



Helping you understand your debt

Your questions answered

Some common questions

Here are the answers to some frequently asked questions that may arise when dealing with your debt.

Creditors

My creditors are calling and writing to me constantly – what should I do?

The first thing to do is to tell your creditors how you would prefer to be contacted and ask that they confirm their agreement to this. It's worth keeping a diary of phone calls, letters and visits.

If you are constantly being hassled by your creditors, start by writing a letter of complaint to the creditor stating section 40 of the Administration of Justice Act 1970.

you can include these paragraphs

Send this letter by **recorded delivery** so that you have signed confirmation that the creditor has received it and they cannot claim at a later date that they have not received any notification of this.

ALWAYS KEEP A COPY OF ANY CORRESPONDENCE SENT TO OR RECEIVED FROM YOUR CREDITOR.

Another possibility is to inform the creditor that you will notify their professional association of their conduct (details of this are generally stated at the bottom of their letters).

If you have no success after sending the above letter, you can then make a formal complaint to the Office of Fair Trading.

I am repeatedly having to say the same things to your representatives who call my telephone number continually. (You can add information if relevant about other members of the household etc, or if they are phoning you at work).

Please note that under the Data Protection Act, I am formally demanding that you remove my telephone number from your records. If you fail to do so I shall take this matter to the relevant authorities for their investigation.

Due to the seriousness of this matter and any legal action which may arise, I will only correspond in writing and will not accept phone calls or personal visits. Should you visit or phone, I shall consider this as harassment and take legal action and/or make complaints to the Office of Fair Trading under section 40 of the Administration of Justice Act 1970.

Section 40 of the Act provides that a person commits an offence if, with the object of coercing another person to pay money from the other as a debt due under contract, he or she:

'harasses the other with demands for payment which by their frequency, or the manner or the occasion of their making, or any accompanying threat or publicity are calculated to subject him or his family or household to alarm, distress or humiliation.'

“ frequently asked questions ”

My creditor has written saying they are going to take me to court – what’s going to happen?

Going to court is part of a process which starts with defaulting on payments. Personal loans and credit cards in the UK are regulated by the **Consumer Credit Act 1974**.

If you fail to maintain the contractual payments on your account, your creditors are within their rights to take action to recover their money. According to the Act, the creditor must issue you with a **Default Notice** before legal action can start.

However, a Default Notice does not necessarily mean that your creditor intends to take you to court, especially if complied with. It will contain details of the action the creditor wishes you to take and the action they will take should you fail to comply.

The creditor has to follow the correct procedure and cannot simply apply for a **County Court Judgment (CCJ)** without ensuring that everything has been done correctly in the process beforehand.

Can I go to prison for non-payment of a debt?

No. You will not be arrested or sent to prison for non-payment of a debt, apart from wilful non-payment of Council Tax or if you are convicted of fraud.

My situation hasn’t changed but creditors keep sending letters asking me to increase the payments.

[use the form on page 12 of the three-step guide](#)

It’s important to keep your **financial statement** up to date so that you can show your creditors that you have other debts to deal with. Make sure you list all other **non-priority creditors** and balances. Keep paying what you’ve calculated you can afford and **don’t increase payments if you can’t afford it.**

Why should I pay £1 per month if creditors keep adding interest?

It is generally accepted that the lowest payment someone should pay to their unsecured creditors is **£1 per month**.

If you stop payments altogether, the creditor is more likely to consider that you have chosen not to pay and may therefore take court action.

By paying a minimum of £1 per month, you are demonstrating your **willingness and commitment to making a payment**, even if it isn’t as much as the creditor wants.

My creditor won’t accept my offer of payment – what can I do?

Even if your creditor refuses the offer, you should **make the payment** regardless, if this is based on what you can afford. It’s really important to show that you are committed to maintaining payments on a regular basis.

Debt collectors and bailiffs

My debt has been transferred to a Debt Collection Agency – what should I do?

Many of your creditors will **transfer your debts** on to a collection agency if you get into arrears with your payments.

Initially, you may receive a letter from the collection agency asking you to send payment of the arrears to them by a specified date. You will need to provide them with a copy of your **financial statement** and also a list of all other non-priority creditors and balances. From then on, you will need to make payments to the collection agent, instead of the original creditor.

Very often the collection agent collects the debts but has no idea about the debtor's circumstances so make sure you tell them how you came to make your payment and keep them updated with any changes in your financial situation.

Will I be visited by a door step collector?

It's not unusual for a creditor to advise you of a visit from a door step collector, but it does not necessarily mean it will happen – **they are not bailiffs** and cannot enter your home to remove goods.

A Debt Collection Agent has threatened a bailiff will call – can they do this?

A Debt Collection Agent cannot instruct a bailiff to call for an unsecured debt. A bailiff will only be able to attend a property if you have failed to pay a County Court Judgment (CCJ). A Debt Collection Agent can, however, appoint a local representative to call on their behalf. This person is best thought of as a "walking version of a letter". They are no different to you or me.

The local representative is NOT a bailiff. He has no right to come into your home even if you open the door to him and he

cannot threaten to remove goods. The reason he/she calls is because you may feel more inclined to make a payment to him/her at the door, when in fact, if you are paying your token offers to the debt on a monthly basis already, there is no need to have someone come to the door requesting more money.

Should you receive notification that someone will come to your home, write back and explain you are not prepared to have anyone come to your property and let the Debt Collection Agent know the date of your last token payment and when you will be paying the next one.

Do I have to let bailiffs in?

Bailiffs can't force their way into your property and legally you don't have to let the bailiff into your home. If a bailiff calls, here are some steps you can take:

- **Don't open the door to them** – they may try to push past you and if they get inside, they have the right to enter again. If they "gain peaceful entry" once – this means entering without breaking in, either through an unlocked door or an open window or being invited in – they can come into your property on future occasions.
- **Don't leave windows open or doors unlocked** – bailiffs can legally get through these.
- A bailiff cannot break in to your home to take goods that they have only seen through a window – if you do not let them in they will not be able to take anything from inside your home.
- Politely but firmly refuse to let the bailiffs in. Offer what you can afford to pay. If the bailiffs accept your offer, ask them to return to their car and go out and pay them. Make sure you get a receipt.
- **Don't sign anything.** If the bailiff leaves papers for you to sign and return, you do not have to do this. You don't have to sign agreements posted through your door either.

**remember to
regularly review
your income and
expenditure**

Should they gain access, they will probably make a list of goods/ belongings that are to be seized in the event that the debt still isn't paid. There are some general exceptions to what a bailiff can take: for most debts, bailiffs are not allowed to take basic clothing, bedding, basic furniture and basic household goods.

The bailiff is **not normally** able to seize:

- Items which belong to someone else
- Rented goods
- Goods subject to hire purchase or conditional sale agreements
- Fixtures and fittings

Remember that bailiffs must leave if you ask them to; if they don't, they are breaking the law.

Changes in circumstances

I still want to clear my debt but my circumstances have changed.

Whatever the change in your circumstances, it's important to review your Income and Expenditure and make any necessary adjustments. If you can stick to your budget and your payments, continue to do so.

I've come into some money/my financial situation has improved.

Having more money means there may be a different way for you to clear your debts. If, after reviewing and updating your Income and Expenditure you have a surplus of **more than £50 per month**, get in touch with Payplan by calling **0800 917 7819**.

Is it possible to write off my debt?

Creditors may consider writing off debts in circumstances such as severe, progressive or debilitating illnesses, where no improvement is expected. If you feel this is the case, you'll need to have supporting medical evidence from your doctor or consultant.

Will I be able to get credit again?

Whenever the full contractual payment isn't made (even if the payment is just a few pounds short) your credit rating is affected. If you apply for credit in the future, most companies will consult a credit reference agency and you may be refused credit.

Information about your credit rating will **stay on your records for 6 years**, providing the debt is cleared within this time. However, if you are refused credit, you do have a right to ask which credit reference company the finance company used. There are three main credit reference agencies. You can find out about your credit rating by going online or writing to them using the information below.

Experian Ltd

Consumer Help Service
PO Box 8000, Nottingham NG80 1WF
www.experian.co.uk

Equifax Plc

Credit File Advice Centre
P.O. Box 1140, Bradford BD1 5US
www.equifax.co.uk

Call Credit

Consumer Services Team
P.O. Box 491, Leeds LS3 1WZ
www.callcredit.co.uk

Some common terms

Here's a glossary of terms and phrases that you may come across when dealing with your debts.

Administration Order

Single court order covering all your unsecured creditor debts as well as arrears on council tax. You make one payment through the courts every month which is divided between your creditors. To be eligible, you need to have at least 2 credit debts, at least one County Court Judgment and your total debts need to be less than £5,000.

Arrears

Arrears occur when you fail to meet the contractual payments to your household bills. Missing payments to your mortgage, rent or council tax can lead to serious arrears, which must be paid immediately.

Arrears Notification

A letter or other communication informing you that you are behind on your scheduled payments.

Arrestment of bank account

An action by a creditor to arrest or freeze your funds, which are held by a bank. (Scotland only)

Arrestment of earnings

This is where a creditor takes payment for their loan directly from your wages. (Scotland only)

Assets

Any item of value which you own. Assets include your property, car, stocks, shares, antiques and savings.

Attachment of goods

Where an item owned by you, but kept outside your home (for example, items in your garage or shed), can be collected and sold to repay all or part of your debt. (Scotland only)

Bailiff

Someone authorised by the Court to collect a debt on behalf of a creditor.

Benefits overpayment

If you receive too much benefit, any payment you already receive from an ongoing award **may be** reduced accordingly.

Creditors

 add yours to your creditor list on pages 7 and 8 of the three-step guide

The companies/people to whom you owe money.

Debt Collection Agency

Creditors sometimes pass on debts to a Debt Collection Agency who can ring, write or come to your house to try to reclaim money owed. They are not bailiffs or court officials.

Debt Management Plan (DMP)

A DMP is a supervised informal agreement to repay creditors usually for people with £100 or more surplus per month.

Debt Relief Order (DRO)

This is a form of bankruptcy available to debtors who owe less than £15,000 in unsecured debt, who do not own property, have assets of £300 or less and who have a disposable income after all essential costs of less than £50.

Default

Failure to meet a contractual payment.

Default notice

Notification that you have failed to meet your contractual payment.

Direct debit

An arrangement set up between you and another account/person where they will take the money from your bank account as instructed.

Disposable income

 work yours out on page 12 of the three-step guide

The amount of money you have left when you take your living costs away from your income, e.g. if your income is £500 and your living costs are £450, your disposable income is £50.

Final demand

The last notification from a creditor for debt payments, before action is taken.

Financial statement

 work yours out on page 12 of the three-step guide

A list of your income and expenditure to send to creditors, showing your surplus/disposable income.

a-z glossary

Hire Purchase

A secured form of credit which lets you have goods straight away but you won't own them until all payments (and interest) have been settled.

Individual Voluntary Arrangement (IVA)

A formal and legally binding agreement made with creditors which allows people to pay off a percentage of their debts over a fixed period.

Interim order

A court order which protects you from the commencement of legal action.

Main bank disclaimer

A form that must be signed to confirm you have been advised of a creditor's right to offset regarding your bank account, if you have not moved to a safe account.

Non-priority debts

add yours to your creditor list on page 8 of the three-step guide

Store cards, credit cards, personal loans, bank overdrafts, catalogue debts and money borrowed from family and friends.

Overdraft

Where withdrawals exceed available funds in your bank account.

Priority debts

add yours to your creditor list on page 7 of the three-step guide

Essential payments including mortgage, rent, utility bills, council tax and child maintenance.

Proof of debts

What creditors provide to confirm the balance on account.

Returned payment

A payment which hasn't been accepted by a creditor.

Right to offset

If you have debts with your bank in the form of credit card or loan arrears, your bank can lawfully take money from your current account to bring the loan or credit card repayments up to date. Opening an account that is not linked with any of your existing creditors will ensure that funds remain in your account.

Safe bank account

find out more on page 5 of the three-step guide

A bank account with no links to your debts, therefore the bank has no right to offset.

Secured debt

Any debt which is secured against an asset (e.g. a house). In the event of non-payment of the debt, the house may be repossessed to repay the loan.

Secured loan

This is a loan only available to property owners (or mortgage holders), where the lender can forcibly sell your house to get its money back if you can't repay.

Standing order

An arrangement set up by you, between you and your bank to pay another account or person. You have control over the payment that the bank send.

Surplus payment

work yours out on page 12 of the three-step guide

The amount you have available after your household and essential costs have been met.

Token payments

If you are unable to make repayments to your creditors, it may be necessary to make small 'token payments'. It is better to send each creditor a 'token payment' than to send nothing at all and it can be as little as £1.00 each per month.

Unsecured debt

A debt not secured by an asset (e.g. a house) or other collateral.

Warrant of execution

A method of enforcing judgments, used in British courts (except Scotland). It empowers a county court bailiff to attend the address of a person with debts and take goods for sale.



We're just a call away...

If you need help or support at any stage, call the
Special Advice Team on **0800 917 7819**.

