

Dealing with Debt

Your legal rights



A free and confidential service paid for by legal aid
0845 345 4 345 www.communitylegaladvice.org.uk

community
legal advice

This leaflet explains your legal rights when you have debts, and the protection you have from people who are demanding money from you. There is information on:

● Rent or mortgage payment problems	3
● Council Tax bill problems	5
● Hire-purchase (HP) problems	6
● Gas, electricity and phone bills	7
● Water bills	8
● Loans and credit problems	8
● What creditors can do to get their money	9
● Going to court	12
● Dealing with many debts	13
● Dealing with bailiffs	15
● Other legal protection if you are in debt	16
● When you can be sent to prison for your debts	19
● Terms used when dealing with debt	20
● Further help	22

The leaflets in this series give you an outline of your legal rights. They are not a complete guide to the law and are not intended to be a guide to how the law will apply to you or to any specific situation. The leaflets are regularly updated but the law may have changed since this was printed, so information in it may be incorrect or out of date.

If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 22 for sources of information and advice.

Most of us owe money to people or organisations most of the time: bills are a fact of life. But occasionally we may find ourselves swamped by debts, and can't see a way of paying them all. Don't ignore bills – there are free, confidential sources of advice to help you deal with them. See 'Further help' on page 22 for details of where to find help.

If you are behind with payments to someone you owe money to (a creditor), they have a legal right to try to get their money. Exactly what they can do depends on the type of debt, and some types are more serious than others. In the worst case, you could lose your home or even go to prison. So if you have several debts, you need to work out which ones you must deal with first and try to arrange to repay them.

Here we outline common types of debt and what the law says that you and the creditor must each do when the creditor wants to get back the money you owe.

Rent or mortgage payment problems

If you have missed your rent or mortgage payments, landlords and mortgage lenders may have the right to evict you.

But the procedure for doing this, called 'possession proceedings', can be quite long, and you should have enough time to seek advice and agree a plan with your landlord or mortgage lender to make reasonable repayments before the court gets involved.

If you have a second mortgage or a loan secured on your home that is regulated by the Consumer Credit Act 1974, and the lender refuses your payment plan, you may be able to get a 'time order' through the courts, which will let you keep your home.

Under a time order, the court can reduce or even stop the interest that is mounting up on the money you owe, and reduce the instalments you pay to a level you can afford. You have to show the court that you are having genuine difficulty making the payments, and that you would be able to pay the full instalments again at a later time. The court will grant you a time order only if it thinks this would be fair, after hearing how you and the mortgage or loan company have been dealing with your debt.

For more details, see 'Time order' on page 9.

Special help for mortgage payment problems

The government recently announced new schemes to help you keep your home if you are having problems making your mortgage payments. They are:

- Homeowners Mortgage Support, under which people in difficulty can make smaller mortgage repayments for up to two years; and
- Mortgage Rescue Scheme, under which a 'registered social landlord' (normally a housing association) either buys your home and rents it back to you, or takes a stake in it.

For more about the schemes, and to find out whether you could be eligible, contact Citizens Advice, or visit the government website <http://mortgagehelp.direct.gov.uk>

Possession proceedings (eviction)

The possession procedure starts with a notice from your landlord or a solicitor's letter on behalf of your mortgage lender warning you that they could take you to court. After that, in most cases, you will receive a county court claim with a date and time for you to attend the local county court. At the court you will have to explain your situation to a judge, and what you plan to do.

The court will need to see that you have missed payments, and that your landlord or mortgage lender used the proper procedures in trying to get the money you owe. If your landlord has not done something they should have done for you (for example, repairs on your house or flat), the court may not make a possession order.

If you are a local authority (council) tenant, and your tenancy is not an 'introductory tenancy', the court must decide if an order is reasonable. It will take account of whether you are vulnerable (for example, if you are elderly) and whether you have tried to make payments.

If your landlord or mortgage lender proves their case, then the court usually grants a possession order. If you can offer some money towards the arrears (the amount you owe) on top of the normal payments, the court may then make a 'postponed' or 'suspended' possession order. This means the landlord or mortgage lender won't be able to evict you, as long as you make the payments stated in the order.

Under a suspended possession order, the court can allow you to pay off missed mortgage repayments over the years you have left on your mortgage if it believes this would be the fairest thing to do. Or if you have missed payments on your council rent, it can let you clear these, under a postponed order, depending on how much you can afford to pay.

If you then miss payments, the landlord or mortgage lender can ask the court for an eviction warrant. You won't be warned of the warrant beforehand, although a bailiff will send you notice of the eviction date. At this stage, you can still ask for a court hearing to ask the judge to call off (suspend) the eviction. You should do this as soon as possible before your eviction is due. You will need specialist legal help if you are in this situation. Some courts provide a court help-desk or duty advisers who may be able to help and possibly represent you.

In some situations this procedure does not apply, and the court can automatically award the landlord possession, which cannot be suspended or postponed. This happens if you:

- have an 'assured' or 'assured shorthold' tenancy and you have missed more than two months' rent payments;
- have a fixed-term assured shorthold tenancy that has come to an end and you've received a valid 'section 21' notice (a notice to leave); or
- have an 'introductory tenancy' from a public landlord (a local council or other registered social landlord).

There can be other reasons for the court to award a possession order. If you don't know what sort of tenancy agreement you have, ask your landlord. If you are still unsure, ask an adviser. There is more about tenancy types and rights in the Community Legal Advice leaflet 'Renting and Letting'.

Council Tax bill problems

If you haven't paid your Council Tax, the council will send you two reminders. After that, it has the right to apply for a 'liability order' in the magistrates' court to get the money you owe. If the court grants the liability order, it will mean the council can:

- use bailiffs to get the money from you (by taking things you own);
- take money from your wages or certain benefits;
- apply to make you bankrupt; or
- apply for a charging order over your home, if you are a homeowner (see 'Charging order' on page 12).

At this stage, it is worth checking whether you could ask to pay less Council Tax, or whether you should have to pay Council Tax at all (Council Tax exemption). You may be able to reduce what you owe. For example:

- If you are on a low income, you could claim backdated Council Tax Benefit, as long as you have a good reason for not having claimed it before.
- If you are the only adult in the house (apart from students, full-time carers, severely mentally disabled people and anyone whose main home is somewhere else), you could claim a Council Tax discount (25 per cent).
- If you think you are paying more Council Tax than people with a similar house or flat in the same council area, you could ask to have your house or flat revalued. If it is revalued into a lower Council Tax band, you will pay less Council Tax, and you may get a refund.
- If the only people living in your house or flat are full-time students or severely mentally disabled people, you do not have to pay Council Tax.

There are other circumstances where you may not have to pay or you could get payments reduced. Contact Community Legal Advice or your local Citizens Advice Bureau, which can check whether you're receiving all the benefits you are entitled to (see 'Further help' on page 22 for details).

Hire-purchase (HP) problems

If you buy goods such as a car or furniture under hire purchase (HP) or a similar scheme, known as a 'conditional sale agreement', you don't own it until you have made the final payment. Until then, it belongs to the creditor (the finance company).

If you miss payments before you've paid a third of the total amount you owe, the creditor can repossess (take back) the item. This amount will be on the front of your agreement. However, the creditor can take the item only if it is in a public place, so they may be able to repossess a car, but they cannot come into your home and take furniture.

If you have paid a third or more of the total amount you owe, the creditor must start court action to get the goods back or to get you to pay. In this case, the court will send you a hearing date, when it will decide whether you must return the item or whether it can accept an offer by you to pay.

You can ask the court for a 'time order', under which it can reduce the payments to a level you can afford (see 'Time order' on page 9 for more about how this works). The court can also make a 'suspended order', which means that the finance company can get the goods back only if you miss payments in the future.

If you want to avoid court action, you may be able to terminate (end) your contract and return the goods – but you may not be able to do this if you've already missed payments. If you do terminate the contract, you will be liable for:

- up to half of the total amount you originally owed (this figure will be on the front of your HP agreement); plus
- any arrears and the cost of repairing any damage to the goods; minus
- the payments you have already made.

If you think terminating your contract may be an option for you, get advice to make sure you do it correctly.

Gas, electricity and phone bills

Gas, electricity and phone companies can disconnect you without going to court, if you haven't paid your bills. But they should give you written notice that they will disconnect you.

Gas and electricity companies must also take notice of customers in need. They should allow you to repay the money you owe at a rate you can afford. However, if you don't then make the payments, the company may want to fit a prepayment meter, or it may disconnect you. If you have a prepayment meter fitted, you will normally pay a higher rate for your electricity or gas. And if you owe the company money, the prepayment meter may be set at a rate that includes paying off your arrears, as well as paying for electricity or gas in advance.

If you offer an amount you can afford to pay but the company won't accept your offer, you should seek advice, for example from:

- Community Legal Advice or a Citizens Advice Bureau; or
- Consumer Focus, the consumer protection body.

See 'Further help' on page 22 for their numbers.

Who must pay the bill?

The person who has to pay any gas or electricity debt is the person who originally asked for the gas or electricity to be supplied. In the past, some energy companies have also demanded payment from anyone living at the house when the gas or electricity was being used – calling them ‘beneficial users’. But in several cases, courts have refused to allow companies to pursue this kind of debt, and if you are in this situation, you may be able to stop a gas or electricity company trying to make you pay. If a company is trying to make you pay a bill that you don’t think you are responsible for, get in touch with Consumer Focus for advice (see ‘Further help’ on page 22 for details).

Water bills

Debts to water companies are treated differently from those to gas, electricity and telephone companies. It is illegal for a water company to disconnect you for missing payments. To force you to pay, a water company must get a ‘money-only’ judgment through a county court claim (see ‘The ‘money-only’ claims procedure’ on page 10).

If the company is awarded a judgment, and you do not pay as ordered, it may apply for:

- a warrant to authorise county court bailiffs to take goods you own;
- an Attachment of Earnings order (to take money from your wages); or
- if you are a homeowner, a charging order over your home, which, in extreme circumstances, could mean you are forced to sell your home to give the company its money.

You should try to make sure you have enough money to pay your water bills in future. You should suggest an arrangement for paying any arrears and ask the company to agree to it. If you have received a county court claim and you accept that you owe the amount of the debt, you should complete the ‘admission form’, making an offer of payment at a rate you can afford.

Loans and credit problems

Overdrafts, credit cards, mail-order agreements and loans that aren’t secured on your home (like a mortgage would be, for example) are often known as ‘non-priority debts’. You generally have to deal with these debts by coming to an arrangement with the creditor to pay an amount you can afford.

If you can't come to an affordable arrangement, the creditor may claim their money through the court. The court can then order you to make payments at a rate you can afford, taking into account your income and outgoings (expenses). As long as you keep up with payments as ordered by the court, the creditor cannot take enforcement action (such as using bailiffs) against you.

Time order

One way you can deal with debts is by getting a 'time order'. You can ask the court for a time order if you have a 'regulated' credit agreement and the creditor has sent you a default notice or arrears notice – a formal warning that you have missed payments. (See 'Terms used when dealing with debt' on page 20 for an explanation of regulated credit agreements.) A time order means the court can reduce or even stop the interest that is mounting up on the money you owe, and reduce the payments to a level you can afford.

But you have to show the court that you have real difficulty making the original payments. You must also show that you will be able to pay the full instalments again later, for example by getting a new job or returning to work after maternity leave.

If you get a time order, the missed payments will still be listed on your credit reference file, so you may have problems getting credit in the future.

If you want to apply for a time order, you must first write to the creditor explaining how much you think you can afford to pay and over what period. If the creditor refuses your offer, you can apply to the county court for the time order, and the court will decide whether your offer is reasonable.

Alternatively, you can simply go ahead and pay the creditor what you've offered. If it doesn't think that you're paying enough, it has the option of making a claim through the courts. You can apply for a time order at this point. An advantage of this route is that you don't have to pay the court fee.

What creditors can do to get their money

If you don't apply for a time order (or the court won't grant you one), the creditor's main legal option to get their money is through a 'money-only' claim in the county court.

If a creditor succeeds in a 'money-only' claim, you will have a County Court Judgment (CCJ) registered against you. This will go on your credit file and will affect your credit rating, probably making it more difficult for you to get credit in future. It will also increase the amount you owe, because the court may rule that you have to pay the creditor's costs. You must pay what the court orders, or the creditor can use bailiffs and other measures to make you pay. If you own your home, the debt could be secured against it through a charging order (see 'Charging order' on page 12 for more about how this works).

However, there are advantages to a CCJ, if you really can't come to an agreement with the creditor to pay back the money. In most cases it should mean that they stop adding interest to what you owe and the court will generally set out a payment plan that you should be able to afford. As long as you keep to the plan ordered by the court, the creditor can't use enforcement measures, like bailiffs, against you.

The money-only claims procedure

The money-only claims procedure starts when the creditor writes to you warning that they plan to start court action (called a 'letter before action' or 'notice of intended litigation'). You may respond to this, asking the creditor either to look at your case further or to discuss a way of paying the money you owe. Otherwise the creditor (the 'claimant') will then ask the court to send a claim form to you (the 'defendant').

At this stage, you can choose to either defend the claim (argue against paying it) or admit the claim.

Defending the claim

You can choose to defend the claim if you don't agree you owe the amount claimed. However, you should get expert advice before deciding to defend a claim. If you lose your case, you may have to pay the creditor's court costs, which could mean that your debt becomes even bigger.

If the creditor has not made a reasonable effort to come to a payment arrangement with you, you can defend (argue against paying) the part of their claim that covers the court fee and the court costs.

Admitting the claim

If you admit the claim, you should come up with an offer of payment based on what you can realistically afford. If the creditor accepts this offer, the court will record it and you will have to stick to it. But if the creditor turns down your offer, then a court official will normally decide how much you should pay. This is done without having a hearing in court.

If you or the creditor don't agree with the court's order for payment, you have 14 days to ask for the decision to be 're-determined' by a district judge. You can do this by writing to the court explaining why you think the amount should be lower. If the court then decides to have a hearing, the case will be transferred to your nearest court. You and the creditor will both be able to have your say before the court decides whether to change the order for payment set out in the original judgment.

If you don't respond to a claim

If you don't respond to a claim the creditor will ask for judgment to be entered 'by default', and the court will make the order for payment, which will usually mean you must pay the money you owe within 28 days. If you don't pay, the creditor can use bailiffs or other measures to try to get the money you owe.

In some cases, you may have a good reason for not responding to the claim (for example, because you were in hospital). If you are in this position, you may be able to get the judgment 'set aside'. To do so, though, you will usually have to show that you have a good chance of defending the claim or you have another good reason for it to be set aside. If you want to get a claim set aside, you should get expert advice first.

If you can't afford the payments

If you can't afford the payments set or your circumstances have changed since the order was made, you can apply to court to reduce them. This is called 'varying an order'.

When you won't have to pay

If your financial situation means that you really can't repay the debt, or you are in a genuine crisis (for example, you have a serious illness), the court may be able to suspend the payments so that you don't have to pay for a set period. The court may also let you offer a very small or token payment, for example £1 a month.

Going to court

After getting a judgment, the creditor can ask for you to be questioned in court about your circumstances so they can find out how best to get the money you owe. In court, you can be ordered to answer questions on oath about, for example:

- your income;
- what you spend money on; and
- what things you own.

If you do not go to the hearing, the court could issue a warrant for your arrest.

The creditor may call off the hearing if you give them the details they want.

If you don't make the payments

If you do not pay what has been ordered in a judgment, there are several things a creditor can do:

- warrant of execution;
- attachment of earnings;
- charging order; or
- High Court enforcement.

Warrant of execution

This is when the county court involves its bailiffs (see 'Dealing with bailiffs' on page 15).

Attachment of earnings

This is when the creditor asks the court to make an order to take regular payments from your wages. You will receive a form on which you must give certain details so they can take the payments. If you don't co-operate with the court in this, you could be arrested and possibly sent to prison for up to 14 days.

If there is an attachment of earnings, the court will set a 'protected earnings rate' (PER). The creditor can't take money from earnings below this level. It is based on Income Support rates, and takes account of other earnings (like your partner's wages) and things you must pay for. The court will then set a normal deduction rate (NDR), which is normally between half and two-thirds of the difference between the PER and your wages or salary.

Charging order

This is when the creditor asks the court to secure the debt on your home (or other property you have a financial stake in).

The creditor could apply to the court for an order to sell your home to get the money you owe. If you've been threatened with this, you will need expert advice.

High Court enforcement

For some types of debt (debts over £600, and debt on unregulated credit agreements), your creditor could use High Court Sheriffs' Officers acting as bailiffs to collect what you owe. If you cannot agree on how much you should pay, you will need to get advice on:

- applying to court to stop bailiff action; and
- arranging a way to pay what you can afford.

Dealing with many debts

If you have many different debts, there are several ways, using the courts, to sort things out yourself.

Administration order (AO)

If you have at least one High Court or County Court Judgment (CCJ) against you, and your total debts are no more than £5,000, you can apply for an administration order (AO). With this, you make regular payments (for example, monthly) to the court at a rate you can afford. The court then sends payments to your creditors.

Creditors can take any further enforcement action against you only if they apply to end the AO and the court agrees. The AO can include, for example:

- 'non-priority' debts;
- Council Tax;
- gas and electricity arrears; and
- water arrears.

Creditors may tell the court that they don't want to be included on the AO, but the court will decide whether or not to include them. The court may set a hearing date to hear any objections from creditors.

You can ask the court for a composition order, which is a way of limiting the payment period. You pay your debts at a rate you can afford for a fixed period, normally three years. After this time, any money you still owe is written off.

Individual voluntary arrangement (IVA)

An individual voluntary arrangement (IVA) is a legally binding arrangement between you and your creditors. You must agree to pay money as a lump sum, instalments, or both. You will often have to pay the insolvency practitioner before you can set up an IVA.

Your creditors may write off part of the debt and not take court action against you or make you bankrupt.

You have to pay all the costs and fees and also a large proportion of the debt, so an IVA is realistic only if you have a fair amount of spare money or things you can sell to pay your debts.

If you are considering this option, you should shop around to compare insolvency practitioners' advice and charges. Remember that the insolvency practitioner will not necessarily act in your best interests; they are businesses that need to make a profit. It is therefore important to get independent advice before signing an IVA.

Bankruptcy

Most creditors can't pursue you for your debts once you have been made bankrupt. The Official Receiver, a government agency responsible for controlling people's affairs during bankruptcy, will investigate the reasons for bankruptcy. Your bankruptcy will normally be discharged (ended) within a year. However, if you have disposable income (income left over after you have paid essential living expenses), the Official Receiver may ask you to make regular payments at a level you can afford for up to three years.

If you refuse to pay because you believe this level is more than you can afford, the Official Receiver may apply to the court, which will decide what you should pay.

Bankruptcy is not an easy option, and you should get expert advice before applying to make yourself bankrupt. It is normally the right option when you have large debts that will take many years to repay. It may not be suitable if you:

- have a certain type of job (for example, if you work in finance or you are a solicitor);
- own (or are buying) your own home;
- have other assets; or
- are likely to inherit money or goods during the bankruptcy period.

And there are some types of debt you will still have to pay after bankruptcy:

- magistrates' court fines;
- maintenance for a partner or children;
- debts from fraud;
- student loans;
- compensation you owe to another person.

Finally, you must make a lump-sum payment, including:

- £345 for the Official Receiver; and
- £150 court fees.

You can apply to have the court fee waived if you are receiving certain benefits or can't afford to pay it.

Debt Relief Order

A Debt Relief Order is a new scheme being introduced in 2009 for people on a low income who cannot afford to go bankrupt. If you are granted a Debt Relief Order, your debts can be written off after a year. It might be an option for you if you have:

- debts of no more than £15,000;
- assets of less than £300; and
- no more than £50 a month left over after paying your essential living costs.

But there are some types of debt you will still have to pay even if you have a Debt Relief Order. These are:

- magistrates' fines;
- maintenance for a partner or children;
- debts from fraud;
- student loans;
- compensation you owe to another person.

Also, creditors will be able to complain to the Official Receiver if they don't think your debt to them should be included in the order.

Dealing with bailiffs

With most debts, bailiffs are involved only if you can't come to an arrangement to repay a creditor, and then only after your case has been to court. However, Her Majesty's Revenue and Customs (HMRC) bailiffs and VAT bailiffs can act without waiting for a repayment arrangement or a court hearing.

Once bailiffs are involved it can be difficult to negotiate with them. Bailiffs usually work by threatening to take your possessions to persuade you to pay what you owe, or taking and selling them to repay your debt.

You may believe bailiffs are allowed to force their way into your home, but they are normally allowed to do this only because of debts from unpaid fines from the magistrates' court. If it is another kind of debt, they may use 'reasonable' force to enter your home but only if they have been inside your home for the same debt on an earlier occasion.

If you allow a bailiff to come into your home, they will usually take 'walking possession' (make a list) of some of your belongings. This means that if you cannot negotiate acceptable payments with the bailiff, or you miss payments that you have agreed with the bailiff, they can legally force entry into your home and take those items away. So if you never let the bailiff into your home, they will never be able to take walking possession of your belongings inside it. However, they will be able to take belongings outside your home (a car, for example).

For most types of debt, a bailiff can't take away 'basic household items'. These include a bed, cooker, fridge and most furniture. However, they can take, for example, a television or other less necessary items.

County court bailiffs

If you have a County Court Judgment (CCJ) and you don't make the payments as ordered, the creditor can ask the court to issue a 'warrant of execution'. This will involve county court bailiffs. But you can ask the court to stop them by filling in a form at your local county court, with a statement about what you can afford to pay.

County court bailiffs also carry out evictions after possession proceedings (see 'Rent or mortgage payment problems' on page 3). This is the main situation in which you cannot physically stop bailiffs from coming into your home, but again you can ask the court to do so.

Debt collectors

It's important to realise that debt collectors are not the same as bailiffs. Debt collectors cannot take any direct action against you, apart from asking you to pay, and they have no right to enter your home. If you believe a debt collector is harassing you, or putting undue pressure on you to pay, contact the trading standards department at your local council. If you are being physically threatened, contact the police.

Other legal protection if you are in debt

There are several laws and regulations designed to make sure that any credit deals you sign up to are fair, and any organisations you owe money to behave reasonably.

Unfair credit agreements

Parts of the Consumer Credit Act allow a court to decide whether a credit agreement (including a mortgage) is unfair to the debtor, and therefore can't be enforced against you by the creditor. If you think this might apply to an agreement you have, you should get expert advice.

Unfair contract terms

When you sign a contract for credit, or to buy something, it should spell out all the terms and conditions of the deal. The law says that a company can't enforce any part of a contract if it is not in plain English or if it is unfair (but this doesn't mean a price you think is unfair).

These regulations prevent lenders from:

- charging you much higher interest if you have missed payments; and
- taking you by surprise with unexpected or hidden small print or unclear wording in agreements.

If you think there was a term in a credit agreement which you weren't aware of when you took it out, contact an adviser or the trading standards department at your local council.

Credit licence

Anyone who offers credit or collects debts must have a licence from the Office of Fair Trading. Credit providers and debt collectors can legally enforce the terms of their credit agreements only if they had a licence when you signed the agreement.

Most credit agreements that consumers sign are 'regulated agreements' under the Consumer Credit Act. This means they must be in writing and must explain, among other things:

- the amount of money you are borrowing;
- the interest rate; and
- how long you will be paying the debt back.

You can get advice on other details of the Consumer Credit Act from:

- an adviser or solicitor;
- the trading standards department at your local council; or
- a Citizens Advice Bureau or advice centre.

Pressure to sign

A creditor may not be able to make you repay a loan if you have been put under a lot of pressure from someone you know to sign up for it. The most likely situation is if your husband or wife or partner persuaded you to sign a secured loan agreement (a mortgage, for example) which was entirely for their business. But you must also show that the lender didn't explain to you how the loan worked, and that they should have told you to get independent advice before signing.

This law is complicated, so if you are in this situation you will need to get specialist legal advice.

Limitation period

The Limitations Act 1980 sets a maximum time limit for creditors to start legal proceedings after the last payment or written acknowledgement (note or letter) from the debtor. For most debts, this is six years, or 12 years for mortgages (and other debts secured on a home). If you have not paid anything towards a debt or 'acknowledged the debt' in writing (for example, by writing to the creditor about the debt) for more than six years, you should get specialist advice before you speak to the creditor about an arrangement to pay what you owe.

Harassment to repay

It is a criminal offence for a creditor to harass you (bully or repeatedly annoy you) to get you to repay. Harassment includes:

- threatening you with a criminal prosecution when you can't be prosecuted;
- pretending to be a court official;
- sending letters that look like court forms;
- telling other people, such as neighbours and your employer, about your debt to force you to pay; and
- telling you that they will remove your possessions when they cannot.

If you are being harassed, keep a record of exactly what has happened and when, and report it to your local trading standards department at your local council. A creditor or debt collection agency could have its credit licence taken away if it is found guilty of harassing you (see 'Credit licence' on page 17).

If a creditor takes court action against you without taking reasonable steps to come to a realistic payment arrangement with you, you could defend (argue that you should not have to pay) the part of the creditor's claim that is for the court fee and costs.

When you can be sent to prison for your debts

Being sent to prison is a great fear for many people with serious debts. In most cases, it's very unlikely. A prison sentence is a last resort, and apart from fraud (see 'Fraud' on page 20) it can happen only for specific types of debt. These include if you haven't paid:

- fines from the magistrates' court;
- your Council Tax or business rates; or
- maintenance for your husband, wife or children.

You can be sent to prison only if the magistrates believe that you 'won't pay' rather than 'can't pay' your debts (that is, you have deliberately refused to pay, or you have chosen to spend the money on other things you didn't truly need).

If this is the case, the court will probably make a 'suspended committal order'. This means that the magistrates will set an amount for you to pay each week or month. You will be sent to prison only if you miss any of these payments. If that happens, you will receive a warrant to be arrested and brought before the magistrates. You cannot be sent to prison without another hearing, although you may be put in police cells overnight.

If you receive a warrant, you should:

- get expert advice, if you can;
- prepare a personal budget statement by setting out all your income, expenses (what you spend your money on) and debts;
- contact the person who issued the warrant and ask them when you need to attend the police station or magistrates' court.

Sometimes, if your debt is a fine you have not paid, the magistrates will ask you to spend the whole day at court to satisfy the committal order, so you should make any necessary arrangements, such as childcare, before you go.

It is very important to realise that at the committal stage, even for non-criminal debts such as Council Tax or business rates, you have the right for a lawyer to speak for you even if you cannot afford to pay for one.

The magistrate should give you time to speak to a duty solicitor at the court before they hear your case. This is important because, before any committal order is made, the court has the right to write off ('remit') all or part of your debt if it feels this is the right thing to do in your case. Your solicitor may be able to show them reasons for doing this, as well as preventing you getting a committal order.

Fraud

If your debt is due to a crime such as fraud, then a prosecution for this could lead to prison. Examples include fraudulently applying for state benefit, or taking credit when you have no intention of repaying it. If you are accused of fraud you should see a criminal law solicitor. An unfair accusation of fraud or a threat of prosecution from a creditor may amount to harassment (see 'Harassment to repay' on page 18).

Terms used when dealing with debt

You may come across some unusual words and phrases, for example from credit providers, the courts or bailiffs, when you are in debt.

Administration order An order asking you to make regular payments to the court, which then distributes the money to the people you owe money to.

Arrears When you are behind with payments (for rent or a loan, for example).

Attachment of earnings When you have money taken out of your wages or benefits to pay off your debts.

Charging order Where the creditor asks the court to secure the debt to your home (or other property you own part or all of). This means that the creditor can apply to the court for an order to sell your home to get the money you owe.

Committal Being sent to prison.

Suspended committal order If the court gives you a suspended committal order because you have not paid your debts, it means that you won't go to prison as long as you make payments of a certain amount that the court has worked out.

Conditional sale agreement

A way of borrowing money to buy things, similar to hire purchase. See 'Hire-purchase (HP) problems' on page 6 for more information.

County Court Judgment (CCJ)

When the county court decides that a money debt must be repaid. The creditor can use methods including bailiffs, a charging order and attachment of earnings if you do not pay.

Creditor Someone you owe money to.

Default notice A formal warning that you have missed payments on a credit debt, and that court action may be started against you unless you make the payments to bring the account up to date.

Harassment Where a creditor causes someone who owes them money 'alarm, distress or humiliation'. The creditor can be prosecuted for this and lose their licence to carry on their business.

Individual Voluntary Arrangement (IVA) A legally binding way of making an arrangement with creditors to pay back part of what you owe with a lump sum or instalments or both, in return for them not taking court action against you.

Possession order A court order that allows a landlord or mortgage lender to take steps to evict you from your home.

Regulated agreement A consumer credit agreement that is regulated by the Consumer Credit Act 1974. This means that, among other things, you are entitled to a properly written credit agreement; a 'default notice' before the creditor can take action against you; and the right to apply for a time order (see below).

Return order When a county court forces you to return to the creditor goods taken out under hire purchase.

Time order You can ask the court for a time order to stop interest adding up on the money you owe, and to reduce the instalments you have to pay.

Warrant of execution This authorises county court bailiffs to threaten to take your belongings if you do not pay money you owe.

Further help

Community Legal Advice

Provides free information direct to the public on a range of common legal problems.

Call 0845 345 4 345

If you qualify for legal aid, get free advice from a specialist legal adviser about benefits and tax credits, debt, education, employment or housing. Also find a high quality local legal adviser or solicitor.

Click www.communitylegaladvice.org.uk

Find a high quality local legal adviser or solicitor, link to other online information and see if you qualify for legal aid using our calculator.

Citizens Advice

Your local Citizens Advice Bureau is listed in the phone book

www.citizensadvice.org.uk/cabdir.ihtml

Advice UK

A network of local advice centres.

To find your nearest centre, phone 020 7469 5700.

www.adviceuk.org.uk

National Debtline

For advice and help on dealing with personal debts

phone: 0808 808 4000

www.nationaldebtline.co.uk

Business Debtline

For advice and help on dealing with business debts

phone: 0800 197 6026

www.bdl.org.uk

TaxAid

For advice on tax issues, including tax debt phone: 0845 120 3779 between 10am and 12 noon, Mondays to Thursdays

www.taxaid.org.uk

Consumer Focus

If you are a vulnerable consumer or have an urgent problem with your energy supplier, you can get help from Consumer Focus. To do so you must contact Consumer Direct

phone: 08454 04 05 06

www.consumerdirect.gov.uk

Ofcom

For problems with phone and telecoms companies

phone: 020 7981 3040

www.ofcom.org.uk

Trading standards

Your local trading standards department is listed on the phone book, or at www.tradingstandards.gov.uk. You can also make a complaint through Consumer Direct, at 08454 04 05 06.

The Community Legal Service

The Community Legal Service has been set up to help you find the right legal information and advice to solve your problems.

You can get help through a national network of organisations including Citizens Advice Bureaux, Law Centres, many independent advice centres and thousands of high street solicitors. All of these services meet quality standards set by the Legal Services Commission. Look for the Community Legal Service logo, shown below.

Many of the organisations offer some or all of their services for free. If you cannot afford to pay for advice you may be eligible for financial support through the Community Legal Service Fund (legal aid). You can order leaflets about funding from the LSC Leaflet line on 0845 3000 343. You can also use a legal aid eligibility calculator on the website: www.communitylegaladvice.org.uk

*Community
Legal Service*



The Legal Services Commission (LSC)

The Community Legal Service and the Community Legal Service Fund are managed by the Legal Services Commission. To find out more about us visit our website at www.legalservices.gov.uk or find the details for your local Legal Services Commission office in the phone book.

legal services
COMMISSION

The leaflets are only available online at: www.communitylegaladvice.org.uk

1 Dealing with Debt

- 2 Employment
- 3 Divorce and Separation
- 4 Renting and Letting
- 5 Buying and Selling Property
- 6 Losing your Home
- 7 The Human Rights Act
- 8 Claiming Asylum
- 9 Welfare Benefits
- 10 Wills and Probate
- 11 Dealing with the Police
- 12 No-win, No-fee Actions
- 13 Problems with Goods and Services
- 14 Medical Accidents
- 15 Equal Opportunities
- 16 Racial Discrimination
- 17 Personal Injury
- 18 Rights for Disabled People
- 19 Community Care
- 20 Education
- 21 Immigration and Nationality
- 22 Mental Health
- 23 Alternatives to Court
- 24 Family Mediation
- 25 Veterans
- 26 Domestic Violence, Abuse and Harassment
- 27 Living Together and your Rights if you Separate
- 29 Care Proceedings
- 30 Neighbourhood and Community Disputes
- 31 Changing your Name

Advice Guides

G1 A Step-by-Step Guide to Choosing a Legal Adviser (available in hard copy)

G2 A Step-by-Step Guide to Legal Aid (available in hard copy)

The leaflets are produced in English and Welsh and are only available online.



This leaflet is published by the Legal Services Commission (LSC). It was written in association with Birmingham Settlement.



LSC001E