gas or electricity trust funds towards clearing your arrears. The Contact a Family Helpline can give you more advice about this

- court fines – your goods could be seized, deductions could be made from your wages or certain benefits. In some circumstances, you could be imprisoned
- maintenance arrears – your goods could be seized, deductions could be made from your wages or certain benefits. In some circumstances, you could be imprisoned
- Income tax or VAT arrears – seizure of your goods and you may face bankruptcy.

### Non-priority debts

These include most forms of credit agreement so long as they are not secured on your home, such as:

- credit card debt
- bank overdrafts
- catalogue debts

- store cards
- unsecured loans.

### **Pressure from non-priority creditors**

Non-priority creditors often put more pressure on people in debt and write the most threatening letters. This can mean some people get in difficulties because they pay the wrong creditors first.

The letters may threaten bailiff action or a charge being put on your home and can be very misleading. Always seek advice as these measures are only ever used as a last resort. There are many processes the creditor has to go through first.

### **Paying off rent and council tax arrears direct from your benefits**

If you are on Income Support (IS) income-related Employment and Support Allowance (irESA) or income-based Jobseeker's Allowance (ibJSA) it may be possible to set up an arrangement where a fixed amount (currently £3.30 a week) is deducted from your benefit and paid to a landlord to help cover arrears in rent. It may also be possible to arrange for a set payment of £3.30 per week to be deducted from your weekly benefit and paid towards council tax arrears.

These arrangements only cover arrears and you will have to make sure you meet any ongoing rent or council tax charges.

### **Paying off fuel and water costs from benefits**

If you get IS or ibJSA allowance you may also be able to enter into an arrangement to have money deducted from your benefit to pay for your current fuel usage and another small fixed amount (currently

£3.30 a week). The supplier will work out an estimate of your current costs separately. This is known as fuel direct.

If you have arrears of water charges you can also ask that deductions are made from your IS, ibJSA or Pension Credit to cover current water charges plus an amount towards the arrears.

### **Goods bought under Hire Purchase (HP) agreements**

HP is a type of credit where you 'hire' (rent) the goods until you 'purchase' them at the end of the agreement. This means you don't own the goods until the end of the agreement – until then the creditor owns them.

If you've paid off less than a third of the amount owed under a HP agreement, your creditor will be able to repossess the goods without having to take court action. So whether a HP debt is considered a high priority will depend on how much you've paid and whether the item is essential to you, for example, a cooker or a vehicle you use for caring.

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## Maximum deductions from benefits

There is a maximum amount that can be deducted from your benefits, because you have to be left with a minimum amount of money depending upon your family's circumstances. Ring the helpline for more information on this.

## How a money adviser will help

### Money advisers

The thought of negotiating with creditors can be a worrying one for most people. But you shouldn't have to do this on your own. You should be able to get free, impartial and confidential advice from a money adviser. For more information about how to find a money adviser see 'Finding help to deal with your debts' on page 28.

### How a money adviser helps

Once a money adviser has a clear idea of your whole situation, they will focus on helping you to develop a plan to reach an agreement to repay your priority debts.

If you have any spare income after looking at your expenditure they will then try to negotiate an agreement with your non-priority creditors. This is normally done by offering each non-priority creditor a percentage of your 'spare income'. It's calculated on a fair basis, where creditors owed the most money are offered the most. Creditors are familiar with this system.

No creditor likes to be offered less towards a debt than what was originally

agreed. But many are willing to negotiate smaller repayments over a longer period so long as you are genuinely unable to pay more.

### Seeking a freeze on interest or even write off a debt

A money adviser will also try and get your creditors to agree to freeze the interest charges on your debt. Sometimes a creditor may also agree to write off all, or part of a debt.

A creditor may be more willing to consider this if there are mitigating circumstances which have contributed to your financial problems, and your circumstances aren't likely to improve in the near future. For instance, you may have had to give up work or reduce your hours to care for your child, or fallen into debt because you had to spend a lot of money on an item you need to care for them.

### Seeking a freeze on payments

Some creditors may consider a temporary period where you are allowed to make no repayments. This can be useful if there is a realistic prospect of your financial circumstances improving in the near future.

## What steps can creditors take to recover debts?

### Demands for repayment

One of the most stressful things about being in debt is dealing with demands for payment. If you owe money you may be getting letters asking for payment, being threatened with court proceedings or

approached by debt collectors. Creditors are entitled to make reasonable demands for repayment. The Office of Fair Trading (OFT) has produced a document, 'Debt collection guidance', which describes practices the OFT considers unfair.

### **Debt collectors' powers**

Some creditors will appoint debt collectors to recover money owing to them. Debt collectors have **no** legal powers to enter your home or take your goods and should be negotiated with in the same way as other creditors.

### **Harassment by creditors**

Harassment of debtors is a criminal offence under Section 40 of the Administration of Justice Act 1970. In some instances creditors' letters, telephone calls or visits can become overly intrusive. Examples of this can include:

- using scare tactics such as wrongly claiming that criminal proceedings can be brought against you or threatening to involve the police
- nuisance visits or phone calls, especially at unusual hours
- waiting outside your workplace on pay day
- calling on neighbours, pretending to believe that you live at their address
- pretending to be someone they are not, such as a court official or bailiff
- sending a person a document which looks like it has been sent from a court.

Also, the Protection from Harassment Act 1997 makes it a criminal offence for any person to pursue a course

of action 'which they know, or ought to know, amounts to harassment of another person'.

### **If you are being harassed**

If you are being harassed in any way, approach a money adviser immediately. Ask them to write to the creditor to let them know they are monitoring the action they're taking.

A money adviser will also be able to advise you on reporting the creditor to the local Trading Standards Department or Office of Fair Trading.

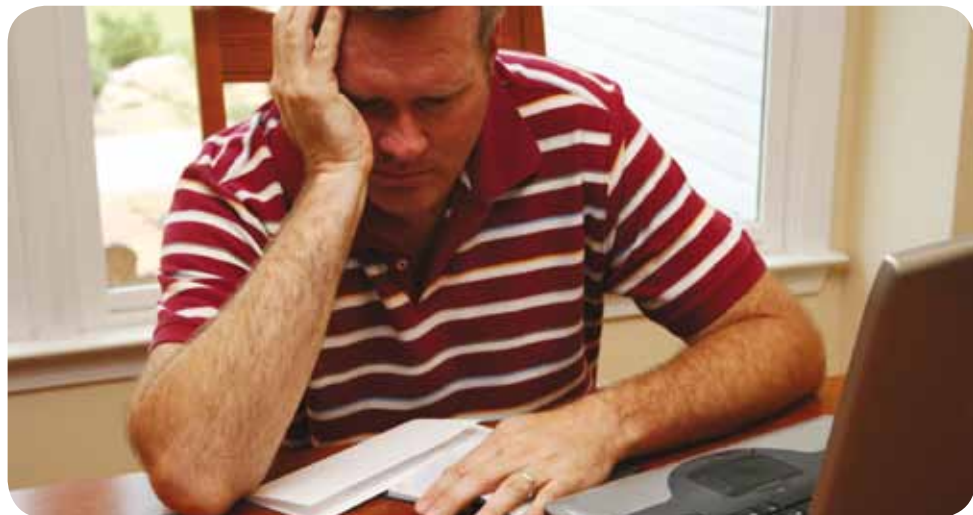
### **Legal action some creditors may take**

You can't normally be sent to prison for non-payment of debts unless, for example, you deliberately refuse to pay maintenance or council tax. But your creditors can take you to court and may be granted the right to take certain action against you. This may include eviction or repossession of your home, seizure of

#### **When a landlord can take legal action**

Before private landlords can take possession proceedings in court to try to evict tenants, they must have sent a 'notice to quit'. Seek advice if you have arrears relating to your home.

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possessions or attachment of earnings (an arrangement where deductions are made directly from your earnings).

Some letters from creditors will state they are 'pre-legal'. These are not court documents. They are simply letters threatening you with legal action. What your creditor must do before taking court action will depend on the nature of the debt. Many creditors cannot take court action until they have issued you with a 'default notice'.

### **What is a default notice?**

If an agreement is regulated under the Consumer Credit Act 1974, creditors must usually issue a default notice before court action is started. The default notice will ask you to bring your payments up to date. If you are unable to do this seek the help of a money adviser.

You may be able to apply to the court to ask for more time to pay, known as a

'time order'. There are different rules for debts taken out before 6 April 2008 so seek advice about this.

From October 2008 creditors must give information sheets with arrears notices, which give advice to debtors about what to do and where to get help.

### **What is the purpose of a default notice?**

A default notice can seem quite frightening when you first read it because it's a legal demand for the full amount of money you owe under the agreement, and often threatens that court action will follow.

A default notice is issued to formally end an agreement and it's at this point that interest can be frozen and charges stop being added. A creditor can't accept reduced payments on the account indefinitely until a default notice has been issued. So although it's true you can be

### **Further help and information about fuel debts**

Contact a Family publishes 'The winter guide – help with fuel bills and keeping warm'. Contact the helpline for a copy. There are also more details below under the section 'Maximising income'.

If you're having difficulties with your fuel supply contact Energywatch, the independent gas and electricity consumer watchdog on:  
Tel: 0845 906 0708  
TYPETALK: 18001 08459 06 07 08  
Web: <http://www.energywatch.org.uk>

taken to court after receiving one it's more likely you will be able to start making payments you can really afford to pay on a long term basis.

You should never ignore a default notice and always seek advice if you receive one.

### **Fuel debts and disconnection**

Gas and electricity companies can disconnect the fuel supply of a customer who is in arrears without going to court for permission. But a supplier should go through certain procedures before disconnecting a supply, for example, accepting fuel direct if you are eligible (see page 11) or offering a prepayment meter, if it is safe and practical to do so.

There is also some protection from disconnection for households with vulnerable members. For example, an electricity company must avoid disconnecting the supply of someone who is a pensioner, disabled or chronically sick during the winter months – so you should always tell them if this applies to you.

Check your supplier's code of practice on disconnection. Some fuel suppliers also

have trust funds that can offer help to people experiencing difficulty paying their bills.

### **Water charges and action the water company may take**

Your water company cannot cut off your supply if you are in arrears. But they can still make a claim in the county court to recover arrears.

Water companies must have a code of practice on dealing with customers in arrears and some water companies have trust funds that can offer help with water bills. See the section on 'Maximising income' on page 22 for more information. Also, direct deductions can be taken from certain benefits to help manage arrears (see page 11).

### **Help for some people with water meters**

Certain customers with meters in England can be protected from paying

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large water bills under government regulations for vulnerable groups. If your household is eligible then you will pay only the average household water bill for your water company. Companies operating in Wales have introduced equivalent provisions on a voluntary basis. Phone the helpline for more information.

## Being taken to court?

If you are not able to resolve a debt problem with your creditor they may decide to take you to court. They may need to use different courts for different types of debt. This section looks at some of the court actions relating to debts in the county court and magistrates' court.

### Get help from a money adviser

If you are being taken to court it is very important you get specialist advice. See the section on 'Finding help to deal with your debts' on page 28 for details of how to get free, confidential advice from a money adviser.

### County courts

You will know that your creditor has started proceedings in the county court if you receive a claim form from the court. On the claim form you will be referred to as the defendant and your creditor as the claimant. The claim form will tell you who is taking you to court, the amount they say you owe them, and the action they are asking the court to take.

The county court doesn't judge whether anyone is innocent or guilty, but can settle disputes about debts. County courts deal with a large number of

debt cases, including the following types of debts:

- money only claims, for example repayment of an overdraft
- claims about land, for example repossession of a home by a landlord because of rent arrears
- claims about agreements regulated by the Consumer Credit Act 1974, for example repossession of an item on hire purchase.

### Money only claims in the county court

Most of these disputes are dealt with on paper by court staff and will not involve a hearing unless you dispute the claim.

When you get the claim form you should also get an 'admission form', a 'defence form' and an 'acknowledgment of service'.

You are expected to respond to the claim form, saying whether you want to **dispute** (defend) or **admit** the claim. There will also be details of the time limits you have to reply.

If you ignore the claim form, the creditor can ask for judgment to be entered in default. This means the court will order payment at the rate chosen by the creditor.

### Admit the claim

This means that you agree you owe the money. If you admit the debt but can't afford to pay it, you can ask for time to pay. The admission form asks for details of your income and expenditure and your offer of payment.

If the creditor refuses your offer, a court official will usually make a decision about how much you should pay. This is called a determination. If you are unhappy with the determination you have a limited time to ask for a re-determination.

### **Defend the claim**

This means you disagree that you owe the amount stated by the creditor. This may be, for example, because you do not think you are liable for the debt.

If you wish to defend the claim you must respond to the claim form and the form that comes with it called 'particulars of claim' within 14 days of the 'date of service'. The date of service is the second day after the court posts it out to you.

If the particulars of claim were served after the claim form, you must respond within 14 days of the date the particulars of claim were served.

If you don't send a defence to the court an order can be made against you. If this happens seek advice.

You should send your defence to the court listed on the paperwork you receive. If you need more time to prepare, send back an 'acknowledgement of service' (this would have been sent to you with the initial claim form). Then send the defence within 14 days after posting the acknowledgement of service.

### **After the defence has been returned to the court**

When the defence is returned to the court they will issue an allocation questionnaire

to both the claimant and defendant with a date to return it by. This is a list of questions which helps the court decide how to hear your case.

A claimant (someone claiming that another person owes them money) in England and Wales will have to pay a fee when the allocation questionnaire is returned, although this can be waived on financial grounds.

When it gets the form the court will decide whether the case will be heard using the small claims track, the fast track or the multi-track. The main difference between the tracks is the amount of court involvement to prepare for your case.

### **When a case goes to small claims**

If the court decides to allocate the case to the small claims track you will be sent a notice of allocation which has instructions (called 'directions') telling you what to do to prepare for the final hearing.

For example, you might be told to send copies of all documents you intend to use as your defence to the other party at least 14 days before the hearing. If you don't follow these directions the case could be postponed and you could have to pay all the costs of the case.

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## Preparing the case

Preparing for a defended case is really important because you'll have to convince a court that you don't owe the money:

- set out notes about the case in date order
- evidence, for example clothes or photographs of clothes that have been ruined by a faulty washing machine, should be prepared
- any letters or other documents about the case should be ready for the hearing.

Seek further advice if you are relying on witnesses.

## Help with legal costs

If you are on a low income you might get legal advice (but not representation) from a solicitor to help you prepare the case.

Community Legal Advice can also offer free telephone advice on  
Tel: 0845 345 4 345

Web: <http://clsdirect.org.uk>

They can also check to see if you qualify for legal aid or help.

## The final hearing

At the end of the hearing, the judge will make a judgment and has to give reasons for it as simply and briefly as possible. They will usually give reasons orally at the hearing but may give them later in writing.

If you are the claimant and win your case, you will get the court fees back as well as the claim, and you can ask for certain expenses also. If you lose, you will not get the court fees back. But it's unlikely that you will have to pay any other costs.

## What if you can't afford to pay a county court judgment?

The judgment is the decision of the court. If at any point after the judgment you can't afford the payments, you can ask the court to vary the judgment. For example, a variation can cover changes to the frequency of instalments.



## Enforcement of county court judgments

If you don't keep to your county court payments your creditor can start enforcement action through the courts to make you pay. The enforcement procedures in the county court are:

- warrant of execution – using bailiffs to seize goods
- attachment of earnings – to instruct your employer to make deductions from your earnings
- charging order – to secure the debt on your home
- third party debt order – enabling money to be taken directly from your bank or building society account.

For advice on enforcements call our freephone helpline.

## Magistrates' courts

Magistrates' courts are responsible for enforcing payments of certain arrears such as arrears of council tax and maintenance.

## Council tax arrears

If you have failed to pay your council tax, the local authority can ask the magistrates' court to make a 'liability' order. A liability order states that an individual is liable to pay an amount of council tax and has not paid it.

If there are still outstanding arrears after a liability order has been made, the local authority can:

- instruct bailiffs to collect the debt
- take payments from your earnings or certain benefits

- obtain a charge on your home – the creditor asks the court to secure the debt to your home
- apply to make you bankrupt if you owe more than £750. It is likely that this method will only be used when the local authority cannot recover the arrears by any other means. If a local authority does start bankruptcy proceedings, it cannot take any other action to recover the money (see 'Bankruptcy' below)
- go back to the magistrates' court to request a 'means enquiry'. This is a detailed examination of your finances and could ultimately result in imprisonment in very limited circumstances, for example, if you have the money to pay your council tax but refuse to.

## Bailiffs and seizure of goods

The rules on bailiffs are complex. What the bailiffs can do legally depends on what the debt is for. Seek advice urgently if you are threatened with action by bailiffs.

Bailiffs almost always need a court order to remove your goods. In many cases bailiffs do not have the right to force their way into your home and have a right of peaceful entry only.

If your doors and windows are closed, bailiffs will not be able to get peaceful entry to your house unless you choose to let them in.

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**[www.cafamily.org.uk](http://www.cafamily.org.uk)**

Bailiffs can also clamp and tow away vehicles parked on a drive or road outside the home, but not if they are on a hire purchase agreement. Seek advice immediately if this is the case.

## Dealing with multiple debts

This section gives a brief overview to procedures such as bankruptcy. To find out more about these procedures seek specialist money advice.

### Bankruptcy

Any creditor who is owed £750 or more, can petition the court for the debtor to be made bankrupt. You can also make yourself bankrupt if your debts are overwhelming.

### Rent and mortgage payment arrears and loans secured on your home

If you owe arrears of rent or mortgage, your landlord or mortgage lender can apply to the county court to try and gain possession of the property. You'll get details of a county court claim, plus the date and time for a hearing, which you should go to. Even if the court grants a possession order, it's still possible for the order to be 'suspended' as long as you make agreed payments.

Take urgent advice if your landlord or mortgage lender is seeking possession of your home.

For some people bankruptcy is a way of removing pressure from creditors. However, it can also have very serious consequences and should not be undertaken lightly.

If you own your home you could lose it and not all debts can be written off during bankruptcy. You could also still have to pay some money towards your debts during the period of your bankruptcy and your future credit rating is likely to be affected.

If you are being made bankrupt or are considering becoming bankrupt, seek specialist advice about the implications.

### Administration orders

An administration order is a county court order which stops creditors listed on it taking enforcement action without the court's permission. You can apply to the county court for an administration order if you have:

- total debts of under £5000, and
- a county court (or high court) judgement against you.

An administration order allows you to pay your debts by regular instalments to the court. The court distributes the payments to creditors.

### Individual Voluntary Arrangement

This may be an alternative to bankruptcy for some debtors and involves entering into an agreement with your creditors which is overseen by an insolvency practitioner.

## Debt Relief Orders

Proposals are in place to provide debt relief for people in England and Wales who owe £15,000 or less, have little or no income, no assets and can't afford to make themselves bankrupt.

A Debt Relief Order will lead to the debts being discharged after one year. At the time of writing Debt Relief Orders are currently being finalised by the UK government and are not yet passed in law - so some of the details of how they will be implemented aren't known. For up to date information ring the helpline.

## Maximising your income

### Consider ways you may be able to raise a lump sum

One way of trying to manage your debt problems is to see if there are any ways you can increase the amount of money available to your household. You may

For some people bankruptcy is a way of removing pressure from creditors. However, it can also have very serious consequences and should not be undertaken lightly.

### Feeling it's too late to get help?

Even if things have already got to the stage where your creditor has been granted the power to take steps against you, it is not too late to seek the help of a money adviser.

Sometimes a money adviser may be able to convince the creditor not to go ahead with the action they have been authorised to take. For example, a money adviser may be able to help to suspend a county court warrant of execution or have a county court judgement set aside.

have certain assets you could cash in or sell which could give you a lump sum to pay off some of your debts. Some creditors may be willing to accept a lump sum payment as 'full and final settlement' on a debt, writing off the balance owed.

Contact the helpline for details of charities – although unusual, some consider giving grants to help towards debts.

### If you are able to work

Depending on your caring responsibilities, it may be possible to raise your income by working longer hours or doing more overtime. But bear in mind that higher earnings may mean you lose certain

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means tested benefits or tax credits. This is a very complex area - seek detailed advice by calling our free helpline.

### **Consider renting a room out**

If your property is big enough you may also wish to consider the option of taking in a lodger. Again, you need to bear in mind the impact on any means tested benefits you receive. You may also need permission from the landlord or mortgage lender under your tenancy or loan agreement.

You will also need to consider the likely impact on your family. Living with debts is already extremely stressful and you may not cope with the additional stress of having a lodger. There may be tax implications and you should seek advice about this. If you already have a lodger or are thinking about letting furnished rooms in your home, up to £4,250 a year income from this source is tax-free (2010-2011 tax year). This is known as the Rent a Room scheme.

You can ring our freephone helpline for further advice.

### **Claiming additional benefits and tax credits**

You should seek a benefits check to see if there are any extra benefits or tax credits you could be getting. Some parents miss out because they wrongly assume they can't claim anything when they are working. But some benefits, for example Disability Living Allowance, are not means tested (it doesn't matter how much money you have) while others can still be

paid if you are working, so long as your earnings are not too high.

If you can claim any extra benefits this can lead to an increase in your weekly income. If the benefit can be backdated it will also give you a small lump sum you could use to clear some of your debt.

Below are some of the benefits that are most commonly claimed by families with disabled children. More detailed information is available in our free guides:

- 'Help with council tax bills'
- 'A guide to claiming Disability Living Allowance for children'
- 'Benefits, tax credits and other financial help'
- 'The tax credits guide'.

All of these are available from the helpline. You can also call our helpline for a full benefits check to make sure you're not missing out on anything.

### **Disability Living Allowance (DLA)**

The main benefit for disabled children is DLA. It's made up of two parts:

#### **Not sure about claiming?**

If you're not sure if you are entitled to a benefit, complete a claim form anyway; it's difficult to get most benefits backdated. But if you care for an adult, a claim for Carer's Allowance may affect that person's benefits, so seek further advice before making a claim in such circumstances.



- the **care component** is for children who need extra attention or supervision. It's paid at three different rates depending on how much help or supervision the child needs
- the **mobility component** is for children who need help with getting around. It's paid at two different rates depending on the nature of the mobility problem.

Your child may qualify for either or both of these components. If your child gets the care component at the middle or highest rate you may also be entitled to Carer's Allowance. An award of DLA can also lead to increased payments of Child Tax Credit - so make sure you let the tax credits office know as soon as you get a DLA decision. DLA is not means tested so you can claim regardless of how much money or savings your family has.

### **Carer's Allowance (CA)**

If your child gets the care component of DLA at the middle or highest rate you may be eligible to claim CA. If you work, then your wages (after deductions for certain childcare costs and other

expenses) must not be more than an earnings threshold. This is currently £100.

You cannot get Carer's Allowance if you are a student and your course is treated as full time.

You should claim Carer's Allowance within 3 months of receiving a DLA decision to make sure it is fully backdated.

## **Tax credits**

### **Child Tax Credit (CTC)**

CTC can be claimed by anyone with a dependent child, whether you work or not. You may get increased CTC if you have a child with a disability. This is because an extra amount is added for each child who is on DLA or who is registered blind. If your child gets the highest rate of DLA care component a further amount is also added.

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## **Working Tax Credit (WTC)**

You can claim WTC if you have a dependent child and you (or your partner if you have one) are working at least 16 hours a week. Certain other groups of workers can apply as well as parents. WTC can sometimes include help with eligible childcare costs.

The amount of tax credits you get is usually based on your gross annual income for the previous tax year. Although they are means tested you are guaranteed some Child Tax Credit so long as your income is less than £58,000 (£66,000 if you have a baby under one). Unlike most other means tested benefits there is no capital limit. Tax credits can be backdated for a maximum of three months.

## **Income Support (IS) and income-based JSA (ibJSA)**

Income support is a means-tested benefit to help individuals or families on a low income with savings below £16,000. To qualify you must be someone who is not required to be available for work, for example, a carer or some lone parents with young children. Income-based Jobseeker's Allowance is a very similar benefit but is for people on a low income who have to sign on as available for work.

## **Employment and Support Allowance (ESA)**

ESA is a benefit for people of working age whose health problems limit their ability to work. There are two types of ESA – contributory ESA and income-related ESA. The latter of these (irESA) is means-tested.

One way of trying to manage your debt problems is to see if there are any ways you can increase the amount of money available to your household.

## **Housing Benefit (HB) and Council Tax Benefit (CTB)**

These benefits are designed to help people on low incomes pay their rent and Council Tax. If you are already getting IS, ibJSA, irESA or Pension Credit (Guarantee Credit) you will usually qualify for full HB and CTB.

However, even if your income is too high to be paid any of the above qualifying benefits (for example because you are working) you may still qualify for some HB and CTB. The amount of help you get depends on how much your income is above IS levels. You will automatically be refused HB and CTB if you have savings of £16,000 or above – unless you are above Pension Credit qualifying age (so long as you or your partner do not get Income Support, income-based Jobseeker's Allowance or income-related Employment and Support Allowance).

HB and CTB are local authority benefits, which means you will need to contact your local council for claim forms. A claim for HB or CTB can be backdated for up to 6 months so long as you have good cause for a late claim. Dealing with a child's health problems will often be accepted as good cause. There are different backdating rules for those over Pension Credit qualifying age.

### **Council Tax Disability Reduction Scheme**

This scheme helps to reduce your Council Tax bill if someone in your household is disabled and you have a second bathroom or kitchen needed by that person. You can also qualify for a reduction if you have a room in your house (other than a bathroom, kitchen or toilet) needed by a disabled person, or someone uses a wheelchair indoors.

A disability reduction can be backdated to the date you first met the qualifying conditions. The local authority will usually want you to put in a separate application for each year.

### **Council Tax Discount Scheme**

Where there is only one adult in a household you should receive a discount of 25% on your bill. In assessing a discount certain adults, including some carers, can be treated as if they were 'invisible'. Seek further advice from our helpline.

### **Help with NHS costs**

This includes free prescriptions, free dental treatment, free NHS eye tests, and vouchers to help with the cost of glasses. Various people qualify for this

help, including those on IS, irESA and ibJSA. Also, if you get Working Tax Credit (including a disability element) or Child Tax Credit, and your gross annual income is below a certain amount (£15,276 for 2010/11), you may qualify for NHS benefits.

If your income is slightly above this level you may still qualify for partial exemption from NHS charges by completing form HC1, available from doctors, dentists, NHS hospitals or by calling  
Tel: 0845 850 1166.

### **Community Care Grants**

If you are on IS, irESA, ibJSA or Pension Credit you may be able to apply to the Social Fund for a Community Care Grant. This is a discretionary grant and doesn't have to be repaid. Payments can be made:

- to ease exceptional pressures on families, or
- to help people at risk of going into care, or
- needing help to settle in the community after a stay in residential care or prison.

Usually a grant is given for specific items. This might include clothing, bedding and other essential household items. Community Care Grants are often awarded to families with disabled children or children with serious health problems.

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## Other financial assistance

### Education Maintenance Allowance (EMA)

If you have a 16 or 17 year old who has stayed on at school or college they may be eligible for an EMA. The amount of an EMA depends on parental income. EMAs don't affect any of the benefits you or your child get. Contact your child's school, college or our helpline for more details.

The government has announced that it is scrapping the Education Maintenance Allowance (EMA) in England. EMA will close to new applicants in England from January 2011. If your child currently gets EMA this will continue until the end of the current academic year. EMA will be replaced by an enhanced learner support fund – this is administered by the individual school or college allowing them to make discretionary payments to those students they believe to be in greatest need. EMA is expected to continue in Scotland, Wales and Northern Ireland.

### Housing Grants

Some parents may get into debt as a result of paying for expensive adaptations to their home for their disabled child. However, Disabled Facilities Grants (DFG) can help with the cost of work like building safe play areas, ensuring safe access to a garden, installing a stair-lift, adapting a lighting or heating system, or building a new bathroom facility.

To be eligible for a DFG you must be:

- an owner occupier
- tenant (private, local authority or housing association), or
- landlord with a disabled tenant.

There is no means test for DFGs for parents of disabled children in England or Wales.

Local authorities also have discretionary powers to provide financial and other assistance for improvements or repairs to the home. This can be in the form of a grant, loan, labour, materials or advice. Contact your local authority housing department or phone our helpline for more information.

### The Family Fund

The Family Fund can give lump sums for specific items that arise from the care of a child aged under 18 with severe disabilities or who's seriously ill.

Your social and financial circumstances will be taken into account. The Fund will consider any request, so you can ask for whatever you need most, for example, laundry equipment, transport expenses, clothing, holidays and so on.

Getting help with these sorts of disability related costs may free up some of your income to help pay off your debts.

To apply, call for an application form or apply online:

The Family Fund

Unit 4 Alpha Court, Monks Cross Drive  
York, YO32 9WN

Tel: 0845 1304542

Web: [www.familyfund.org.uk](http://www.familyfund.org.uk).

Or call our helpline for an application form.

### Grants from charities and benevolent funds

It's worth considering applying to a



charity for financial help. Some charities will consider giving a lump sum to help with particular issues that are causing you hardship, for example help towards paying off a gas or electricity bill where someone in the household has a disability.

Others may only be willing to offer financial help towards specific costs linked to your child's ill-health or disability. However, getting a grant towards these costs may free up more of your weekly income which can go towards paying your debts.

Also, some utility and water companies have charitable trusts. Contact your supplier to see if they operate such a charitable trust or contact the organisation CHARIS, which can provide details of trusts, on Tel: 01733 421050, Web: [www.charisgrants.com](http://www.charisgrants.com)

The Directory of Social Change publishes 'A Guide to Grants for Individuals in Need'. This is a practical guide to sources of money available from over 2,500 trusts and charities. Your local library or citizens advice bureau (CAB) may have a copy of this guide.

Our helpline also has a list of charities that give grants to families caring for a disabled child. Contact the helpline for a copy.

There is also a web-based database called Turn2us you can search for grant-making charities at  
Web: [www.turn2us.org.uk](http://www.turn2us.org.uk)

Freephone helpline: **0808 808 3555**  
**[www.cafamily.org.uk](http://www.cafamily.org.uk)**



It may also be worth contacting any organisation concerned with your child's particular condition. Some of these charities provide small grants. An adviser on our helpline can help you to find a suitable charity.

### **Financial help from social services**

Social services have the power to provide financial assistance to a family where they believe that this is necessary to help a child. They will only normally consider making payments in exceptional circumstances. But it might be worth making a request if you are in an emergency situation like facing disconnection for fuel arrears or eviction for rent arrears.

### **Minimum wage**

If you are working, check whether you are being paid the national minimum wage.

The National Minimum Wage Helpline number is Tel: 08456 000 678.

### **Reducing fuel costs**

The home energy efficiency scheme offers grants which help to cover the costs of home insulation and of improving energy efficiency. It's available to owner occupiers and to people renting accommodation who meet the qualifying conditions.

The scheme is called **Warm Front** in England and **HEES** in Wales. There is also a more generous scheme in Wales, **HEES Plus**, for certain applicants.

To find out more about the scheme call freephone Tel: 0800 316 2805 in England or Tel: 0800 316 2815 in Wales. You can find out more in Contact a Family's 'The winter guide - help with fuel

bills and keeping warm'. Please contact our helpline for a free copy.

## Finding help to deal with your debts

### Local money and debt advisers

In some areas there are debt partnership projects between Contact a Family and CAB where a trained debt adviser can visit you at home. To find out if there is a project in your area ring the free Contact a Family Helpline.

Many organisations have trained money advisers who are able to provide comprehensive advice. You should be able to get details of services in your area from Advice UK at

Web: [www.adviceuk.org.uk](http://www.adviceuk.org.uk)

Tel: 020 7407 4070 or your local CAB.

### Local CAB

For details of your local CAB call Citizens Advice on Tel: 020 7833 2181 or search their website at

Web: [www.adviceguide.org.uk](http://www.adviceguide.org.uk)

You can check in your local telephone directory too. In some agencies staff may be trained in debt counselling work.

### Help on the telephone

If you prefer you can get advice over the telephone.

### The National Debtline

Tel: 0808 808 4000

Web: [www.nationaldebthelpline.co.uk](http://www.nationaldebthelpline.co.uk)

You can speak to a trained money adviser who will talk you through your debt

problems by calling National Debtline. They have a wide-ranging series of factsheets including, for example, 'How to avoid debt at Christmas.'

### Consumer Credit Counselling Service

Tel: 0800 138 1111 (free helpline)

Web: [www.cccs.co.uk](http://www.cccs.co.uk)

Offer free confidential debt advice, and you should be able to speak to a trained money adviser who will talk you through your debt problems.

### Community Legal Advice

Tel: 0845 345 4 345

Web: [www.clsdirect.org.uk](http://www.clsdirect.org.uk)

Can offer free telephone advice and you can also find out if you qualify for legal aid by contacting them.

### Further advice

If you would like further details about any of the information in this guide or would like to discuss your own case in more detail please call the Contact a Family Helpline on freephone Tel: 0808 808 3555 (Monday–Friday)  
e-mail: [helpline@cafamily.org.uk](mailto:helpline@cafamily.org.uk)

Freephone helpline: **0808 808 3555**  
**[www.cafamily.org.uk](http://www.cafamily.org.uk)**

## Income/expenditure sheet

Remember to be consistent in using only weekly amounts or only monthly amounts.

INCOME	£	EXPENDITURE	£
Wages		Mortgage/rent	
Partner's wages		Endowment policy	
Income Support		Second mortgage/secured loan	
Jobseeker's Allowance		Service charges	
Tax Credits		Buildings/contents insurance	
Child Benefit		Life Assurance	
Disability Living Allowance/ Attendance Allowance		Council Tax	
Carer's Allowance		Water charges	
Other state benefits		Gas	
State Retirement Pension		Electricity	
Other pensions		Any other fuel costs	
Maintenance (that you receive)		Disability related costs	
Income from boarders/lodgers		Childcare costs	
Other income		Prescriptions and other health costs	
<b>TOTAL INCOME</b>		Travel (including any car costs)	
		Court fines	
		School meals/meals at work	
		Maintenance (that you pay)	
		Telephone (including any mobiles)	
		TV licence/rental	
		Hire purchase	
		Rentals	
		Food and housekeeping	
		Clothing and shoes	
		Laundry	
		Newspapers/magazines	
		Children's pocket money	
		Sport and leisure	
		Other costs	
		<b>TOTAL EXPENDITURE</b>	

With thanks to True Colours, the Department for Business Enterprise and Regulatory Reform, Citizens Advice and the Financial Inclusion Project for funding this guide.

### **Social networking**

Contact a Family is on Facebook and Twitter. Join us at:

#### **Facebook**

[www.facebook.com/contactafamily](http://www.facebook.com/contactafamily)

#### **Twitter**

[www.twitter.com/contactafamily](http://www.twitter.com/contactafamily)

### **Podcasts**

You can download podcasts from our website at [www.cafamily.org.uk/news/podcasts.html](http://www.cafamily.org.uk/news/podcasts.html)

iTunes users can listen to our podcasts at [www.cafamily.org.uk/itunes](http://www.cafamily.org.uk/itunes)

### **Videos**

You can watch videos on our YouTube channel at [www.youtube.com/cafamily](http://www.youtube.com/cafamily)

Freephone helpline: **0808 808 3555**  
**[www.cafamily.org.uk](http://www.cafamily.org.uk)**

## Getting in contact with us

Free helpline for parents and families

**0808 808 3555**

Textphone

**0808 808 3556**

Open Monday–Friday,

Access to over 170 languages

**[www.cafamily.org.uk](http://www.cafamily.org.uk)**  
**[www.makingcontact.org](http://www.makingcontact.org)**

Contact a Family Head Office:

**209-211 City Road, London EC1V 1JN**

Tel **020 7608 8700**

Fax **020 7608 8701**

Email **[info@cafamily.org.uk](mailto:info@cafamily.org.uk)**

Web **[www.cafamily.org.uk](http://www.cafamily.org.uk)**



Language Line  
services

## Other information booklets available

This guide is one of a series produced for parents and groups concerned with the care of disabled children. A full list of Contact a Family publications is available on request or can be downloaded from our website [www.cafamily.org.uk](http://www.cafamily.org.uk)

- A guide to claiming Disability Living Allowance for your disabled child (UK)
- Benefits, tax credits and other financial assistance (UK)
- The tax credits guide (UK)
- Disabled children's services in England and Wales (England & Wales)
- Getting direct payments for your disabled child (England & Wales)

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