

Debt Law: Covid-19 Update



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Please note the information in this handout is subject to change and in the case of Covid-19 rules and regulations this can be rapid change. It is only accurate at the date that this course has been given.

Aims and Objectives

Aims

To give delegates an overview of the debt issues that can affect clients and the new rules and options available related to Covid.

Objectives

By the end of the course delegates should be able to understand:

- Whether the debts are priority or non-priority
- The actions that can be taken for non-payment of debts by creditors including court enforcement
- The temporary rules covering debts and Covid-19 including various guidance
- The law around enforcement agents
- The main debt options available

Causes of Debt

Debt problems can stem from multiple sources such as long term low income, sudden loss of work, benefit problems or sanctions, change of domestic situation such as divorce, death or illness amongst others. The furlough scheme is currently due to end at the end of September 2021. This is likely to cause further job loss.

Delays in Seeking Advice

People often put off seeking help about them because they feel there is stigma attached to debt. This can cause extra problems because often someone will not seek advice until the situation is dire.

Financial Conduct Authority (FCA)

Debt advice is regulated by the FCA. Those giving advice on options for debts and financial products must have an FCA licence. There are still many areas around debt that the non-regulated adviser will come across and will need to help clients with. Whilst advice relating to the options for dealing with debt is regulated advice on court procedures, enforcement agents, council tax, utilities and quite a few other areas is not.

You can offer advice on completing court forms, Enforcement Agents and liability but cannot give advice on debt solutions including debt management plans and bankruptcy amongst many others.

Priority Debts

How to spot a priority debt

This is down to the what will happen if the debt is not paid. The most serious things that can happen include:

Loss of home – Through non-payment of mortgage, secured loan or rent

Gas and Electric supply disconnected

Prison – For debts including Council Tax, Court Fine, Child Maintenance, Tax, VAT and TV licence

Loss of hire purchase goods – Through seizure or court action called a return of goods order

Sale of Goods on Pawn

Rent

For clients with rent arrears the best option is to try to halt the process before it reaches court if possible. This could mean helping them to make an offer of repayment so that further action does not take place. For rent arrears the course of action followed by landlords can be:

- Reminder letters, telephone calls and sometimes visit from the landlord or their representatives to ask for repayment
- Notice of Seeking Possession issued giving the client up to 2 months' notice to either reduce the arrears or vacate the property
- Court papers or hearing for repossession for rent arrears or eviction

History – When looking at dealing with rent arrears it helps if you find out from the client whether they have been in court before and how long they have been in rent arrears. The longer they have been in rent arrears the more chance there is of their landlord going to court. If they have been in court before then it is likely they may be under a Judgment regarding their arrears. You also need to try and find out the type of tenancy that they have such as secure, assured shorthold tenancy, introductory tenancy or being accommodated as a homeless person.

Covid-19 Rules – Currently we have the following options during Covid-19 which are:

- *Discretionary Housing Payment* – For rent shortfalls and/or arrears this can be claimed from your local Council if you get either housing benefit or Universal Credit Housing Element. It is a request process and no legal right of appeal on refusal only Judicial Review.
- *Rent Holiday/Reduction* – This is not a legal entitlement though lots of people believe it is. Some private landlords are offering temporarily reduced rents.
- *Rent Notice* – The notice period has changed during covid with the latest rules starting on 1st June being a 4 month notice period for most cases changing again on 1st August to 2 months. If there are serious rent arrears or other urgent issues such as antisocial behaviour it is between 2 to 4 weeks. Serious rent arrears is currently considered to be 4 or more months worth.

Local Authority and Housing Association Landlords – They are generally more patient than private landlords and easier to deal with. Where the landlord is a Registered Social Landlord (e.g. Local Authority or Housing Association) then the rent arrears can also be repaid by deductions from certain benefits including Income Based Job Seeker's Allowance, Income Based Employment and Support Allowance, Universal Credit and Pension Credit Guarantee Credit.

Local Authorities and Housing Associations will often accept much lower repayment offers than private landlords. The lowest offer they will currently accept is current rent + £3.75 per week for those on very low incomes.

Private landlords and Notice to Quit– There are different notices for different reasons but where rent arrears are concerned these must be issued with the correct amount of notice. A section 8 is most often issued by a private landlord for rent debts. This states that at the time of the Notice to Quit either 8 weeks (if rent payable weekly) or 2 months (if rent payable monthly) or more of arrears are owed. If this is still the case when the Notice to Quit expires then when the landlord applies to court for a possession hearing they can ask for possession on ground 8 which is a mandatory ground. This means that the Judge has to grant possession if the notice was served correctly. There are some defences to this available such as disrepair and harassment. If a section 21 notice is issued then this is not about rent arrears.

Social landlords and notice of seeking possession – There are again different notices for this but most importantly the social landlord must show that they have followed the rent arrears pre-action protocol in their application to the court. This gives them extra steps that they must follow and they will show in the notice and court papers that they have done this.

Possession Hearing for Rent Arrears – At this hearing the Judge will decide whether to grant a Possession Order, Suspended Possession Order, Adjourn the Case or Dismiss the Case.

Possession Order – This is an order where the Judge orders the client to give up possession of the property after a certain amount of time normally 14 or 28 days but up to 56 days can be given. The client does not have to leave the property without a further court order called an Eviction order but this can be applied for by the landlord once the date for possession has expired.

Suspended Possession Order – This is where the client has a Possession Order which is suspended as long as payments are made to cover the rent instalment and an amount off the arrears. As long as the client keeps up with the payments then no further action can be taken but if they miss or are late with payments then the company can apply for an Eviction order. Social tenants used to have an indefinite period to repay their rent arrears. However, where the tenant has a fixed term tenancy then the arrears must be cleared by the end of the fixed term.

Adjournment for Stated Time Period – This is where the Judge states that a new hearing will take place after a certain amount of time to allow time for something to happen. This could include: time for the client to seek debt advice, time for the client to pay a lump sum to clear the arrears, time for the client to claim Housing Benefit or even time for the landlord to produce something which the Judge decides is needed.

Adjournment with Liberty to Restore– This is where the Judge states that as long a client does something, normally payments towards the rent arrears, then no further action will take place and a Suspended Possession Order will not be granted. If they do not do what they have been ordered then the landlord can request that the Possession Hearing take place again. This is better for the client because they do not end up with a Suspended Possession Order. Sometimes the Liberty to Restore is without end and sometimes for a certain period.

Dismissal – This is where the Judge dismisses the landlords claim for some reason maybe faulty paperwork such as the Notice of Seeking Possession or no arrears are owed.

Mortgage and Secured Loans – If a client is behind with their mortgage or secured loan then before the creditor company takes court action against them they must follow the Mortgage Pre-Action Protocol which is at Appendix 1. The stages of action for mortgage arrears are as follows:

- Reminder letters and telephone calls
- Threats of court action
- Compliance with the contact necessary through the mortgage pre-action protocol
- Court hearing for possession of property for non payment

If the company has not yet taken court action and your client can afford it then it is often very easy to reach a repayment arrangement with the company. You just need to know what amount of disposable income the client has and then work out what to offer.

Covid-19 Rules – These are:

- *Deferrals* – The FCA scheme for mortgage payment holidays (deferrals) has ended for new applications and all current payment holidays must end by 31st July 2021.
- *Tailored Support* – This is a scheme where the lender will make an offer of support which is specific to the needs of the customer. The guidance is at <https://www.fca.org.uk/consumers/mortgages-coronavirus-consumers> and this will affect the credit rating if taken up. The support offered could include no repayments, reduced repayments, changing the mortgage term.

Repayment offers

Norgan Offer – The case Cheltenham & Gloucester Building Society v Norgan [1996] 1 WLR 343 says that it is reasonable for the Court to accept the arrears being repaid

over the full period of the agreement. If you are in Court then a Norgan offer will be the standard offer for a first time in court for arrears.

5 Years Repayment – If you are not at court then most companies will in practice expect the offer to be over 5 years and they will often accept this.

How to Offer Repayment – A quick telephone call to the company is the best way to deal with them even if the offer is not ready to be made. Just contacting the company can often get further action held and also allow you to get further information about the mortgage if needed.

Mortgage Arrears Fees – The quicker a repayment arrangement is reached with the mortgage company the better for the client. This is because any mortgage arrears fees must cease as soon as an arrangement is in place. These can be very high. The property is always more secure if the client never has to go to court.

Help with Mortgages, Secured Loans, Service Charges and Ground Rent for those on benefits – There is one scheme which is the Loans for Mortgage Interest. This works slightly differently depending which benefit you are on. It is to help with mortgage, secured loan, service charge and ground rent.

For those on income-based jobseeker's allowance, income related employment and support allowance, pension credit guarantee credit and income support:

The only restriction is for those on jobseeker's allowance who only get two years of help.

For those getting it through the Universal credit (UC) housing element – Where someone works during an assessment period they do not get any help. If they work during the waiting period they have to start the waiting period again.

Scheme Rules – For both schemes the rules are nearly the same and are:

- Nine months waiting period – There is a 39 week (9 assessment periods for UC) wait from the date of benefit claim to when you get the first payment.
- Interest Only – The help is only available with the interest part of the mortgage and not the capital. This is paid at 2.61% meaning that it does not cover most people's full instalment. The maximum possible help as a result is £435 per month.
- Limited Help – The help is only available for the first £200,000 of mortgage on all benefits about from Pension Credit where it is only available on the first £100,000.

- Loan not Benefit – The benefit paid is secured on the property by means of the charge and has to be repaid on re-mortgage or death. This differs from Housing Benefit where the amount paid to help with the rent does not have to be repaid. The loan scheme is not automatic and has to be signed up for through Serco who contacts those currently on the scheme. Only around half of current claimants have changed to the loan scheme so those who have not will have their benefit stopped. It changed to a loan on 6th April 2018.

Secured Loan and Time Order – With secured loans you also have the option of applying for a Time Order if it is a Consumer Credit Act loan. A Time Order is an order which can be made by the Court under the Consumer Credit Act 1974 Section 129. Time Orders are normally, but not always, for when someone is experiencing temporary financial difficulties and can be for a limited period. They request that the agreement is changed to either make lower monthly repayments, increase the length of the loan, lower the interest rates, stop charges or other similar changes to the terms of the agreement. A Time Order can be applied for free of charge when Possession of a property is sought or in response to a County Court claim otherwise there is a Court Fee which has to be paid. You need to be able to show good cause to the Judge as to why the Time Order should be granted. If this is done under Legal Aid then a charge may be put on the property to cover the cost of the advice. Time orders are only available on agreements regulated under the Consumer Credit Act 1974.

Possession Hearing for Mortgage and Secured Loans – At this hearing the Judge will decide whether to grant a Possession Order, Suspended Possession Order, Adjourn the Case or Dismiss the Case.

Possession Order – This is where the Judge orders the client to give up possession of the property after a certain amount of time normally 14 or 28 days but up to 56 days can be given. The client does not have to leave the property without a further court order called an Eviction order but this can be applied for by the company once the date for possession has expired.

Suspended Possession Order – This is where the client has a Possession Order which is suspended so long as payments are made to cover the monthly instalment and an amount off the arrears. As long as the client keeps up with the payments then no further action can be taken but if they miss or are late with payments then the company can apply for an Eviction order.

Adjournment – This is where the Judge states that a new hearing will take place after a certain amount of time to allow time for something to happen. This could include: time for the client to seek debt advice, time for the client to pay a lump sum to clear the arrears, time for the client to claim Support with Mortgage Interest or even time

for the mortgage company to produce something which the Judge decides is needed.

Dismissal – This is where the Judge dismisses the mortgage companies claim for some reason maybe faulty paperwork or no arrears are owed.

Rent, Mortgage and Secured Loan Hearings – Any client with a court date for a possession hearing will need specialist housing advice. Most local courts have a County Court Duty Scheme and these provide solicitors free of charge for representation. If you client qualifies for Legal Aid they may also be able to get a Housing solicitor free of charge through this.

Eviction – Where a client has an eviction time and date then they may still have the opportunity to stop this going ahead and specialist advice should be sought.

Leaving the Property due to repossession or eviction – Any client who will need to be rehoused by the Council should seek specialist housing advice before considering leaving their property. There are circumstances where the council can refuse to rehouse someone if they are found to have made themselves intentionally homeless. They should also make the council aware of their situation as soon as possible because the council has a duty under the Homeless Reduction Act to provide advice to provide free information and advice to any person to help them to try and prevent homelessness and inform them of their rights and the help available locally.

Council Tax

There are regular procedures that the Council follows with regard to Council Tax. These are the same for all of the Councils you are going to deal with. They are:

- Issue a bill with a list of instalments amounts for the client to pay
- Once the first instalment is missed issue a letter giving the client 14 days to make up the missed instalment
- If this does not take place then once the 14 days has run out they will issue a 7 day letter giving the client 7 days to make up the missing instalment
- If this does not happen then after the 7 days are up they issue a bill for the full amount and inform the client they have lost their right to pay by instalment and they must pay the full amount immediately
- If the client does not pay then shortly after this they apply for and issue a Liability Order hearing notice. This informs the client of the time and date that their Liability Order hearing will take place at their local Magistrates' court.

- This hearing is only to determine whether they are liable so unless they are going to dispute liability they do not have to attend if they do not want to
- After the Liability Order has been granted the Council will normally wait 7 days and then use one of their selection of enforcement options.

Enforcement Options – These are:

- Enforcement Agents – They are the most popular option for Councils to use and for council tax debts the enforcement agents cannot force entry to the property to collect the debt. They can take goods from outside the home such as vehicles. Further information is in the section on enforcement agents on page 25.
- Attachment of Earnings Order – They are where the Council deducts a certain percentage of the client's gross wages direct from their pay packet.
- Attachment of Benefits Order – They are where the Council deducts £3.70 per week from the benefit of the client although if they are on Universal Credit this is 5% of the standard allowance which ranges from £12.59 to £24.95 per month.
- Third Party Debt Order – This is where an application is made to freeze the bank account of the client.
- Attachment of Councillor's Allowances – This is only available where the client is a Councillor and is the same as Attachment of Earnings Order.
- Charging Order – This is where they secure the debt on the house by means of a charge.
- Bankruptcy – This is only available when the debt is over £5,000.
- Prison – This should only be used where clients are guilty of culpable neglect or wilful refusal. Unfortunately it is not the case that this is understood properly and at the hearing the client can end up at risk of prison for not being able to afford to pay. Specialist advice should be sought by anyone who has a hearing at Magistrates' court for anything other than a liability order.

Council Tax Liability – Council tax has a fixed list of those who can be liable which is called the hierarchy of liability and is easy to find on the internet. In most cases if they are the owner or the tenant or their partner then they will be correctly liable. Where someone is not the owner or tenant of a property then this needs to be

checked as there may be an alternative liable person. If the client is not liable then if there is a liability order hearing they must attend with evidence of who the liable person should be. If there is not a liability order hearing or it has already happened then they should notify the council in writing.

Council Tax and Covid-19 Schemes – All schemes for this have ended.

Guidance to local councils on good practice in the collection of Council Tax arrears – This is through the <https://www.gov.uk/government/publications/council-tax> and cover things the Council should take into account.

Council Tax Protocol – This was developed by Citizens Advice and is at <https://www.citizensadvice.org.uk/about-us/our-campaigns/all-our-current-campaigns/council-tax-protocol/> and 63 Councils have currently signed up. It covers a much higher standard than the good practice.

Gas and Electric

The process that happens for arrears depends on the company but normally includes letters, calls, and/or texts about the missed payments. If no agreement arrangement is come to and maintained then after the sending of disconnection warning notices the next step is for them to apply to the Magistrates Court for a Warrant to enter the property and disconnect the meter for non-payment. At this point they will try to instead install a prepayment meter but this is not always possible. Disconnection should be avoided as reconnection is normally very expensive and can often require the full debt, costs and a deposit to be paid before it happens.

Covid-19 Rules – An agreement was reach with the Government and Energy Suppliers (<https://www.gov.uk/government/news/government-agrees-measures-with-energy-industry-to-support-vulnerable-people-through-covid-19>) The main points are that energy suppliers should:

- consider reviewing bill payment plans, including debt repayment plans
- consider offering payment breaks or reductions in how much is paid
- consider giving greater time to pay
- possibly offer access to hardship funds
- consider extending discretionary (emergency) credit or sending out a pre-loaded top up card
- not disconnect credit meters (pre-payment meters) during the outbreak

Priority Services Register – All vulnerable persons should be added to this with their gas, electric and water company to make sure that they are aware that extra support may be needed at their property. This is done with a call or online.

Arrears repayment offers – If there are arrears the utility company will normally try to come to an arrangement to repay the debt over a 1 year period. If the client is vulnerable then the utility company needs to be told. They will normally have a vulnerable person unit who will deal with the debts in a much more sympathetic manner.

Normal Disconnection Rules – [*these are suspended during Covid*] Gas and Electricity suppliers must not disconnect premises in winter where they have reason to believe there is either an occupant of pensionable age living alone or living with others who are under 18. They must also “take all reasonable steps” not to disconnect households including people of pensionable age, disabled or chronically sick.

Deductions from benefits – Gas and Electricity can both be paid for by deductions from benefits. This is where the current usage is deducted from benefits along with £3.70 per week towards the arrears or 5% of the standard allowance for UC.

Switching – If the debt owed has not exceeded £200 they can switch suppliers which stops it being a priority debt. The debt should not move with them. If the debt owed is under £500 and they have a prepayment meter they can switch to a cheaper supplier but the debt moves with them.

Grants – These are available from some gas and electric suppliers and other places as well. The website www.turn2us.org.uk has a grant checker. CHARIS Grants at www.charisgrants.com cover British Gas, EDF and Npower amongst other suppliers. There are also grants which can be applied from which are workplace or industry specific such as B&CE’s Charitable Trust for current and previous building and construction workers at <https://bandce.co.uk/corporate-responsibility/the-charitable-trust/for-times-of-need/> and The Smallwood Trust at www.smallwoodtrust.org.uk/grants who help some women on low incomes.

Hire Purchase, Personal Contract Purchase (PCP) or hire agreement

These are Consumer Credit Act agreements where the debt is secured on an asset. This is normally a car but can be household goods including sofas, fridges and washing machines. If less than a third of the total cost of the agreement has been paid by the client then the creditor can take the goods back without a court order. If more than a third of the agreement has been paid then they must apply to Court for a Return of Goods Order covered on page 18.

- Covid-19 Deferral – No new payment deferrals can be applied for. All existing payment freezes must end by 31st July 2021 and only tailored support is available. Repossession action should only happen as a last resort.

Pawnbroker

These are short term loans which are secured against goods which have been put into pawn as collateral. When it is paid back the goods are returned. If the loan is not paid back then the goods are sold which wipes out the debt. Some shops closed temporarily during covid-19 but most have re-opened and if there is a problem the National Pawnbrokers Association can be contacted at www.thenpa.com

- **Covid-19 deferral** – No new payment freezes can be applied for. All existing payment freezes must end by 31st July 2021 and only tailored support is now offered. Repossession action should only happen as a last resort.

Non-Priority Debts

These are the debts that will not cause extremely serious outcomes. These are the others such as Credit Cards, unsecured loans, catalogues, overdrafts and water. Water is not a Priority debt because it cannot be cut off if it is not paid. Debts which the client has stood guarantor on will normally be Non-Priority unless they have put an asset as surety.

Covid-19 Options for Non-Priority Debts

The guidance is at <https://www.fca.org.uk/consumers/coronavirus-information-personal-loans-credit-cards-overdrafts> and covers:

- personal loans
- credit cards, store cards and catalogue credit
- motor finance, including hire-purchase and leasing agreements
- rent-to-own, buy now pay later and pawnbroking agreements
- high-cost short-term credit (payday loans)
- overdrafts

For all of the above apart from high-cost short-term credit the payment deferral scheme has already ended for new applicants and all deferrals must end by 31st July 2021. For high-cost short-term credit it ended on 31st March 2021.

The new scheme is now to offer tailored support which has been available from 1st April 2021. This will affect the credit rating if the full instalment is not paid as due. Tailored support depends on the lender but the guidance suggests that the “lender should:

- work with you to provide support before you miss payments
- be flexible and use a range of short and longer-term options to support you – this could include a period of no payments or reduced payments
- give you time to repay what you owe and not pressurise you into repaying your debt within an unreasonably short period of time
- direct you to debt help or money guidance, and allow you to access debt advice before deciding on the support you take

- where appropriate, put in place a sustainable repayment plan that is affordable and considers your wider financial situation (including other debts and essential living expenses)
- prevent your debts from escalating (once a repayment plan is in place) by suspending, reducing, waiving or cancelling any interest, fees or charges to make that happen”

Stage of Action – What is happening with the debt can cover a whole range. Some examples are:

- Debt defaults
- Telephone calls
- Reminder letters
- Case passed to debt collection agency which can be more than one if the agency cannot manage to sort successfully complete the debt collection
- Debt assigned to a new company which has purchased the rights to it
- Before court the creditor must follow the debt pre-action protocol
- County Court Judgment (either forthwith or instalment order)
- Enforcement of the county court judgment
- Statutory demand served for bankruptcy

Debt Emergencies

You will also have debts which are emergencies but for non-priority debts. Some of these are:

Loan Sharks – In many areas there are loan sharks operating. A loan shark is a money lender without a Consumer Credit Licence to lend. When someone says that a debt is for a friend a quick way to find out if it is a loan shark is to ask what the consequences would be if they did not pay the money back. Loan Sharks can use violence so never advise the client to stop paying until a specialist has talked to them. The Loan Shark Team which is part of the Police is contactable at 0300 555 2222. Remember your client is at risk of harm so never advise them to stop paying just get the Loan Shark Team to deal with this. More information is at www.gov.uk/report-loan-shark.

Difference between loan shark and payday lenders – It is quite common for pay day lenders to be referred to as loan sharks. A check on the internet can make sure if

someone has an FCA licence or not. The website <https://register.fca.org.uk/> has a checker.

Statutory Demand – A Statutory Demand is a demand issued by the Court on behalf of a creditor. If this is not responded to it in 18 days from the date of service then after 21 days the client can be made Bankrupt. Any creditor can use them whether there is a Consumer Credit Act agreement or not. The problem is that the client will often not read the paperwork and not realise how serious this is.

The debt owed must be at least £5,000 and there are two courses of action which can be taken to stop a Statutory Demand which are:

- apply to the Court for it to be set aside
- reduce the debt to under £5,000 before the deadline or pay the debt off in full

To get the Statutory Demand set aside they must show reason why this should happen. Among the reasons that can be used to set aside a Statutory Demand are:

- The amount demanded is incorrect
- The amount is not owed
- The debt is already being paid back and therefore not all due
- A counterclaim could be issued
- It is a secured debt
- Less than £5,000 is owed
- The debt is statute barred

The www.gov.uk website gives information on the procedures to challenge a statutory demand at www.gov.uk/statutory-demands/challenge-a-statutory-demand including links to the Insolvency Application notice court form.

It costs nothing for a creditor to issue a Statutory Demand. It costs them £280 for the court fee for the bankruptcy hearing and £990 for the bankruptcy deposit which covers the costs to the Official Receiver for managing a bankruptcy.

One version of the statutory demand application form is at Appendix 2. There are several very similar ones depending on the type of debt.

Court Money Claim –The deadline to respond is 14 days plus 2 days for postage unless it is from a bulk/business or money claim centre when there are 5 days for postage. The response is with admission or full or part, defence or a request for 14

extra days to complete the defence. If making a counter claim as part of the defence then there will be a court fee payable otherwise this is free.

Even if the client is out of time for making an admission they should do it anyway if they do not have a Judgment. This can be sent by fax to the address for response. The reason for this is that if the client makes an admission before the creditor applies to the court for Judgment then they are considered to be in time.

Debt Pre-Action Protocol letter of claim – This is the stage before a court money claim and as part of this protocol a letter of claim is issued with a reply form. The deadline for the reply to this is 30 days.

County Court Judgment (CCJ)

This is applied for by a creditor on an N1 claim form. It asks for money to be paid back. The client can either defend or admit all or part of the claim. If they are successful they will not owe the debt. If they are not or do not defend it then they can end up with a County Court Judgment for either forthwith (payable immediately) or an Instalment Order.

Debt Pre-Action Protocol

Before a claim for money can be issued the debt pre-action protocol must be followed. A factsheet on this can be found at <https://www.nationaldebtline.org/EW/factsheets/Pages/pre-action-protocol-for-debt/county-court-protocol.aspx> and the full details of the protocol are at <https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/protocols/pre-action-protocol-for-debt-claims.pdf>.

As part of this protocol a letter of claim must be issued with a reply form. The first part of this is at Appendix 3 and it also has a financial statement to complete and return with it. The deadline for the reply to this is 30 days. It has multiple possible replies and the creditor must take account of the response before taking court action. If documents or information are requested by the client then the creditor must respond to that request within 30 days. If the client does not respond in the deadline then the creditor can make a court claim as soon as the 30 days deadline passes.

Court Money Claim Procedure

Admission and Offer of Repayment – This is on form N9A and is where the client makes an admission and offer of repayment. It is sent back to the creditor. The creditor then makes a decision on whether they will accept the offer or not and completes a form and sends it with the client's forms to the court.

- Creditor Accepts Offer – If the creditor has accepted the offer then the court will normally make a Judgment for this amount and send a copy to the client and the creditor.

- Creditor Refuses Offer – If the creditor refuses the offer and asks for an alternative amount then the court will make the decision on how much the County Court Judgment instalment order should be for or whether it should be for a forthwith order. The court will then send a copy of the judgment it has made to the client and the creditor.
- Redetermination of the Order – If the order has been decided without a hearing then the creditor and the client both have the right to ask for a redetermination of the amount of the order within 14 days of service if they are unhappy. This is free. You can ask for this to take place at a hearing so that the case can be put to a Judge in person. This is under CPR 14.13.

Defence and Counterclaim of Debt – On form N9B the client can defend against a debt for a number of reasons which might include it has already been paid, it is not the client's debt, it is statute barred or it is irredeemably unenforceable. The forms are returned directly to the court. The defence form has room for a small defence on it but if it is complicated a witness statement should be completed and sent with the form. This would be paginated with evidence attached in the usual manner of a defence. If a counterclaim needs to be submitted there will be a court fee for this which can be found on form EX50a.

Default Judgment – If the client fails to respond to a claim then the creditor can ask for a default Judgment made. You cannot ask for a redetermination of a default Judgment and must ask for a variation.

Enforcement – As soon as a CCJ has been granted a Charging Order can be applied for. If the CCJ is defaulted then the creditor can take any of the following enforcement actions: Attachment of Earnings Order, Third Party Debt Order or Warrant of Execution for Enforcement Agents.

Default on Judgment Terms – If a forthwith County Court Judgment is granted then this means that immediately it is granted the client is considered to have defaulted on the terms. They would only default on the terms of the Instalment Order if they did not meet or were late with the payments due.

Variation of the Order – This can be made at any time by the client or creditor if there has been a change in circumstances and costs £50. If your client is on a low income then they may qualify for full or partial fee remission leaflet EX160. This needs to be made on form N245 and asks for a change in the payment for a County Court Judgment. The court sends a copy of your client's application to the creditor and if they do not respond in 14 days then the variation will be made. If the creditor objects the court officer will decide the amount. Your client and the creditor then have 14 days to object to the amount. If either objects then this will be decided at a hearing.

Return of Goods Order

Where goods have been taken out on hire purchase the creditor can take back the goods once the client has defaulted without the agreement of the client if less than

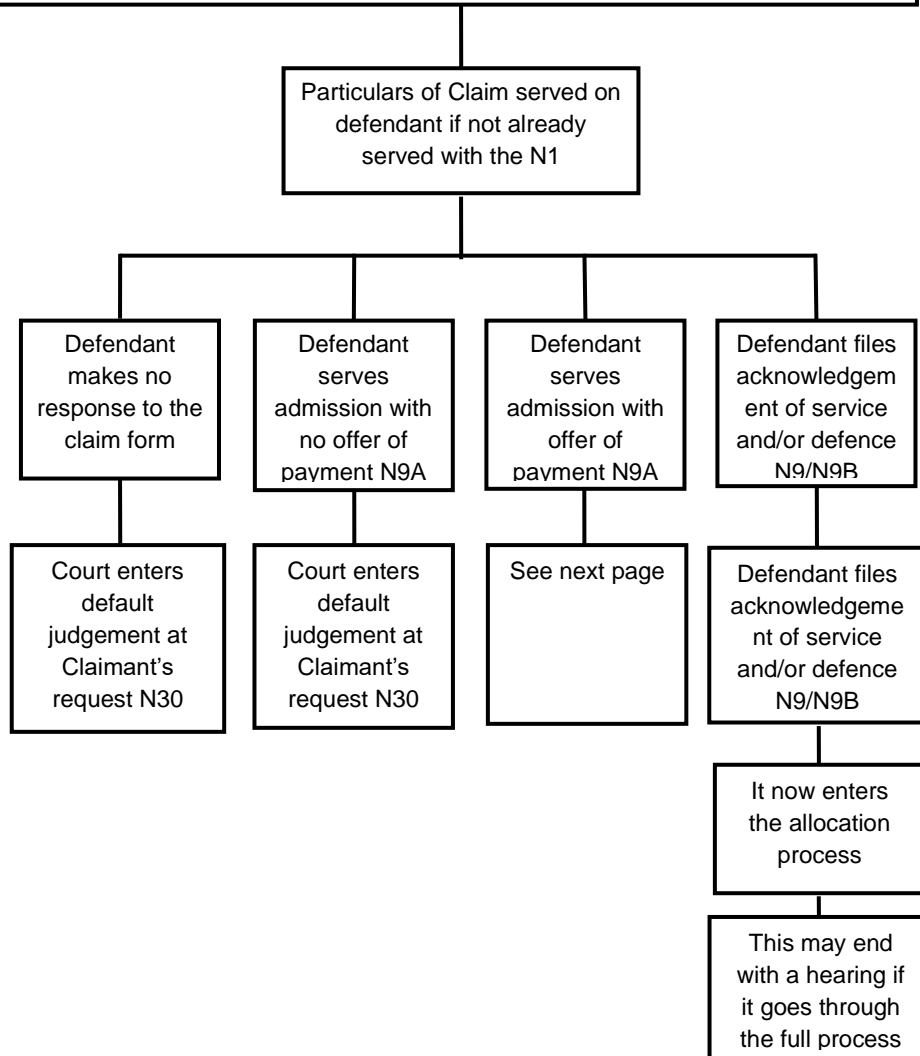
1/3 of the amount of the credit has been paid. If 1/3 or more has been paid then they need to apply for a return of goods order to get their goods back.

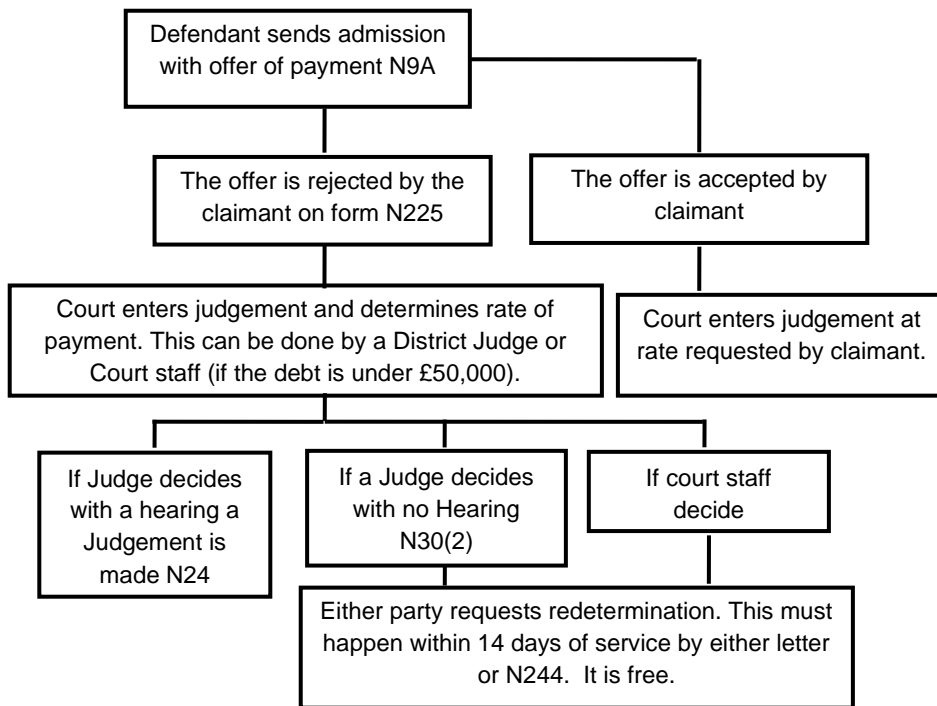
A court form called an application for a return order is sent to the client. This comes with the N9C form to complete and return. The N9C forms asks if the defendant still has the goods, whether they admit liability for the debt and for an offer of repayment. It then has an income and expenditure to be filled in. The form must be returned to the court in 14 days from the date of service. A hearing date will be sent with the form for the defendant's local county court but if the claimant accepts the repayment offer the hearing will be cancelled.

The hearing will go ahead if the claimant does not accept the offer of repayment and the Judge will make the final decision on the claim.

Overview of the Claim Form N1 process

Claim Form N1 is issued by the Court and served on defendant. The defendant has:
14 days to respond to this claim with admission or defence and if defending can ask for an extra 14 days for this + 5 days for posting if business centre and 2 days if





County Court Judgment enforcement

Once the claimant has a county court judgment they can take enforcement action for the debt. As soon as the judgment is made they can apply for:

Information order – This is an order for a defendant to attend a hearing at their local County Court. They will be required to provide certain information on form EX140 which can be found at www.justice.gov.uk/forms. They will also provide the defendant with a list of documents that they require them to bring to the hearing. At the hearing the defendant will be required to answer under oath the questions on form EX140 and any additional questions required by the creditor. There is the risk of prison if they do not attend the hearing or provide the documentation required. The reason for this hearing is for the creditor to discover information which will allow them to apply for further enforcement of the County Court Judgment. It is unlikely they would apply for an Information Order if they already had the information needed to take further enforcement action against the defendant.

Charging order – This is an order to secure the amount owed by a defendant to a creditor against an asset. This is usually a charge or security against property. When a charging order is obtained an entry is made on the Land Register to show it.

- There is not a Court hearing before an Interim Charging Order is awarded
- A Charging Order is not final until there has been a Court hearing and it has been made into a Final Charging Order. The Final Charging Order Hearing should be at the nearest Court to your defendant's address. The Judge at the Hearing will decide whether to grant the Final Charging Order.

- If your defendant has a Charging Order hearing ask them to ask for conditions to be attached to Order, for example that if monthly payments are maintained then the creditor should not be allowed to enforce their Final Charging Order. If the payment conditions are then defaulted on, the creditor can enforce the charging order by applying for an Order for Sale if the debt is £1,000 or higher.

Order for Sale – This can be applied for by the creditor once a Charging Order has been defaulted on. It is where the creditor applies to the Judge for the property to be sold and the proceeds to be used to clear the debt. There will be a Hearing and the decision on whether an Order for Sale is granted will be made by a Judge.

Attachment of Earnings Order – This is where the creditor requests that the defendant's employer and some occupational pension providers deduct regular amounts directly from their wages, pension or Statutory Sick Pay through the Court. The debt must be more than £50 for an Attachment of Earnings Order to be applied for by a creditor.

Third Party Debt Order – This is where a creditor requests the Court freeze a cash asset such as a bank or building society account so that the defendant cannot take money out of it until there has been a Hearing. The creditor will then request at the Hearing that the cash in the asset is used to pay off their debt. It is very less unusual than it used to be for a creditor to request a Third Party Debt Order and is covered in CPR part 72.

Warrant of Execution for Enforcement Agents – This is where the creditor requests the Court give permission for Enforcement Agents to be sent to collect the amount outstanding. There is not a hearing for this. The first the defendant will often know about this is when Enforcement Agents contact them or they may receive a letter from the creditor informing them about it. If Enforcement Agents are collecting a debt then the defendant can apply back to the Court to stay the Warrant of Execution and Vary the County Court Judgment.

Debt Defences for Court Forms

The main defences to a debt apart from I have paid this or I am not the person who owes it are:

Statute Barred – This was recently changed by Doyle v PRA Group (UK) Ltd [2019]. It was previously that most creditors have 6 years from the last admission of liability and is now 6 years from the last admission of liability or date of default (whichever is more recent) to take court action against a client. There are a few exceptions to this such as mortgage capital which has a 12 year limitation period and certain bills which run from the date the instalment became due. An admission of liability would

be made by either a payment (from the client) or written admission by the client or by someone on their behalf. Once it is more than six years since the most recent of either the last admission of liability or default date then the debt would be Statute Barred under the Limitation Act. If a Liability Order or County Court Judgment has been granted in regard to the debt before the end of the Limitation period then the debt cannot be Statute Barred. Statute Barred under the Limitation Act means that the creditor cannot recover the debt through Court action. This does not stop the creditor from contacting the debtor to ask for debt to be repaid.

Once a debt can be considered statute barred this cannot be changed by subsequent admission of liability or payment. However, any money paid could not be recovered because the debt is still owed even though the creditor cannot take Court action to recover it.

Debt is Irredeemably Unenforceable – This is only for debts under the Consumer Credit Act which covers the majority of loans, credit cards, bank accounts and store cards. If the debt was taken out before 6th April 2007 because if it was taken before this date then there is a chance that the agreement may not be enforceable. The agreement might not have been signed by the client or it might not have the correct amount of credit on it. If it turns out that the agreement was started before this date then some questions about how they took the agreement out (at bank, over telephone, got sent credit card in post, etc.) and whether they remember signing for it on an agreement. All agreements from this date forwards are enforceable with leave of the Court. This makes it very difficult to challenge them successfully.

Lacks capacity to enter agreement – When taking out an agreement the client must have had the mental capacity at the time to understand the agreement taken out. If they did not then it must have been reasonable for the creditor to realise that they did not. This is a difficult one because although it is often easy to prove this the lack of capacity you then have to prove that the creditor should have known that they did not have capacity which is much harder.

Liability – Check the whether the client is liable for the debts they have told you that they owe. There are some debts which have to be paid even if the client is not liable, like rent, but most people are surprised when they find out that they would not normally have to pay a debt if it is not in their name.

Identity Fraud – When the debt is in the client's name but they did not take it out then it could be identity fraud. They should put this on the defence form and also contact the creditor directly and inform them of this. They should also inform the Police through Action Fraud and get a crime reference. A credit report should then also be sought because if there is one debt through identity fraud there is often others.

Undue Influence – With a Consumer Credit Act agreement there may be a defence if someone influenced them to take out the debt. This may be a husband forcing his wife or a young lady taking advantage of an elderly gentleman. If this is the case then there may be a legal challenge possible.

Payment Protection Insurance (PPI) – The deadline for PPI reclaim was 29th August 2019. This means it will only be a defence if the client has already made the reclaim and it is being processed.

Mis-Selling – If the debt was unaffordable at the time it was taken out then this is a defence if the client made their finances clear to the creditor. Debt Camel at www.debtcamel.co.uk has information and sample letters for this.

Standard Financial Statement

Court forms for debts often need a financial statement completed as part of them. This includes responses to a court claim for money where repayment is being offered and a request to vary a court judgment to affordable payments. An accurate financial statement is very important to show the court the offer of repayment is affordable and the client does not have a lot of spare money they are not using.

Websites for financial statements – Using a website to make a financial statement is one of the easiest ways as it has all the prompts about things to be added and also completes the adding. It can be set up in the client's name and then they can access this separately.

Free and FCA licensed online debt advice services – These include the access to a standard financial statement and are:

- www.businessdebtline.org – for those self-employed or running their own company
- www.nationaldebtline.org – for everyone else

If your client needs debt advice then any local debt advice service will help them to make a Standard Financial Statement which is also the official licensed version. You can make a start for London by contacting Debt Free London at www.debtfree.london

Enforcement Agents AKA Bailiffs

Covid-19 Rules – The hold on Enforcement Agent action has ended. Enforcement Agents now follow the guidance at <https://www.gov.uk/government/publications/working-safely-during-covid-19-enforcement-agents-bailiffs/working-safely-during-covid-19-enforcement-agents-bailiffs> to reduce the risk of transmission of Covid-19 through their work practices.

Main Debts – The main debts Enforcement Agent collect which bring them into advice agencies are:

- County Court Judgments
- Parking Fines
- Council Tax
- Magistrates' Court Fines

County Court Judgments – There is no power to force entry for this type of judgment. It costs the creditor £110 to use a County Court Enforcement Agent and £66 to use a High Court Enforcement Agent. It can only be applied for where the claimant has a County Court Judgment with an instalment order that has not been complied with or a forthwith Judgment. Most judgments go through the County Court but some debts, which are not Consumer Credit Act debts, can be dealt with through the High Court which is cheaper. An application can be made to Court to stay the execution and reinstate or vary the County Court Judgment to an affordable instalment order.

Council and Transport for London Parking Tickets – There is no power to force entry for this type of judgment. When a client has these tickets the escalation from ticket to County Court Judgment to Enforcement Agents is very quick and can often take less than 3 months. There is no process in place to apply back to court for the County Court Judgment to be stayed unless there is an irregularity with the parking ticket or paperwork. If there is an irregularity you may be able to challenge this and there is a leaflet from National Debtline covering this.

Council Tax – There is no power to force entry for this type of judgment. The power for this is through the Magistrates' Court and there is no process to apply back to court to stop the Enforcement Agent action.

Magistrates' Court Fine – This is where someone has committed a criminal act and been fined. They include: no TV licence, breach of the peace, drunk and disorderly and fare jumping. This is under criminal law. The Enforcement Agent in these cases has an extra power under the Domestic Violence Act allowing them to force entry to a property if they have reason to believe goods of value are hidden inside. This is

very rarely used although often threatened. It requires an extra application to the court to use this power.

Enforcement Agents – Rights of Entry for debts

The reason an Enforcement Agent wants to gain entry to a property is to list the goods on a “Controlled Goods Agreement”. This is normally used as part of a repayment arrangement and if the repayments are not made as agreed then the Enforcement Agents can take the goods.

Client will often have heard that the Enforcement Agent can break in. This is not quite correct as most of the time they can only make peaceable entry. Some of the exceptions for debt are:

- for a Magistrates’ Court fine, Income tax or Stamp Duty debts
- If they already have a Controlled Goods Agreement

The guidance states that forced entry should only be the last resort. This information does not cover Warrant of Evictions.

What this means in practice is that an Enforcement Agent will try to gain entry by being let in by an adult, through an open door or by opening a door which is unlocked and going in. They will assume that they have permission to do this unless told otherwise. If your client does not want an Enforcement Agent to gain entry to their property then they need to inform them that they do not give Enforcement Agents permission to enter. If the client leaves goods outside of their property then the Enforcement Agents can levy against these. They must gain entry to their property to levy on goods inside.

Once a debt has been secured by means of a Controlled Goods Agreement the debtor (one who owes the debt) must not dispose of the goods without the permission of the Enforcement Agent’s company. This is a criminal offence.

Enforcement Agents – Cars

It is easiest for an Enforcement Agent to levy against a car or other vehicle because they do not need to gain entry to a property to do this. They will also often clamp the vehicle and refuse to release it until the client has paid the full debt. Remember if it is on the road then the Enforcement Agents are likely to be able to find it because they use ANPR.

The Enforcement Agent may clamp the debtor’s car on their drive or where they find it on the public highway. Public highway is considered to be anywhere a member of the public can access. They should not clamp it if it is a vehicle essential for trade or education and worth not more than £1,350 (but the debtor would have to tell them

this). Enforcement Agents should not take control of vehicles displaying a blue badge. The vehicles have to be left clamped for a minimum of two hours, in order to allow the debtor time to get payment so the clamp will be released.

If the vehicle is on hire purchase then this can be still clamped. This is because there is not yet case law on this so the practice in some firms that they clamp the car, ring the hire purchase company and offer to sell it. Their aim is to keep the profit after the sale. A Motability should not be clamped because it is not owned by the person but by the company. If this happened the Motability company should be contacted immediately.

Enforcement Agents and Fees

- **Fees where Debt Returned to Creditor** – When they return the debt to the creditor as they have been unable to collect it the Enforcement Agents can no longer ask the debtor to pay the enforcement fees.
- **Fees (non High Court)** – If an Enforcement Agent is collecting a debt from they can charge these fees:
 - Administration/ Compliance stage = £75
 - Enforcement stage = £235 + 7.5% of any debt over £1,500
 - Sale or disposal stage = £110 + 7.5% of any debt over £1,500 + Reasonable costs
- **Fees (High Court)** – If an Enforcement Agent is collecting a debt from they can charge these fees:
 - Administration/ Compliance stage = £75
 - Enforcement stage 1 = £190 + 7.5% of any debt over £1,500
 - Enforcement stage 2 = £495
 - Sale or disposal stage = £525 + 7.5% of any debt over £1,500 + Reasonable costs

Enforcement Agent National Standards

National Standards for Enforcement Agents – Enforcement Agents have to adhere to the rules in the National Standards for Enforcement Agents which is available at

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attach>

ment_data/file/911280/covid-enforcement-guidance.pdf. Some of the important points are:

- Time to Collect – They have one year to chase for the debt. It runs from the date they start collecting or the date the debtor breaks any arrangement they have made with them.
- Hours to Collect – They should only carry out enforcement action any day of the week between the hours of 6.00am and 9.00pm. If the debtor is operating a business they should only carry out enforcement action during trading hours, unless they have been given permission by a court to act out of hours.

They should be respectful of the debtor's religion and culture and should carefully consider how appropriate it is for them to perform their duties during any major religious or cultural festival.

- Repayment Arrangement – The debtor should not be pressed to make an unreasonable repayment arrangement but they do not have to make a repayment arrangement at all.
- Vulnerability – Enforcement Agents should not collect from properties where people are classed as vulnerable without taking precautions which are not specified. Debtors may be deemed to be vulnerable if they are elderly, disabled, seriously ill, bereaved, have difficulty understanding English, pregnant, unemployed or a single parent with children under 12. If they turn up to the debtor's property and there is only a child under the age of 16 present, then they are not allowed to enter. Where vulnerability is discovered, the Enforcement Agent should allow time for the person to get advice before charging fees.
- Behaviour and Conduct of Enforcement Agents – They must act within the law at all times. They are not allowed to act in a threatening manner when visiting the debtor. This might include making gestures towards them or taking action that could cause harm or risk of harm to them, their family or friends. If an Enforcement Agent comes to their door they have to show you their ID and also a letter that states they are collecting a debt from the debtor on behalf of the people they owe money to. They must not be deceitful by misrepresenting their powers and capabilities.
- Notices – Enforcement agents must provide notices at each stage of the process of taking control of goods. All notices must be clear, complete and unambiguous. They must not use unhelpful legal or technical language.

Complaints and Ombudsman

If court action has not taken place then complaints can be a way to resolve debt problems with creditors which are not around with non-payment. The Financial Ombudsman Service deals with most credit related complaints and sets the rules for creditors to follow in responding to them. These are at <http://www.financial-ombudsman.org.uk/publications/consumer-leaflet.htm>

Other Ombudsman are available for different types of debt and can all be found at Communications, energy, or property – www.ombudsman-services.org

Local Government Ombudsman – www.lgo.org.uk

Housing Ombudsman – www.housing-ombudsman.org.uk

Overview of Debt Options

Debt options can only be given by a regulated adviser under an FCA licence. This means whilst someone can be told that options exist a particular option cannot be suggested to them without licence. A summary of some of the most common options is below and the National Debtline factsheet Ways to Clear your Debt contains detailed information on them. This is available at <https://www.nationaldebtline.org/EW/factsheets/Pages/ways-to-clear-your-debt/debt-advice.aspx>

Take No Action – This is for certain clients who can ignore certain debts without worry of the actions creditors could take to enforce them. For example with statute barred or nearly statute barred debts, or someone who would not be affected by a county court judgment or being made bankrupt.

Write Offs – This is where a client has no spare income and a serious health or other problem such that the creditor if given details of this might write their debt off like terminal illness, deficit budget or unlikelihood of the client getting back into work.

Payment Holiday/Moratorium – This is a short term option where a client cannot pay anything for a specific period and then will be able to start making payments. This was available before Covid-19 but is much more common now.

Breathing Space – This went live on 4th May 2021. It can only be accessed by a regulated or Council debt adviser. It has two components Standard Breathing Space and Mental Health Crisis Breathing Space. For the Standard Breathing Space you can get a hold of up to 60 days. For Mental Health Crisis Breathing Space you can get an unlimited hold + 30 days at the end of it whilst under going mental health crisis treatment if the treatment is confirmed on a form by an Approved Mental Health Practitioner. The hold covers most debts but has exceptions. It can also hold some court, possession and enforcement action.

Negotiated Agreement with Creditors – This is either for a Token Amount or higher. It is where the spare money is pro-rata fairly between the non-priority creditors. If the client has some disposable income then they could do this by way of a Debt Management Plan.

Debt Management Plan (DMP) – If the client at least £5 per creditor per month spare income and at least two different creditors then this is an option. Two companies offer the management of DMPs free of charge which are PayPlan and StepChange and other companies offer it but charge for it.

Debt Reorganisation/Consolidation Loan – This could be an option for those who have the disposable income and credit rating to be able to get a loan.

Voluntary Charge – This is where the client agrees to put a charge on their property to stop further action taking place to enforce the debt. A Voluntary Charge needs to be done properly otherwise it could lead to the creditor being able to apply for an Order for Sale (see County Court Judgment enforcement). It takes a non-secure debt and secures it on a property and is one of the options looked at when trying to stop someone being made bankrupt.

Full and Final Settlement – This is where a client has a lump sum that can be used to pay a lump sum off the debt in exchange for the remainder of the debt being written off. The offers are made to multiple creditors on a pro rata basis.

Administration Order – This is free and applied for through the local County Court. It is for those whose debts total less than £5,000, have at least 2 different creditors and a County or High Court Money Judgment who are unable to afford to repay their creditors. It is a court order which allows the court to administer their debts and they make one monthly payment to the court for this. It stops further enforcement action by the creditors in it. It is a court order and made by a Judge. You can also apply for a composition order to reduce the amount of time taken to pay the debts off.

Debt Relief Order – It costs £90. It is a form of insolvency very similar to a bankruptcy but for those with simpler circumstances. The qualification criteria for this is that the applicant must not be a homeowner and:

- Have debts which total less than £30,000 (some debts do not count towards this)
- Have less than £75 per month disposable income
- Have a motor vehicle worth not more than £2,000
- Have gross assets totalling not more than £2,000
- Have lived or worked in the UK in the last 3 years

A Debt Relief Order can only be applied for through a Debt Relief Order Intermediary and freezes debts for a one year moratorium period. If at the end of the period the criteria for the order are still met then the debts are written off. During the period creditors cannot take enforcement action for their debts.

Bankruptcy – This costs £680 and is applied for online. It is for any amount of debt and for any circumstances including home owners. Once a bankruptcy order has been granted all assets are under the control of the Official Receiver who will look at whether they can be sold to raise money to pay off the debts. If the client also has more income coming in than they need for their essential expenditure then the official receiver may make an income payments order for them to pay towards the costs of the bankruptcy for up to 3 years.

Individual Voluntary Arrangement (IVA) – This is free to apply for as the costs are included within the monthly payments. To qualify for an Individual Voluntary Arrangement the client must have at least two different creditor companies, debts of at least £6,000 and at least £80 per month disposable income. It is an insolvency and managed by an Insolvency Practitioner. It is a legal agreement which normally lasts for 5 years but can go on longer where the debts are managed and partially repaid through monthly payments as a result the client's assets can be protected from sale. In year 4 of the IVA the equity of any property the client has an interest in will be looked at. If they have sufficient equity they may have to re-mortgage their property to release it and pay off the creditors.

Immigration, Insolvency and Debt

If a client is not a British Citizen or has other issues with immigration such as needing to bring others from abroad then before making a decision on their debt option they should get advice. This is because immigration can be affected by debt.

Free Debt Advice in London

- Debt Free London – 0800 808 5700 + www.debtfree.london
- Citizens Advice – 03444 111 444 + www.citizensadvice.org.uk

Lawworks Clinics Coming Up

www.lawworks.org.uk/solicitors-and-volunteers/training-and-events

Appendix 1

PRE-ACTION PROTOCOL FOR POSSESSION CLAIMS BASED ON MORTGAGE OR HOME PURCHASE PLAN ARREARS IN RESPECT OF RESIDENTIAL PROPERTY

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SECTION I – INTRODUCTION

1. PREAMBLE

- 1.1 This Protocol describes the behaviour the court will normally expect of the parties prior to the start of a possession claim within the scope of paragraph 3.1 below.
- 1.2 This Protocol does not alter the parties' rights and obligations.
- 1.3 It is in the interests of the parties that mortgage payments or payments under home purchase plans are made promptly and that difficulties are resolved wherever possible without court proceedings. However in some cases an order for possession may be in the interest of both the lender and the borrower.

2. AIMS

- 2.1 The aims of this Protocol are to—
 - (1) ensure that a lender or home purchase plan provider (in this Protocol collectively referred to as 'the lender') and a borrower or home purchase plan customer (in this Protocol collectively referred to as 'the borrower') act fairly and reasonably with each other in resolving any matter concerning mortgage or home purchase plan arrears; and

- (2) encourage more pre-action contact between the lender and the borrower in an effort to seek agreement between the parties, and where this cannot be reached, to enable efficient use of the court's time and resources.

2.2 Where either party is required to communicate and provide information to the other, reasonable steps should be taken to do so in a way that is clear, fair and not misleading. If the lender is aware that the borrower may have difficulties in reading or understanding the information provided, the lender should take reasonable steps to ensure that information is communicated in a way that the borrower can understand.

3. SCOPE

3.1 This Protocol applies to arrears on—

- (1) first charge residential mortgages and home purchase plans regulated by the Financial Services Authority under the Financial Services and Markets Act 2000;
- (2) second charge mortgages over residential property and other secured loans regulated under the Consumer Credit Act 1974 on residential property; and
- (3) unregulated residential mortgages.

3.2 Where a potential claim includes a money claim and a claim for possession this protocol applies to both.

4. DEFINITIONS

4.1 In this Protocol—

- (1) 'possession claim' means a claim for the recovery of possession of property under Part 55 of the Civil Procedure Rules 1998 ("CPR");
- (2) 'home purchase plan' means a method of purchasing a property by way of a sale and lease arrangement that does not require the payment of interest;
- (3) 'bank holiday' means a bank holiday under the Banking and Financial Dealings Act 1971; and
- (4) 'business day' means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas day.

SECTION II – ACTIONS PRIOR TO THE START OF A POSSESSION CLAIM

5. INITIAL CONTACT AND PROVISION OF INFORMATION

5.1 Where the borrower falls into arrears the lender should provide the borrower with—

- (1) where appropriate, the required regulatory information sheet or the National Homelessness Advice Service booklet on mortgage arrears; and
- (2) information concerning the amount of arrears which should include—
 - (a) the total amount of the arrears;

- (b) the total outstanding of the mortgage or the home purchase plan; and
 - (c) whether interest or charges will be added, and if so and where appropriate, details or an estimate of the interest or charges that may be payable.
- 5.2 The parties should take all reasonable steps to discuss with each other, or their representatives, the cause of the arrears, the borrower's financial circumstances and proposals for repayment of the arrears (see 7.1). For example, parties should consider whether the causes of the arrears are temporary or long term and whether the borrower may be able to pay the arrears in a reasonable time.
- 5.3 The lender should advise the borrower to make early contact with the housing department of the borrower's Local Authority and, should, where necessary, refer the borrower to appropriate sources of independent debt advice.
- 5.4 The lender should consider a reasonable request from the borrower to change the date of regular payment (within the same payment period) or the method by which payment is made. The lender should either agree to such a request or, where it refuses such a request, it should, within a reasonable period of time, give the borrower a written explanation of its reasons for the refusal.
- 5.5 The lender should respond promptly to any proposal for payment made by the borrower. If the lender does not agree to such a proposal it should give reasons in writing to the borrower within 10 business days of the proposal.
- 5.6 If the lender submits a proposal for payment, the borrower should be given a reasonable period of time in which to consider such proposals. The lender should set out the proposal in sufficient detail to enable the borrower to understand the implications of the proposal.
- 5.7 If the borrower fails to comply with an agreement, the lender should warn the borrower, by giving the borrower 15 business days notice in writing, of its intention to start a possession claim unless the borrower remedies the breach in the agreement.

6. POSTPONING THE START OF A POSSESSION CLAIM

- 6.1 A lender should consider not starting a possession claim for mortgage arrears where the borrower can demonstrate to the lender that the borrower has—
 - (1) submitted a claim to an insurer under a mortgage payment protection policy and has provided all the evidence required to process a claim;
 - (2) a reasonable expectation of eligibility for payment from the insurer; and
 - (3) an ability to pay a mortgage instalment not covered by the insurance.
- 6.2 If a borrower can demonstrate that reasonable steps have been or will be taken to market the property at an appropriate price in accordance with reasonable professional advice, the lender should consider postponing starting a possession claim. The borrower must continue to take all reasonable steps actively to market the property where the lender has agreed to postpone starting a possession claim.

- 6.3 Where the lender has agreed to postpone starting a possession claim the borrower should provide the lender with a copy of the particulars of sale, the Home Information Pack and (where relevant) details of purchase offers received within a reasonable period of time specified by the lender. The borrower should give the lender details of the estate agent and the conveyancer instructed to deal with the sale. The borrower should also authorise the estate agent and the conveyancer to communicate with the lender about the progress of the sale and the borrower's conduct during the process.
- 6.4 Where the lender decides not to postpone the start of a possession claim it should inform the borrower of the reasons for this decision at least 5 business days before starting proceedings.

7. ALTERNATIVE DISPUTE RESOLUTION

- 7.1 The court takes the view that starting a possession claim is usually a last resort and that such a claim should not normally be started when a settlement is still actively being explored. Discussion between the parties may include options such as:
- (1) extending the term of the mortgage;
 - (2) changing the type of a mortgage;
 - (3) deferring payment of interest due under the mortgage; or
 - (4) capitalising the arrears

8. COMPLAINTS TO THE FINANCIAL OMBUDSMAN SERVICE

- 8.1 The lender should consider whether to postpone the start of a possession claim where the borrower has made a genuine complaint to the Financial Ombudsman Service (FOS) about the potential possession claim.
- 8.2 Where a lender does not intend to await the decision of the FOS it should give notice to the borrower with reasons that it intends to start a possession claim at least 5 business days before doing so.

9. COMPLIANCE

- 9.1 Parties should be able, if requested by the court, to explain the actions that they have taken to comply with this protocol.

Appendix 2

Rule 7.3
SD 1

Statutory Demand

under section 123(1)(a) of the Insolvency Act 1986 [*]

under section 222(1)(a) of the Insolvency Act 1986 [*]

**[Delete whichever is not applicable]*

Warning

- This is an **important** document. This demand must be dealt with **within 21 days** after its service upon the company or a winding-up order could be made in respect of the company.
- Please read the demand and notes carefully.

Notes for Creditor

- The person making this demand must complete the whole of sections 1, 2 (including Part B if applicable) and 3 and the authentication (including the date) at the end.
- The details given in Section 1 must comply with rule 1.6 of the Insolvency (England and Wales) Rules 2016 (IR 2016).
- The Details of Debt (Section 2) must include all the relevant matters listed in the margin notes at Section 2. These should be set out in the order given unless the person completing the demand considers that a different order would be more convenient for the recipient.
- The creditor must give details of an individual with whom the Company can communicate about the Demand in Section 3.
- The authentication must comply with rule 1.5 of the IR 2016. If signatory of the demand is a solicitor or other agent of the creditor the name of his/her firm should be given.

Section 1 - DEMAND

To *[insert details of Debtor Company]*

Name: *[The Company]*

[if registered, insert its registered name; if unregistered, its name]

Registered No. (if any):

[if incorporated in England and Wales under the Companies Act 2006 or a previous Companies Act, its registered number]

Address:

[if registered, insert its registered office; if unregistered, the postal address of any principal place of business]

*[Or, if the Debtor Company was incorporated outside the UK insert the following details]**

Country or territory in which incorporated:

Registered No. (if any):

No. (if any) under which registered under Part 34 of Companies Act 2006:

**[delete if not applicable]*

This demand is made under [section 123(1)(a)][section 222(1)(a)][*] of the Insolvency Act 1986 *[*delete whichever section is not applicable]*

and is served on you by the creditor *[insert details of Creditor below]*

Name:

[if a registered company, insert its registered name; if unregistered, its name; if an individual, his or her full name]

Registered No. (if any):

[if a company incorporated in England and Wales under the Companies Act 2006 or a previous Companies Act, insert its registered number]

Address:

[if a registered company, insert its registered office; if unregistered, the postal address of any principal place of business; if an individual, his or her personal or professional address (as appropriate)]

*[Or, if the Creditor is a company incorporated outside the UK insert the following details]**

Country or territory in which incorporated:

Registered No. (if any):

No. (if any) under which registered under Part 34 of Companies Act 2006:

**[delete if not applicable]*

The creditor claims that the Company owes the sum of £
full details of which are set out in section 2 of this Demand.

Appendix 3

ANNEX 1 INFORMATION SHEET

You have received this notice because a business intends to take you to court in relation to a debt. This notice tells you what to do next, including how to avoid court action. Please read it carefully.

What should I do now to make sure I am not taken to court unnecessarily?

Read the enclosed letter from the business very carefully. Think about whether you owe the debt and whether the amount is correct. The letter should provide information about how much money you owe and any interest and fees added to the debt. If it doesn't, ask the business for more information.

Once you have read the letter, consider the following options.

- **Seeking debt advice.**

If you are in financial difficulty or need advice to help you work out whether you owe the debt, or how you might pay the debt, contact a debt advisor (particularly if you haven't been in contact with the business for a number of years).

The following organisations offer free, impartial and non-judgemental advice:

Citizens Advice	03444 111 444 (England) 03444 772 020 (Wales)	www.citizensadvice.org.uk
Civil Legal Advice	0345 345 4345	www.gov.uk/civil-legal-advice
StepChange Debt Charity	0800 138 1111 (Freephone)	www.stepchange.org
National Debtline	0808 808 4000 (Freephone)	www.nationaldebtline.org
AdviceUK	0300 777 0107	www.adviceuk.org.uk
Christians Against Poverty	0800 328 0006 (Freephone)	www.capuk.org

It is recommended that you get debt advice if you have any doubt about whether you owe the debt or whether you can pay it now.

If you don't have a copy of the agreement (contract) between you and the business, and you need this to decide what to do next or to help you get debt advice, you can ask the business to provide you with a copy.

- **Speaking to the business.**

If you agree you owe the debt and want to talk to the business about payment terms, or if you have any questions or concerns, get in touch with the business as soon as possible. Their contact details should be in the letter they sent you.

- **Filling in the Reply Form.**

If you have not been able to resolve the matter by speaking to the business, you should fill in the Reply Form that was provided with the letter from the business, and then send it back to the business. You should complete the Reply Form with as much information as possible to avoid court action being taken against you.

How long do I have to fill in the Reply Form?

You only have **30 days** from the date at the top of the letter from the business to send back the Reply Form. If the business does not get your Reply Form within 30 days, it could **take you to court** in relation to the debt. Make sure you allow time for posting.

If a court orders you to pay an amount of money (called "having judgment entered against you"), details of the judgment will usually be entered on the Register of Judgments, Orders and Fines. Most entries stay on the Register for six years unless you pay the amount you owe within one month of the judgment.

Organisations such as banks, building societies and credit companies use the information on the Register when someone applies for credit, such as a loan or overdraft. It helps them decide whether or not that person would be able to pay off a debt.

What happens if I fill in and return the Reply Form in time?

If you return the Reply Form within 30 days, you and the business will have at least a further 30 days to discuss the debt, or for you to seek debt advice, before the business takes you to court. During that time you should discuss with the business how you can resolve the matter, ideally without going to court.

If you request more information in the Reply Form, the business must wait at least 30 days after it gives you that information before taking you to court.

Where can I find out more?

This Information Sheet is a summary of your rights and responsibilities under the Pre-Action Protocol for Debt Claims. Where a business and an individual disagree about a debt claim, the Protocol tells them what they should do before they go to court. If you want to know more, the full Protocol is available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/protocol>.

REPLY FORM

YOU HAVE 30 DAYS FROM THE DATE AT THE TOP OF THE ENCLOSED LETTER TO FILL IN AND RETURN THIS FORM.

IF YOU DON'T, IT COULD RESULT IN COURT PROCEEDINGS.

If you have any questions or would like to discuss the debt, please call the business that sent you this form as soon as possible.

Full name:

Address and postcode:

Contact telephone numbers:

Email address:

Reference:

SECTION 1: Do you owe the debt?

Fill in one of the boxes in this section. Use more pages if you need to.

It is recommended that you get debt advice if you have any doubt about whether you owe the debt and whether you can pay it now, or if you want advice on any rights and protections you may have.

Box G below asks about debt advice.

BOX A

I agree I owe the debt.

Tick this box if you agree you owe the debt and agree the amount of the debt is correct.

IF YOU WILL PAY THE DEBT, GO TO SECTION 2.

IF YOU NEED DEBT OR LEGAL ADVICE, GO TO SECTION 3.

BOX B

I owe some of the debt, but not all of it.

Tick this box if you agree you owe some of the debt, but not all of it, for example if you think too much interest has been added or you haven't been credited for payments you made in the past.

The amount of debt I owe to you is £.....

Say how much you think you owe.

I don't owe any more than this because

Explain on a separate piece of paper why you don't owe all of the debt. Give as much detail as possible and provide copies of any supporting documents.

IF YOU WILL PAY THE PART OF THE DEBT YOU OWE, GO TO SECTION 2.

IF YOU NEED DEBT OR LEGAL ADVICE, GO TO SECTION 3.

OTHERWISE, GO TO SECTION 4.

BOX C

I don't know whether I owe the debt.

Tick this box if you're not sure whether you owe the debt and/or you need help from a debt adviser to work out whether you should pay.

NOW GO TO SECTION 3.

BOX D

I dispute the debt.

Tick this box if you don't owe the debt, for example because the debt should be paid by someone else, because you have already paid it, or because there is a legal problem with the credit agreement.

I dispute the debt because

Explain on a separate piece of paper why you dispute the debt. Give as much detail as possible and provide copies of any supporting documents.

NOW GO TO SECTION 4.

SECTION 2: How will you pay?

Only complete this section if you ticked Box A or Box B in Section 1 and you want to pay now.

The letter from the business will tell you how to pay. Keep a record of the payments you make.

BOX E

I will pay what I owe now.

Tick this box if you agree that you owe all or part of the debt and you are able to pay what you owe now. You should pay using the payment details in the letter from the business. Keep a copy of any proof of payment you receive.

BOX F

I will pay, but I need time to pay.

Tick this box if you agree that you owe all or part of the debt, but you can't pay right now.

If you offer to make repayments, you must be able to afford them. You should consider getting debt advice about how much you can afford to repay. If you are seeking debt advice, complete Section 3.

My proposals for repayment are

Explain on a separate piece of paper how you intend to pay the debt. Say how much you could pay now and how you will pay the remainder. For example, say how much you could pay each week, fortnight or month and when your first payment would be made.

I have provided a Financial Statement showing my current financial situation:

Yes No

To help the business ensure you can afford your proposed repayments, fill out the Financial Statement that is attached to this form. You should also attach a copy of any budget or financial statement that a debt advice organisation has helped you prepare.

SECTION 3: Do you intend to get, or are you already getting, debt advice?
Only complete this section if you are getting debt advice about whether you owe the debt or whether you can afford to pay.

BOX G

I am getting or intend to get debt advice.

I am getting advice from

.....

Insert the name and contact details of the person or organisation giving you advice.

I am getting advice about

Explain on a separate piece of paper what you are getting advice about, for example whether you owe the debt or how you could pay.

I have an appointment with an adviser on

.....

If you have an appointment with a debt adviser, give the appointment date and time.

I can't obtain advice within 30 days of returning this Reply Form because

If it will take you longer than 30 days to get debt advice, explain on a separate piece of paper the reason for the delay and when you expect advice will be available.

NOW COMPLETE SECTION 4.

SECTION 4: What documents are you sending with this form? What information do you need?

Complete the boxes below if you want to provide or get more information.

BOX H

I have provided documents.

Tick this box if you want to provide documents about the debt, for example you might want to provide a letter showing you have an appointment for debt advice or a receipt showing you paid some of the debt.

I have enclosed the following documents

Describe on a separate piece of paper the documents you have provided and why they are important.

BOX I

I need more documents or information.

Tick this box if you need more information, such as copies of documents you don't currently have.

I need a copy of

.....

Additional documents or information that you might need could include:

- *A copy of the written contract for the debt*
- *A full statement of account, including details of all interest and charges included on the outstanding balance of the debt, explaining how they have been calculated, and any payments already made toward the debt*
- *A calculation of the interest claimed*

- *The annual or daily rate of interest*
- *A description of the nature and amount of any administrative charges included in the debt*
- *A copy of the notice of assignment of the debt*

Signature **Date**...../...../.....

Print name

Sign and date this Reply Form once you've filled it in. Then send it to the address given in the letter from the business.

Make sure you keep a copy of this form for reference in the future.

If your circumstances change, please update the business as soon as possible.