

Priority Debt Strategy Chart

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DEBTLINE

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DEBTLINE

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Using this list of sanctions as a guide, it is usually fairly easy to identify which are priority debts.

The chart sets out:

- the main priority creditors;
- gives typical repayment term information;
- suggests negotiation tactics; and
- sets out the final creditor sanctions.

Priority debts Normally money advisers will treat a debt as a priority where non-payment can result in the client:

- being disconnected;
- losing their home;
- losing essential goods or services; or
- being imprisoned.

Abbreviations

CMS	– Child Maintenance Service,
CCA	– Consumer Credit Act 1974,
CMP	– current monthly payment,
CRA	– credit reference agency,
CTR	– Council Tax Reduction,
DEA	– Direct Earnings Attachment,
DEO	– Deduction from Earnings Order,
DWP	– Department for Work and Pensions,
FCA	– Financial Conduct Authority.
FOS	– Financial Ombudsman Service,
HB	– Housing Benefit,
HMRC	– HM Revenue and Customs,
LGSCO	– Local Government and Social Care Ombudsman,
MCOB	– Mortgage Conduct of Business rules,
PCP	– Personal Contract Purchase,
PSOW	– Public Services Ombudsman for Wales,
SMI	– Support for Mortgage Interest,
SRB	– sale or rent back scheme,
UC	– Universal Credit,
VAT	– Value Added Tax.

From April 2014, bailiffs are called Enforcement Agents. We use 'bailiffs' throughout.

Disclaimer

England and Wales only

The strategies and tactics in this chart do not constitute an exhaustive list as there may be further options to consider. Always base advice on the circumstances and wishes of the client. The information is accurate as of October 2017. We cannot be held responsible for changes in the law or developments in case law since this was published.

Debt type	Typically, what will the creditor want?	Strategies and tactics	Possible actions
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Mortgage, second mortgage or secured loan

Arrears cleared or repossession of property

- Offer CMP plus offer to clear the arrears over a “reasonable period” up to life time of mortgage (for first mortgages and unregulated second mortgages) (*Cheltenham and Gloucester v Norgan*)
- Apply for time order if a regulated mortgage contract under FSMA (Regulated Activities) Order 2001
- There are some mortgage rescue or Sale and Rent Back schemes operating in England and Wales through local authorities and housing associations
- Check if there is a local Preventing Repossession Fund still running (England only)
- Check if can claim SMI (many secured loans are not eligible for help unless in receipt of UC). From April 2018, SMI is awarded by way of a loan scheme secured on property
- Direct deductions from benefits for arrears
- Lender forbearance options, such as a payment holiday, interest only for a time, extending the term or capitalisation of arrears
- Remortgage on better terms or consider part-rent and part-buy schemes but need independent financial advice
- Sell property or assisted voluntary sale
- Consider downsizing and buying a cheaper property
- Consider equity release but need independent financial advice
- Is the lender following the FCA MCOB rules?
- Is the lender following the Mortgage Pre-action Protocol?
- Check any grounds to make a complaint with escalation to FOS if necessary
- If a regulated secured loan was taken out before 21 March 2016, are there grounds for bringing an unfair relationship claim?

Repossession and eviction from home through county court possession procedure

Rent

- **Social landlord:** minimum rate direct deduction from benefit
- **Assured tenancy:** if tenant has more than 2 months arrears can get mandatory possession

- Check the type of tenancy and which mandatory or discretionary grounds for possession apply
- Check if can claim Housing Benefit (HB) and entitlement is accurate
- Ask for a Discretionary Housing Payment if entitled to HB or UC with a housing element award
- Get HB paid direct to landlord
- Check UC rules for help with rent, if the DWP agrees they can pay UC directly to the landlord
- Direct deductions from benefits for arrears but this is usually at 20% under UC although argue the minimum rate of 10% on hardship grounds
- Check if there is a local Preventing Repossession Fund still running (England only)
- Pay ongoing rent and make offer to pay back the arrears at amount you can afford
- Rent Pre-action Protocol followed (if social landlord)?
- Check for disrepair counterclaim?
- Check whether the benefit cap applies?
- Does bedroom tax apply?
- Are there more affordable properties with fewer bedrooms available in the area?

Eviction from home through county court possession order

Debt type	Typically, what will the creditor want?	Strategies and tactics	Possible actions
<p>Council tax</p>	<ul style="list-style-type: none"> ● Annual bill payable in ten monthly instalments but you can ask to pay over 12 instalments ● Arrears cleared by end of financial year 	<ul style="list-style-type: none"> ● Offer to pay arrears in instalments depending upon ability to pay (in early stages ask to add missed payments to the end of the council tax year) ● Check if can claim Council Tax Reduction (also called Council Tax Support) or a discount ● Direct deductions from benefits if have liability order ● Make sure include ongoing council tax in budget ● Dispute liability order if appropriate ● Check adherence to local authority policy on debt collection (will set standards for both in-house and external bailiff collection) ● Use the Taking Control of Goods: National Standards guidance ● Will local authority use their discretion to reduce the council tax under section 13A of the Local Government Finance Act 1992? ● Complain to LGSCO or the PSOW in Wales 	<ul style="list-style-type: none"> ● Liability order in magistrates' court ● A fine if do not comply with request to provide certain financial information ● Bailiffs ● Deduction from wages or benefits ● Bankruptcy if the debt is £5,000 or more ● Charging order if debt over £1,000 ● Imprisonment
<p>Gas or electricity</p>	<p>Payment before next bill is due</p>	<ul style="list-style-type: none"> ● Check liability for the bill ● Check for estimated bills and back-billing ● Instalment payment arrangement at an affordable rate as required under standard licence conditions ● Prepayment meter set at level to recover arrears at a level can afford - use Energy UK's 10 Prepayment Meter Principles ● Vulnerable – use Energy UK's Safety Net ● Eligible for Warm Home Discount – Core or Broader Group? ● Trust fund – see Auriga Services booklet: Help with Water and Energy Bills ● Eligible for Winter Fuel Payment or Cold Weather Payment? ● Priority Services Register? ● Help paying your bills through your benefits – Fuel Direct deductions from benefits ● Complain to the Citizens Advice consumer service and, if necessary, escalate to Ombudsman Services: Energy ● Energy saving advice ● Could client switch to a better value supplier? Signpost to the Citizens Advice energy comparison tool ● Disconnection: <ul style="list-style-type: none"> ■ Standard Licence Condition 27 provides protection for particular groups of customers during October to March inclusive ■ Vulnerable – use Energy UK's Safety Net ■ Prepayment meter to avoid being cut off if practicable ● Reconnection: apply to local council welfare assistance scheme for help with reconnection costs 	<ul style="list-style-type: none"> ● Installation of prepayment meter ● Disconnection of supply (Require warrant to enter property if refuses entry) ● County court recovery and enforcement action

Debt type

Typically, what will the creditor want?

Strategies and tactics

Possible actions

Magistrates' court fines

- **Court:** payment of fine in full or within fixed time

- **Bailiffs:** payment of fine and charges in full, within fixed time or seizure of goods

Court:

- Ask for time to pay in instalments or vary the terms of the existing order
- Ask for deduction from benefit at set amount (minimum £5.00 a week but beware, this is up to £25 a week if on UC)
- Ask for attachment of earnings order using fixed deductions but be careful as the court can choose to make deductions using a sliding scale
- Ask for a means enquiry and submit statement of means (or personal budget)
- Ask for fine to be remitted (written off) if circumstances have changed since fine was issued or the court was not aware of circumstances

Bailiffs:

- Ask for time to pay
- Try and negotiate instalments using a personal budget
- Ask the bailiff to return the fine to the court so they can deal with it (especially if on benefits as court can organise direct deduction or if client is vulnerable)
- Use the Taking Control of Goods: National Standards guidance
- Check adherence to local court's guidance and procedures on dealing with what they term 'vulnerable defaulters'. Guidance intended to be followed both by the court itself and by the bailiff company

- Deduction from wages or benefits
- Bailiffs (with the right to force entry – if reasonable to do so)
- Include the fine on the Register of Judgments, Orders and Fines
- Clamping order (if the court thinks client is able to pay and if the vehicle is worth more than the fine plus costs of clamping and sale)
- County court or High Court enforcement
- Imprisonment

Maintenance through the Child Maintenance Service (CMS)

- CMS payments calculated using a set formula
- Arrears preferably paid within two years
- Deductions from earnings, benefits or bank accounts

- Challenge liability and/or level of arrears if not been worked out properly
- Try and negotiate a payment or collection schedule based on personal budget
- Argue hardship if welfare of children affected, ill health or special circumstances
- Deduction of earnings order decision is discretionary and can appeal to magistrates' court
- If liability order registered in the county court use normal procedures against charging orders and third party debt orders

- Deduction from earnings or benefits without a court order
- Deduction order to make regular payments or a lump sum from a bank account without a court order
- Liability order in magistrates' court
- Include the order on the Register of Judgments, Orders and Fines and on CRA files
- Penalty payments can be imposed but the power is not currently used
- Bailiffs
- Third party debt order
- Charging order
- Order preventing disposal of assets
- Disqualification from driving for up to two years
- Imprisonment for up to six weeks if deliberately not paying

Debt type

Typically, what will the creditor want?

Strategies and tactics

Possible actions

Benefit overpayments and social fund loans

Warning: the specific rules for the recovery of legacy benefits, Housing Benefit and Universal Credit are all different

- Direct deductions from benefits at fixed amount
- Deductions from earnings using a Direct Earnings Attachment
- Instalments if not on benefits

- Ask for a mandatory reconsideration (MR) and then appeal if the decision is wrong or the overpayment has been worked out incorrectly. HB only: consider whether to go to appeal straight away as MR not required
- Budgeting loan: ask DWP to extend payment period if not at maximum repayment period of 104 weeks
- If a temporary problem, ask for deductions to be suspended
- Use the DWP – Benefit Overpayment Recovery Guide to argue for a lower level of deduction (not HB or CTR)
- If instalment recovery, make an offer based on a personal budget and explain why higher payments will cause hardship
- Ask DWP to use its discretion to remit (write off) on cost grounds, abandonment rules or waiver due to detriment to health and welfare or extreme hardship. See Ch5, Ch8 and Appendix 5, DWP – Benefit Overpayment Recovery Guide (not HB or CTR)
- Is an offset possible due to an underlying entitlement to an income-related benefit which had not been claimed?

- Deductions from most benefits with maximum recovery amounts (these may be higher for UC)
- Direct Earnings Attachment (no court involved, amount of deduction depends on earnings, is doubled if fraud)
- Debt collection agency
- County court action
- Bailiffs
- Third party debt order
- Charging order
- Recovery from deceased's estate
- Civil penalty
- Suspension of benefit, financial penalty or prosecution for fraud

Tax credit overpayments

- Reduce ongoing award by set percentages
- Deductions from some benefits
- Amendment to PAYE code
- Pay in instalments over 12 months

- Check if the tax credits award is correct and ask for a mandatory reconsideration and then appeal if entitlement is worked out incorrectly
- Is there a complaint to make about the way in which HMRC has used its discretion in making the decision to recover?
- Ask HMRC to accept an affordable payment and explain circumstances with the support of a personal budget
- Dispute recovery if there is official error
- Can notional entitlement offset some of the debt?
- Can the overpayment be written off or suspended? Contact the Debt Management Telephone Centre if payment will cause hardship due to serious illness, being on benefits long-term, caring responsibilities or if there is a mental health issue
- Check the tax credits code of practice (COP26) 'What happens if we've paid you too much tax credit?'
- Ask for a payment arrangement if PAYE code deductions are too high

- Deductions from ongoing tax credit awards for any tax credit debts in the household at one of four rates – argue lower rate on hardship grounds
- Payment directly to HMRC by instalments (from 12 months up to ten years in exceptional circumstances)
- Deductions from some benefits by agreement (2015 regulations allow recovery of tax credits through DWP and, from April 2018, DWP will recover some tax credits using its own methods – including Direct Earnings Attachment – without consent)
- Deductions from UC without consent
- Direct recovery of debt from bank accounts (if debt over £1,000 - minimum of £5,000 must be left in the account)
- Taking control of goods without court order
- Debt collection agency
- County court action
- Bankruptcy if the debt is £5,000 or more
- Amendment to PAYE code – unlikely at the present time

Debt type

Typically, what will the creditor want?

Strategies and tactics

Possible actions

Income tax, National Insurance and VAT

Payment by instalments over as short a period as possible

- Check all returns are up-to-date
- Are all tax allowances and reliefs being used to reduce the bill?
- Check the correct tax code has been applied
- Has HMRC processed the return correctly?
- Are the penalties and surcharges correct?
- Can payments on account for self-assessment tax be reduced to free up money to pay arrears? Get specialist advice from TaxAid on how to make a realistic estimate of a tax bill
- Can you deregister for VAT if below the threshold?
- Try and negotiate payment by instalments
- Let HMRC know if there are mental health issues or vulnerable circumstances as they have guidance that may lead to a flexible approach
- Ask for payment arrangement if PAYE code deductions too high

- Amendment to PAYE code to pay over 12 months out of wages and pension income (if debt from previous year with deductions on a sliding scale depending upon earnings)
- Debt collection agency
- Bailiffs without court order
- County court action which can lead to the standard county court enforcement options
- Direct recovery of debt from bank accounts (if debt over £1,000 - minimum of £5,000 must be left in the account)
- Summary proceedings in magistrates' court if debt less than £2,000 (although this is rare)
- Bankruptcy if the debt is £5,000 or more

Hire purchase, Personal contract purchase (PCP) or conditional sale

CMP plus offer on arrears over short period

- Check if paid over a third of the total agreement
- Check terms of agreement - if it is for a car, think about the balloon payment, excess mileage charges and charges for damage to the vehicle
- Consider voluntary termination under Section 99 of the CCA if suitable
- Ask the lender for permission for the client to sell the vehicle themselves as in some circumstances this will lead to a smaller shortfall than terminating under Section 99
- Hand the vehicle back and allow the lender to sell it as part of an informal arrangement because in some circumstances it might lead to a smaller shortfall than terminating under Section 99
- Offer affordable instalments even if less than contractual monthly payment
- Apply for a time order if received an arrears notice, termination notice or default notice
- Don't park vehicle on the road
- Check any grounds to make a complaint with escalation to FOS if necessary

- Repossession of goods by the lender (without court order) if less than a third paid
- Return of goods order through county court
- Enforcement of judgment through county court

Debt type

Typically, what will the creditor want?

Strategies and tactics

Possible actions

Bill of sale

- CMP plus an amount towards arrears to clear arrears quickly, or possession of goods (usually a vehicle)
- Refinance and 'churn' the loan

- Ask the lender for permission for the client to sell the vehicle as this will usually produce a smaller shortfall than following repossession and sale
- Hand the vehicle back and allow the lender to sell it where the agreement is unaffordable. The Consumer Credit Trade Association (CCTA) code of practice states surrender should operate as full and final settlement unless there has been an instruction to collect the vehicle following default, malicious damage or failure to take reasonable care that has affected the value of the vehicle
- Offer affordable instalments to repay even if less than contractual monthly payment
- Apply for a time order if client receives an arrears notice, termination notice or default notice
- Don't park vehicle on the road, although some agreements allow forcible entry to recover vehicles without a court order from the client's premises
- Check that the bill of sale conforms with the statutory form and was registered at the High Court in London within seven days of being executed, and has been re-registered every five years if the agreement has continued for longer
- If the bill of sale appears void and the creditor disagrees, consider applying to 'expunge' (remove registration)
- Check the credit agreement is properly executed and conforms with Consumer Credit Act and Regulations
- Check whether the correct information was given prior to entry into the agreement, and that a proper affordability assessment was carried out. See CONC 4 and CONC 5
- Consider whether any of the above give valid grounds for a complaint to FOS
- Are there grounds for an Unfair Relationship claim?
- Consider refinancing over a longer period, although this will incur extra interest and a larger debt over time

- Repossession of goods without a court order, including from any subsequent buyer of the goods
- Churning unaffordable loans may be offered by lenders

'Square Peg' Debts

We call some debts 'square peg' debts because they do not fit neatly into the priority or non-priority debt categories. This might be because of the type of debt or the circumstances of your client. It is important that you make clients fully aware of any potential consequences of prioritising what other creditors might see as a non-priority debt. You will also need to talk to your client about explaining this to other creditors.

Phone debt

Usually phone debt is treated as a non-priority, particularly because pay-as-you-go mobiles are a flexible solution to a disconnected landline or a discontinued mobile phone contract. There are still areas of the country without a mobile signal, or a mobile phone may not be a reasonable replacement for a landline. Some contracts are part of a bundle of services, including access to the internet and satellite or cable TV and some clients would view these as essential. The need to retain an essential phone service could mean that phone arrears are a priority debt.

Personal debts to friends and family

These should usually be treated in the same way as ordinary non-priority debts (unless the family member has agreed to put the debt on hold). Higher payments may be needed if the debt is causing hardship to the friend or family member; the relationship is going to suffer if the debt is not paid off fast or in cases of domestic or financial abuse, etc. For example, if your client is in debt to the person whose home they are living in – they may be at risk of homelessness if they do not prioritise repayments.

Parking penalty charges

Many local authorities enforce parking penalties under the Traffic Management Act 2004 using Northampton County Court. Parking penalties may typically need to be treated as a priority

debt as there is often a risk of losing essential goods such as a car. They can be difficult to deal with because the local authority can ask the county court to use private enforcement agents (bailiffs) and if this is unsuccessful, other county court enforcement methods. There is no power to suspend bailiff action or request instalments using an N245. The amount owed can grow very fast as the client will lose a 50% discount if the penalty is not paid within 14 days (sometimes 21 days), with the client given 28 days from service to pay the full amount. If the debt has not been paid after 28 days, a charge certificate can be issued; this can increase the debt by a further 50%. Enforcement fees will then also be added to this if passed to bailiffs.

However, as you cannot be sent to prison, it could be treated as a non-priority debt in some circumstances. If this debt is being treated as a non-priority, it is worth trying to get the bailiff or the local authority to accept repayment instalments.

Mortgage shortfall debt

In theory, this is a non-priority debt because the house the mortgage was secured on has now been repossessed. However, mortgage shortfalls are often very large and a pro-rata payment arrangement may not be appropriate because it may stop the client from making anything other than token offers to their other creditors. There could be a limitations issue to explore if the property was repossessed some years ago. If the client has a new mortgaged property, the current home may be at risk from bankruptcy proceedings or a charging order if there is equity in the property. Consider treating shortfalls differently to other non-priority debts as they can be complex and specialist advice may be needed.

Credit union loans

These are usually a non-priority debt but it can

be in the client's best interests to treat credit union debt differently. Clients may be reluctant to make reduced payments because it is their only form of affordable credit. The credit union may ask to be treated differently and this might not be appropriate. This can cause confusion for clients and advisers. Some credit unions may:

- argue that their repayments should be prioritised, or say that they will not accept token repayments;
- take action to bar members who are in arrears from membership services such as Christmas savings schemes.

Find out the type of loan and the contractual terms that apply. If your client wants to prioritise their credit union debt, make it clear that other creditors are likely to object and explain any other consequences. Prioritising payments may be viewed as a preference in bankruptcy or a debt relief order.

Benefit overpayments and social fund loans

Because of the changes in recovery powers, it is likely that benefit overpayments and social fund loans will need to be treated as priority debts. This is because they can become priority debts by default because repayments are deducted at source. The DWP can recover debts using a direct earnings attachment (DEA) which requires most employers to make deductions from earnings without the need for court action. If direct deductions are being made from benefits or wages this may mean that there is not enough money to cover normal outgoings or priority debts. Ask for the social fund loan to be rescheduled or a reduction in the repayments of the overpaid benefit. Clients experiencing hardship due to deduction(s) can ask for a lower level of deduction to be made on a DEA, using a budget to argue their case.

For a small number of clients – those with no

affected benefits and who are not employed and not on PAYE – benefit overpayments and social fund loans can be treated as a non-priority debt unless they become a priority due to recovery from the State Pension.

Tax credit overpayments

Overpayments fall into the priority debt category because repayment deductions can be made from ongoing tax credit awards, from certain benefits including Universal Credit, by reducing the tax code in PAYE or through the same enforcement methods as income tax. HMRC has a new power to take money from bank accounts in certain circumstances. For a small number of clients – those with no ongoing tax credit award, no affected benefits and who are not on PAYE – tax credit overpayments can be treated as a non-priority debt unless they become a priority due to recovery from the State Pension.

Water charges debt

It is no longer possible to be disconnected for water charges debt so this is usually a non-priority debt. Water debt is a square peg debt because the ongoing charges need to be included as an essential item of expenditure in a financial statement. Arrears should normally be treated in the same way as other non-priority creditors. If you are dealing with water debt that is billed with rent, you may need to prioritise the arrears repayments. It will depend on the tenancy agreement and you may need specialist advice.

Water companies will usually use the county court to collect their debts but debts are often passed to High Court enforcement agents for collection. Challenge aggressive collection activity such as charging order applications, using the High Court to enforce the debt and issuing statutory demands (although this is less likely due to the rise in the bankruptcy petition limit).