In Debt

Dealing with your creditors

This guide has been produced by The Insolvency Group Limited using material available from the Insolvency Service and the IVA Standing Committee.

Summary of Contents

The following pointers may help you to decide which parts of the guide deal with the option that you want:

- Negotiating an agreement to repay all or some of your debts – Page 5.
- Applying for a loan to reorganise or clear your debts - Page 7.
- Appointing an organisation to negotiate with your creditors on your behalf, and you can make payments to clear your debts – Page 9.
- Pay back your creditors in full by making a monthly payment to court – Page 11.
- Appointing an insolvency practitioner to negotiate with your creditors and you have assets or income that you can use to reduce your debts - Page 12.
- Low income and don't have many assets and want to have debt relief without going to court - Page 14.
- If none of the above options are suitable for you, and you are considering bankruptcy, please turn to page 16.

Introduction

If you are currently experiencing debt problems, there are various options available to assist you in making arrangements with your creditors. This guide explains these options, how they work and some of the pros and cons of each. The guide can help you with personal or business debts, or both.

Please do not use this publication as a substitute for getting independent expert advice on which option is best for you.

It is important that you always seek independent advice early. The worst thing when you have money troubles is to do nothing and to hope the problem will go away.

This guide:

- summarises the key features of each of the main ways of dealing with debt;
- sets out how each of them works; and explains the pros and cons of each.

Things to consider when deciding which option is best for you

- Does it free you (when completed) from all or part of your debts so that your creditors will have no further claim against you?
- Is it binding on all your creditors? In other words, does it protect you from further recovery action or extra charges (or both) by your creditors during the procedure?
- How long will it last?
- Will it affect your employment?
- Will it affect your credit rating?
- Will your home be at risk?
- If you have to pay a fee, it may come out of payments you make to your creditors, or you may have to pay it separately, before or after the option you choose is put in place.
- Some of the options will involve you putting certain types of debt (called ‘priority debts’) before others. It may be difficult or impossible to negotiate reduced payments or write-offs for the other debts. Priority debts are, for example, utilities, rent, court fines, council tax, maintenance payments and income tax.
- Are you confident you can keep up the repayments to your creditors, for the time required, under the option you are considering?

Please note - Whatever option you choose, the following points apply

- None of the options can affect the rights of secured creditors, for example a bank or building society that has a mortgage or legal charge* over your home. They continue to have the right to take possession of your home if you don't keep up your payments.
- Most debts involving credit and loans are unsecured, for example, credit and store cards and bank overdrafts. This means that if you don't pay the debt, the creditor is not automatically entitled to take something of yours, such as your home. However, in some circumstances they may go to court if you fall behind with your payments. If they then get a court judgment, they may be able to ask the court to secure the debt on your home through a charging order.
- All these options may affect your credit rating and will show up on your credit record.
- Using any of the options to help with your debt may occasionally affect your employment. Under the terms of your employment, you may have to inform your employer about it.

In some circumstances, you may be able to get help from a charity or trust fund to pay off some types of urgent debt. However, this is unlikely to be the answer to the whole problem – charities are unlikely to help with large credit-card and similar debts. To get this kind of help, you will normally have to fill in a detailed application form or find an advice agency to apply for you.

*Having a charge on your home means that if you don't repay the debt, the creditor has a claim on the proceeds if the property is sold.

What is your best option?

The best option for you will depend on your own and your family's circumstances, your future prospects and on your own preferences. What you decide to do will also depend on how much you owe and how much you can repay from your income or your assets, after paying your own and your family's basic living costs.

Be prepared to give all the details of your debts and your finances to whoever you seek advice from, and to your creditors. It is essential you give them the complete picture. When making any offer to your creditors, be realistic about your income and spending. If you need help with making an assessment of your basic household and personal spending when putting your case to your creditors, many debt-advice and other organisations can give free advice and guidance.

The following pages set out the pros and cons of each option for dealing with your debts.

Options explained - Negotiated agreement with creditors

How it works

You contact your creditors and negotiate an agreement to repay all or some of the debts.

Negotiated agreements may involve either or both of these:
(1) payments from your income
(2) payments from lump sums you receive, for example from an inheritance or from relatives.

Your creditors may be prepared, at the start or later, to agree to write off part of what you owe them. If they do so, they should confirm this agreement in writing.

(1) Payments from income: you need to work out how much you can afford to repay, after allowing for your essential household and personal spending such as mortgage or rent, heating, utilities, and housekeeping. You should offer to share any extra income among all your creditors, based on the amounts you owe them. This means that all your creditors are offered their share of what you can afford. You should also ask your creditors to freeze any interest or charges. Your creditors will expect you to give them regular updates of your income and expenditure so that they can see whether you can increase your payments.

(2) Payments from lump sums: you may make payments towards your debts from a lump sum you receive and which your creditors may agree to accept in settlement of what you owe – that is, they agree to write off the balance they are owed. However, if you do have extra income after paying your everyday expenses, they may expect you to make at least some payments from that as well.

If you can't make payments temporarily, for example because of a short-term illness, creditors may agree to accept no payments or token payments of say £1 a month, but only for a limited period.

Pros

- Fair and open way of sharing payments, widely understood by creditors.
- You can ask if you can reduce your payments if your situation gets worse or you face unexpected essential spending.
- You do not need an advice agency to negotiate these payments for you. You can do it yourself or ask an advice agency for help with drawing up your personal budget sheet and make offers to your creditors based on this.
- Creditors may be prepared to write off the balance of what you owe after a period of time if:
    - you have shown that you have made every effort to pay them back as much as you can, and
    - you have maintained regular payments to them.

Cons

- Creditors may refuse to agree with what you propose (but it's always worth asking them to reconsider) although they can't refuse any payments you make to them.
- Creditors may refuse to freeze interest or charges (but it's worth asking them to reconsider).
- If you can only afford small payments, they may not be enough even to cover interest or charges, and your debts will increase.
- Creditors may refuse your proposal unless it's made through an advice agency, which will have independently reviewed your circumstances. You can complain to the Office of Fair Trading if this happens.
- You remain liable to pay the full amount of your debts, although you may be able to persuade your creditors to agree to write off part, or even all of it, depending on your circumstances.
- Creditors could still take action against you, for example by getting a court judgment and then an order that creates a charge on your home, unless they have specifically agreed not to do so in return for the payments made under the informal arrangement.
- You are responsible for administering all the payments yourself and keeping creditors informed of your circumstances.

Options explained - Debt reorganisation or consolidation loan

How it works

You apply to a lender for a loan to reorganise or clear your debts. These loans are often advertised as ‘consolidation loans.’ This means you swap some or all of your creditors for just one creditor. If you own your home, the lender will probably want to take a charge* on it. You should seek independent advice about whether this would be in your best interests. You should shop around for the best deal from high street and internet lenders. If you have a poor credit rating, you may not be able to get loans on the best terms.

A consolidation loan will only help if:

- it is used to pay some or all of your existing debts
- the repayments on the new loan are no more than those you are already making towards your existing debts, and you can afford to make them.

Otherwise, the new loan will simply add to your debt burden and make your problems worse. You will also need to look very carefully at how long the loan will take to repay, what interest you are going to have to pay compared with what you are currently charged; and what charges or penalties there are, for example for late payments.

*Having a charge on your home means that if you don’t repay the debt, the creditor has a claim on the proceeds of sale if the property is sold.

Pros

- You will be making one monthly payment on one loan rather than many payments to different creditors.
- Your monthly payments may be lower, or at least should not be any higher.

Cons

- You may have to pay fees for arranging the loan. Always ask for full written details of all fees.
- If you have a poor credit rating, you may not be able to get a loan, or you may be offered poor terms and conditions, for example a high interest rate.
- If the loan is secured on your house or other asset, then it could be taken from you (repossessed) if you do not keep up the payments.
- Interest rates often change over the loan period, making it difficult to work out what the total cost of the loan will be – check if the interest rate is fixed or variable.

- Consolidation loans are often offered over a longer period of time than your original debts. This means that even if the interest seems reasonable, the length of time you have to repay it can increase the overall cost of the loan significantly, so you end up paying more.
- If you don’t clear all your existing borrowing, the new loan is likely to make your debt problems worse and make it more difficult for you to make all your payments.

Options explained - Debt management plan (DMP)

How it works

You go to a debt management company who will negotiate with your creditors and manage your payments to them. The arrangement the company negotiates for you with your creditors is called a debt management plan (DMP).

Your creditors will want details of your assets, including your home, if you own it. This helps them decide whether the offer you make through the debt management company is reasonable or whether they expect any of your assets to be sold so that they get a larger payment.

The individual or company you choose to manage your plan must be licensed and regulated under consumer Credit law. Some will not charge you a direct fee for their services, but will get it from the creditors, for example out of the payments you to make to them. Others may make an initial charge for preparing, negotiating, and administering your plan and then take the rest from your monthly payments.

In either case, before it asks you to sign up for a DMP, the company should give you details of the fees it wants to charge you, and how you must pay them. A plan can last for 5 years or more, depending on how much you owe and what you can pay each month or quarter. Your debt management company should give you an estimate of how long the plan will last. They should also review the plan every year, and creditors will expect to be given regular updates of your income and spending, so they can see whether you can increase your payments.

Pros

- Fair and open way of sharing payments, widely understood by creditors.
- The debt management company will help you prepare your plan, including agreeing the level of your household and personal spending based on guidelines, which can then be used to put your case to the creditors.
- The debt management company will negotiate with creditors on your behalf, so offers are more likely to be accepted and interest frozen than if you try to do this yourself.
- You may be able to vary your payments if your circumstances change.
- You make single payments each month or quarter to the debt management company, which is responsible for administering all payments to your creditors.
- Any monthly payment you make should be passed on to creditors within 5 working days.
- Some debt management companies do not charge you a fee.
- Creditors may be prepared to write off the balance of what you owe after a period of time if:
    - you have shown that you have made every effort to repay them as much as you can; and
    - you have maintained regular payments to the debt management company.

Cons

- The debt management company can't force creditors to accept your proposal or freeze interest. A plan is not binding on creditors who refuse to take part in it, but they can't refuse to accept any payments made to them.
- You remain liable to pay your debts until they are paid in full.
- Creditors could still take enforcement action against you, for example by getting a county court judgment and then an order, which creates a charge on your home*, even if you are keeping up your payments under the plan, unless they agree not to do so.
- You may not be able to make reduced offers if your circumstances worsen and you can no longer afford your agreed monthly payments.
- A plan can last for several years. However, some creditors may be prepared to freeze interest for only a shorter time. If interest and charges cannot be frozen for the full length of the plan, then the total amount you end up paying under the plan could be more than the original amount of your debts and could extend the lifetime of the plan.
- Having a charge on your home means that if you don't repay the debt, the creditor has a claim on the proceeds if the property is sold.

Options explained – County Court Administration order (CCAO)

How it works

You can ask the court to make an administration order if:

- you owe no more than £5,000 to at least 2 creditors; and
- you have a court judgment entered against you by one of your creditors that you can't pay in full.

Under the order, you must make weekly, monthly, or quarterly payments from your income to the court, which shares them among your creditors, in proportion to the amounts you owe them.

If you don't keep up the payments, the court may make an attachment of earnings order. This is sent to your employer, directing them to deduct amounts from your wages and pay them to the court for sharing among
your creditors.

Pros

- None of the creditors listed on the administration order application can take further action against you without the court's permission.
- The court deals with the creditors and shares out the payments for you.
- Interest and other charges are stopped.
- There is no upfront fee – the court takes 10p of every £1 you repay.
- You can apply to make payments for a limited time, such as 3 years, using a 'composition order'.
- If your circumstances worsen, you can apply to the court to make reduced payments.
- You may be able to continue running any business you have.

Cons

- Creditors can put objections to the court and ask to be left out of the order. The court need not agree to this.
- If you don't keep up your payments, the order can be revoked (withdrawn) and the creditors can pursue you again.
- If the court makes an attachment of earnings order, your employer will find out about your money troubles.

Options explained - Individual Voluntary Arrangement (IVA)

How it works

You go to an insolvency practitioner who will prepare, negotiate, and administer an arrangement for you to voluntarily repay your creditors. This may be done by using your spare income, a lump sum, or other assets that you own.

If you have surplus income after meeting your essential household and personal expenses or have assets that can be used to pay your creditors or have access to a lump sum, for example from a relative, you may then consider entering into an Individual Voluntary Arrangement (IVA). Doing this will protect you from recovery action that your unsecured creditors may take and will usually involve your creditors writing off part of what you owe them. A proposal for an IVA will only be approved where enough creditors vote in favour.

The person you choose to supervise your IVA must be licensed and regulated under insolvency law as an insolvency practitioner.

The insolvency practitioner will charge fees for preparing, negotiating, and administering your IVA. Before the practitioner asks you to sign up to an IVA, they should give you details of the fees they want to charge you and how these must be paid – whether as a lump sum or from the payments you make into the IVA.

Pros

- Creditors who vote against your proposal are still bound by it.
- Creditors whose lending is unsecured can't take any further action.
- Interest is usually frozen as long as you keep up with your payments.
- Your insolvency practitioner will help you prepare your proposal, including agreeing the level of your household and personal spending based on guidelines acceptable to creditors.
- Many insolvency practitioners will allow you to pay their fees for preparing your proposal monthly, as part of the IVA.
- You make only a single payment each month or quarter. Your insolvency practitioner is responsible for administering and distributing your payments.
- The terms of an IVA will usually enable you or your spouse or partner or a relative to make arrangements to buy your share of the net worth of your home or to make extra payments, rather than the home having to be sold. This may be done through a re-mortgage or a loan. (Net worth means its value after any debts secured on it have been paid.)
- On completion of the IVA, the balance of what you owe your creditors is written off.
- You may be able to continue running any business you have.

Cons

- Your IVA is entered on a public register.
- The insolvency practitioner may require payment in advance for preparing your proposal and getting your creditors' agreement.
- If there is some equity (value) in your home after taking account of the mortgage(s) on it, you will probably have to pay for your share, usually in the fifth year of your

IVA, by re-mortgaging the property. If you can't get a re-mortgage, you may have to continue making monthly or quarterly payments from your income, for up to a further 12 months.

- If your circumstances change, and your practitioner can't get creditors to accept amended terms, the IVA is likely to fail. You will then still owe your creditors the full amount of what you owed them at the start, less whatever has been paid to them under your IVA.
- If your IVA fails, you may be made bankrupt.

Options explained - Debt Relief Order (DRO)

How it works

You should first seek debt advice, and if a DRO is considered suitable, you will be referred to an approved intermediary*. They will check that your situation fulfils the criteria and will help you complete the online form and submit it for you to a government official called the official receiver. The official receiver then makes the order, if appropriate.

*An approved intermediary is someone who has been approved by a competent authority chosen by the government.

To be eligible for a DRO:

- your debts must not exceed £50,000.
- your assets must not exceed £2,000 (certain assets do not count, for example clothing, furniture) and a vehicle worth less than £4,000 and
- your surplus income must not exceed £75 a month after paying your essential personal and household spending.
- You must reside in England, Wales, or Northern Ireland.

A DRO will last for 1 year, and once your DRO has ended you are released from your debts (with certain exceptions).

Pros

- Your debts included will be written off at the end of the DRO. There are a few exceptions, as explained below.
- None of the creditors listed in the DRO application can take further action against you without the court's permission.
- It allows you to make a fresh start after 1 year.
- You will keep your assets, and a vehicle as detailed above.
- The approved intermediary ensures that you are given appropriate advice and that you fit the criteria for a DRO.

Cons

- Your DRO is entered on to a public register.
- You can't have a DRO if you have an existing bankruptcy order, an IVA, are subject to bankruptcy restrictions, or you have had a DRO in the last 6 years.
- You won't be able to have a DRO if you own a house, even if it has no equity (value).
- You will remain liable to pay certain debts – in particular:
    - student loans
    - fines
    - debts arising from family proceedings
    - budgeting loans and crisis loans owed to the Social Fund.
- Your employment may be affected.
- Your IVA may be revoked if your surplus income increases to over £75 per month.

- Your DRO could be revoked (withdrawn) if you don’t co-operate with the official receiver during the year your DRO is in force.
- You can’t act as a director of a company or be involved in its management unless the court agrees.
- You will be committing an offence if you get credit of £500 or more without disclosing that you are subject to a DRO.
- You may have a debt relief restrictions order* made against you for 2 to 15 years if you acted irresponsibly, recklessly, or dishonestly.

* An order that will place restrictions similar to those in force while subject to a DRO, which the official receiver may apply for.

Options explained - Bankruptcy

How it works

Bankruptcy is a formal court procedure which you can start or which one or more of your creditors owed £5,000 or more can start. Your assets (with certain exceptions) are sold to help pay your creditors. However, you can usually keep your personal belongings, the contents of your home and your tools of trade (which may include your car) unless they have a high value.

If you have surplus income after meeting your essential household and personal expenses, you will have to make payments out of your income for up to 3 years.

Your assets and income are dealt with by a licensed and regulated insolvency practitioner or by a government official called the official receiver.

Bankruptcy usually lasts for 1 year, and once you have been freed (discharged) from your bankruptcy, you are released from your debts (with certain exceptions).

Pros

- Debts are written off, with certain exceptions explained below.
- Creditors can't take further action unless the debts are secured on your home or other property.
- It allows you to make a fresh start after only a year.
- You may be able to avoid having to sell your home if your spouse, partner or a relative can buy your share of its value after any debts secured on it have been paid.

Cons

- Your bankruptcy is entered on a public register and is advertised.
- If you apply to the court for your own bankruptcy, you will have to pay a fee of £680.00 which can be paid in a lump sum or in instalments.
- You will remain liable to pay certain debts – in particular:
    - student loans
    - fines
    - debts arising from family proceedings; and
    - budgeting loans and crisis loans owed to the Social Fund.

- Any business you have will almost certainly be closed down.
- Your employment may be affected.
- Certain professionals are barred from practicing if they are made bankrupt.
- You can't act as a director of a company or be involved in its management unless the court agrees.
- You will be committing an offence if you get credit of £500 or more without disclosing that you are bankrupt.
- You may have a bankruptcy restrictions order* made against you for 2 to 15 years if you acted irresponsibly, recklessly or dishonestly.

- An order that will place restrictions similar to those in force while a person is bankrupt, which the official receiver may apply for.

Further Information

Loan sharks are illegal money lenders who often charge very high interest rates. If you spot a loan shark, or have borrowed money from one, you can report them in confidence.

Report a loan shark:
Tel: 0300 555 222 Monday to Friday 9am to 5pm.
Email: reportaloanshark@stoploansharks.gov.uk

Where can I get advice

MoneyHelper
Helpline: 0800 138 7777
Website: https://www.moneyhelper.org.uk/en

Advice UK
Telephone 020 7469 5700
Website: www.adviceuk.org.uk

Citizens Advice
Helpline: 0207 833 2181 to find your local CAB
Website: www.citizensadvice.org.uk

Community Legal Services (CLS)
Helpline: 0845 345 4345
Website: www.legalservices.gov.uk

StepChange Debt Charity
Helpline: 0800 138 1111
Website: www.stepchange.org

National Debtline
Helpline: 0808 808 4000
Website: www.nationaldebtline.co.uk

GOV.UK
The new place to find government services and information.

Website: www.GOV.UK

This replaces Directgov and Business link.

Insolvency Service

This guide has been prepared using material available from the Insolvency Service. The Insolvency Service is the government agency responsible for administering the insolvency system in England and Wales, including bankruptcy. The Insolvency Service cannot provide legal or financial advice on individual cases but can give more

information about the options listed here. Its website gives access to a range of publications.

You can also search on the Insolvency Service website for an Insolvency Practitioner to deal with your situation www.bis.gov.uk/insolvency

Insolvency Enquiry Line: 0845 602 9848
Opening hours: Monday to Friday 8am to 5pm (except bank holidays)
Email: Insolvency.Enquiryline@insolvency.gsi.gov.uk

Other organisations also offer insolvency advice and debt counselling but beware of uninvited approaches by post or telephone.

Disclaimer

This publication provides general information only. Every effort has been made to ensure that the information is accurate, but it is not a full and authoritative statement of the law, and you should not rely on it as such. The Insolvency Group Limited cannot accept any responsibility for any errors or omissions as a result of negligence or otherwise.